Shares and Share Capital – Concepts

Lesson 4

KEY CONCEPTS

■ Shares ■ Equity ■ Preference ■ Dividend ■ Transfer ■ Transmission ■ Sweat Equity Shares ■ Prospectus ■ Dematerialization ■ Rematerialization

Learning Objectives

To understand:

The lesson is divided into six parts for easy understanding:

PART A: Meaning and Types of Share Capital

- Definition of 'Capital'
- Definition of term 'Share'
- Defining the classes of Share Capital under the Companies Act, 2013
- Voting rights of equity shareholders and preference shareholders
- Compliance for publication of share capital under the Companies Act, 2013

PART B: Basic Terms related to Issue and Allotment of Shares

- Meaning of term 'Securities'
- Red Herring Prospectus, Shelf Prospectus, Abridged Prospectus, Offer for sale/deemed Prospectus, Matters to be stated in Prospectus
- Share Certificate, Duplicate share certificates, Splitting of share certificates, Maintenance of share certificate, Case laws, etc.

PART C: Issue and Allotment of Securities

- Issue of securities and governing provisions
- Issue of shares at premium, utilisation of share premium, prohibition of issue the shares at discount
- Concept of allotment of securities
- Private Placement of shares; Issue of shares on Preferential Basis; Right Issue; Bonus Issue; ESOP
- Equity shares with Differential Voting Rights; Sweat Equity Shares
- Issue and Redemption of Preference Shares

PART D: Alteration of Share Capital

- Methods of altering share capital
- Buyback of Shares
- Reduction of share capital
- Diminution of share capital is not reduction of Capital
- Reduction of share capital without sanction of Tribunal

PART E: Transferability of Shares

- What is transfer or transmission
- Stamp Duty applicability
- Statutory remedy in case board refuses registration of transfer/transmission of shares
- Dematerialisation and Rematerialisation of shares

Lesson Outline

- Meaning and types of shares capital
- Issue of Share Certificates
- Further Issue of Share Capital
- Issue of shares on Private and Preferential basis
- Right Issue and Bonus Issue
- Sweat Equity and ESOPs
- Preference shares and its types
- Transfer and Transmission of securities
- Reduction of Share Capital
- Dematerialization and Rematerialisatm of shares
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 (Section 23-70)
- The Companies (Share Capital & Debentures) Rules, 2014
- The Companies (Prospectus & Allotment of Securities) Rules, 2014
- The SEBI (Depositories and Participants) Regulations, 2018
- The SEBI (ICDR) Regulations, 2018

PART A: MEANING AND TYPES OF SHARE CAPITAL

MEANING AND DEFINITION OF 'CAPITAL'

'Capital' can be defined as the significant element for initiating and running the business for its day to day operations. As well the capital is required for funding its future prospects. Its meaning may vary from person to person. Capital can be termed as the money that can be used to make more money. For a business or say a company can have the capital can be from two sources:

- **Debt:** That a company owes and required to be paid back.
- **Equity:** The amount which investors put in the company in exchange to have ownership of the company and the same amount is not required to be paid.

In relation to a company limited by shares, the word 'capital' means the share capital i.e., the capital in terms of rupees divided into specified number of shares of a fixed amount each.

For example, share capital of a company is Rs.5,00,000 which can be divided into 50,000 shares of Rs.10 each or 5,000 shares of Rs.100 each, whichever is feasible to the company.

DEFINITION

Definition of Share: Under Section 2(84) of the Companies Act, 2013, "share" means a share in the share capital of a company and includes stock.

Section 44 of the Companies Act, 2013 provides that a share or debentures or other interest of any member in a company is a movable property transferable in the manner provided by the articles of the company. According to Section 45 of the Companies Act, 2013 every share in a company having a share capital shall be distinguished by its distinctive number but this provision shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

DEFINING THE CLASSES OF SHARE CAPITAL UNDER THE COMPANIES ACT 2013

Share Capital can be classified in the following categories: These are classified on the basis of maximum amount, subscribed amount, called up, issued and paid up capital.

Nominal Authorised or Registered Capital	**Section 2(8) under Companies Act, 2013 :** Such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.
Issued Capital	**Section 2(50) under Companies Act, 2013 :** Such capital as the company issues from time to time for subscription. It is that part of the authorised or nominal capital which the company issues for the time being for public subscription and allotment. This is computed at the face or nominal value.
Subscribed Capital	**Section 2 (86) under Companies Act, 2013 :** Such part of the capital which is for the time being subscribed by the members of a company. It is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers of shares in the company. It is clear that the entire issued capital may or may not be subscribed.
Called-up Capital	**Section 2(15) under Companies Act, 2013:** Such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has
Paid-up Share Capital	**Section 2(64) under Companies Act, 2013 :** Such aggregate amount of money credited as paid - up as is equivalent to the amount received as paid - up in respect of shares issued and also includes any amount credited as paid - up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.

Types of Share Capital

Pursuant to Section 43 of Companies Act, 2013, the share capital of a company limited by shares shall be of two kinds, namely: —

(a) Equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) Preference share capital.

Brief Analysis:

- **Equity share capital:** It means all share capital which is not preference share capital. It consists of the following features:

1. Equity Shares have voting rights at all general meetings of the company. These votes have the affect of the controlling the management of the company.
2. Equity Shares have the right to share the profits of the company in the form of dividend and bonus shares. However, even equity shareholders cannot demand declaration of dividend by the company which is left to the discretion of the Board of Directors.
3. When the company is wound up, payment towards the equity share capital will be made to the respective shareholders only after payment of the claims of all the creditors and the preference share capital.

- **Preference share capital:** It means that part of the issued share capital of the company which carries or would carry a preferential right with respect to-

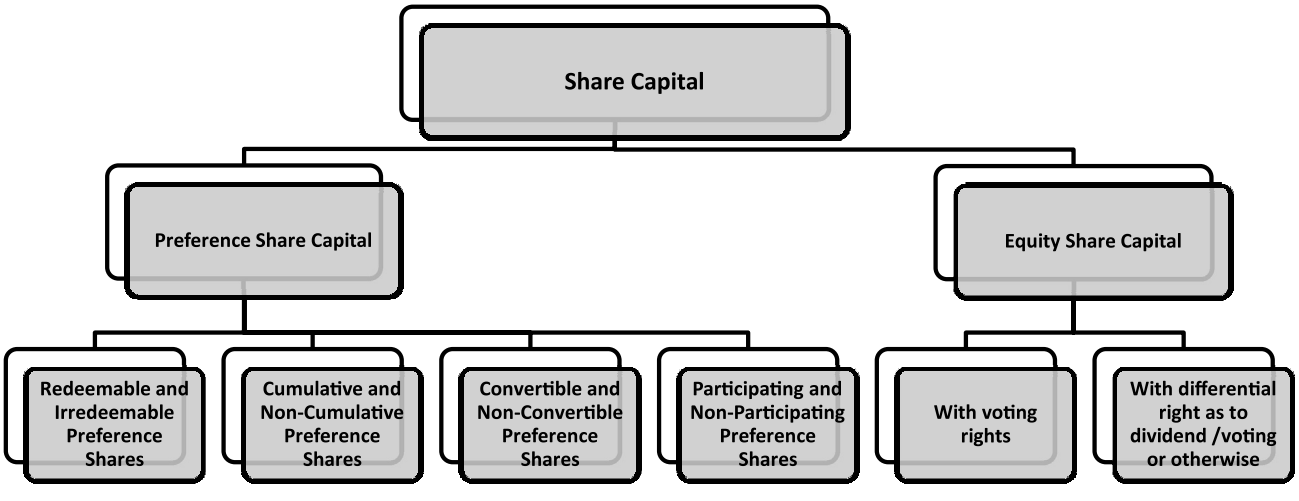
  1. payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
  2. repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company.

As per section 55 of the Companies Act, 2013, no company limited by shares shall, issue any preference shares which are irredeemable.

Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:-

(a) that in respect of dividends, in addition to the preferential rights to the amounts specified in sub- clause (a) of clause (ii) of section 43, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

(b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii) of section 43, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.



Cumulative and Non-Cumulative

- Cumulative preference shares: the dividends are accumulated and therefore paid before anything paid to equity shares.
- Non-Cumulative preference shares: if company does not pay dividend in current year, claim of preference shareholder is lost to that extent.

Convertible and Non-Convertible

- Convertible preference shares possess an option or right whereby they can be converted into an ordinary equity share at some agreed terms and conditions.

- Non-Convertible preference shares do not have the option to convert but has all other normal characteristic of a preference share.

Participating and Non-participating

- Participating preferences share has an additional benefit of participating in 'surplus profits or 'surplus assets' of the company apart from preferential dividend.
- The Non-participating preference share are those which are not entitled to participate in the 'surplus profits' or surplus assets'' of the company. They are entitled to only a fixed rate of dividend.

Redeemable and Non-Redeemable

- Redeemable preference share has a maturity date on which date the company will repay the capital amount to the preference shareholders. The paying back of capital is called redemption dividend. Preferences share shall be redeemed within a period not exceeding 20 years (however infrastructure companies can issue preferences shares redeemable within a period not exceeding 30 years).
- Irredeemable Preference Share do not have any maturity date and are repayable only at the time of winding up of the company. However, as per section 55 of the Companies Act, 2013 no company can issue irredeemable preference shares.

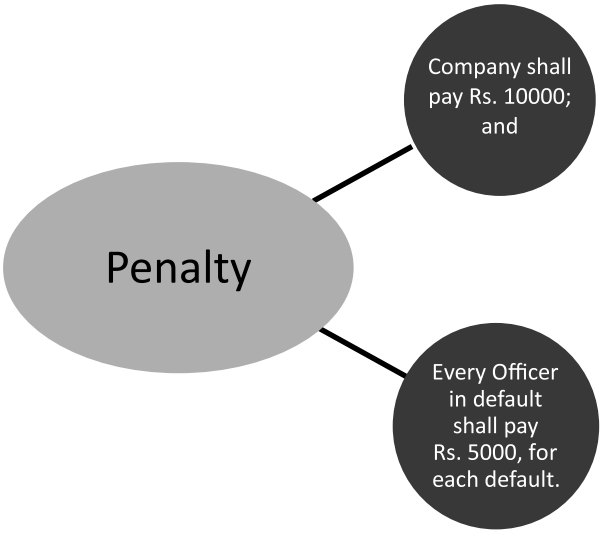
VOTING RIGHTS OF EQUITY SHAREHOLDERS AND PREFERENCE SHAREHOLDERS

Voting Rights of Equity Shareholders	*Voting Rights of Preference Shareholders*
According to section 47, subject to the provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188 – (a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and (b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.	Section 47(2) states that 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 only on resolutions placed before the company which directly affect the rights attached to his preference shares and, any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company: Provided that the proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares. Provided further that where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

COMPLIANCE FOR PUBLICATION OF SHARE CAPITAL UNDER COMPANIES ACT, 2013

It is provided under section 60 of the Act that, where any notice, advertisement or other official publication, or any business letter, bill head or letter paper of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, bill head or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

Penalty for non-compliance:



PART B: BASIC TERMS RELATED TO ISSUE & ALLOTMENT OF SECURITIES

Understanding the basic concepts and definition related to issue and allotment of securities are required before going through the procedure of issue and allotment of securities. It includes understanding the meaning securities, prospectus, kinds of prospectus like shelf prospectus, red herring prospectus , abridged prospectus and offer to sale deemed to prospectus, contents of prospectus, meaning of share certificates, concept of original and duplicate share certificates, etc.

SECURITIES

'Securities' has been defined under section 2(81) of Companies Act, 2013 to mean the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. The relevant section lays that securities include:-

As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956, 'securities' include-

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

Explanation.- For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938;

(ida) units or any other instrument issued by any pooled investment vehicle;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable including mortgage debt, as the case may be;

(ii) government securities;

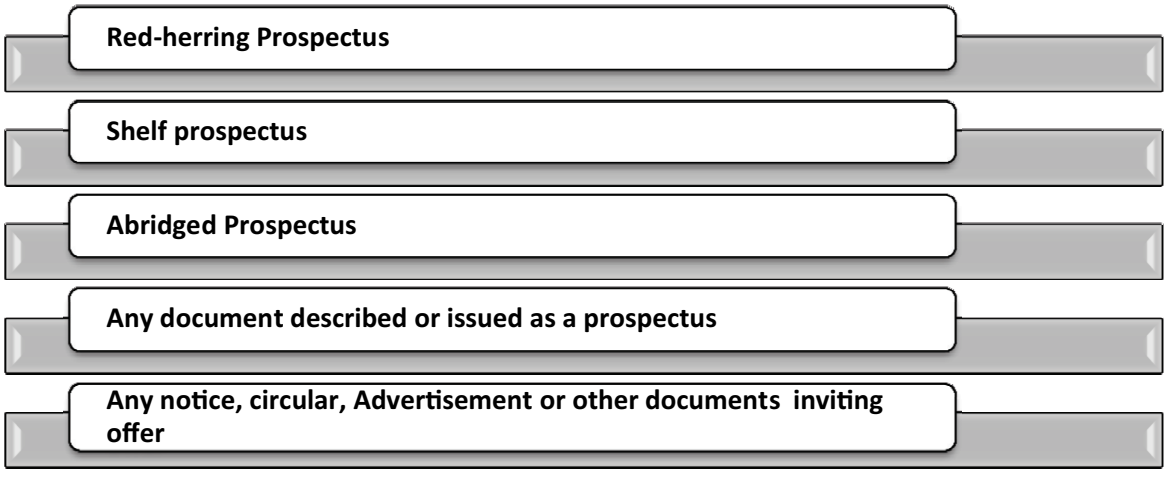
(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interests in securities.

Thus, the word 'securities' includes shares and other instruments.

PROSPECTUS

In general parlance prospectus refers to an information booklet or offer document on the basis of which an investor invests in the securities of an issuer company. It has been defined under section 2(70) so as to mean any document described or issued as a prospectus and includes a red-herring prospectus referred to in Section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.



RED-HERRING PROSPECTUS

Definition: Red-herring Prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities included therein (under explanation to section 32). In simple terms a red-herring prospectus contains most of the information pertaining to the company's operations and prospects, but does not include key details of the issue such as its price and the number of shares offered.

Timelines for issue: According to section 32 of the Companies Act, 2013 a company proposing to make an offer of securities may issue a red-herring prospectus prior to the issue of a prospectus.

Timeline for filing with ROC: Such company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

Other conditions: A red-herring prospectus shall carry the same obligations as are applicable to prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red-herring prospectus and shall be filed with the Registrar and the Securities and Exchange Board.

SHELF PROSPECTUS

Definition: Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public. Issuer is permitted to offer and sell securities to the public without a separate prospectus for each act of offering for a certain period.

Validity Period: Under the Act any class or classes of companies, as the Securities and Exchange Board (SEBI) may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. Such prospectus is to be submitted at the stage of the first offer of securities which shall indicate a period not exceeding one year as the period of validity of such prospectus. The validity period shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

Filing of Information Memorandum (FORM PAS-2) with ROC: An information memorandum is required to be filed by a company filing a shelf prospectus which shall contain all material facts relating to:

- new charges created;
- changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities; and
- such other changes as may be prescribed.

Filed with the Registrar with in ***within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus*****,** prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Advantage to investors: The section also provides a benefitting provision for the investors, the proviso provides that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

Illustration: XYZ Ltd intends to raise share capital by issuing equity shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. What can be the way out to the company to follow to avoid repeated issuance of prospectus?

Solution: Company can issue shelf prospectus to avoid repeated issuance of prospectus

ABRIDGED PROSPECTUS

Definition: According to section 2(1) of the Act "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. Section 33 of the Act provides that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus. A

copy of the prospectus, on are quest being made by any person before the closing of the subscription list, be furnished to him.

Exceptions: Nothing aforesaid shall apply if it is shown that the form of application was issued—

(a) in connection with a bonafide invitation to a person to enter into an underwrite with respect to such securities; or

(b) in relation to securities which were not offered to the public.

Penalty: The penal provisions provide that a company which makes any default in complying with the provisions shall be liable to a penalty of fifty thousand rupees for each default.

OFFER FOR SALE/DEEMED PROSPECTUS

Definition: Public Offer or an Offer for Sale (OFS) includes of securities to the public by an existing shareholder, through issue of a prospectus. Under section 25 of the Act where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company. The document "Offer for Sale" is an invitation to the general public to purchase the shares of a company through an intermediary, such as an issuing house or a merchant bank. A company may allot or agree to allot any shares or debentures to an "Issue house" without there being any intention on the part of the company to make shares or debentures available directly to the public through issue of prospectus. The issue house in turn makes an "Offer for Sale" to the public.

Additional Information: All enactments and rules of law as to the contents of prospectus and as to liability in respect of misstatements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply to such Offer for Sale. Following additional information to the matters required to be stated in a prospectus:

(a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected.

Conditions to be fulfilled:

(a) "Offer for Sale" to the public was made within six months after the allotment or agreement to allot; or

(b) at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

Signing Authority: It shall be sufficient if the offer document is signed on behalf of the company by two directors of the company.

Offer for Sale of shares by certain members of a company: Section 28 of the Act permits certain members of a company, in consultation with Board of Directors, to offer, in accordance with the provisions of any law for the time being in force, the whole or a part of their holdings of shares to the public. The document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.

All laws and rules made hereunder as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

The section lays that the members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorize the company, whose share were offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

The rules in this context provide that the provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities "and rules made there under shall be applicable to an offer of sale referred to in section 28 except for the following, namely:-

(a) the provisions relating to minimum subscription;

(b) the provisions for minimum application value;

(c) the provisions requiring any statement to be made by the Board of Directors in respect of the utilization of money; and

(d) any other provision or information which cannot be compiled or gathered by the offer or, with detailed justifications for not being able to comply with such provisions.

Further the rules provide that such offer document or prospectus issued under the section shall disclose the name of the entity bearing the cost of making the offer for sale along with reasons.

Matters to be stated in the prospectus

- **Setting out the reports on financial information**: According to Section 26(1), every Prospectus shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

  Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

- **Declaration about the compliance of provisions of Companies Act:** To make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.

SHARE CERTIFICATE

Meaning of Share Certificate: Share certificate is a prima facie evidence of the title of the person to such share. According to Section 45 of the Companies Act, 2013 each share of the share capital of the company shall be distinguished with a distinct number for its individual identification. However, such distinction shall not be required, as per provision to Section 45, if the shares are held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.

Who can sign share certificate:

In terms of Section 46(1) of the Act, a share certificate issued under the common seal, if any, of the company or signed by two Directors or by a Director and the Company Secretary, wherever, the company has appointed a Company Secretary, is a *prima facie* evidence of the title of the person to such share.

Time line for issue of share certificates:

Under Section 56(4) of the Act, every company, unless prohibited by any provision of law or any order of any Court, Tribunal or other authority must deliver the certificates of all securities allotted, transferred or transmitted:-

S. No.	*Event*	*Timelines*
1.	**Subscribers to the memorandum**	within a period of two months from the date of incorporation
2.	**Any allotment of any of its shares**	within a period of two months from the date of allotment
3.	**Transfer or transmission of securities**	within a period of one month from the date of receipt by the company of the instrument of transfer under sub-section (1) or, as the case may be, of the intimation of transmission under sub-section (2)
4.	**Any allotment of debenture**	within a period of six months from the date of allotment

NOTE: In case of Specified IFSC Public Company/Specified IFSC Private Company- It shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission with in a period of 60 days.- Notification dated 4th January, 2017.

However, where the securities are dealt within a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities [Proviso to Section 56(4)].

Duplicate Share Certificate

Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

Splitting of Share Certificate

A split certificate means a separate certificate claimed by a shareholder for a portion of his holding. The advantages of a split certificate are that the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

Difference between original share certificates and duplicate share certificates

BASIS	*ORIGINAL SHARE CERTIFICATES*	*DUPLICATE SHARE CERTIFICATES*
Governing Provisions	Rule 5 of the Companies (Share Capital and Debentures) Rules 2014	Rule 6 of the Companies (Share Capital and Debentures) Rules 2014
Issues	On allotment of shares	Renewal to be made only on surrender of old certificate
Fee	No fee is chargeable in case of original share certificates	Company may charge fee for duplicate share certificate as the Board decides but not exceeding Rs. 50 per certificate
Timeline for issue	Subscribers to Memorandum: 2 months Allotment: 2 months Transfer/Transmission: 1 month	Listed Company: 45 days Unlisted Company: 3 months from date of submission of documents

Record Maintenance	FORM MBP-2 (Register of Members)	FORM SH-2 (Register of Renewed and Duplicate Share Certificates)
Penalty	Where any default is made in complying with the above provisions, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees [Section 56(6)].	According to Section 46(5), if a company with an intention to defraud, issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447, for fraud.

Maintenance of share certificate forms and related books and documents [Rule 7 of the Companies (Share Capital and Debenture) Rules, 2014]

(1) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and the blank form shall be consecutively machine-numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the Secretary or such other person as the Board may authorise for the purpose; and the Company Secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.

(2) The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates referred above, namely:–

(a) the committee of the Board, if so authorized by the Board or where the company has a Company Secretary, the Company Secretary; or

(b) where the company has no Company Secretary, a Director specifically authorised by the Board for such purpose.

(3) All books mentioned above shall be preserved in good order not less than thirty years and in case of disputed cases, shall be preserved permanently, and all certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf.

The above mentioned provisions shall not apply to cancellation of the certificates of securities, under sub-section (2) of section 6 of the Depositories Act, 1996, when such certificates are cancelled in accordance with the SEBI (Depositories and Participants) Regulations, 2018.

Case Laws depicting Significance of Share Certificate

- A certificate of shares is evidence to the effect that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers. This certificate is a *prime facie* evidence of title to the shares in the possession of shareholders *[Society Generale De Paris vs. Walker, (1885) 11A AC 20, 29].*

- Share certificate is the only documentary evidence of title and that the share certificate is a declaration by the company that the person in whose name the certificate is issued is a shareholder in the company *[Ghanshyam Chhaturbhuj vs. Industrial Ceramics (Pvt.) Ltd. (1995) 4 Com LJ 51].*
- Also the company cannot dispute the amount mentioned on the certificate as already paid *[Bloomenthal v. Ford (1897) AC 156(HL)].*
- As already mentioned, a person acting on the share certificate issued by the company may recover compensation for the damages suffered by him. The measure of damage is the value of the shares at the time of the refusal by the company to recognize him as a shareholder together with interest from that date. *[Bahla and San Francisco Rly. Co., (1868) LR 3 QB584].*

Query: In case the company on registering the transfer of shares has sent certificate to another person. Elucidate.

Solution: In that case the company should surrender the original share certificate and if the said certificate is not so surrendered, the same should be cancelled by the company and duplicate certificate should be issued to the real owner. It was held in *BPL Sanyo Technology Ltd. vs. Rahul Agarwal [1995] 83 Comp Cas 885* decided by the Rajasthan High Court that the bank should surrender the original share certificate and if the said certificate is not so surrendered, the same should be cancelled by the company and duplicate certificate should be issued to the real owner**.**

Whether Share Certificate an Official Publication

The question whether a share certificate is an official publication was considered by the Department of Company Affairs (Now, Ministry of Corporate Affairs) and the Department has clarified vide *Circular No. 3/73[8/10(47)]/72-CL-V dated 3.2.1973* as follows:

"It will be seen that in terms of section 44 of the Companies Act, 2013, the shares in a company are movable property transferable in the manner provided in the articles of the company.

Section 46 of the Companies Act, 2013 provides that a certificate under the common seal of the company specifying any share held by any member shall be *prima facie* evidence of the title of the member to such share.

Thus, shares are movable property transferable in the manner provided in the articles of the company and that the share certificates are certificates of title and are movable property but are not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement.

Legal Effect of Share Certificate

We have already stated that a share certificate is *prima facie* evidence to the title of the person whose name is entered on it. It means that the share certificate is a statement by the company that the moment when it was issued, the person named in it was the legal owner of the shares specified in it, and those shares were paid-up to the extent stated. It does not constitute title but it is merely evidence of title. It is, however a statement of considerable importance, for it is made with the knowledge that other persons may act upon it in the belief that it is true and this fact brings into operation the doctrine of estoppel. As a result, a share certificate once issued by the company binds it in two ways,namely:

(a) by estoppel as to title, and

(b) by estoppel as to payment.

Estoppel as to Title: A share certificate once issued binds the company in two ways. In the first place, it is a declaration by the company to the entire world that the person in whose name the certificate is made out and to whom it is given is a shareholder in the company. In other words the company is estopped from denying his title to the shares.

Estoppel as to Payment: If the certificate states that on each of the shares full amount has been paid, the company is estopped as against a bonafide purchaser of the shares, from alleging that they are not fully paid.

If a person knows that the statements in a certificate are not true, he cannot claim an estoppel against the company *Barrow case (1880) 14 Ch D 432: 42LT 891CA*.

Despite everything, a certificate must be issued by someone who has the authority. For example, where the secretary forged the signature of two Directors in a company, the company had refused to register the holder of shares as a member. Further a certificate is not evidence as to the equitable interest in, where an individual is aware of the false statements in a certificate, he will not be entitled to claim an estoppel.

Personation of Shareholders [Section 57]

Meaning: To 'personate' means to pretend to be someone else, especially for fraudulent purpose such as casting a vote in another person's name. Personation and impersonation imply the same thing.

Where any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and

(i) thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon; or

(ii) receives or attempt to receive any money due to any such owner.

He shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees.

PART C: ISSUE AND ALLOTMENT OF SECURITIES

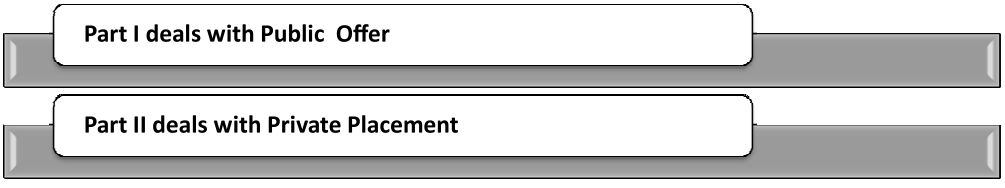
Financial markets have an important relationship with economic development. A company decides to issue securities for different reasons; the main reasons being raising capital to meet its financial requirements may be for starting a –

- new venture;
- repaying debts;
- expansion and diversification etc.

This actually reflects indulgence of enormous investor wealth for the sublime reason of economic development. This economic dependence of the corporate sector is a compelling rationale for an orderly regulated environment that boosts investor confidence and assures conformity with prescribed norms. It helps in creating conducive ownership base and wide capacities to create an impact on the national economy. When an investor buys securities he is enabling the company to carry on its business using those funds.

Primarily, issues can be classified as a Public issue, Rights or Preferential issues (also known as private placements). While public and rights issues involve a detailed procedure, private placements or preferential issues are relatively simpler.

Chapter III of the Companies Act, 2013 deals with "Prospectus and allotment of securities", the chapter is divided into two parts:



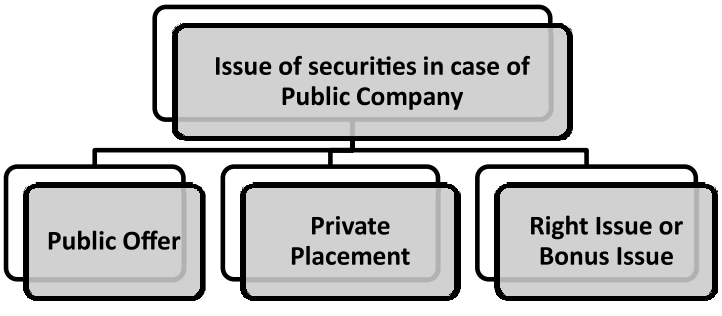
Section 23 of the Companies Act, 2013 provides that a company whether public or private may issue securities.

As per Section 23(1), a public company may issue securities:

(a) to public through prospectus ("public offer") by complying with the provisions of Part I of Chapter III of the Companies Act, 2013; or

(b) through private placement by complying with the provisions of Part II of Chapter III of the Companies Act, 2013; or

(c) through a rights issue or a bonus issue in accordance with the provisions of the Companies Act, 2013 and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made there under.

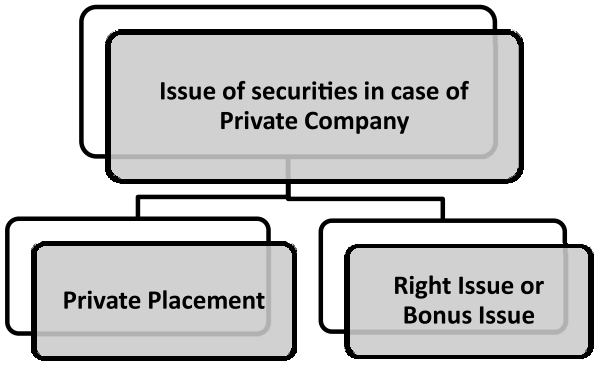


Public offer includes initial public offer or further public offer of securities to the public by a company, or an offer for the sale of securities to the public by an existing shareholder, through issue of prospectus.

For a private company, Section 23(2) provides that a private company may issue securities:

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II Chapter III of the Act.



The section 23(2) deals with issue of securities, which is a wider term not restricted to equity, preference or debentures.

Section 23(3) – Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

Section 23(4) – The Central Government may, by notification, exempt any class or classes of public companies referred to in sub- section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.

The MCA vide Notification No. 4744(E) dated October 30, 2023, has appointed it as the effective date for the provisions of section 5 of the Companies (Amendment) Act, 2020 i.e. enforcement of sub-section 3 and 4 od section 23 of the Companies Act, 2013.

Explanation I to Section 42 defines private placement as any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

GOVERNING LAWS

Issue of Securities is governed in the following manner:

In the case of a Public Company, which is a listed entity or is desirous of listing its securities on the recognized stock exchange in India, the issue of securities is governed by –

- The Companies Act, 2013;
- Securities Contract (Regulation) Act, 1956;
- The SEBI Act, 1992; and
- The SEBI (ICDR) Regulations, 2018.

In the case of all issues by Private Companies, the same is governed by the Companies Act and the power of administration is exercised by the Central Government, the Tribunal or the Registrar of Companies as the case may be.

Section 24 of the Companies Act empowers the SEBI to regulate the matters relating to issue and transfer of security non- payment of dividend by listed companies or those companies which intend to get their securities listed. The explanation to Section 24 provides that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in the Act shall be exercised by the Central Government, the tribunal or the Registrar of Companies as the case may be. Further the power relating to forward dealing and insider trading has been delegated to SEBI for listed companies or the companies which intend to get their securities listed.

KINDS OF ISSUE OF SHARES

1. Issue of Securities at a Premium

Meaning: A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Share Premium to be transferred to 'Securities Premium Account'

Section 52(1) states that when a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account"and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

Utilisation of Securities premium

In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

(a) issuing fully paid bonus shares to members;

(b) writing off the balance of the preliminary expenses of the company;

(c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;

(d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or

(e) for the purchase of its own shares or other securities under section 68.

CASE LAW

Utilisation of securities premium account for selective capital reduction

Brillio Technologies Pvt. Ltd. (Appellant) vs. Registrar of Companies, Karnataka & Ors. (Respondents) dated April 19, 2021

The NCLAT observed that Security Premium Account can be utilized for making payment to non-promoter shareholders. Further, it can be held that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares, whose shares have been extinguished pursuant to selective capital reduction, after obtaining prior approval of the NCLT.

Section 52(3) further states that the securities premium account may, notwithstanding anything contained in sub- sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,–

Where a company issues shares at a premium, even though the consideration may be other than cash, a sum equal to the amount or value of the premium must be transferred to the securities premium account. (Section 52(1)) *[Head (Henry) & Co. Ltd. v. Ropner Holding Ltd. (1951) 2 All ER 994: (152) Ch 124 (Ch D)].*

(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or

(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity of the company; or

(c) for the purchase of its own shares or other securities under section 68.

POINTS TO REMEMBER:

- Firstly, the premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend.

- Secondly, the amount of premium whether received in cash or in kind must be kept in a separate account, known as the "Securities Premium Account".
- Thirdly, the amount of premium is to be maintained with the same sanctity as the share capital.

Any premium paid does not give the shareholder any preferential rights in case of a winding up. Monies in the securities premium account cannot be treated as free reserves, as they are in the nature of capital reserve *[Departmental Circular No. 3/77 dated 15.4.1977]*.

Illustration: A company ABC Limited has issued shares on security premium and the amount has been separately kept in Security Premium Account. Now the company wants to use this amount for the following purposes. Guide as Company Secretary of the Company:

a) Writing off the balance of preliminary expenses.

b) For distribution of dividend

c) For buyback of shares.

Solution: The company can use the security premium amount for purpose (a) and (c) and not for the purpose (b).

2. PROHIBITION TO ISSUE THE SHARES AT DISCOUNT

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

Exception: A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

Penalty: Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve percent per annum from the date of issue of such shares to the persons to whom such shares have been issued.

CONCEPT OF ALLOTMENT OF SECURITIES

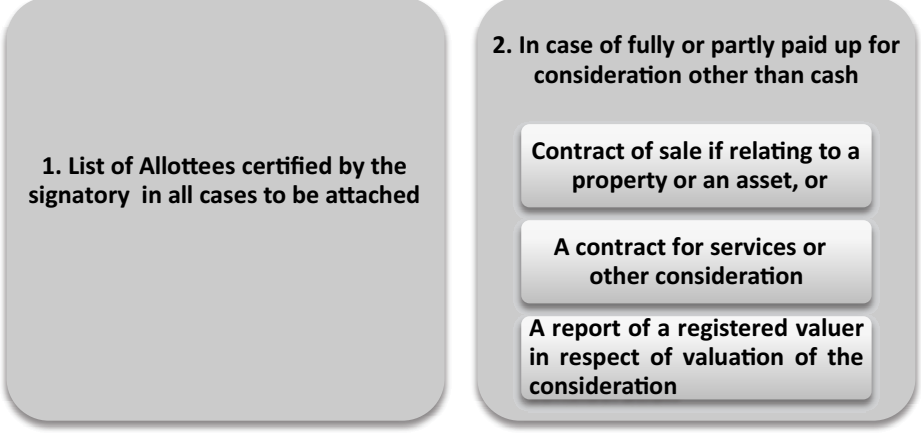
Section 39 of the Companies Act, 2013 read with Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with Allotment of Securities.

Allotment

- Allotment of any securities of a company offered to the public for subscription shall be made only when the amount stated in the prospectus as the minimum amount has been subscribed and payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.
- **Minimum Amount of Application**: The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- **FORM PAS-3:** Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment, within thirty days thereafter, in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.

- Along with Form PAS-3 a certified list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees, shall be attached.
- The list shall be certified by the signatory of Form PAS-3 as being complete and correct as per the records of the company.
- Further, in the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration shall be attached to the Form PAS-3.
- When a contract is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899, and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899. Further a report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract.

FORM PAS-3 AND ITS ATTACHMENTS



Refund of money

In cases where the stated minimum amount has not been subscribed and the sum payable on application received with in a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the SEBI, the amount received as above shall be returned. The application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

Time to refund the application money	15 days from closure of issue
Interest to be paid in case of default in repayment of application money	15% p.a.

Penalty for default [Section 39(5)]

In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

CASE LAWS

Related to return of allotment

(A) In case of *Sri Gopal Jalan & Co. vs. Calcutta Stock Exchange Association Ltd. 1963-(033)-Com Cases-0862-SC*, the Supreme Court held that the exchange was not liable to file any return of the forfeited shares under Section 75(1)of the Companies Act,1956 [Corresponds to section 39 of the Companies Act, 2013] when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital and approved the observations of Harries C.J. in S.M. Nandy's case that: "On such forfeiture all that happened was that the right of the particular shareholder disappeared but the shares considered as a unit of issued capital continued to exist and was kept in suspense until another shareholder was found for it";

(B) In case of *Alote Estate vs. R.B. Seth Hiralal Kalyanmal Kasliwal [1970] 40 Com Cases 1116 (SC)*, inadequacy of consideration, the shares will be treated as not fully paid and the shareholder will be liable to pay for them in full, unless the contract is fraudulent;

(C) *Harmony and Montage Tin and Copper Mining Company; Spargo's case (1873).*

Any payment which is presently enforceable against the company such as consideration payable for property purchased, will constitute payment in cash;

(D) In case of *Chokkalingam vs. Official Liquidator AIR 1944,* allotment of shares against promissory notes shall not be valid.

GENERAL PRINCIPLES REGARDING ALLOTMENT

"Allotment" of shares means the act of appropriation by the Board of Directors of the company out of the previously un-appropriated capital of a company of a certain number of shares to persons who have made applications for shares *(In Re Calcutta Stock Exchange Association, AIR 1957 Cal. 438).* It is on allotment that shares come into existence.

The following general principles should be observed with regard to allotment of securities:

1. The allotment should be made by proper authority. The proper authority may be the Board of Director of the company, or a committee authorised to allot securities on behalf of the Board.
2. Allotment of securities must be made within a reasonable time (As per Section 6 of the Indian Contract Act, 1872, an offer must be accepted within a reasonable time). What is reasonable time is a question of fact in each case. An applicant may refuse to take securities if the allotment is made after along time. (As per Section 56 within a period of two months from the date of allotment in the case of allotment of any of its shares)
3. The allotment should be absolute and unconditional. Securities must be allotted on same terms on which they were applied for and as they are stated in the application for securities. Allotment of securities subject to certain conditions is also not valid. Similarly, if the number of securities alloted is less than those applied for, it cannot be termed as absolute allotment.
4. The allotment must be communicated. As mentioned earlier posting of letter of allotment or allotment advice will be taken as a valid communication even if the letter is lost in transit.
5. Allotment against application only. Section 2(55) of the Act requires that a person should agree in writing to become a member.

6. Allotment should not be in contravention of any other law. If securities are allotted on an application of a minor, the allotment will be void.

CASE LAWS

Related to allotment

(A) An allotment may be valid even if some defect was there in the appointment of Directors but which was subsequently discovered. [Section 290 and the Rule in *Royal British Bank vs. Turquand* (1856)];

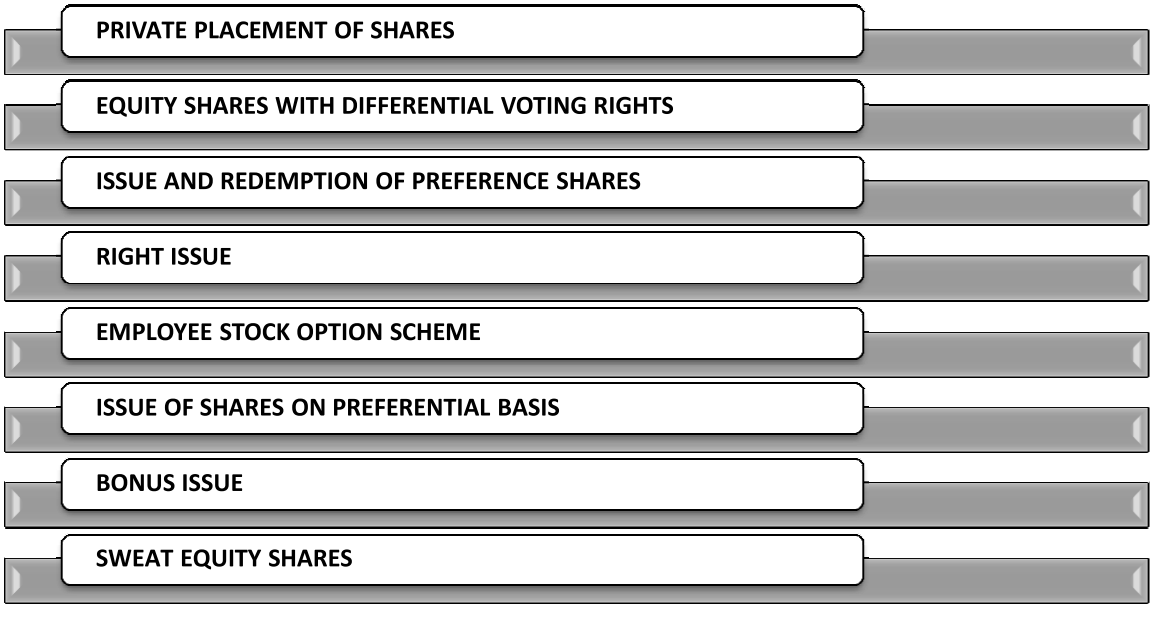
(B) An allotment by a Board irregularly constituted may be subsequently ratified by a regular Board *[Portugese Consolidated Copper Mines, (1889) 42 Ch. D 160 (CA)]*;

(C) A director who has joined in an allotment to himself will be estopped from alleging the invalidity of the allotment *[Yark Tramways Co. vs. Willows*, (1882)];

(D) Grant applied for certain shares in a company, the company dispatched letter of allotment to him which never reached him. It was held that he was liable for the balance amount due on the shares. *[Household Fire And Carriage Accident Insurance Co. Ltd. vs. Grant* (1879)];

(E) There can be no proper allotment of shares unless the applicant has been informed of the allotment *[British and American Steam Navigation Co. Re. (1870)]*.

ISSUE OF SECURITIES



I. PRIVATE PLACEMENT OF SHARES

Governing Provisions of Companies Act 2013: Section 42 and Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

- **Meaning:** As per Explanation I to Section 42(3), "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

- **Private Placement offer-cum-application:** Section 42(1) provides that a company may, subject to the provisions of this section, make a private placement of securities. Section 42(3) reads, a company making private placement shall issue private placement offer and application in **Form PAS-4** serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode within 30 days of recording the name of such person pursuant to sub-section (3) of section 42.

  The private placement offer and application shall not carry any right of renunciation.

- **Maximum number of persons to whom offer can be made and other incidental matters:** As per section 42(2), a private placement shall be made only to a select group of persons who have been identified by the Board, whose numbers shall not exceed 200, excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause(b) of sub-section (1) of section 62, in a financial year subject to such conditions as may be prescribed.

  It is further clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

  "Qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

  Where a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be the public offer and shall be accordingly dealt.

  Further sub-rule (7) provides that the provisions of sub-rule (2) shall not be applicable to:

  (a) Non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934; and

  (b) Housing finance companies which are registered with the National Housing Bank under the National Housing Bank Act, 1987.

  If they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis.

- **Application to Private Placement:** As per section 42(4) states that every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash. However, a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.

- Time limit for allotment and payment of interest/refund of subscription money otherwise:

  Section 42(6) states that a company:

  - Allot the securities within 60 days from receipt of application money.
  - If not allotted, Repay the application money within 15 days from the expiry of 60 days.
  - If not repaid, liable to pay interest @12% p.a. from the expiry of the 60th day.

- **Subscription money to be kept in a separate bank account**

  Proviso to Section 42(6) states that monies received on application received by the company shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than-

  (a) for adjustment against allotment of securities; or

  (b) for the repayment of monies where the company is unable to allot securities.

- **No information to Public about issue:** Section 42(7) states that no company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

Return of allotment

- **Filing with the Registrar a return of allotment (FORM PAS-3)** within fifteen days from the date of the allotment, including a complete list of all allottees, with their full name, address, PAN No. and e-mail id of security holder, the class of security held, the date of allotment of security, the number of securities held, nominal value and amount paid on such securities and particulars of consideration received if the securities were issued for consideration other than cash.
- **Penalty for non-filing Form PAS-3**: The company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

Penalty

According to section 42(10), if a company makes an offer or accepts monies in contravention of section 42, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest to subscribers within a period of thirty days of the order imposing the penalty.

CONDITIONS APPLICABLE TO PRIVATE PLACEMENT

1. Special Resolution of Shareholders: A Company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitation.

The explanatory statement annexed to the notice for shareholders' approval shall contain the following disclosure:

(a) particulars of the offer including date of passing of Board Resolution;

(b) kinds of securities offered and the price at which such security is being offered;

(c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;

(d) name and address of valuer who performed valuation;

(e) amount which the company intends to raise by way of such securities;

(f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities:

Where the amount to be raised through such offer or invitation does not exceed the limit specified in Section 180(1)(a) in such cases relevant Board Resolution under Section 179(3)(c) would be adequate.

In case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit specified in Section 180(1)(c), it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

In case of offer or invitation of any securities to qualified institutional buyers, it shall be sufficient if the company passes a previous special resolution only in a year for all the allotments to such buyers during the year.

2. Records to be maintained: The Company shall maintain a complete record of private placement offers in Form PAS-5.

3. Filing with ROC:

- FORM PAS-3 within 15 days of allotment.
- FORM MGT-14 for filing with ROC Special Resolution/Board Resolution within 30 days.

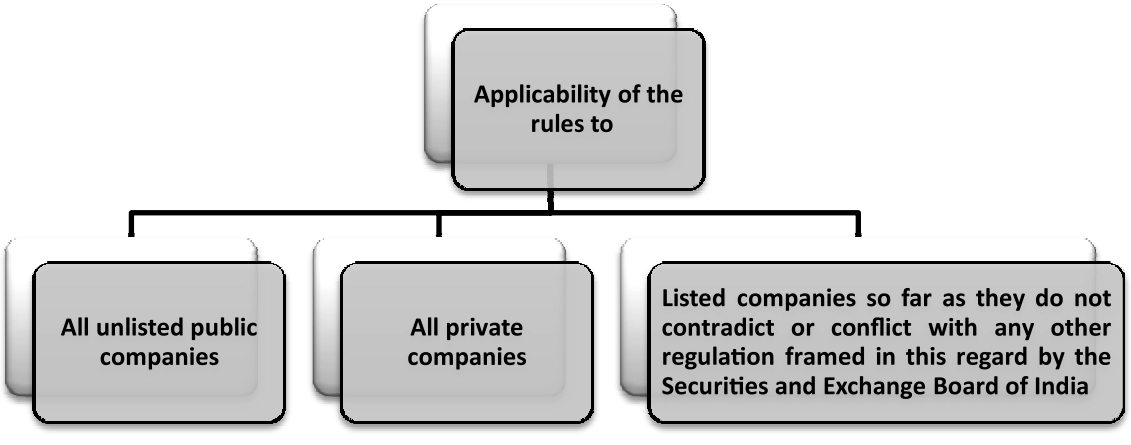
CASE LAW

In the case of ***Mayasheel Retail India Limited***, ROC of Delhi & Haryana observed that the Company has violated the provisions of section 42(2), 42(7) and 42(8) of the Act r/w Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 that include exceeding the permissible limit of subscribers, publicizing the offering through advertisements, and failing to file requisite returns with the Registrar of Companies.

II. EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

Governing Provisions of Companies Act 2013: Section 43 and Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014.

While Section 43 enables companies to issue equity shares with differential rights as to dividend, voting rights etc., Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014 states the conditions regarding shares with differential voting rights.



Conditions for issuing shares with differential rights [Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014]

Only a company limited by shares can issue equity shares with differential rights as to dividend, voting or otherwise. Such company has to comply with the following conditions, namely:-

(a) **Authorization in Articles of Association:** The articles of association of the company authorizes the issue of shares with differential rights;

(b) **Passing of Ordinary Resolution at General Meeting**: The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders. When the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot. (Though with Companies (Amendment) Act, 2017 coming into force, any item of business required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108);

(c) **Limit for voting power not exceeding 74 percent:** the voting power in respect of shares with differential rights of the company shall not exceed seventy four percent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;

(d) **No defaults:** The company has not defaulted in the following:

- 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;
- the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

A company may issue equity shares with differential rights upon expiry of five years from the end financial year in which such default was made good.

The company has not been penalized by Court or Tribunal during the last three years of any offence under the RBI Act, 1934, the SEBI Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act,1999 or any other Special Act, under which such companies being regulated by sectoral regulators.

(e) Conversion of existing equity share capital into differential voting rights and vice-versa not possible: The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice versa*;

(f) Register of Members: The Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of these;

(g) The holders of the equity shares with differential rights enjoys all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

Illustration:

The Company ABC Private Limited wants to issue shares with differential voting rights up to 40% of its share capital? Can it do so?

Solution: Rule 4 of the Companies (Share capital and Debentures) Rules, 2014 specifies a condition that the voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time. Therefore, a company can issue shares with differential voting rights upto 40 percent of its share capital which is within limit mentioned in Rule 4.

Disclosures in the explanatory statement to the notice of the meeting

While taking a decision it is important that all information is provided with regard to the matter, hence rule 4(2) of the Companies (Share Capital and Debentures) Rules, 2014 requires that the explanatory statement shall be annexed to the notice of the general meeting or of a postal ballot. The explanatory statement shall contain the following particulars, namely:-

(a) the total number of shares to be issued with differential rights;

(b) the details of the differential rights;

(c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the reasons or justification for the issue;

(e) the price at which such shares are proposed to be issued either at par or at premium;

(f) the basis on which the price has been arrived at;

(g) (i) in case of private placement or preferential issue:

(a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

(b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

(ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;

(h) the percentage of voting right which the equity share capital with differential voting right shall carry the total voting right of the aggregate equity share capital;

(i) the scale or proportion in which the voting rights of such class or type of shares shall vary;

(j) the change in control, if any, in the company that may occur consequent to the issue of equity differential voting rights;

(k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

(l) the pre and post issue share holding pattern along with voting rights as per Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Disclosures in the Boards' Report

The Board of Directors are required to disclose the details of the issue of equity shares with differential rights in the Board's Report for the financial year in which was completed.

(a) the total number of shares allotted with differential rights;

(b) the details of the differential rights relating to voting rights and dividends;

(c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(d) the price at which such shares have been issued;

(e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;

(h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

III. ISSUE AND REDEMPTION OF PREFERENCE SHARES

Governing Provisions of Companies Act 2013: Section 55 and Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014.

CONDITIONS FOR ISSUE OF PREFERENCE SHARES

- **Time Period**: Company cannot issue irredeemable preference shares or redeemable preference shares with the redemption period beyond 20 years.
- **Authorisation by Articles of Association:** Section 55 (2) further states that a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

Section 55 (1) states that no company limited by shares shall issue any preference shares which are irredeemable.

Exceptions

Issue and redemption of preference shares by company in infrastructure projects

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum 10% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

The term ''Infrastructure Projects'' means the infrastructure projects specified in Schedule VI.

- **Authorized by passing a special resolution in the general meeting of the company:** the issue of such shares has been authorized by passing a special resolution in the general meeting of the company.

- **No subsisting default:** the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier or in payment of dividend due on any preference shares.
- **Redemption out of the profits of the company**: Preference Shares shall be redeemed out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption.
- **Fully paid up shares:** Such shares shall be redeemed only if they are fully paid.
- **Capital Redemption Reserve Account:** where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account.
- **Premium if any payable on redemption of preference shares:**

  (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed. Premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

  (ii) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

  In case Company is not in position to redeem preference shares: Section 55(3) states that when a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares here in after referred to as unredeemed preference shares), it may, with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

  The issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

  The capital redemption reserve account may, notwithstanding anything in this section, 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.

Resolution authorising preference shares to set out certain particulars

A company issuing preference shares shall set out in the resolution, particulars in respect of the following matters relating to such shares, namely:-

(a) the priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;

(b) the participation in surplus fund;

(c) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;

(d) the payment of dividend on cumulative or non-cumulative basis;

(e) the conversion of preference shares into equity shares;

(f) the voting rights;

(g) the redemption of preference shares.

Explanatory statement to special resolution to set out certain particulars

While taking a decision it is important that all information is provided with regard to the matter, hence rule 9(3) states that the explanatory statement to be annexed to the notice of the general meeting which shall provide the material facts concerned with and relevant to the issue of such shares, including -

(a) the size of the issue and number of preference shares to be issued and nominal value of each share;

(b) the nature of such shares i.e. cumulative or non-cumulative, participating or non-participating, convertible or non-convertible;

(c) the objectives of the issue;

(d) the manner of issue of shares;

(e) the price at which such shares are proposed to be issued;

(f) the basis on which the price has been arrived at;

(g) the terms of issue, including terms and rate of dividend on each share, etc.;

(h) the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;

(i) the manner and modes of redemption;

(j) the current share holding pattern of the company;

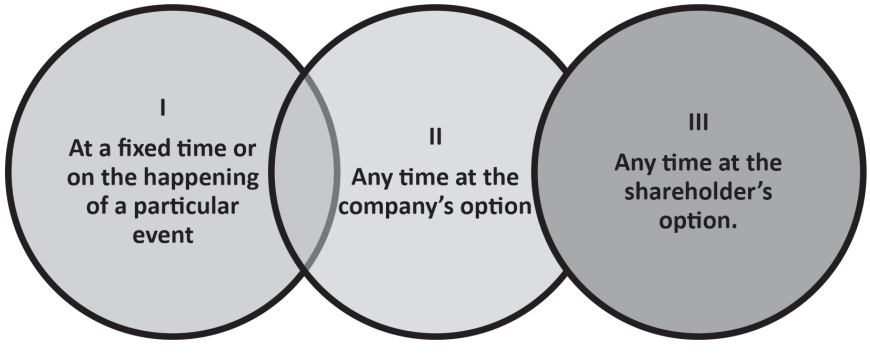
(k) the expected dilution in equity share capital upon conversion of preference shares.

Register of Members to contain the particulars of preference share holder(s)

When a company issues preference shares, the Register of Members maintained under section 88 shall contain the particulars in respect of such preference shareholder(s).

Redemption of preference shares

Rule 9 (6) states that a company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-



Procedure to issue and redemption of Preference Shares

(1) For issue of preference shares the articles of the company should authorize for it, if not, then amendment in the articles of the company is required. Also ensure that there is no subsisting defaults in redemption of preference shares earlier or in payment of dividend due on any preference shares.

(2) Ensure that the resolution for issuing preference shares contains all the relevant particulars as mentioned above.

(3) Issue the notice of general meeting along with the explanatory statement, to provide the required details.

In the case of listed entity, intimate the stock exchange at least two working days in advance of board meeting (Regulation 29 of Listing Regulations).

(4) Pass special resolution and file with the Registrar **Form MGT-14** along with the fee so specified in the Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing the resolution.

> *Note:* in case of One Person Company for the purpose of passing of ordinary and special resolution in general meeting, it shall be sufficient if the resolution is communicated by the member to the company and entered in the minutes book and signed and dated by the member and such date shall be deemed to be the date of meeting for all purpose under this Act.

(5) Within 30 days of allotment file with the Registrar, the Return of allotment in **Form PAS-3** along with fee as specified in companies (Registration of Offices and Fees), Rules 2014.

(6) Update the register of members maintained under section 88 after issue of preference shares.

(7) The company may redeem the preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders.

(8) The preference shares may be redeemed as given below:

(a) At affixed time or happening of a particular event;

(b) Any time at the company's option;

(c) Any time at the shareholders option.

(9) The notice of redemption of preference shares shall be filed by the company with the Registrar in **Form SH-7** along with altered MOA with the fee as specified in Companies (Registration of Offices and Fees), Rules, 2014 within 30 days of redemption of preference shares.

(10) Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in **Form PAS. 3**, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014.

(11) Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment.

(12) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.

Remedies available for Preference shareholders in relation to redemption of preference shares

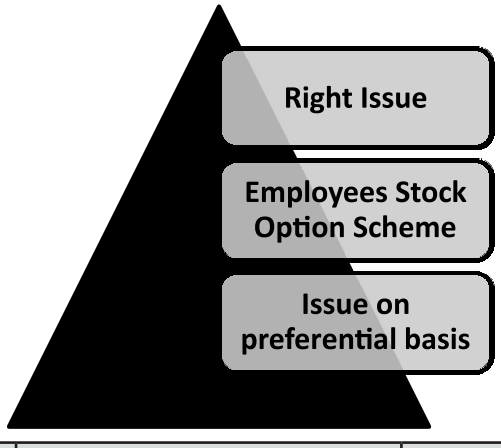
The National Company Law Appellate Tribunal (NCLAT) in the matter of *Bank of Baroda (Appellant) vs. Aban Offshore Limited (Respondent), Company Appeal (AT) No.35 of 2019*, held that intention of the legislature while promulgating Section 55 of the Companies Act, 2013 was to compulsorily provide for redemption of preference shares by doing away with the issue of or redeemable preference shares.

Therefore, even though there is no specific provision stipulated under the Companies Act, 2013 through which relief can be sought by preference shareholders in case of non- redemption by the company or consequent non-filing of petition under Section 55 of the said Act, the intention of the legislature being clear and absolute, Tribunal's inherent power can be invoked to get an appropriate relief by an aggrieved preference shareholder(s).

Alternatively, preference shareholders coming within the definition of 'member(s)' under Section 2(55) read with Section 88 of the Companies Act, 2013, may file a petition under Section 245 of the said Act, as a class action suit, being aggrieved by the conduct of affairs of the company. Thereby, it was held that preference shareholders are not remediless and for redemption of preference shares, they can file an application under Section 55(3) of the Companies Act, 2013 or alternatively they may also file application under Section 245 of the Companies Act, 2013 as a class action suit and the NCLT while exercising the inherent power viz. Rule 11 of NCLT Rules, 2016 can pass appropriate order.

FURTHER ISSUE OF SHARE CAPITAL

Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered:



(A) ***PERSONS***	*(B)* ***EMPLOYEES***	*(C)* ***ANY PERSONS***
[u/s 62(1)(a)]	***[u/s 62(1)(b)]***	***[u/s 62(1)(c)]***
• Who, at the date of the offer, are holders of equity shares of the company • In proportion to the paid-up share capital on those shares • By sending a letter of offer Subject to such conditions as may be prescribed.	• Under a Scheme of Employees Stock Option • Subject to special resolution passed by company (Ordinary Resolution in Private Company) Subject to such conditions as may be prescribed.	• Whether or not those persons include the persons referred to in Clause (a) or (b) • If it is authorised by a special resolution either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer Subject to such conditions as may be prescribed.

IV. RIGHT ISSUE:

Governing Provisions of the Companies Act, 2013: Section 62(1)(a) and Rule 12A of the Companies (Share Capital and Debentures) Rules, 2014.

Definition: Issue of shares to those who, at the date of the offer, are holders of equity shares of the company in proportion to the paid-up share capital on those shares by sending a letter of offer.

Conditions: The offer shall be made by notice:

- specifying the number of shares offered; and
- limiting a time not being less than fifteen days or such lesser number of days as may be prescribed and not more than 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
- The offer shall be deemed to include right of renunciation, unless the articles of the company otherwise provide; and the notice referred above shall contain a statement of this right;
- If the offer is rejected by the equity shareholders after the expiry of the time specified in the notice aforesaid; or
- on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered;
- the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

Period of Notice for offer under Right Issue under Section 62(1) (a)(i)

As per Rule 12A of the Companies (Share Capital and Debenture) Rules, 2014, the time period within which the offer shall be made to shareholders for acceptance shall be not less than seven days from the date of offer.

The said notice shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.

Right to renounce the offer: Unless the articles of the company otherwise provide, the Directors must state in the notice of offer of rights shares the fact that the shareholder has also the right to renounce the offer in whole or in part, in favour of some other persons. However, in case of a private company case ninety percent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub- section shall apply.

The provisions of section 62 are applicable to all types of companies except the Nidhi companies.

Restrictions: The restrictions contained in Section 62 of the Act regarding issue of further shares do not apply to:-

(a) Increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loans raised by the company to convert such debentures or loans into shares in the company [Section 62(3)].

The terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loans by a special resolution passed by the company in the general meeting.

(b) conversion of part or whole of the debentures issued to or loans obtained from any Government in shares of the company in pursuance of a direction issued by that Government in public interest on such terms and conditions as appear to be fair and reasonable to the Government even if the terms of issue of such debentures or loans do not contain a term providing for an option for such conversion [Section 62(4)].

Where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty 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.

In determining the terms and conditions of conversion under section 62(4), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary [Section 62(5)].

Where the Government has, by an order made under section 62(4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under section 62(4) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised 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 [Section 62(6)].

CASE LAW

Related to further issue of shares by a company

(1) *Nanalal Zaver vs. Bombay Life Assurance Co. Ltd., AIR 1950 SC 172: (1950)*: Section 81 (Corresponding to section 62 of the Companies Act, 2013) is intended to cover cases where the Directors decide to increase the capital by issuing further shares within the authorised limit, because it is within that limit that the Directors can decide to issue further shares, unless, of course, they are precluded from doing that by the Articles of Association of the company. Accordingly, the section becomes applicable only when the Directors decide to increase the capital within the authorised limit, by issue of further shares.

The above judgement was followed by the Supreme Court in *Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd.*(1981). The Court pointed out that the Directors of a company must exercise their powers for the benefit of the company. The Directors are in a fiduciary position and if they does not exercise powers for the benefit of the company but simply and solely for personal aggrandisement and to the detriment of the company, the Court will interfere and prevent the Directors from doing so;

(2) *Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd.:* The power to issue shares need not be used only when there is a need to raise additional capital. The power can be used to create a sufficient number of shareholders to enable a company to exercise statutory powers or to enable it to comply with statutory requirements.

The Department of Company Affairs, now Ministry of Corporate Affairs has clarified that 'one year' specified in the section is to be counted from the date on which the company has allotted any share for the first time;

(3) *Balkrishan Gupta vs. Swadeshi Polytex Ltd.* (1985): Although the term 'holders of the equity shares' is used in Sub-section (1)(a) and 'members' in Sub-section (1A)(b) of Section 81 (Corresponding to section 62 of the Companies Act, 2013), the two terms are synonymous and mean persons whose names are entered in the register of members;

(4) In *Worldwide Agencies (P) Ltd. vs. Margaret T. Desor, (1990)*, it was held that persons who have become entitled to the shares of a deceased member can exercise all the membership rights of the deceased irrespective of the fact whether their name is in the register of members or not;

(5) *Mathalone (R) vs. Bombay Life Assurance Co. Ltd. AIR 1953 SC 385: (1954):* The Court held that the transferor could not be compelled by the transferee to take up on his behalf the rights shares offered to the transferor and all that he could require the transferor to do was to renounce the rights issue in the transferee's favour.

V. EMPLOYEE STOCK OPTION SCHEME

Governing Provisions of the Companies Act 2013: Section 62(1)(b) and Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014.

Definition: The term 'Employee Stock Option' (ESOP) has been defined under sub-section (37) of Section 2 of the Companies Act, 2013, according to which "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

Type of Resolution:

- **For public Company:** Special Resolution
- **For Private Company**: Ordinary Resolution

Who are employees?

(a) a permanent employee of the company who has been working in India or outside India; or

(b) a Director of the company, whether a whole time Director or not but excluding an Independent Director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include -

  (i) an employee who is a promoter or a person belonging to the promoter group; or

  (ii) a Director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

In case of a startup company, as defined in notification number [G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of industry and Internal Trade, Ministry of Commerce and Industry Government of India, Government of India] the conditions mentioned in sub-clause (i) and (ii) shall not apply upto ten years from the date of its incorporation or registration.

Details in explanatory statement

While taking a decision it is important that all information is provide with regard to the matter, hence rule 12(2) states that the company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution–

(a) total number of stock options to be granted;

(b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;

(c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;

(d) the requirements of vesting and period of vesting;

(e) the maximum period within which the options shall be vested;

(f) the exercise price or the formula for arriving at the same;

(g) the exercise period and process of exercise;

(h) the Lock-in period, if any;

(i) the maximum number of options to be granted per employee and in aggregate;

(j) the method which the company shall use to value its options;

(k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment form is conduct;

(l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and

(m) a statement to the effect that the company shall comply with the applicable accounting standards.

Free pricing in conformity with accounting policies

The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

Rule 12(4) states that the approval of shareholders by way of separate resolution shall be obtained by the company in case of –

(a) grant of option to employees of subsidiary or holding company; or

(b) grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

Varying the terms of ESOP requires special resolution

Rule 12(5) states that the company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders. The notice shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such.

Minimum one year vesting period

Rule 12 (6)(a) states that there shall be a minimum period of one year between the grant of options and vesting of option. In a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause.

Company has freedom to specify lock-in period

Rule 12(6)(b) states that the company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

No right of dividend or voting till exercise of option

Rule 12 (6)(c) states that the Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

Forfeiture/refund

Rule 12 (7) states that the amount, if any, payable by the employees, at the time of grant of option –

(a) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or

(b) the amount maybe refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

Conditions

Rule 12(8) states the following conditions:

- The option granted to employees shall not be transferable to any other person.
- The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
- No person other than the employees to whom the option is granted shall be entitled to exercise the option.

Death/Permanent disability/Resignation of employees who were granted with options

Rule 12(8) states that in the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

Disclosure in the Board's Report

Rule 12(9) states that the Board of Directors, shall, *inter alia,* disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme issued during the year.

Maintenance of Register

- Rule 12(10) states that the company shall maintain a Register of Employee Stock Options in **Form No. SH.6** and shall forthwith enter therein the particulars of option granted under clause (b) of sub-section (1) of section 62.
- The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.

Listed companies has to comply with the SEBI guidelines

Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

Forms to be filed with ROC for ESOP

- Form MGT-14 for Special Resolution within 30 days
- Form PAS- 3 for allotment within 30 days

VI. ISSUE OF SHARES ON PREFERENTIAL BASIS

Governing Provisions of the Companies Act, 2013: Section 62(1)(c) and Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.

As discussed earlier, section 62(1)(c) deals with issue of shares to persons other than existing shareholders and provides that a company can issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if —

(a) The company in General Meeting passes a special resolution to this effect; and

(b) The price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

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 and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

Conditions for Preferential Offer

(a) **Authorisation by its Articles of Association and Special Resolution**: The issue is authorized by its articles of association. The issue has been authorized by a special resolution of the members;

(b) **Contents of Explanatory Statement**: While taking a decision it is important that all information is provided with regard to the matter, hence the company shall make the following disclosures in the explanatory statement to be annexed to the notice of general meeting:

(i) The objects of the issue;

(ii) The total number of shares or other securities to be issued;

(iii) The price or price band at/within which the allotment is proposed;

(iv) Basis on which the price has been arrived at along with report of the registered valuer;

(v) Relevant date with reference to which the price has been arrived at;

(vi) The class or classes of persons to whom the allotment is proposed to be made;

(vii) Intention of promoters, directors or key managerial personnel to subscribe to the offer;

(viii) The proposed time within which the allotment shall be completed;

(ix) The names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;

(x) The change in control, if any, in the company that would occur consequent to the preferential offer;

(xi) The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;

(xii) The justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer;

(xiii) The pre-issue and post-issue share holding pattern of the company in the prescribed format.

(c) **Completion of issue:** The allotment of securities on a preferential basis shall be completed within a period of twelve months from the date of passing of the special resolution; If the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter;

(d) **Price for issue:** The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;

(e) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-

(i) either up front at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

(ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares.

The company should take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure in explanatory statement;

(f) Where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

(g) Where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company;

(i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

According to Rule 13(3), the price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.

(Further in case of listed companies the price of shares to be issued on a preferential basis is not required to be determined by the valuation report of a registered valuer).

In case the preferential offer is made by a company to one or more existing members only, few provisions relating to private placement in PAS-5 & offer letter in PAS-4 shall not apply.

Difference between Private Placement and Preferential Allotment

Particulars	*Private Placement*	*Preferential Allotment*
Governing	Section 42	Section 62(1)(c)
Meaning	Offer or invitation made to a select group of persons	Issue of shares to any persons whether or not they include members and employees
Securities to be issued	Any security including Equity, Preference and Debentures	Only Equity and other securities convertible into Equity can be issued
Shareholders' Approval	Required	Required
Allottees	Any person as identified by the Board	To members, employees or any other persons
Disclosures in Explanatory Statement	Only a few as per Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014	Detailed disclosures as per Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014
Offer Letter	In prescribed format (PAS-4)	No format prescribed
Mode of payment	Through any banking channel but not cash	Either for cash or consideration other than cash
Time limit for allotment	Within 60 days of receipt of subscription money	Within 12 months from the date of passing Special Resolution
Authorisation in Articles	Not Required	Required
Bank Account	Separate Bank account is required	No such requirement.

Difference Between Right Issue and Preferential Allotment

Sr. No.	*Particulars*	*Right Issue*	*Preferential Allotment*
1	**Provisions**	Section 62(1)(a) of the Companies Act, 2013	Section 62(1)(c) of the Companies Act, 2013. In addition to the above, it is subject to the compliance with the applicable provisions of Chapter III (i.e. Public Offer and Private Placement)
2	**Rules**	No Rule has been prescribed for Right Issue	Pursuant to Section 62(1)(c) of the Companies Act, 2013, Rule 13 (issue of shares on Preferential basis) of Companies (Share Capital and Debentures) Rules, 2014 is applicable. Further, in addition to above Rule, Rule 14 (Private Placement) of Companies (Prospectus of Securities) Rules, 2014 is applicable.

Sr. No.	*Particulars*	*Right Issue*	*Preferential Allotment*
3	**Type of Securities**	Only shares can be issued (Equity as well as Preference Shares)	Shares and other securities mean equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into exchanged with equity shares at a later date. [Section 62(1)(c) & Rule 13] However, under Private Placement any security can issue. (Equity, Preference Debenture etc.) [Section 42]
4	**Person to whom offer is made**	Shares are issued in proportion to existing shareholding. [Section 62(1)(a)]	Shares may be issued to both existing shareholders and even outsiders. [Section 62(1)(c)]
5	**Limit of Person to whom offer is made**	No limit but offer to all existing shareholder.	No Limit under Section 62(1)(c) and Rule 13 but under Section 42 shall not exceed fifty or such higher number as may be prescribed. Not more than 200 in the aggregate in a financial year [Provison to Rule 14(2)]
6	**Approval**	Board approval through Board Meeting is required. [Section 62(1)(c) and Section 179(3)(c)]	Both Board Resolution and Special Resolution is needed to approve Preferential Allotment. [Section 62(1)(c) and Section 179(3)(c)]
7	**Period of Offer**	Offer remains open for the minimum period 15 days and maximum 30 days. [Section 62(1)(a)(i)]	No provisions for offer period
8	**Offer Letter**	No specific format has been prescribed. Offer letter can be in any format.	Offer letter shall be in prescribed format i.e. PAS-4 [Section 42(3) & Rule 14(3)]
9	**Dispatch of offer letter**	Through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least 3 days before opening the issue [Section 62(2)]	Either in writing or in electronic mode within in 30 days of recording the name of identified person pursuant to sub-section (3) of Section 42. [Rule 14(3)]
10	**Filing with ROC before issue of offer letter**	No filing required	Offer letter can be issued only after SR has been filed with ROC in MGT14
11	**Return of Allotment**	E-form PAS-3 for allotment of shares within 30 days	PAS-3 for allotment of shares within 15 days of allotment

Sr. No.	*Particulars*	*Right Issue*	*Preferential Allotment*
12	**Period of Allotment**	Allot shares within 60 days of receipt of application money [Otherwise treated as deposit under Rule 2(1)(c)(vii) of Companies (Acceptance of Deposit) Rules, 2014]	The allotment shall be made of the earlier of these two - – 12 months of Special Resolution; or – 60 days from receipt of application money.
13	**Separate Bank Account**	No separate Bank account is required to receive application money.	Separate Bank account is mandatorily required to receive application money
14	**Mode of Allotment Money**	Company can issue share on cash or through banking Channels [no restriction]	Shares can be issued for Cash or for a Consideration other than Cash. But, all the monies payable towards subscription shall be paid through Cheque, Demand Draft or banking channels, but not in cash
15	**Utilization of application money**	No restriction for filing of return of allotment before utilization of application money	No utilization of application money unless return of allotment is filed with ROC
16	**Valuation Report**	No need of any valuation report	Valuation Report is mandatory for making preferential allotment
17	**Price of Shares or securities**	No provision	The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer
18	**Attachment of valuation report with PAS-3**	Not required	Mandatory required to attached valuation report with PAS-3
19	**Right to renounce**	Shareholders under this option have right to renounce, reject or approve the offer.	No such right under this option
20	**Explanatory Statement**	Not applicable because no shareholder approval is required.	Notice should contain Explanatory statement according to Rule 13 (d) & Rule 14(2).

VII. BONUS SHARES

Meaning: A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. The vesting of rights in bonus shares takes place when the shares are actually allotted; and not from any earlier date.

Governing Provisions of the Companies Act, 2013: Section 63 and Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 and SEBI Regulations (if the company is listed) are applicable.

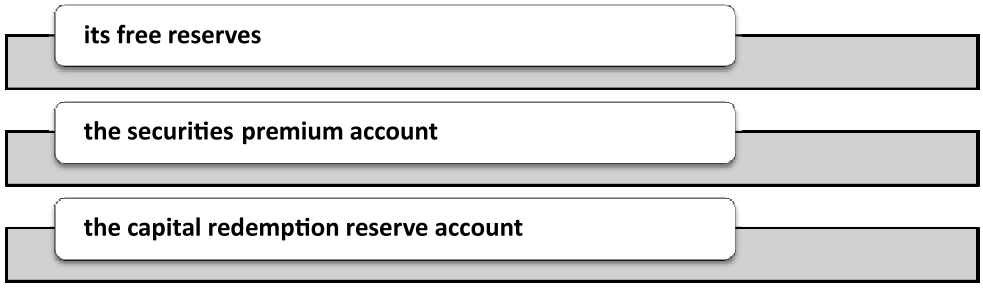
Benefits of Issuing Bonus Shares:

1. It is meant for capitalizing undistributed profits.
2. Fund flow is not affected adversely.
3. Market value of the company's shares comes down to their nominal value by issue of bonus shares.
4. Market value of the members' share holdings increases with the increase in number of shares in the company.
5. 'Bonus shares' is not an income. Hence, it is not a taxable income.

The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Sources for issue of Bonus Shares

According to section 63(1), a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of-



Note: No issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions for issue of Bonus Shares

In terms of section 63(2), no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless-

(a) **Authorisation in AOA:** It is authorised by its articles;

(b) **General Meeting Resolution:** It has, on the recommendation of the Board, been authorised in the general meeting of the company;

(c) **No defaults:**

- it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;

- it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus.

(d) **Fully paid up shares:** The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

(e) **No issue in lieu of dividend**: The bonus shares shall not be issued in lieu of dividend.

FORMS TO BE FILED WITH ROC

- **FORM MGT-14:** In case special resolution for altering the Article of Association for authorizing bonus issues of shares, then to file Form MGT-14 within 30 days of passing the special resolution.
- **FORM PAS-3:** Within 30 days of allotment file with the Registrar the Return of allotment in **Form PAS-3** along with fee as specified in Companies (Registration of Offices and Fees), Rules 2014.

The Ministry of Corporate Affairs has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023 to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014 which omitted rule 12(6) that required a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3, In the case of issue of bonus shares.

Illustration: *A Company wants to issue bonus shares but its Article of Association prohibits the same. What steps can be taken by the company to issue bonus shares?*

Answer: *The company is required to alter its AOA by passing special resolution under Section 14 of Companies Act, 2013.*

Illustration: *What will be issue price for Bonus Shares?*

Answer: *The bonus shares are issued at free of cost.*

Illustration*: ABC Private Limited has the following:*

- *Authorised Equity Share Capital: Rs. 85 Crores.*
- *Paid Up Equity Share Capital: Rs.60 Crores.*
- *Reserves & Surplus: Rs.780 Crores.*

However, ABC Private Limited has defaulted in making payment towards contribution of provident fund for last two years. The Board plans to issue bonus shares in ratio of 1:1. Can the Board do so?

Answer: As the Company has defaulted in making payment of statutory dues , it do not satisfy the conditions permissible to issue bonus shares. Therefore, ABC Private Limited can't issue bonus shares.

VIII. SWEAT EQUITY SHARES

What are Sweat Equity Shares?

According to section 2 (88), sweat equity shares means such equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

What are Value additions?

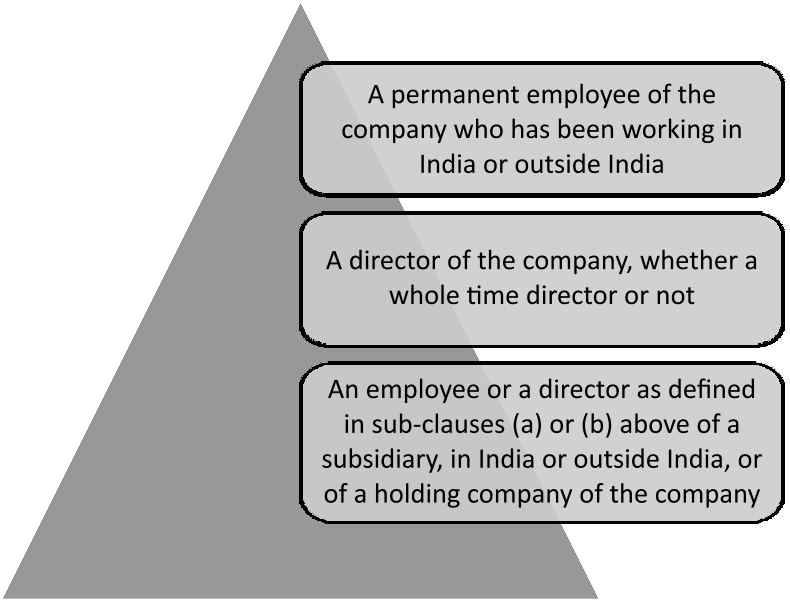
It means actual or anticipated economic benefits derived or to be by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by

such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

Who are Employees?

According to Explanation to Rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014: For the purposes of this rule-

The expressions ''Employee'' means –



Governing Provisions of the Companies Act, 2013: Section 54 and Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014 and SEBI Regulations if the company is listed are applicable.

Conditions for Issue of Sweat Equity Shares

Section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

1. **Authorisation by Special Resolution:** The issue has been authorized by a special resolution passed by the company in the general meeting.
2. **Matters to be stated in Special Resolution:** The following are clearly specified in there solution:
   (a) number of shares;
   (b) current market price;
   (c) consideration, if any; and
   (d) class or classes of directors or employees to whom such equity shares are to be issued.
3. **Compliance with SEBI Regulations:** Where shares are listed on a recognized stock exchange, the company issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
4. **Sweat Equity Shares have the same rights and limitations as that of Equity Shares:** Section 54(2) provides that the rights, limitations, restrictions and provisions as are for the time being applicable to

equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank pari passu with other equity shareholders.

5. **Special Resolution remains valid for not more than 12 months:** Rule 8(3) states the special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

6. ***Three Years Locking Period:*** The sweat equity shares issued to directors or employees shall be locked for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

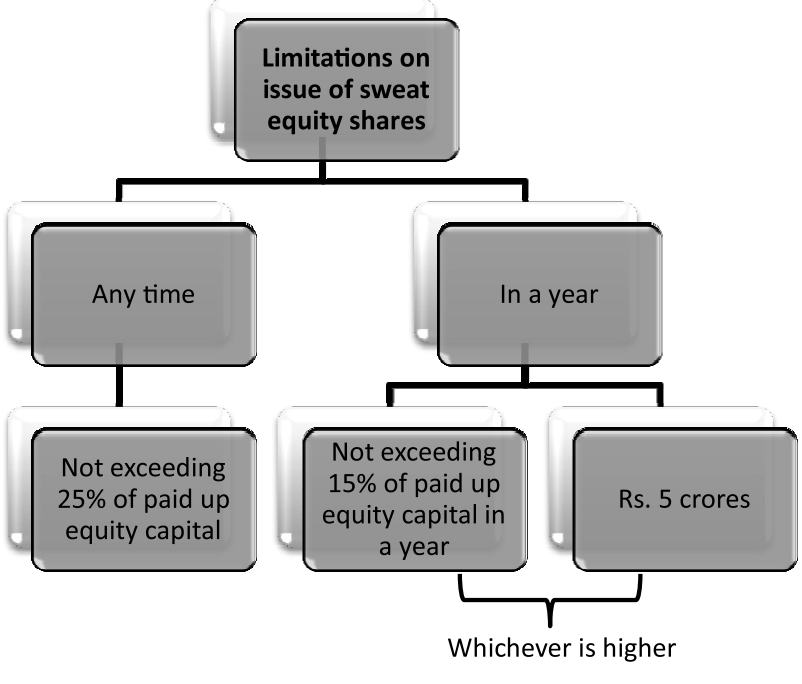
7. **Limitations on issue of sweat equity shares:**

Rule 8(4) states that the company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of sweat equity shares in the company shall not exceed twenty five percent, of the paid up equity capital of the company at any time.

Note: A startup company, as defined by Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital upto ten years from the date of its incorporation or registration.

Valuation: A significant Aspect in case of Sweat Equity Shares:

- The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.
- The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the **Board of Directors** with justification for such valuation.
- This valuation report shall be sent to the **shareholders with the notice of the general meeting.**



8. **Sweat equity shares for non-cash consideration:** The non-cash consideration shall be treated in the following manner in the books of account of the company –

   (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

   (b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

9. **Sweat equity shares forming part of managerial remuneration:** The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely –

   (a) the sweat equity shares are issued to any director or manager; and

   (b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

10. **Sweat equity shares and compensation aspects**

- **If the sweat equity shares are not issued pursuant to acquisition of an asset**

  Rule 8(11) states that in respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares (*i.e.*, fair value by Registered valuer shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

- **If the shares are issued pursuant to acquisition of an asset**

  Rule 8(12) states that if the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount to the accounting value of the sweat equity shares that is in excess value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

11. **Disclosure in Board Report:**

   (a) the class of director or employee to whom sweat equity shares were issued;

   (b) the class of shares issued as Sweat Equity Shares;

   (c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them , if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;

   (d) the reasons or justification for the issue;

   (e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;

   (f) the total number of shares arising as a result of issue of sweat equity shares;

   (g) the percentage of the sweat equity shares of the total post issued and paid up share capital;

   (h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;

   (i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

12. **Maintenance of Register**

Rule 8(14) states that the company shall maintain a Register of Sweat Equity Shares in **Form No. SH.3** and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54. The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide. The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authority.

Illustration: The share capital of the company ABC Pvt. Ltd. is ₹*20* Crore. Mr. Raj is appointed as Managing Director of the company, the company wants to compensate him by issue of shares for supplying technical know-how without any cost. What can be the quantum of the shares that can be allotted?

Solution: the paid-up capital of the company is ₹20 crore. Hence he can be allotted with 15% of existing equity i.e. (15% of ₹20 crore up to ₹3 Crore) value of shares or ₹ 5 crore whichever is higher.

Explanatory Statement to Special Resolution to contain certain particulars [Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014]

While taking a decision it is important that all information is provide with regard to the matter, hence rule 8(2) states that the explanatory statement to be annexed to the notice of the general meeting shall contain the following particulars, namely:-

(e) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

(f) the reasons or justification for the issue;

(g) the class of shares under which sweat equity shares are intended to be issued;

(h) the total number of shares to be issued as sweat equity;

(i) the class or classes of directors or employees to whom such equity shares are to be issued;

(j) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;

(k) the time period of association of such person with the company;

(l) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;

(m) the price at which the sweat equity shares are proposed to be issued;

(n) the consideration including consideration other than cash, if any to be received for the sweat equity;

(o) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

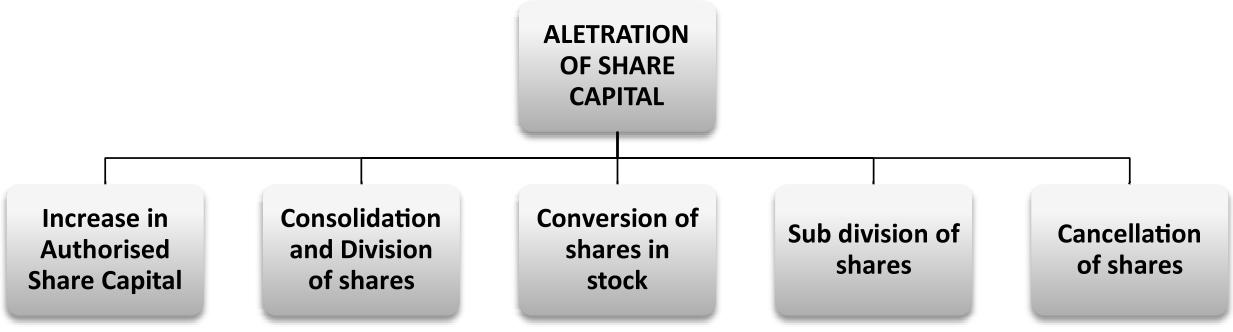
(p) a statement to the effect that the company shall conform to the applicable accounting standards; and

(q) diluted Earning Per Share pursuant to the issue of sweat equity shares, calculated in accordance with the applicable accounting standards.

PART D : ALTERATION IN SHARE CAPITAL, BUY-BACK AND REDUCTION OF SHARE CAPITAL

ALTERATION OF SHARE CAPITAL (SECTION 61)

The company may for commercial reasons, alter its share capital. Section 61 of the Companies Act, 2013 provides that a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to:



(a) **Increase Authorised Capital**: It includes to increase its authorised share capital by such amount, as it thinks expedient;

(b) **Consolidation and division of shares:** It includes to consolidate and divide, all or any of its existing shares into a larger denomination than of its existing shares e.g., by consolidating ten shares of Rs. 10/- each into one share of Rs. 100/- each. Proviso to Section 61(1)(b) states that 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;

(c) **Conversion in stock:** It includes to convert all or any of its fully paid-up shares into stock or reconvert that stock into fully paid-up shares of any denomination;

(d) **Sub-division:** It includes to sub-divide its existing shares or any of them, into shares of smaller amount than is fixed by the Memorandum, so however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced shall be the same as it was in the case of the share from which the reduced share is derived;

(e) **Cancellation of Shares:** It includes to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken up or agreed to be taken by any person and diminish the amount of the share capital by the amount of the shares so cancelled.

Points to be noted

- The cancellation of shares shall not be deemed to be a reduction of share capital.
- In order to alter its capital clause in the Memorandum, the company requires authority in its articles. But if the articles give no power to this effect, the articles must be amended by a special resolution before the power to alter the capital clause can be exercised by the company [*Re. Patent Invert Sugar Co. (1885) 31 Ch. D. 166*].
- Any amendment in Articles of Association will require the filing of **Form MGT-14** with ROC within 30 days of passing the special resolution.
- An ordinary resolution will be enough for altering capital clause in the Memorandum of Association.

Filing of FORM SH-7 with ROC:

Section 64(1) states that when-

- a company alters its share capital in any manner specified in sub-section (1) of section 61;
- an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
- a company redeems any redeemable preference shares.

The company shall file a notice in the prescribed **Form SH-7** with the Registrar with in a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

PENALTY:

As per Section 64 (2), contravention in this case will make the such company and every officer who is in default shall be liable to a penalty of five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

BUY-BACK OF SECURITIES

What is Buy-Back?

The term buy-back implies the act of purchasing its own shares/securities by a company. This facility enables the Company to go back to the holders of its own shares/securities and make an offer to purchase such shares/ securities from them.

Governing Provisions of Companies Act, 2013

- Section 68-70.
- Rule 17 of Companies (Share Capital and Debentures) Rules, 2014.
- For Listed Companies: SEBI Regulations are also applicable.

Sources

According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) out of:

However, no buy-back of any kind of shares or other specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus, the company must have at the time of buy-back, sufficient balance in any one or more of these accounts to accommodate the total value of the buy-back.

What are Free Reserves?

Free reserves has been defined under section 2(43) of the Act as such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Further it has been provided that the following shall not be treated as free reserves:

(i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves.

Conditions for Buy Back

1. **Authorisation by AOA**: The primary requirement is that the articles of association of the company should authorise buy-back. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back. Buy-back can be made with the approval of the Board of Directors at a Board meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy-back.

   In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

2. **Approval:**

   Board of Directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company and authorize such buy-back by means of a resolution passed at the meeting.

   Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company, in respect of any financial year.

3. **Quantum:**

   The buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company. In respect of buy-back of equity shares in any financial year the reserve of 25% shall be construed with respect to its paid-up equity capital in that financial year.

4. **Debt Equity Ratio after Buy Back**

   The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves. However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies.

As per MCA order [S.O. 702(E)], dated 10th March 2016 the Central Government notified that the debt to capital and free reserves ratio shall be 6:1 for Government companies within the meaning of clause (45) of section 2 of the Companies Act, 2013 which carry on Non-Banking Finance Institution activities and Housing Finance activities.

5. **Fully paid up shares:** all the shares or other specified securities for buy-back are fully paid-up.

6. **Time Gap between two Buy Back:** No offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

7. **Completion of Buy Back:** Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

8. **Methods of Buy Back:** The buy-back may be—

   (a) from the existing shareholders or security holders on a proportionate basis;

   (b) from the open market;

   (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

9. **Extinguishment of shares**: When a company buys-back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

10. **Prohibition of further issue of shares:** Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

11. **Period of offer for buy-back:** The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer.

    Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.

12. **Register of Buy Back:** When a company buys-back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought in **Form No. SH-10**, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and other particulars.

    The said register shall be maintained at the registered office of the company and shall be kept in the custody of Secretary of the company or any other person authorized by the Board in this behalf.

    The entries in the register shall be authenticated by the Secretary of the company or any other person authorized by the Board in this behalf.

13. **Dispatch of letter of offer to shareholders:** The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

14. **Filing with ROC:**

    - **Filing of Special Resolution (Form MGT-14):** Within 30 days of passing special resolution for buy back.
    - **Letter of Offer (Form No. SH-8):** The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH.8, along with the fee. Such letter of offer shall be dated and signed on behalf of the Board

of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

- **Declaration of Solvency (Form No. SH-9):** The company shall file with the Registrar, along with the letter of offer, and in case of a listed company with the Registrar and the Securities and Exchange Board, a declaration of solvency in Form No. SH.9 along with the fee and signed by at least two directors of the company, one of whom shall be the managing director, if any, and by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent with in a period of one year from the date of declaration adopted by the Board.
- **Return (Form No. SH-11**): The company, after the completion of the buy-back, shall file with the Registrar, and in case of a listed company with the Registrar and the Securities and Exchange Board of India, a return in the Form No. SH.11 along with the fee. There shall be declaration with the return filed with the Registrar in Form No. SH.11, signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

15. **Completion of verification of offers:** The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty-one days from the date of closure of the offer.

16. **Opening of Bank Account:** The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules. The company shall within seven days of the time specified in sub-rule (7)-

    (a) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or

    (b) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.

17. **Other Points to be considered:**

    In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

Penalty

If a company makes any default in complying with the provisions of Section 68 or any regulation made by the Securities and Exchange Board, in case of listed companies, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Explanatory statement to contain certain disclosures [Rule 17(1) of the Companies (Share Capital and Debentures) Rules, 2014]

Explanatory statement to the special resolution authorising buy-back to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following disclosures:

(a) the date of the Board meeting at which the proposal for buy-back was approved by the Board of Directors of the company;

(b) the objective of the buy-back;

(c) the class of shares or other securities intended to be purchased under the buy-back;

(d) the number of securities that the company proposes to buy-back;

(e) the method to be adopted for the buy-back;

(f) the price at which the buy-back of shares or other securities shall be made;

(g) the basis of arriving at the buy-back price;

(h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;

(i) the time-limit for the completion of buy-back;

(j) the aggregate share holding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;

  (i) the aggregate number of equity shares purchased or sold by persons mentioned in (i) above during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;

  (ii) the maximum and minimum price at which purchases and sales referred to in (ii) above were made along with the relevant date.

(k) if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back–

  (i) the quantum of shares proposed to be tendered;

  (ii) the details of their transactions and their holdings for the last twelve months prior to the date of the Board meeting at which the buy-back was approved including in formation of number of shares acquired, the price and the date of acquisition.

(l) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

(m) a confirmation that the Board of Directors have made a full enquiry in to the affairs and prospects of the company and that they have formed the opinion –

  (i) that immediately following the date on which the general meeting is convened there will be no grounds on which the company could be found unable to pay its debts;

  (ii) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and

  (iii) informing their opinion for the above purposes, the directors have taken in to account the liabilities (including prospective and contingent liabilities); as if the company were being wound-up under the provisions of the Companies Act, 2013.

(n) a report addressed to the Board of Directors by the company's auditors stating that:

(i) they have inquired into the company's state of affairs;

(ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;

(iii) that the audited accounts on the basis of which calculation with reference to buy-back is done is not more than six months old from the date of offer document; and

However, where the audited accounts are more than six months old, the calculations with reference to buy-back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company;

(iv) the Board of Directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.

Transfer to and application of Capital Redemption Reserve Account [Section 69]

When 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 account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to member so the company as fully paid bonus shares.

Circumstances prohibiting buy-back [Section 70]

No company shall directly or indirectly purchase its own shares or other specified securities-

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist. [Proviso to Section 70(1)]

No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (Annual Return), section 123 (Declaration of Dividend), section 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement).

Why the Company choose Buy Back?

The following are the benefits of share buy-back for the companies as under:

1. It is an alternative mode of reduction in capital without requiring approval of the Court/NCLT;
2. to improve the earnings per share;
3. to improve return on capital, return on net worth and to enhance the long-term shareholders value;
4. to provide an additional exit route to shareholders when shares are under valued or thinly traded;
5. to enhance consolidation of stake in the company;
6. to prevent unwelcome takeover bids;

7. to return surplus cash to shareholders;
8. to achieve optimum capital structure;
9. to support share price during periods of sluggish market condition;
10. to serve the equity more efficiently.

Illustration:

PQR Limited has the following:

Equity Share Capital: Rs. 800 crore of Rs. 10 each

General Reserve: Rs. 500 crore

Security Premium Account: Rs. 200 crore

Secured Loans: Rs. 100 Crores

Advise the maximum quantum upto the company can buy back its shares with Board Approval and Shareholders' approval.

*Solution: Maximum Quantum with Board Approval: (800 +500)*10 % = 130 crore i.e. 13 crore shares can be bought back with Board Approval*

*Maximum Quantum with Shareholders' Approval: (800 +500)*25 % = 325 crore i.e. 32.5 crore shares can be bought back with Shareholders' Approval*

In exercise of the powers conferred by sub-section (3) of section 23 read with section 469 of the Companies Act, 2013 the Central Government have notified Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 vide MCA notification dated 24th January 2024

The provisions of these rules shall apply to –

(a) unlisted public companies;

(b) listed public companies, so far as they are in accordance with regulations framed or directions issued in this regard by the Securities and Exchange Board or the Authority, which issue their securities for the purposes of listing on permitted stock exchanges in permissible jurisdictions

Listing on permitted stock exchanges in permissible jurisdictions. -

(1) An unlisted public company, which does not fall under rule 5 and which has no partly paid-up shares, may issue equity shares for the purposes of listing on a stock exchange in a permissible jurisdiction.

Explanation. – For the purposes of this sub-rule, issue of equity shares shall include, offer for sale of equity shares by existing shareholders of the unlisted public company for listing on a stock exchange in a permissible jurisdiction.

(2) The unlisted public company or its existing shareholders referred to in sub-rule (1) shall also comply with the requirements of the Scheme.

(3) Listing of equity shares on permitted stock exchanges in permissible jurisdiction by an unlisted public company which also intends to get its equity shares listed with any recognised stock exchange as defined under clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 shall also be in compliance with such conditions as may be specified by the Securities and Exchange Board of India.

(4) The unlisted public company shall file the prospectus in e-Form **LEAP-1** specified in the Second Schedule along with the fees within a period of seven days after the same has been finalised and filed in the permitted exchange.

(5) After the listing of the equity shares of a company on any of the stock exchanges in a permissible jurisdiction, the company shall comply with Indian Accounting Standards as specified in the Annexure to the Companies (Indian Accounting Standards) Rules, 2015 in preparation of their financial statements, in addition to any other accounting standard, which they may be required to comply for the preparation of the financial statements filed before the securities regulator concerned, or with the stock exchange concerned, as the case may be.

Certain companies not eligible. - A company shall not be eligible for issuing its equity shares for listing in accordance with these rules, in case it –

(a) has been registered under section 8 or declared as Nidhi under section 406 of the Act;

(b) is a company limited by guarantee and also having share capital;

(c) has any outstanding deposits accepted from the public as per Chapter V of the Act and rules made thereunder;

(d) has a negative net worth;

Explanation. – For the purposes of this clause, the expression "net worth" shall have the same meaning as assigned to it under clause (57) of section 2 of the Act;

(e) has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holder or any other secured creditor:

Provided that this clause shall not apply if the company had made good the default and a period of two years had lapsed since the date of making good the default;

(f) has made any application for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 and in case any proceedings against the company for winding-up under the Act or for resolution or winding-up under the Insolvency and Bankruptcy Code, 2016 is pending;

(g) has defaulted in filing of an annual return under section 92 or financial statement under section 137 of the Act within the specified period.

The First Schedule states that Permissible Jurisdiction-International Financial Services Centre in India and Permitted Stock Exchange refers to India International Exchange, NSE. International Exchange.

REDUCTION OF SHARE CAPITAL (SECTION 66)

The need of reducing share capital may arise in various circumstances such as follows:

- Returning of surplus to shareholders;
- Eliminating losses, which may be preventing the payment of dividends;
- As a part of scheme of compromise or arrangements; simplify capital structure;
- When the company is making losses, the financial position does not present a true and fair view of the company. In order to reduction of capital will write-off that portion of capital which is already lost and will make the balance sheet look healthy.

Conditions for reduction of share capital

1. **Approval of members by passing Special Resolution**: It is required to get the matter for reduction in share capital to get it approved with member's approval by special resolution.
2. **Filing of Form MGT-14 with ROC:** Special resolution passed for reduction of share capital is required to be filed with ROC within 30 days.

3. **Confirmation by Tribunal**: Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular.

4. **Methods for reduction of share capital:**

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

Example: Where the shares are of face value of ₹100 each with ₹65 has been paid, the company may reduce them to ₹65 fully paid-up shares and thus relieve the shareholders from liability on the uncalled capital of ₹35 per share.

(b) either with or without extinguishing or reducing liability on any of its shares,–

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

Example: Where the shares of face value of ₹100 each fully paid-up is represented by ₹65 worth of assets. In such a case, reduction of share capital may be effected by cancelling ₹35 per share and writing off similar amount of assets.

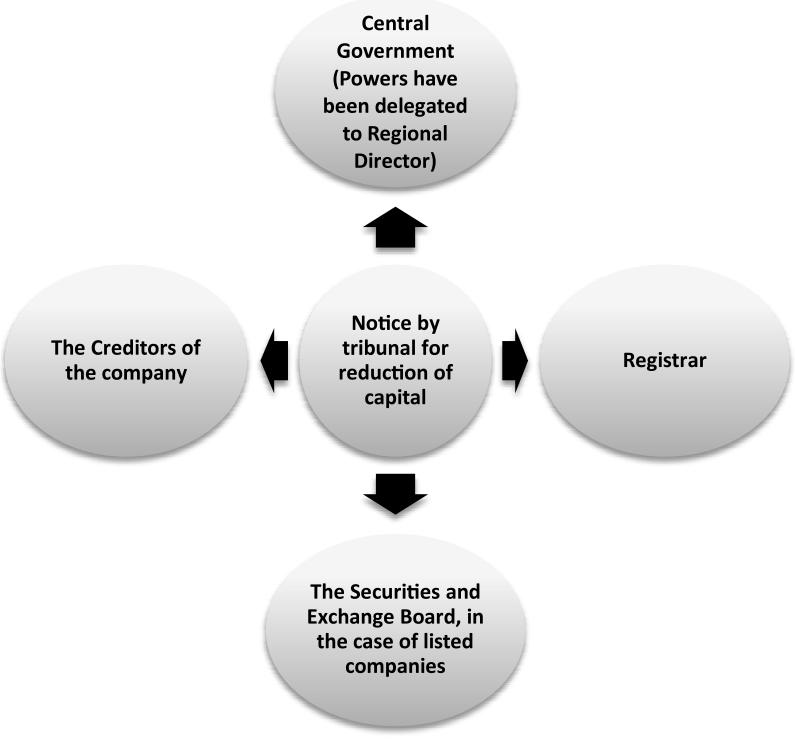
(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Example: Shares of face value of ₹100 each fully paid-up can be reduced to face value of ₹75 each by paying back ₹25 per share.

No Reduction of Capital would be allowed in case of Arrears in the Repayment of Deposits and Interest there on.

5. **Notice by Tribunal:**

The Tribunal shall give notice of every application made to it under sub-section (1) to:



It shall take into consideration there presentations, if any, made to it by that Central Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice.

If no representation has been received from the Central Government, Registrar, the SEBI or the creditors within the said period, it shall be presumed that they have no objection to the reduction. [Proviso to Section 66(2)]

Consent affidavits from the creditors is mandatory for reduction of share capital

In case of the case of *Brillio Technologies Pvt. Ltd vs Registrar Of Companies, The NCLAT, New Delhi,* while giving its judgment held that "Consent affidavits from the creditors is mandatory for reduction of share capital, SPA cannot be utilized for making payment to non- promoter shareholders, selective capital reduction is allowed if the non-promoter shareholders are paid fair and true value of their respective shares and that section 66 of that Act makes such a provision for reduction without it coming under any arrangement or compromise."

6. **The claims of every creditor of the company must be discharged**:

   The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

7. **The Accounting Treatment for the company must be in compliance with accounting standards:**

   Proviso to Section 66(3) provides that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

8. **Filing of the certificate by company's auditor with Tribunal:** A certificate to that fact that the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act by the company's auditor has been filed with the Tribunal.

9. **Publication of the order of the Tribunal:** The order of confirmation of the reduction of share capital by the Tribunal under Section 66(3) shall be published by the company in such manner as the Tribunal may direct.

10. **Deliver a copy of the Tribunal to Registrar:** The company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute (which means document submitted to Tribunal detailing the reduction and approved by the tribunal. Here the word minute has different meaning from the word minutes used for proceedings) approved by the Tribunal showing -

    (i) the amount of share capital;

    (ii) the number of shares into which it is to be divided;

    (iii) the amount of each share; and

    (iv) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

No liability of member

A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

Action under Section 447 i.e. Punishment for Fraud

If any officer of the company:

- knowingly conceals the name of any creditor entitled to object to the reduction;
- knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- abets or is privy to any such concealment or misrepresentation as aforesaid; He shall be liable under section 447.

CASE LAWS

1) Birla Global Finance Ltd. Company Petition No. 228 of 2002 Connected With C.A. No. 149 of 2002, in re: In this case the court held that the redemption of preference shares is nothing but repayment of the preference capital and amounts to reduction of share capital.

2) Sandvik Asia Ltd. v. Bharat Kumar Padamsi (2009 (3) Bom CR 57): Here the court held that once it is established that non-promoter shareholders are being paid fair value of their shares, and an overwhelming majority of them have voted in favour of resolution for reduction of share capital, the court will not be justified in withholding the sanction to the resolution.

3) Elpro International Ltd. (2009 4 Comp LJ 406 (Bom): The Bombay High Court while dealing with a special resolution passed in favour of reduction of capital, held that a company can reduce the share capital of any shareholder in any way so long as the procedure is fair and gets the approval of the majority shareholders.

4) Indian National Press (Indore) Ltd., In re, (1989) 66 Com Cases 387, 392 (MP)- The need for reducing capital may arise in various ways, for example, trading losses, heavy capital expenses, and assets of reduced or doubtful value. As a result, the original capital may either have become lost or a company may find that it has more resources than it can profitably employ. In either case, the need may arise to adjust the relation between capital and assets.

In the matter of *Josco Jewellers Private Limited Vs. RoC, Kerala CP/06/KOB/2020*: The Petitioner Company had filed a petition under Section 66 of the Companies Act, 2013 against the Registrar of Companies, Kerela seeking reduction of its share capital from Rs. 120 crores to Rs. 1 crore. After a review of the capital structure, the Board of Directors of the Petitioner Company observed that the company's paid up capital was more than the required amount for the existing business of the company and that it would be beneficial for the company to remit back its excess capital by way of reduction of share capital. The NCLT, Kochi Bench held that since all the requisite statutory procedures have been fulfilled and no objections has been received from any shareholders, the company petition filed for reduction of its share capital is hereby allowed.

DIMINUTION OF SHARE CAPITAL IS NOT A REDUCTION OF CAPITAL

As per section 61(1)(e) of the Companies Act, 2013, diminution of capital is the cancellation of the unsubscribed part of the issued capital. It can be effected by an ordinary resolution provided articles of the company authorises to do so. According to section 61(2), cancellation of shares under section 61(1) shall not be deemed to be reduction of share capital. It does not need any confirmation of the Tribunal under section 66.

Reduction of share capital by following methods also do not need any sanction/approval of the Tribunal:

(a) Redemption of redeemable preference shares.

(b) Purchase of shares of a member by the Company on order of the Tribunal under Section 242 of the Companies Act, 2013.

(c) Buy-back of its own securities under Section 68.

In the following cases, the diminution of share capital is not to be treated as reduction of the capital:

(i) Where the company cancels shares which have not been taken or agreed to be taken by any person [Section 61(1)(e) Companies Act, 2013];

(ii) Where redeemable preference shares are redeemed in accordance with the provisions of Section 55 [Explanation to section 55(3) of the Companies Act, 2013];

(iii) Where any shares are forfeited for non-payment of calls and such forfeiture amounts to reduction of capital;

(iv) Where the company buys-back its own shares under Section 68 of the Act [Section 66(6)];

(v) Where the reduction of share capital is effected in pursuance of the order of the Tribunal sanctioning any compromise or arrangement under section 230.

Points to remember:

The above cases do not require the approval or sanction of Tribunal as well as the procedure for reduction of capital as laid down in Section 66 is not attracted.

CASE LAWS

(A) *SIEL Ltd., Inre. [(2008)144 Com Cases 469 (Del)]*, the view was that reduction of the share capital of a company is a domestic concern of the company and the decision of the majority would prevail. If the majority by special resolution decides to reduce the share capital of the company, it has the right to decide to reduce the share capital of the company and it has the right to decide how this should be effected. While reducing the share capital, the company can decide to extinguish some of its shares without dealing in the same manner with all other shares of the same class. A selective reduction is permissible within the frame work of law for any company limited by shares.

(B) *British and American Trustee and Finance Corpn. vs. Couper, (1894) AC 399, 403: (1991-4),* the Act does not prescribe the manner in which the reduction of capital is to be effected. Nor is there any limitation of the power of the Court to confirm the reduction except that it satisfied that all the creditors entitled to object to the reduction have either consented or been paid or secured.

(C) *British and American Trustee Corpn. vs. Couper, (1894) (ibid),* when exercising its discretion, the Court must ensure that the reduction is fair and equitable. In short the Court shall consider the following, while sanctioning the reduction:

(i) The interests of creditors must be safeguarded;

(ii) The interests of shareholders must be considered; and

(iii) Lastly, the public interest must be considered as well.

(D) *Borough Commercial and Bldg. Society, (1893),* Reduction in shares capital of an unlimited company: An unlimited company to which Section 100 (corresponds to section 66 of the Companies Act, 2013) does not apply, can reduce its capital in any manner that its Memorandum and Articles of Association allow. It is not governed by Sections 61 and 66 of the Act (corresponds to section 27 and 30 of the Companies Act, 2013). Section 13 (corresponds to section 4 of the Companies Act, 2013) does not provide that its capital shall be stated in the Memorandum. However, even if its capital is stated in the Memorandum, the Companies Act impliedly gives power to the member to alter it.

(E) *Great Universal Stores Ltd., Re (1960),* Reduction of capital when company is defunct: The Registrar of Companies has been empowered under Section 560 (corresponds to section 248 of the Companies Act, 2013) to strike off the name of the company from register on the ground of non-working. Therefore, where the company has ceased to trade and Registrar exercises his power under Section 560 (corresponds to section 248 of the Companies Act, 2013) a reduction of capital cannot be prevented.

(F) *Marwari Stores Ltd. vs. Gouri Shanker Goenka, (1936),* Equal Reduction of Shares of One Class: Where there is only one class of shares, *prima facie*, the same percentage should be paid off or cancelled or reduced in respect of each share, but where different amounts are paid-up on shares of the same class, the reduction can be effected by equalising the amount so paid-up. The same principle is to be followed where there are different classes of shares *[Bannatyne v. Direct Spanish Telegraph Co.*, (1886) 34 Ch D 287].

(G) *Asian Investments Ltd. Re, (1992),* It is, however, not necessary that extinguishment of shares in all cases should necessarily result in reduction of share capital. Accordingly where reduction is not involved Section 100 (corresponds to section 66 of the Companies Act, 2013) would not be attracted.

REDUCTION OF SHARE CAPITAL WITHOUT SANCTION OF THE TRIBUNAL

The following are cases which amount to reduction of share capital and where no confirmation by the Tribunal is necessary:

(a) **Surrender of shares** — "Surrender of shares" means the surrender to the company on the part of the registered holder of shares already issued. Where shares are surrendered to the company, whether by way of settlement of a dispute or for any other reason, it will have the same effect as a transfer in favour of the company and amount to a reduction of capital. But if, under any arrangement, such shares, instead of being surrendered to the company, are transferred to a nominee of the company then there will be no reduction of capital [*Collector of Moradabad vs. Equity Insurance Co. Ltd.*, (1948)]. Surrender may be accepted by the company under the same circumstances where forfeiture is justified. It has the effect of releasing the shareholder whose surrender is accepted from further liability on shares.

The Companies Act contains no provision for surrender of shares. Thus, surrender of shares is valid only when Articles of Association provide for the same and:

(a) Where forfeiture of such shares is justified; or

(b) When shares are surrendered in exchange for new shares of same nominal value.

Both forfeiture and surrender lead to termination of membership. But in the former case, it is at the initiative of company and in the latter case at the initiative of member or shareholder.

(b) **Forfeiture of shares** — A company may if authorised by its articles, forfeit shares for non-payment of calls and the same will not require confirmation of the Tribunal.

Where power is given in the articles, it must be exercised strictly in accordance with the regulations regarding notice, procedure and manner stated therein, otherwise the forfeiture will be void. Forfeiture will be effected by means of Board resolution. The power of forfeiture must be exercised bonafide and in the interest of the company.

In Re *Jubilant Clinsys Ltd. CA No. 94/ALD/2016, NCLT-Allahabad Bench*

In this case, the Court held that where proposed reduction of share capital did not prejudicially affect interest of any shareholder nor it had any adverse effect on public at large and all requisite statutory requirements in respect to said reduction had been complied, reduction of share capital was to be allowed.

In Re *Economy Hotels India Services Private Limited Vs. Registrar of Companies & Anr. (NCLAT) Company Appeal (AT) No. 97 of 2020, NCLAT Delhi*

The Appellant Company had filed a petition under Section 66 of the Companies Act praying for confirming the reduction of share capital. In the extract of the minutes submitted to NCLT, it was written that the 'unanimous ordinary resolution' required for reduction has been obtained. The NCLT rejected the application for reduction. Hence the company has filed and appeal with NCLAT pleading that it was a mere typographical error in the minutes characterising the 'special resolution' as 'unanimous ordinary resolution' and the Appellant had filed the special resolution with ROC and fulfilled all the statutory requirements prescribed in the Companies Act, 2013, hence the order of the Tribunal is liable to set aside.

The court held that merely a 'typographical error' in the extract of 'Minutes', characterising the 'special resolution' as 'unanimous ordinary resolution' will not render a special resolution as invalid. The special resolution passed is very well valid. NCLAT has allowed the reduction.

Effect of Forfeiture

When the shares have been forfeited, the defaulting shareholder ceases to be member of the company and he loses all rights or interests in his shares. But notwithstanding the forfeiture he remains liable to pay to the company all monies which at the date of forfeiture were payable by him to the company in respect of the shares.

Re-issue of forfeited shares

The Company may re-issue the forfeited shares to any willing buyer after having specific powers to that effect in the Articles. The shares are generally issued at a price at par with other shares as reduced by amounts already received in respect of the said shares.

Reissue of forfeited shares is a sale of shares and it does not amount to an allotment. The company should duly record the particulars of the members who acquire those shares as if it were a transfer of shares.

The directors would fix a price for the forfeited share that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture.

In the case of a company whose shares are listed in a recognized stock exchange, re-issue of forfeited shares shall be as per Guidelines for Preferential Issue of the Securities and Exchange Board of India and the listing agreement.

Conclusiveness of certificate for reduction of capital

Where the Registrar had issued his certificate confirming the reduction, the same was held to be conclusive although it was discovered later that the company had no authority under its articles to reduce capital [*Re Walkar & Smith Ltd., (1903) 88 LT 792 (Ch D)*]. Similarly, in a case the special resolution for reduction was an invalid one, but the company had gone through with the reduction. It was held that the reduction was not allowed to be upset [*Ladies's Dress Assn. v. Pulbrook, (1900) 2 QB 376*].

PART E: TRANSFERABILITY OF SHARES

What is transfer of shares?

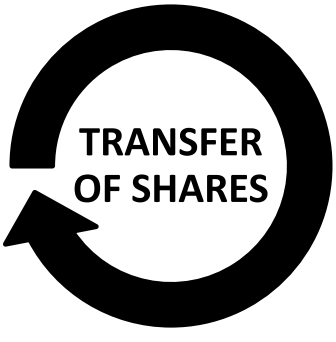
When the owner of shares transfers his ownership of shares to another person is called as transfer of shares. The person who transfers is known as 'Transferor' and the person to whom shares are transferred is known as 'Transferee'.

TRANSFER OR TRANSMISSION OF SECURITIES

Transferability of securities

One of the most important characteristics of a company is that its shares are transferable. Section 44 of the Companies Act, 2013 states that the shares or debentures or other interest of any member in a company shall be movable property, transferable in the manner provided by the articles of the company. Therefore, there cannot be an absolute prohibition on the right to transfer shares. The right to transfer may be subjected to restrictions contained in the articles and there cannot be total prohibition or ban on transferability of shares. However, only permissible restriction on transferability may be contained Articles of association

Governing Provisions of Companies Act 2013: Section 56 of the Companies Act deals with transfer and transmission of securities.



- **PUBLIC COMPANY:** Freely Transferable
- **PRIVATE COMPANY:** Restricted to Transfer

PRIVATE COMPANIES

Shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market. The objective behind the right of restriction on the transfer of shares is to preserve the composition of the shareholding.

- The section 2(68) of the Companies Act, 2013 restricts the right to transfer shares but does not prohibit the right to transfer shares. In case of transfer of shares of a private company, the provisions or restrictions contained in the Articles of Association should be duly complied with by the transferor and transferee.
- Restrictions upon transfer of shares in private companies are not applicable in following cases:-
  - (a) On the right of a member to transfer his/her shares in a case where the shares are to be transferred to his/her representative(s).
  - (b) In the event of death of a shareholder, legal representatives may require the registration of shares in the names of heirs, on whom the shares have been devolved.
  - (c) In respect of shares which are proposed to be issued on a right basis, existing members would have a right to renounce shares likely to be allotted to them. If the existing shareholders renounce

their shares then these shares will be allotted to the renounces for the first time and therefore no transfer of shares will take place.

- Restriction on right to transfer shares is generally placed by using following two methods:

  (a) **Right of pre-emption:** If a member wishes to sell some or all of his shares, such shares shall first be offered to other existing members of the company at a price determined by the directors or by the auditor of the company or by the use of formula set out in the articles. If no existing member is determined to acquire shares, then shares can be transferred by the transferor to the proposed transferee. A member is not bound to sell his shares to other members under pre-emption clause unless any other member or members agree to buy all the shares proposed to be sold. The transfer between the members is outside the purview of pre-emption clause. The pre-emption clause cannot place a complete ban on right to transfer; they cannot completely prohibit the transfer.

  (b) **Valuation of Shares under Preemption clause:** Articles of Association of private company provide that the shares are to be sold under pre-emption clause at a fair price determined by the directors or the auditor of the company. It may also be provided that the fair price would be certified by the auditor of the company. If the pre-emption clause requires that the shares are required to be offered to other members at a price certified by the directors or auditor(s), the Court is not in a position to enquire into the correctness of valuation, unless there is evidence that valuation was not correctly made. If the person who made the valuation has acted negligently and failed to take into account all the necessary factors for arriving at the value of share, in such case the transferor may sue for the damages to the person who made the valuation for difference between the value of the share as computed by the valuer, and the real value of shares.

  In *Nanalal Zaver v. Bombay Life Assurance Co. Ltd,* the Supreme court held that the existing shareholders must be given the first option by the company.

(c) **Powers of directors to refuse registration of transfer of shares:** The Powers of directors to refuse registration of transfer of shares are specified in the articles of association of the company. This power is to be exercised by the Board of Directors in good faith.

PUBLIC COMPANY

As per section 58(2), the securities or other interest of any member in a public company shall be freely transferable. The Board of Directors of a company or the concerned depository has no discretion to refuse or withhold transfer of any security. The transfer has to be effected by the company/depository automatically and immediately.

However, proviso to section 58(2) provides that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. It is now possible to contractually agree on terms such as right of first refusal, right of first offer, tag along, call option, put option, etc. in the shareholder agreements/ investment agreements, in the case of a public company as well. These terms would now be binding on the investors. Therefore, private arrangements or contracts between two or more persons would be enforceable contracts.

- ***Instruments of transfer to be presented to the company (Form SH-4)***

According to Section 56(1) a company, shall not register a transfer of securities of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of 60 days (irrespective

of the nature of the company, whether listed or unlisted) from the date of execution along with the certificate relating to the securities, or if no such certificate is in existence, then along with the related certificate or letter of allotment of securities. In case of loss of the instrument, the company may register the transfer on terms as to indemnity.

Such instrument of transfer of securities held in physical form shall be in **Form No**. **SH.4.** Where a company not having share capital, the instrument of transfer herein should also be in **Form No. SH.4** and other conditions be complied where the references therein to securities were references instead to the interest of the member in the company.

However, nothing in section 56(1) shall prejudice any power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted [Section56(2)].

- ***Registration of partly paid up shares – Notice to the transferee (Form No. SH.5)***

According to section 56(3), where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice in **Form No. SH.5** to the transferee and the transferee gives 'no objection' to the transfer within two weeks from the receipt of the notice.

- ***Time Limit for Delivery of certificates: One Month***

Every company, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates fall securities transferred or transmitted within a period of one month in case of transfer or transmission of securities.

- ***Intimation to depository***

Proviso to Section 56(4) states that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities. No transfer deed is required for transfer of shares, where the shares are held in dematerialized form.

- ***Transfer of securities by legal representative***

Section 56(5) of the Act provides that in case of death of holder of any security, the transfer of such security by the legal representative of the deceased shall be valid-

- Even though the legal representative is not the holder of such security;
- As if the legal representatives were the holder of such security.

Notice to ROC: No such Notice or intimation is required to be given to ROC. The Share Transfer details shall be given to ROC in Annual Return of the company in Form MGT-7

- ***Penalties***

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

- ***Transfer of shares by depository with an intent to defraud, is liable under Section 447 for fraud***

As per section 56(7), without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 for fraud.

➢ ***Stamp duty payable and affixation/ cancellation of stamps at the time of transfer of shares***

Before the transfer is lodged with the company, it should be duly stamped. The transfer of securities attracts prescribed stamp duty under the Indian Stamp Act, 1899.

The amount of consideration is required to be mentioned in the share transfer deed as otherwise the companies cannot verify whether share transfer stamp duty has been correctly charged thereby attracting the penal provisions of the Stamp Act in case of a default.

Under Section 56(1), a company cannot register the transfer of securities unless a instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company along with the certificate relating to the securities in question.

Meaning of 'Duly stamped': The expression 'duly stamped' has not been defined in the Companies Act. Under Section 2(11) of the Indian Stamp Act, 1899, 'duly stamped' as applied to an instrument, means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in India.

Stamp must be cancelled: Under Section 12(1) of the Indian Stamp Act, 1899, whoever affixes an adhesive stamp to an instrument which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again. Sub-section (2) thereof makes it clear that any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again, shall, so far as such stamp is concerned, be deemed to be unstamped. Sub-section (3) thereof provides the manner in which the adhesive stamp can be cancelled and provides that the stamp be cancelled by writing on or a cross the stamp his name or initials or the name or initials of his firm. Section 17 of the Indian Stamp Act, 1899 makes it clear that all instruments chargeable with duty and executed shall be stamped before, or at the time of execution. Therefore, the legal requirement is that the stamp must be cancelled either before or at the time of execution.

It is necessary that the value of the consideration paid for a transfer must be determined as a part of the agreement because in the absence of such valuation it would not be possible to know whether stamp duty has been paid according to the value or not. A transfer form which does not indicate the value of the shares purposes of transfer would be void and not capable of being accepted.

The "value of the shares" means the price which the shares would fetch at the time of the transfer and not the face value of the shares. The consideration actually paid or agreed to be paid is the value of the shares. So long as there is nothing to indicate that the consideration was not truly stated in the transfer, the one mentioned therein should be accepted as the consideration that was paid [*Union of India vs. Kulu Valley Transport Ltd. (1958).*

Stamp Duty Rates w.e.f. 1st July 2020 as per Amended Indian Stamp Act

S.No.	*Type of transfer*	*Rate of Stamp Duty*
1.	Transfer and Re-issue of debenture	0.0001%.
2.	Transfer of security other than debenture on delivery basis	0.015%
3	Transfer of security other than debenture on non-delivery basis	0.003%

CASE LAWS

A company cannot register transfer of shares unless the instrument of transfer is duly stamped and is delivered to the company. The expression "duly stamped" has to be construed with reference to the provisions of Section 2(11) of the Indian Stamp Act, 1899 and the document in question would be an invalid one if the stamp affixed there on has not been cancelled. Under Section 108(1) of the Companies Act, 1956 [Corresponds to section 56(1) of the Companies Act, 2013] it is mandatory that the company shall not register the transfer of shares unless a properly executed instrument of transfer duly stamped has been delivered to the company. [*Shri Parveen Sharda vs. Chopsani Ice Aerated Water and Oils Mills Ltd., Appeal No. 1 of 1982 decided on 10.1.1983 (CLB*)].

In *Vardhaman Publishers Ltd. vs. Mathrubhumi Printing & Publishing Co. Ltd.* (1990), the Kerala High Court held that affixing stamps on a separate sheet of paper and attaching it to the transfer application or cancellation of stamps by drawing a line across the stamp was not improper and would not invalidate the said application. On the question of whether a newly added Article empowering the Board to reject transfer of shares would affect transactions of sale of shares entered into before the insertion of the Article, the Court held that the property in the shares passes on the date of transfer and the right to have the shares registered in the transferee's name becomes crystallised on that day itself. Any alteration of articles will not affect concluded transactions and in respect of such transactions, the existing articles would prevail. So, if the original (unaltered) Articles as on the date of transfer permit free transfer of shares, the Board cannot refuse registration of the transfer.

The Share Transfer details shall be given to ROC in Annual Return of the company in Form MGT-7.

STATUTORY REMEDY IN CASE BOARD REFUSES REGISTRATION OF TRANSFER/TRANSMISSION OF SHARES

Section 58 of the Companies Act, 2013, deals with process of the company to be followed by on refusal to register the transfer of securities.

PRIVATE COMPANY

(i) If a private company limited by shares refuses (whether in pursuance of any power of the company under its articles or otherwise) to register the transfer of, or the transmission of the right to any securities or interest of a member in the company, then the company shall send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transfer, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company. Notice shall contain the reasons for refusal to register the transfer or transmission.

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

PUBLIC COMPANY

(i) If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal [Section 58(4)].

(ii) The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order-

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

(b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved [Section 58(5)].

(iii) If a person contravenes the order of the Tribunal he shall be punishable with imprisonment for a term not less than one year but may extend to three years and with fine not less than one lakh rupee may extend to five lakh rupees [Section 58(6)].

CASE LAWS

(A) Refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason. *[Appeal to the CLB No. 27, of 1975 dated 17th August, 1976, Shri Nirmal Kumar vs. Jaipur Metal and Electrical Limited];*

(B) The mere attempts of a person to wind up a company more than once cannot be a ground for refusing to register transfer by the directors *[Rangpur Tea Association Ltd. vs. Makkan Lal Samaddar (1979)];*

(C) The power to refuse registration of shares which is conferred on the directors by the articles, is a discretionary power and must be exercised reasonably, and in good faith for the benefit of the company. Unless the contrary is proved, the power is deemed to have been exercised properly. *[Berry & Stewart vs. Tottenham Hostpur Football and Athletic Co. Ltd., 1936];*

(D) Where the appellant transferee and respondent company were in the same line of business and were rivals, the refusal on the ground of rivalry will be justified in terms of the decision rendered by the Supreme Court in the Bajaj Auto Case. Under these circumstances, the investment cannot be considered to have been made bona fide with the intention of making profits. The respondent company is entitled to refuse the registration even in the absence of an enabling provision in articles in view of the provisions of Section 111(2)[Corresponds to section 58(3) and 58(4) of the Companies Act, 2013] [*Modi Carpets Ltd. v. Trans- Asia Carpets Ltd., Appeal No. 2 of 1980 decided on 26.12.1981(CLB)*];

(E) In *Shri T.N. Kuriakos vs. Premier Tyres Ltd.,* decided on 13.6.1983 (CLB), the appeal against the refusal by the respondent company to register transfer of shares was allowed by the Company Law Board (Now Tribunal) on the ground that the refusal of the respondent to register transfer of shares in favour of the appellant was based on the decision of the Transfer Committee, a sub-committee of the Board of Directors and not that of the Board of Directors as such, and, therefore, the said decision was not a valid and legal decision;

(F) The Supreme Court of India in *Mackintosh Burn Limited v. Sarkar and Chowdhury Enterprises Private Limited*, (2018) 5 SCC 575 held that the registration of a share transfer may not only be refused on the ground of it resulting in a violation of any law but also for any other sufficient cause.

RECTIFICATION OF REGISTER OF MEMBERS (SECTION 59)

Section 59 of the Companies Act, 2013 provides the procedure for the rectification of register of members after the transfer of securities. The provision states that –

1. **Remedy to the aggrieved for not carrying the changes in the register of members: Grounds of appeal:** If, without sufficient cause –
   (i) The name of any person is entered in the register of members; or
   (ii) The name of any person having entered in the register of members is without sufficient reason omitted there from; or
   (iii) Default or unnecessary delay is being made in entering in the register, the fact of any person having become a member; or
   (iv) Default or unnecessary delay is being made in entering in the register, the fact of any person having ceased to be a member; or
   (v) The person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to 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 the Central Government by notification.
2. **Order of the Tribunal:** The Tribunal may, after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.
3. **Right to transfer not restricted:** Section 59 of the Act shall not restrict the right of a holder of securities, to transfer such securities. Any person acquiring such securities shall been titled to voting rights unless the voting rights have been suspended by an order of the Tribunal.
4. **Contravention of provisions of the law**: Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.
5. **Specific instances of rectification:**

   Rectification has been held to be permissible in the following cases:
   (a) Applicant induced to take shares by misrepresentation;
   (b) Shareholders' name removed under unlawful surrender of his shares;
   (c) Irregular allotment;
   (d) Name of nominee entered in register without his knowledge or consent;
   (e) Allotment of shares to a non-resident without taking necessary permission for foreign exchange;
   (f) Allotment in violation of memorandum of association of the company.

6. **Mutation of name in other Company's register of members:** The Company which has changed its name would been titled to ask those companies in which it is holding shares to substitute a company's new name in their register of members in the place of old name. [*Sulphur Dyes v. Hicks on & Dadajee Ltd. (1995) 83 Com Cases 533(Bom)]*

LOST TRANSFER DEEDS

- It is sometimes found that the transfer documents sent to companies are lost, say, in transit. In such a case, the provision to section 56(1) of the Act provides that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period (within 60 days from the date of execution of the instrument of transfer), the company may register the transfer on such terms as to indemnity as the Board may think fit.
- The Board of Directors of the company should be satisfied that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost. The proof may be in the form of an affidavit from the transferor or the transferee and supported by the purchase or sale note of the broker and the registration receipt issued by the postal authorities.
- In addition, the Board can take an indemnity on such terms as it may think fit to safeguard its position and after that company may register the transfer.

DELEGATION OF POWERS FOR TRANSFER

It is the articles of the company which authorise the Board of Directors to accept or refuse transfer of securities, at their discretion. The Board further have the power to delegate all or any of their powers to any of the company or any person even not in the employment of the company. Therefore, the articles of association should authorise the Board of Directors to delegate the powers suitably. Only in the case of refusal to register a transfer, the directors are required to exercise their discretion.

TRANSFER OF DEBENTURES

In case of transfer of debentures, a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee should be delivered to the company by the transferor or transferee with in a period of 60 days from the date of execution along with the certificate relating to the debentures or if no such certificate is in existence with the letter of allotment of debentures.

After registering the transfer, the particulars thereof have to be recorded in the Debenture Transfer Register and should be initialed by the appropriate authority. After making appropriate endorsements, the debenture certificate may be sent to the party concerned.

TRANSFER OF SHARES TO MINOR

In India, a minor is not competent to enter into any contract, as under Section 11 of the Indian Contract Act, 1872, a person who has attained the age of majority is only competent to contract. Since a minor cannot enter into a contract or agreement except through a guardian, and since as per Section 153, no notice can be taken of the fact that the guardian holds a share in trust for a minor, it follows that his name cannot be entered in the Register of Members and therefore, he cannot become a member of a company. There is, however, no objection in law to the guardian of a minor entering into a contract on behalf of a minor, by virtue of the statutory right conferred on the guardian of a minor under Section 8 read with Section 4 to 6 of the Hindu Minority and Guardianship Act,1956. Since Section 56 of the Companies Act, 2013 enables execution of transfer deed by or on behalf of the transferor or the transferee, the transfer deed can be executed by a minor through his natural guardian as transferee, and the contract so entered into by a minor through his natural guardian is a binding and valid contract under Section 8 of the Hindu Minority and Guardianship Act, 1956.

The articles of association of a company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor, as such a restriction is unreasonable and not sustainable. Section 44 of the Companies Act, 2013 provides that shares in a company are movable property and are transferable in the manner provided by the Articles. The expression 'in the manner provided by the articles of association of the company' can only be interpreted to mean the procedure to be adopted for transfer and impose restrictions, which are meaningful and reasonable. In case, the restriction imposed on transfer to a minor is accepted, it would mean that the shares of a deceased member can never be inherited by the legal heir who might be a minor. This would lead to a highly unjust situation and cannot be accepted as tenable. Accordingly, if the shares can be transmitted in favour of a minor, there is no reason why the shares which are fully paid-up and in respect of which no financial liability devolves on the minor are to be held as not transferable merely because of the ban imposed in the articles of association [*Saroj* v. *Britannia Industries Ltd.,* Appeal No.5/80 decided on 14.12.81 by CLB].

TRANSFER OF SHARES TO PARTNERSHIP FIRM

A firm is not a person and as such is not entitled to apply for membership. The Department of Company Affairs (Now, Ministry of Corporate Affairs) has in its Circular No. 4/72 dated 9.2.1972 stated that a firm not being a person cannot be registered as a member of a company except where the company is licensed under Section 25 (Corresponds to section 8 of the Companies Act, 2013).

TRANSFER OF SECURITIES TO A BODY CORPORATE

An incorporated body being a legal person can acquire securities in its own name. Where a company is a transferee, the following documents are required to be submitted to the company:

(a) A certified true copy of the Board resolution and/or power of attorney authorizing the signatory of the instrument of transfer to execute the instruments;

(b) A certified true copy of a Board resolution passed under Section 179(3)(e) of the Companies Act; and

(c) A certified true copy of Memorandum and Articles of Association of a company.

Transfer of shares without Authority of Owner is void:

transfer of shares by the husband of a lady owner without her authority was void and the transferee obtained no rights.

WHEN TRANSFEROR ACT AS TRUSTEE

When a transferor makes a transfer, he makes an implied representation that the transfer will be registered by the company in the name of the transferee in the place of transferor. If the company refuses to register the transfer for no fault or default of the transferee, the transferor, by reason of the shares continuing to stand in his name, will, in cases where he has received consideration for the transfer, be treated as trustee for the transferee and bound to act in accordance with his direction and for his benefit in respect of the shares, unless the transferee rescinds the contract and seeks to recover his money on consideration which has failed.

However, after the transfer form has been executed the transferor cannot be compelled to undertake any financial burden in respect of the shares at the instance of transferee where, after the transfer of shares, but before the company had registered the transfer, the company offered rights shares to its members. The transferor could not be compelled by the transferee to take up on his behalf the rights shares offered to the transferor.

TRANSFER IN VIOLATION OF ARTICLES

Where the article of a private company requires that transfers of the company shares should be made with the previous sanction of the company's Board of Directors, the Supreme Court held that any transfer without such

approval would be invalid. *John Tinson & co. P. Ltd. v. Surjeet Malhan (Mrs.) (1997) 88 Com Cases 750: AIR 1997 SC 1411.*

Where a transfer was made in violation of a private company's articles requiring that shares must be first offered to existing members, it was held that the transferor was not the proper person to object.

TRANSMISSION OF SECURITIES

Transmission of securities has not been defined by the Companies Act, 2013. 'Transmission by operation flaw' is not a transfer. It refers to those cases where a person acquires an interest in property by operation of any provision of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the holder of securities or by purchase in a Court-sale.

Thus, transmission of securities takes place when the registered holder of securities dies or is adjudicated as an insolvent, or if the holder of securities is a company, it goes into liquidation. Because a deceased person cannot own anything, the ownership of all his property passes, after his death, to those who legally represent him. Similarly, when a person is declared insolvent, his entire property vests in the Official Assignee or Official Receiver. Upon the death of a sole registered holder of security, so far as the company is concerned, the legal representatives of the deceased holder of securities are the only persons having title to the securities unless securities-holder had appointed a nominee, in which case he would been titled to the exclusion of all others.

Transmission of shares do not require the execution through instrument of transfer in Form SH-4

Transmission in Case of Sole Owner

On the death of a sole owner of shares, vesting of rights and liabilities goes in favor of the legal heirs. They are entitled to be registered as the holders of shares. [*Scott v. Scott (London) Ltd., (1940) Ch. 794*; *Safeguard Industrial Investments Ltd. vs. National West minister Bank Ltd., (1980) 3 All ER 849*.] But the legal heirs do not by itself become members of the company. The company cannot register them as members without the consent. [*Re, Cheshire Banking Co. Duff's Executor's case, (1886) 32 Ch D 301*.] A company cannot compel them to become member nor it is a duty to do so.[*State of Kerala vs. West Coast Planters Agencies Ltd.,(1958) 28 Com Cases 13 (Ker)*.] The company can justifiably register them as members when they apply for it.

Transmission of shares to widow

If a widow applies for transmission of the shares standing in the name of her deceased husband without producing a succession certificate and if the articles of association of the company so authorises, the directors may dispense with the production of succession certificate, probate or letter of administration upon such terms as to indemnity as the directors may consider necessary, and transmit the shares to the widow of the deceased by obtaining an indemnity bond.

Transmission of joint holdings

In case some shares are registered in joint names and the articles of the company provide that the survivor shall be the only person to be recognised by the company as having any title to the shares, the company is justified in refusing to register the transmission of title by operation of law in favour of the son of the deceased holder even though he may obtain succession certificate from the Court.

Section 56(1) of the Companies Act, 2013 states that the transfer of securities must be effected by a proper instrument of transfer and that a provision in the articles of an automatic transfer of securities of a deceased securities-holder is illegal and void. Such transfer does not amount to transmission which takes place by operation of law. Section 56(2) of the Act provides that nothing in the sub-section (1) shall prejudice the powers of the company to register, on

receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. It follows that, for such transmission, instrument of transfer is not required, and, merely an application addressed to the company by the legal representative is sufficient.

Articles of companies generally provide for formalities to be observed for transmission of shares. In the absence of such provision in the articles of the company, Regulations 23 to 27 of Table F of Schedule I to the Act will govern the procedure for transmission. According to these regulations, the legal representatives are entitled to the shares held by deceased member and the company must accept the evidence of succession e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of Directors. He is, however, not a member of the company by reason only of being the legal owner of the shares. But he may apply to be registered as a member. On the contrary, instead of being registered himself as a member, he may make such transfer of the shares as the deceased or insolvent member could have made. The Board of directors also have the same right to decline registration as they would have had in the case of transfer of shares before death. But if the company unduly refuses to accept a transmission, the same remedies are available to the legal representative as in the case of a transfer namely, an appeal to the Tribunal under Section 58.

Distinction between Transfer and Transmission

S. No.	*Basis*	*Transfer of Securities*	*Transmission of Securities*
1.	**Nature**	Transfer takes place by a voluntary or deliberate act of the parties by way of a contract.	Transmission is the result of the operation of law. For example, due to death, insolvency or lunacy of a member.
2.	**Instrument**	An instrument of transfer is required in case of transfer.	No instrument of transfer is required in case of transmission.
3.	**Circumstance**	Transfer is a normal course of transferring property.	Transmission takes place on death or insolvency of a holder of securities.
4	**Consideration**	Transfer of securities is generally made for some consideration.	Transmission of securities is generally made without any consideration.
5	**Stamp Duty**	Stamp duty is payable on transfer of securities by a holder of securities.	No stamp duty is payable on transmission of securities.
6	**Liability**	As soon as transfer is complete, the liability of the transferor ceases.	Shares continue to be subject to the original liabilities.

The Board of Directors of a company or the concerned depository has no discretion to refuse or withhold transfer of any security.

Rejected Documents

Documents which are not duly stamped or where stamps are not cancelled should be returned to the person lodging them pointing out the errors so as to enable them to rectify *the error. In Feder. vs. Smt. Sarla Devi Rathi (1997)*, the company had not registered 100 shares that Smt. Sarla Devi Rathi, the respondent, had purchased and neither they returned the share certificates to her. The company urged that since the respondent had not become a shareholder of the company, no cognizance of the complaint could be taken. The High Court held that there was a *prima-facie* case against the company.

The CLB had pointed out that the company on not registering the transfer should have returned the documents to the party who lodged them (the transferee in this case) and not the transferor as the transferor loses his right in the shares as soon as he executes the transfer in blank.

Time for pointing out Insufficiency of Stamps

Where a company by mistake or otherwise registers a transfer which should have been refused because of insufficient or uncancelled stamps, or because of the instrument being unstamped, it should point out the error to the transferee within such time (within one year from the date of execution) that the transferee can have the matters rectified through the orders of the Collector. Afterwards it would be too late. [*Kothari Industrial Corpn. Ltd. vs. Lazor Detergents P. Ltd. (1994) 1 Comp LJ 178 (CLB – Mad)]*.

Impounding of Documents Relating to Share Transfer

The Board of directors are not persons to impound or regularise an instrument of transfer which is not duly stamped, *Mathrubhumi Co. Ltd. vs. Vardhaman Publishers Ltd.*, *(1992) 73 Com Cases 8093 (Ker)* as they have no authority under Sections 33 and 42 of the Stamp Act.

CASE LAWS

Related to Transfer of Shares

(A) *Hindustan Mercantile Bank Ltd. vs. D.N. Choudhury Cotton Mills Ltd. (2008) 83 SCL 399 (CLB–KOL.)*, the legal opinion on which the transferor company had relied upon was on the basis that the transferee company along with a few other companies was acting in concert to acquire shares in violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 [Replaced by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011]. To come to the conclusion that the transferee along with others was acting in concert, reliance had been placed on commonality of directors both in the transferee-company and other companies. Since the company was not a listed company, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, were not applicable. Further, it was found that neither the transferee company nor other companies had acquired shares of the transferor company. Accordingly, the company was to be directed to register the transfer of shares in favour of the transferee.

(B) *Sham Sunder Kukreja vs. Hindustan Lever Ltd. (2001) 44 CLA 38 (CLB)*, if, by virtue of Section 111A(3) of the Companies Act, 1956 [Corresponds to section 59(1) of the Companies Act, 2013], the petition should have been filed within 2 months of the registration of the securities submitted for transfer, and where on the basis of facts and circumstances of the case, the transfer was effected in a fraudulent manner, the period of limitation (2 months) shall not apply.

(C) *Dr. Rajiv Das v. The United Press Ltd. (2001) (CLB)*, in the case, where the shares of a company were held in joint names and one of these joint holders requested the company to split the shares equally between the joint holders by issuing fresh certificates, the company shall not be legally bound to do so unless the share transfer deeds executed by both the joint holders duly completed and stamped were lodged with the company together with the relevant share certificates, in terms of the provisions of Section 108 of the Companies Act, 1956 [Corresponds to section 56 of the Companies Act, 2013].

(D) *T.S. Premkumar vs. Tamil Nadu Mercantile Bank Ltd. 2001 (CLB).* there shall be no justification, if a company/ bank asks for information on Income Tax Returns (including that of the nominees of the transferee), the sources of the consideration paid for the purchase of share, the details of the group to which the transferee is attached, for the purposes of registration of transfer of shares, if the number of the shares which are subject matter of transfer, is insignificant, and after the registration of which the controlling of interest in the company/bank is not changing.

(E) Transferor Holds Bonus Shares Only as a Trustee for the Transferee. *Charanjiv Lal vs. ITC Ltd. and Another (2005) 5 COMP LJ 138 (CLB)*, the petitioner-transferee purchased 100 equity shares of ITC limited of bearing and lodged the same through post, which were received by the company on 10th December, 1991. However, the company did not take any action to register the shares in name of the petitioner and informed him that it had not received the share certificates and the transfer instrument. To prevent any unauthorized transfer of the shares, he obtained a status quo order from Senior Civil Judge, Delhi.

In theme an while, the company declared 60 bonus shares on two occasions against the impugned 100 shares of which the certificate relating to first 60 bonus shares had been sent to the transferor. The suit filed by the transferee-petitioner was dismissed for want of jurisdiction and hence the petitioner-transferee approached the Company Law Board. The Petition was allowed. The view expressed by the Judge was that the bonus shares always go with the original shares and the transferor holds bonus shares only as a trustee for the transferee. Considering that the original shares have been sold before the record date, in the absence of denial by the transferor nearly a month before the record date, it is the petitioner transferee who is entitled to the bonus shares and not the transferor.

Transfer of Shares in Depository Mode

Depository system maintains the ownership records of securities in the book entry form while in physical mode every share transfer is required to be accompanied by physical movement of share certificates to, and registration with the company concerned. The process of physical movement of share certificates often involves long delays and a significant portion of transactions end up as bad deliveries due to the faulty completion of paperwork, or signature differences with the specimens on record with the companies, or for other procedural lapses. Investors also face problems on account of loss of share certificates, forgery and mutilation. The significant time involved in effecting ownership changes also impounds a substantial volume of shares at any given time leading to lower trading volumes.

FORGED TRANSFER

It may happen that a forged instrument of transfer is presented to the company for registration. In order to avoid the consequences which will follow a forged transfer, companies normally write to the transferor about the lodgement of the transfer instrument so that he can object if he wishes. The company informs him that if no objection is made by him before a day specified in the notice, it would register the transfer.

The consequences of a forged transfer are detailed here under:

(a) A forged transfer is a nullity and, therefore, the original owner of the shares continues to be the shareholder and the company is bound to restore his name on the register of members *[People's Ins. Co. vs. Wood and Co., 1961]*. A forged document never has any legal effect. It can never move ownership from one person to another, however, genuine it may appear. Thus, a forged instrument of transfer leaves the ownership of the shares exactly where it always was in the so-called transferor. It follows that if a company registers a forged transfer, the true owner can apply so as to be replaced on the register and his name will be restored. But the company does not incur any liability in damages by putting the name on the register.

(b) However, if the company issues a share certificate to the transferee and he sells the shares to an innocent purchaser, the company is liable to compensate such a purchaser, if it refuses to register him as a member, or if his name has to be removed on the application of the true owner.

(c) If the company is put to loss by reason of the forged transfer, as it may have paid damages to an innocent purchaser, it may recover the same independently from the person who lodged the forged transfer.

The fact that the transferee was a bona fide purchaser for valued id not make any difference and the transferee was bound to return the scrips to the person to whom the same rightfully belong. [*Kaushalya Devi* vs. *National Insulated Cable Company of India 1977 Tax LR 1928(Del)]*

In case of joint share holdings, a transfer to be effective must be executed by all and if the signature of any one be forged, the transfer will be void.

A person acting in good faith, sends in and procures registration of the transfer and the issue of a fresh certificate on the basis of a forged deed is bound to indemnify the company against the untoward consequences. This happens when a stock broker, trusting his clients innocently forwards forged document to the company. [*Yeung vs. Hongkong and Shanghai Banking Corpn.*, *(1980)]*.

Further Section 57 states that if any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

A forged transfer cannot pass any title and is a nullity.

DEATH OF A JOINT SHAREHOLDER

Where shares are held in joint names, and one of the joint shareholder dies, the survivor alone will be recognized as the holder of the said shares. It would be sufficient for the company to delete the name of the deceased shareholder after obtaining satisfactory evidence of his death. This of course does not prevent a third person from calling on the company to register his name as holder of the shares after obtaining evidence such as probate of a will for the purpose of proving his title to the shares as against the surviving joint holders.

TRANSPOSITION OF NAME

In the case of joint-shareholders, one or more of them may require the company to alter or rearrange order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint- holders will be recognised for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorised officer of the company. Since no transfer of any interest in the shares take place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition also does not require stamp duty.

> Transposition of names of shareholders in the register of members do not require the execution through instrument of transfer in Form SH-4.

The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if there quest for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.

DEATH OF TRANSFEROR OR TRANSFEREE BEFORE REGISTRATION OF TRANSFER

Where the transferor dies and the company has no notice of his death the company would obviously register the transfer. But if the company has notice of his death, the proper course is not to register until the legal representative of the transferor has been referred to.

Where the transferee dies and company has notice of his death, a transfer of shares cannot be registered in the name of the deceased. With the consent of the transferor and the legal representatives of the transferee, the transfer may be registered in the names of the later. But if there is a dispute, an order of Court will have to be insisted upon.

In *KillickNixon Ltd. vs. Dhanraj Mills Ltd*., it was held that the company is not bound to enquire into the capability of the transferee to enter into a contract. The company has to act on the basis of what is presented in the transfer deed.

Proof in a transfer by representative

Where a transfer is executed by a person in a representative capacity such as an officer of a body corporate or by an attorney, proof of the authority and the Board resolution authorizing the representative to execute the transfer on behalf of body corporate must be produced, before the transfer can be registered.

Relationship between Transferor and Transferee

Pending registration, the transferee has only an equitable right to the shares transferred to him. He does not become the legal owner until his name is entered on the Register of Members in respect of the shares. But as between the transferor and the transferee, immediately after the transfer is made, the contract of transfer will subsist and the transferee becomes the beneficial owner of the shares so transferred to him. A relation of trustee (transferor) and beneficiary (transferee) is thereby established between them. The transferor is under obligation to comply with all reasonable directions of the transferee. The transferee should, however, take prompt steps to get himself registered as a member.

Section 126 of the Companies Act, 2013 provides that where the transferor gives a mandate to pay the dividend to the transferee pending registration of transfer, the same should be paid to the transferee, otherwise the dividend in relation to such shares should be transferred to the Unpaid Dividend Account mentioned in Section 124. It is further provided that in the case of offer of rights shares or fully paid bonus shares, the same should be kept in abeyance till the title to the shares is decided.

RIGHTS OF TRANSFEROR

Transferor's right to indemnity for calls - Where a transferor has paid for calls to the company after the shares are transferred, there arises an implied promise by the transferee to indemnify the transferor. Such a promise to indemnify can be implied even in the case of blank transfers [*Ashworth Partington & Co.,(1925)1K]*.

Transferee's right to Dividends, Bonus and Rights Shares - Where the transferor, by reason of the shares standing in his name, has received after the transfer, any dividend on shares, bonus or other benefit accruing in respect thereof, the transferee being the person lawfully entitled thereto, can recover the same from the transferor, provided that he has not allowed his claim to become time barred under the provisions of the Limitation Act. [*Chunnilal Khushaldas Patel vs. H.K. Adhyaru, (1956) 26 Com Cases 168 : AIR 1956 SC 655]*.

Dividend to transferee after transfer - In one case the transfer was registered and dividends paid to the transferee. Later, the register was rectified by removing the transferee's name from the register on the ground of a technical nature, like inadequacy of stamps, it was held that the transferee was not bound to hand over the dividend amount to the transferor. [*Kothari Industrial Corpn. L*td. *vs. Lazor Detergents P. Ltd., (1994)1 Comp LJ 178 (CLB-Mad)]*. However the Madras High Court held that the company should not be allowed to rectify the register on a technical ground after transferring the shares.

Position under the Securities Contracts (Regulation) Act, 1956 - As regards the position of a transferor after transfer, Section 27 of the Securities Contracts (Regulation) Act, 1956 may also be noted. It provides as follows:

Title to dividends -

1. It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee, who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

   Explanation: The period specified in this section shall be extended -

   (i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;

   (ii) in case of loss of transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and

   (iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

2. Nothing contained in Sub-section (1) shall affect -

   (a) the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect of which the dividend has become due; or

   (b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.

EFFECTS OF TRANSFER

Once a transfer form has been executed, the transfer is complete as between the transferor and the transferee and the transferee acquires the right to have his name entered in the register of members. No further application is necessary for having the name of the transferee entered in the register of members and the transferee perfects his title to the share after the entry in the Register of Members. Once the transferee becomes a member of the company, a contractual relationship arises with the company, [*Killick Nixon Ltd. vs. Dhanraj Mills Pvt. Ltd.*, *(1983) 54 Com Cases 432 (DB)(Bom)]*.

A company cannot refuse to register a transfer on the ground that the transfer was without consideration or that there was a collusion and connivance between the transferor and transferee. Any objection about inadequate consideration can be raised only by the transferor himself and not by the company particularly where the shares are fully paid.

Where the transfer is in a spot delivery contract, Section 108 [Corresponds to section 56 of the Companies Act, 2013] is not applicable. [*Sanatan Investment Co. Pvt. Ltd. vs. Prem Chand Jute Mills Ltd. (1983) 54 Com Cases 186(Cal)]*.

CASE LAW

The National Company Law Appellate Tribunal (NCLAT) held that the Company has to register the transfer of 60,000 shares in the name of legal heirs of one of its deceased shareholders which were due to him on right basis as Letter of Administration for succession has been submitted by legal heirs, so company could not insist for production of affidavit and indemnity bond in the matter of *DLF Ltd. & Anr. vs. Satya Bhushan Kaura & Anr.*, *dated January 13, 2020.*

Priority among Transferees

It was held in *Society General De Paris vs. Jonet Walker and other (1886),* that where a share holder has fraudulently sold his shares to two different transferees, the first purchaser will, on the ground of time alone, be entitled to the shares in priority to the second.

For example, a person as signed his property, including some shares, for the benefit of his creditor. The assignee failed to get the share certificates registered in his name, but gave notice of assignment to the company. The assignor sold the shares to an other who applied for registration. It was held that the assignee's claim was prior in time and therefore, entitled to registration. [*Peat vs. Clayton, (1906) 1 Ch.659*].

Pledging of Shares

Shares of a company can be a subject matter of a valid pledge. Section 2(7) of the Sale of Goods Act, 1930, defines the term 'goods' as meaning every kind of moveable property other than actionable claim and money and includes stocks and shares. Shares are goods under the Sale of Goods Act, 1930 and therefore can be a subject matter of pledge under the Indian Contract Act, 1872. In *Kanhaiyalal Jhanwar vs. Pandit Shirali And Co. And Ors [AIR 1953 Cal 526]*, the Calcutta High Court held that the deposit of share certificates themselves is sufficient to create a pledge thereon.

On the death of a sole owner of shares, the rights and liabilities goes in favour of the legal heirs. They are entitled to be registered as the holder of the shares. But the company can register them as members with only their consent and when they apply for *it. Re Cheshire Banking Co.,Duff's executor's case* (1886) 32 Ch D 301.

LEGAL FRAMEWORK FOR DEPOSITORY SYSTEMS

The legal framework for depository system in the Depositories Act provides for the establishment of single or multiple depositories.

Two depositories in India

In the depository system, share certificates belonging to the investors are dematerialised and their names are entered in the records of depository as beneficial owners. Consequent to these changes, the investors' names in the companies register are replaced by the name of depository as the registered owner of the securities. The depository however, does not have any voting rights or other economic rights in respect of the shares as a registered owner. The beneficial owner continues to enjoy all the rights and benefits and be subject to all the liabilities in respect of the securities held by a depository. Shares in the depository mode are fungible and do not have distinctive numbers. The ownership changes in the depository are done automatically on the basis of *delivery payment*.

The companies which enter into an agreement with the depository will give an option to the holders of eligible securities to avail the services of the depository through participants. The investors desiring to join the depository are required to surrender the certificates of securities to the issuer company in the specified manner and on receipt of information about dematerialisation of securities by the issuer company, the depository enters in its records the names of the investors as beneficial owners. Similarly, the beneficial owner has right to opt out of a

depository in respect of any security and claim the share certificates and get his name substituted in the register of members as the registered owner in place of the depository.

There has to be regular, mandatory flow of information about the details of ownership in the depository record to the company concerned. In case of any reservation about the acquisition of securities on the ground that the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, SEBI Act, 1992 or Companies Act, 2013 or any other law for the time being in force, the depository, company, depository participants, the holder of securities or SEBI shall have a right to make an application to the Tribunal for rectification of register or records concerned. Pending decision of the Tribunal, the holder of securities can transfer such securities and the transferee concerned shall be entitled to voting rights unless voting rights have been suspended by an order of the Tribunal.

The Act provides for detailed regulations to be framed by SEBI and detailed bye-laws to be framed by depositories with the approval of SEBI.

How does an investor avail services of a depository?

(a) In the case of existing securities:

An investor before availing the services of a depository, shall enter into an agreement with the depository through a participant and then shall surrender security certificates to the issuer. The issuer on receipt of security certificate shall cancel them and substitute in its records the name of the depository as the registered owner in respect of that security and inform the depository accordingly. The depository shall there after enter the name of the investor in its records as beneficial owner.

(b) In the case of fresh issue:

At the time of initial offer the investor would indicate his choice in the application form. If the investor opts to hold a security in the depository mode, the issuer shall intimate the concerned depository about the details of allotment of a security made in the favour of investors and records the depository as registered owner of the securities. On receipt of such information, the depository shall enter in its records the names of allottees as beneficial owners. In such case a prior agreement by the investor with the depository as well as an agreement between the issuer company and depository may be necessary.

(c) In the case of exit from the depository:

If a beneficial owner or a transferee of a security desires to take a way a security from depository, he shall inform the depository of his intention. The depository in turn shall make appropriate entries in its records and inform the issuer. The issuer shall make arrangements for the issue of certificate of securities to the investor within 30 days of the receipt of intimation from the depository.

(d) In the case of transfer within the depository:

The depository shall record all transfers of securities made among the beneficial owners on receipt of suitable intimation to the effect that a genuine purchase transaction has been settled.

(e) In the case of pledge:

Before creation of any pledge or hypothecation in respect of a security, the beneficial owner is required to obtain prior approval of the depository and on creation of pledge or hypothecation; the beneficial owner shall give intimation of such pledge or hypothecation to the depository. The depository shall make appropriate entries in its records which will be admissible as evidence.

DEMATERIALISATION AND REMATERIALISATION OF SHARES

Dematerialisation of Shares

Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates. Dematerialisation is comparable to keeping your money in a bank account. In demat form, physical share certificates are replaced by electronic book entries; purchase of shares are reflected as credits in demat account and sales are reflected as debits. The risk associated with physical share certificates such as loss, replacement, theft, damage, etc. are overcome in the share certificates held in Dematerialisation form which are totally risk free.

- Dematerialisation of shares of a company is regulated by the Depositories Act, 1996.
- According to the Depositories Act, 1996, an investor has the option to hold securities either in physical or electronic form. Part of holding can be in physical form and part in demat form. However, SEBI has notified that settlement of market trades in listed securities should take place only in the demat mode.
- Section 29 of the Companies Act, 2013 provides that every company making public offer; and such other prescribed companies shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made there under. In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.

Any company, other than a company mentioned above, may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 and the regulations made there under.

As per Rule 9(1) of the Companies (Prospectus & Allotment of Securities) Rules, 2014 the promoters of every public company making a public offer of any convertible securities may hold such securities on in dematerialised form:

Provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialised form only.

The Ministry of Corporate Affairs vide issuing the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 dated 27th October, 2023 has inserted rule 9(2) stating- every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall, -

(a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 inform the Registrar about the details of such share warrants in Form PAS-7; and

(b) within a period of six months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.

In case any bearer of share warrant does not surrender the share warrants within the period referred to in sub-rule (2), the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act.

As per Rule 9A of the Companies (Prospectus & Allotment of Securities) Rules, 2014 i.e. Issue of securities in dematerialised form by unlisted public companies.

1. Every unlisted public company shall -

   (a) Issue the securities only in dematerialised form; and

   (b) Facilitate dematerialisation of all its existing securities

   in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

2. Every unlisted public company making any offer for issue of any securities or buy-back of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

3. Every holder of securities of an unlisted public company:

   (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

   (a) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialised form before such subscription.

4. Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository as defined in clause (e)of sub-section(1) of section 2 of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.

5. Every unlisted public company shall ensure that–

   (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

   (b) it maintains security deposit at all times, of not less than two years, fees with the depository and registrar to an issue and share transfer agent in such form as may be agreed between the parties; and

   (c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

6. No unlisted public company which has defaulted in sub-rule (5) of Rule 9A of the Companies (Prospectus & Allotment of Securities) Rules, 2014 shall make offer of any securities or buy-back its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

7. Except as provided in sub-rule (8) of Rule 9A of the Companies (Prospectus & Allotment of Securities) Rules, 2014, the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply *mutatis mutandis* to dematerialisation of securities of unlisted public companies.

8. Every unlisted public company governed by this rule shall submit **Form PAS-6** to the Registrar with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within sixty days from the conclusion of each half year duly certified by a Company Secretary in practice or Chartered Accountant in practice.

8A. The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

9. The grievances, if any, of security holders of unlisted public companies under this rule filed before the Investor Education and protection Fund Authority.

10. The Investor Education and protection Fund Authority shall initiate any action against a depository or participant or Registrar to an issue and share transfer agent after prior consultation with the securities and Exchange Board of India.

11. The Companies (Prospectus & Allotment of Securities) Rules, 2014 shall not apply to an unlisted public company which is:-

A Nidhi;
A Government company;
A wholly owned subsidiary.

As per Rule 9B of the Companies (Prospectus & Allotment of Securities) Rules, 2014 i.e. Issue of securities in dematerialised form by private companies

(1) Every private company, other than a small company, shall within the period referred to in sub-rule (2) -

(a) issue the securities only in dematerialised form; and

(b) facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 and regulations made thereunder.

(2) A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such financial year, shall, within eighteen months of closure of such financial year, comply with the provisions of this rule.

(3) Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act,1996 and regulations made thereunder.

(4) Every holder of securities of the private company referred to in sub-rule (2),-

(a) who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or

(b) who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.

(5) The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.

(6) The provisions of this rule shall not apply in case of a Government company.

- As per SEBI (ICDR) Regulations, 2018, in case of a public issue or rights issue, the specified securities issued shall be issued only in dematerialized form in compliance with the Companies Act, 2013, statement that furnishing the details of depository account is mandatory and applications without depository account shall be treated as incomplete and rejected. Investors will not have the option

of getting the allotment of specified securities in physical form. However, they may get the specified securities rematerialised subsequent to allotment.

- Currently, there are two depositories registered with SEBI and are licensed to operate in India:

  NSDL (National Securities Depository Ltd.)

  CDSL [Central Depository Services (India) Ltd.]

- Section 8 of the Depositories Act, 1996 provides that every person subscribing to shares offered by a company shall have the option either to receive the share certificates or hold shares with a depository in electronic form. Where a person opts to hold his shares with, the company shall intimate such depository the details of allotment of the shares and on receipt of such information the depository shall enter in its records the name of the allottee as the beneficial owner of the shares[Sub-section(2) of Section 8].
- Section 9 of the Depositories Act, 1996 clarifies that all the securities held by a depository shall be dematerialised and shall be in a fungible form that is, they do not bear any notable feature like distinctive number, folio number or certificate number. Once shares get dematerialised, they lose their identity in terms of share certificate, distinctive numbers and folio numbers.
- According to Section 10 of the Depositories Act, 1996, a depository shall be deemed to be the registered owner of the shares for the purposes of effecting transfer of ownership of the security on behalf of a beneficial owner and the depository as a registered owner shall not have any voting rights or any rights in respect of the shares held by it. It is only the beneficial owner of the shares who shall be entitled to all the rights and benefits and be subject to all the liabilities in respect of his shares held by a depository.
- Every depository shall maintain a register and an index of beneficial owners in the manner provided in Section 88 of the Companies Act, 2013. *[Section 11]*

SEBI has amended relevant provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to disallow listed companies from accepting request for transfer of securities which are held in physical form, with effect from April 1, 2019. The shareholders who continue to hold shares and other types of listed companies in physical form even after this date, will not be able to lodge the shares with company/its RTA for further transfer. They will need to convert them to demat form compulsorily if they wish to effect any transfer. Only the requests for transmission and transposition of securities in physical form, will be accepted by the listed companies/their RTAs.

As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the listed entity shall ensure that hundred percent of share holding of promoter and promoter group is in dematerialised form and the same is maintained on a continuous basis in the manner as specified by the SEBI.

TRANSFER OF DEMATERIALISED SHARES

Transfer of shares in dematerialised form do not require execution of instrument of transfer in ***Form SH-4****.*

However, the stamp duty is payable as per new Amended Stamp Act w.e.f. 1st July 2020.

Section 7 of the Depositories Act, 1996 lays down that every depository shall, on receipt of intimation from a participant, register the transfer of shares in the name of the transferee and where the beneficial owner or a transferee of any shares seeks to have custody of such shares, the depository shall inform the issuer accordingly.

The Stamp Duty is also to be paid on the transfer of securities in dematerialised form w.e.f. 01/07/2020 which was earlier exempted. Any number of securities can be transferred/ delivered with one delivery instruction. Therefore, the paperwork and signing of multiple transfer forms is done away with.

REMATERIALISATION OF SECURITIES

An investor may opt to rematerialise his shares even after Dematerialisation. Rematerialisation is conversion of electronic securities into physical certificates of such securities.

This can be done in the following manner:

(1) Beneficial owner sends request to DP.

(2) DP intimates Depository (NSDL or CDSL) of such request electronically.

(3) Depository confirms rematerialisation request to the company's Share Transfer Agents.

(4) Share Transfer Agent updates accounts, prints certificates and confirms the Depository.

(5) Depository updates accounts and downloads the details to the DP.

(6) Share Transfer Agent dispatches certificates to holder thereof.

(7) The DP also sends intimation about rematerialisation to its client.

SPECIMEN RESOLUTIONS

Specimen of the Board Resolution Approving Private Placement of Shares

"RESOLVED THAT pursuant to the provisions of Section 42, 62(1)(c) and other provisions, applicable, if any, of the Companies Act, 2013 read with the Companies (Prospectus and allotment of Securities) Rules, 2014 and the Companies (Share Capital and Debentures) Rules, 2014, the consent of the Board of Directors of the Company be and is hereby accorded for an allotment of _____(_____) Equity Shares of Rs. _____(Rupees_____ _____) each of the Company at par, distinctively numbered from _____ to _____ (both inclusive), to_____ from whom the Company has received share application money aggregating to Rs. _____/- (Rupees _____).

RESOLVED FURTHER THAT the said Equity Shares shall rank *pari-passu* with existing Equity Shares in all respects.

RESOLVED FURTHER THAT any of the Director of the Company be and is hereby authorized to file Return on Allotment of aforesaid shares in E-Form No. PAS-3 or such other applicable form from time to time with the Registrar of Companies by affixing Digital Signature thereto.

RESOLVED FURTHER THAT the Share Certificate for the shares allotted as aforesaid be issued to abovementioned allottee under the signatures of any two Directors and Mr. _____ as Authorised signatory of the Company and the Common Seal (if any) of the company be affixed on the share certificate as per the Articles of Association of the Company.

RESOLVED FURTHER THAT necessary entries in respect of issue and allotment of aforesaid shares be made in the Register of Members.

RESOLVED FURTHER THAT any of the Director of the Company be and is hereby authorized to intimate above allotment to Depositories and/or R&T agents by submitting necessary documents and to do all such acts, deeds, matters and things which may deem necessary, pertinent, desirable, incidental in this regard."

Specimen of the Board Resolution Approving the Registration of Transfer of Shares

"RESOLVED THAT Registration of transfer of _____ fully paid equity shares of the company as per details in the register of share transfers of the company entered on page _____ to _____, entries Nos. _____ to

_____ (both inclusive), which was placed before the meeting and each page was initialed by the chairman of the meeting as a mark of identification, be and is hereby approved."

"RESOLVED FURTHER THAT Shri _____,Company Secretary be and is hereby authorized to endorse the relevant share certificates under his signature, arrange for their dispatch to the transferees of the shares and make appropriate entries in the register of members and other records of the company."

Specimen of Board Resolution Approving Registration of Transmission of Shares

"RESOLVED THAT Transmission of _____ nos. of fully paid equity shares of the company bearing distinctive numbers _____ to _____ (both numbers inclusive) presently registered in the name of Shri _____ who has been reported as deceased on _____ in the district of _____ which is situated in the state of _____, in the name of Shri _____ son of Shri _____ resident of _____ be and is hereby approved."

"RESOLVED FURTHER THAT since the company has received a letter from the said Shri _____, intimating to the company that he has decided to have the said shares registered in his name, the said shares be registered in his name;" and

"RESOLVED FURTHER THAT Shri _____,Company Secretary, be and is here by authorized to enter the name of the said Shri _____ in the register of members of the company and send the relevant share certificates to him after appropriately endorsing them in his name."

LESSON ROUND-UP

- Share capital of a company can be classified as: nominal, authorized or registered capital; issued and subscribed capital; called up and uncalled capital; paid-up capital.
- A share is defined as a share in the share capital of a company and includes stock.
- The Companies Act, 2013 permits a company limited by shares to issue two classes of shares, namely equity share capital and preference share capital.
- A preference share or preference share capital is that part of share capital which carries a preferential right with respect to both dividend and capital.
- Preference shares may be of various types, namely participating and non-participating, cumulative and non-cumulative shares, redeemable preference shares.
- Equity share capital means all share capital which is not preference share capital.
- Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.
- A share certificate is prima facie evidence to the title of the person whose name is entered on it.
- A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of (i) its free reserves; (ii) the securities premium account; or (iii) the capital redemption reserve account.
- Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

- A company may if authorised by its articles, forfeit shares for non-payment of calls and the same. The power of forfeiture must be exercised bona fide and in the interest of the company.
- In general parlance, "transfer" takes place when title to the property is transferred from one person to another whereas "transmission" refers to devaluation of title by operation of law.
- Transmission may takes place either by succession or by testamentary transfer.
- According to Section 44 of the Companies Act, 2013, shares, debentures or other interest of a company are movable property, transferable in the manner provided by the articles of association of the company.
- Section 56 of the Companies Act requires that where share transfer form is delivered to the company should be adequately stamped.
- Shares of a private company are not marketable securities due to restriction on right to transfer. Such shares by their very nature are not freely transferable in the market.
- The securities of a public company are freely transferable, subject to the provisions that any contractor arrangement between two or more persons in respect of transfer of securities shall be enforceable as contract.

GLOSSARY

Explanatory Statement: To enable shareholders to take apt and a well informed decision, it is necessary to provide them with requisite information. It covers all the information and facts that may enable members to understand the meaning, scope and implication of the proposed resolution. (Section 102 of Companies Act, 2013)

Special Resolution: A resolution is a Special Resolution when it is intended to be passed as a special resolution. The votes cast in favour of such resolution by members who, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting. (Section 114 of Companies Act, 2013)

General Meeting: Meeting of the members of the company with the Board of Directors. This may be Extra ordinary General Meeting or Annual General Meeting.

Share Capital: Funds raised by issuing shares in return for cash or other considerations. The amount of share capital a company can change over time because each time a business sells new shares to the public in exchange for cash, the amount of share capital will increase. Share capital can be composed of both common and preferred shares.

Red herring Prospectus: A prospectus which does not include complete particulars of the quantum or price of the securities included there in.

Shelf Prospectus: A prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Abridged Prospectus: "Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Redemption of shares: Where a company issues shares on terms stating that they can be bought back by the company. Not all shares can be redeemed, only those stated to be redeemable when they were issued. The payment for the shares must generally come from reserves of profit so that the capital of the company is preserved.

Employee Stock Option: As defined under sub-section (37) of Section 2 of the Companies Act, (ESOP) 2013, "employees' stock option" means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

Sweat Equity Shares: Sweat equity shares mean equity shares issued by a company to or directors at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property or value additions, by whatever name called.

Rights Issue: Rights issue is an issue of capital to be offered to the existing shareholders of the company through a letter of offer.

Bonus Shares: When a company is prosperous and accumulates large distributable, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation).

1. Discuss the various kinds of share capital. How is preference share capital distinguished from equity share capital?
2. Define and explain the term "share". What are the different classes of shares which a company may issue?
3. What are the various modes through which a public and private company may issue securities and the governing laws for issue of securities?
4. Define Prospectus and its types. What is Offer for Sale?
5. What is a Share Certificate and its legal effects? When can a company issue duplicate share certificate?
6. State the provisions of the Companies Act, 2013 relating to issue of shares at premium and at discount.
7. Discuss the procedure for issue of further shares to existing shareholders under Section 62 (1) of the Companies Act, 2013.
8. Jacob, who is Managing Director in 'Z' Limited has been issued 5000 Sweat Equity Shares in consideration of providing know-how without cost to 'Z' Limited last year. Jacob now wants to transfer half of these shares in the name of his brother. Can he do so? if not, why?
9. XYZ Limited wants to alter capital clause of its Memorandum of Association. What are the ways in which said clause may be altered under provisions of the Companies Act, 2013.

10. Sitcom Limited has completed buy back 8% of its shares in November 2019. Now the Board of Directors want to further buy back 15% in January 2020 and asks CS to call EGM for passing special resolution. Advise the Board of Directors in the matter.

11. The paid-up capital of ARC Limited is Rs. 50,00,000/- divided into 5,00,000 Equity Shares of Rs. 10/- each. The Board of Directors want to return a part of the paid-up the share capital as it feels that it is in excess of the needs of the Company. Can the Company do so? What procedure is to be followed?

12. Parag has submitted the duly executed and stamped transfer deed in prescribed form for transfer of shares of Reliable Ltd. from Parag to the Company. What steps the CS should take after receiving the same?

13. The Capital of ABC Ltd is Rs. 50 lacs, consisting equity share capital of Rs. 40 Lacs and redeemable preference share capital of Rs. 10Lacs. The company is running in losses and its accumulated loses aggregated to Rs. 15 Lacs, the company wants to borrow Rs. 20 lacs from financial institutions to improve its working and also to redeem the preference share capital. Choose the correct option:

    (a) The borrowing from financial institution for redemption of preference shares shall not be permissible

    (b) The company can raise funds from financial institution for redemption of preference shares

    (c) The company shall after seeking approval from members of the company can raise funds from financial institution for redemption of preference shares

    (d) None of the above.

14. Ram lal is a shareholder of a company holding 100 shares. Ram Lal dies in a road accident leaving Mohan as his legal representative. Mohan is not a member of the company. Mohan transfers all 100 shares of the deceased member to Anil. Is the transfer is valid?

    (a) No, Mohan can effect a valid transfer only after the succession in his favour is duly registered

    (b) Yes, the transfer done is valid

    (c) Mohan can effect a valid transfer only after intimating the company about the demise

    (d) None of the above.

LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- ICSI Premier on Company Law
- Bare Act- Companies Act, 2013

OTHER REFERENCES (Including Websites/Video Links)

- *https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==*