PART VIII

PROSPECTUS, ISSUANCE, TRANSFER AND FORFEITURE OF SHARES

Chapter 1

Prospectus

Synopsis

21. Penalty for impersonation for acquisition, etc., of shares
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Important Provisions at a Glance

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The provisions contained in the Companies Act, 1956 regarding prospectus are applicable to both listed and unlisted public limited companies. A private company cannot invite public to subscribe for its shares in or debentures, therefore, it cannot issue prospectus. [Section 3(1)(*iii*)]

In case of companies which desirous to get listing of their securities on Stock Exchange(s), the SEBI has stipulated numerous disclosure requirements. However, the contents of this chapter have been confined only to the provisions regarding prospectus as contained in the Companies Act, 1956.

1. Meanings of 'prospectus' and 'abridged prospectus'

The term 'prospectus' under section 2(36) means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting offers from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures securities of a body corporate.

The term 'abridged prospectus' under section 2(1) means a memorandum containing such salient features of a prospectus as may be prescribed.

Only a public company has power and privilege to issue prospectus to public for subscription of shares in or debentures of the company. The prospectus of a public company shall contain matters specified in Part I of Schedule II and shall set out the reports specified in Part II of Schedule II to the Companies Act, 1956. If a public company does not issue a prospectus with reference to its formation then it has to file a statement in lieu of prospectus with the concerned Registrar of Companies.

2. Prohibition on public companies for allotment of shares unless statement in lieu of prospectus has been delivered to the Registrar

Section 70(1) provides that a company having a share capital, which does not issue a prospectus on or with reference to its formation, or which has issued such a prospectus but has not proceeded to allot any of the shares offered to the public for subscription, shall not allot any of its shares or debentures unless at least three days before the first allotment of either shares or debentures, there has been delivered to the Registrar for registration a statement in lieu of prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, in the form and containing the particulars set out in Part I of Schedule III and, in the cases mentioned in Part II of that Schedule, setting out the reports specified therein, and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

3. Dating of prospectus

Section 55 of the Act provides that a prospectus issued by or on behalf of a company or in relation to an intended company shall be dated, and that the date so stated in the prospectus shall be taken as the date of its publication.

4. Powers of the Securities and Exchange Board of India

Section 55A provides that the provisions contained in sections 55 to 58, 59 to 84, 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall—

(*a*) in case of listed public companies;

(*b*) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India; and

(*c*) in any other case, be administered by the Central Government.

Explanation to section 55A clarifies that for removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, Tribunal or the Registrar of Companies, as the case may be.

5. Matters to be stated and reports to be set out in prospectus

As per section 56(1) of the Act, every prospectus shall state the matters specified in Part I of Schedule II and the said Parts I and II shall have effect subject to the provisions contained in Part III of Schedule II.

In case, if a company desirous listing of its securities, SEBI DIP Guidelines also require disclosures of certain information in the prospectus which is in addition to the requirement of the Companies Act, 1956.

6. Authority for issuance of prospectus

In terms of the provisions of section 56(1) of the Act, a prospectus can be issued—

(*i*) by or on behalf of a company; or

(*ii*) by or on behalf of any person who is or has been engaged or interested in the formation of a company.

The prospectus can be issued on or with reference to the formation of a company.

7. Requirement for accompanying memorandum containing salient features of prospectus with the application form

Section 56(3) of the Act, provides that no one shall issue any form of application for shares in, or debentures of a company, unless the form is accompanied by a memorandum containing salient features of prospectus. The memorandum containing salient features of prospectus shall contain all particulars as specified in Form 2A of the Companies (Central Government's) General Rules and Forms, 1956. The application form must comply with the provisions of section 56 and cannot be issued unless it contains a memorandum containing salient features of prospectus and is in consonance with the provisions of section 56.

However, section 56(3) does not apply, if it is shown that the form of application was issued either:—

(*i*) in connection with a bona fide invitation to person to enter into an underwriting agreement with respect to the shares or debentures; or

(*ii*) in relation to shares or debentures which were not offered to the public.

Any person who acts in contravention of provisions cited above shall be punishable with fine which may extend to fifty thousand rupees. The powers of prosecution under section 56 have been delegated to the SEBI. The practice of forwarding forms of application for shares without enclosing copies of prospectuses, contravenes section 56(3).

It has been clarified by the Department *vide* Circular Letter No. F. 2/18/74/64, dated 22-9-1964 that the requirements of section 56(3) are mandatory and any contravention of the provisions contained therein is punishable with fine, which may extend to fifty thousand rupees. Government has very carefully considered the matter in all it's aspects and is of the firm opinion that no laxity in strict compliance of the legal provisions should be permitted. With a view to avoiding prosecutions for such illegal practices being launched against the member-brokers of the Exchanges, the desirability of strictly adhering to the mandatory provisions of law as well as of conforming to the rules, bye-laws and regulations of the Exchange should be impressed upon them, states the *ibid* circular.

8. Furnishing of a copy of prospectus on demand

Section 56(3) of the Act, provides that a copy of prospectus shall be furnished to a person who makes request in this regard before the closing of the subscription list. Any person who acts in contravention of provisions cited above shall be punishable with fine, which may extend to fifty thousand rupees.

9. Non-incurrence of liability by directors, etc.

A director or other person responsible for prospectus shall not incur any liability by reason of non-compliance with, or contravention of, provisions relating to issue and contents of prospectus or form of application and supply of prospectus on request in the following cases: [Section 56(4)]

(*i*) as regards any matter not disclosed, if he proves that he had no knowledge thereof;

(*ii*) if he proves that the non-compliance or contravention arose from an honest mistake of fact on his part;

(*iii*) he shows that the form of application was issued either,—

  (*a*) in connection with a *bona fide* invitation to person to enter into an underwriting agreement with respect to the shares or debentures; or

  (*b*) in relation to the shares or debentures which were not offered to the public;

(*iv*) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case or otherwise were immaterial and having regard to the circumstances of the case, reasonably to be excused.

10. Non-application of provisions for issuance and contents of prospectus and form of application

Section 56(5) of the Act provides that section 56 do not apply in the following cases:—

(*i*) if a company issue a prospectus or form of application relating to shares in or debentures of the company, to the existing members or debentureholders of the company, whether or not the applicants have the right to renounce in favour of other persons;

(*ii*) if a company issue a prospectus or form of application relating to the shares or debentures which are, or are to be, in all respects uniform with the shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

11. Expert's statement may be included in a prospectus, if comply with certain requirements of the Act

A prospectus inviting persons to subscribe for shares in or debentures of a company may contain a statement purporting to be made by an 'expert' only when the expert is a person who is not, or has not been, engaged or interested in the formation or promotion, or in the management of the company. [Section 57]

Section 58 of the Act provides that a prospectus inviting persons to subscribe for the shares in or debentures of a company and including a statement purporting to be made by an expert shall be issued only after fulfillment of following conditions, namely:—

(*i*) the expert has given his written consent to the issue of prospectus with the statement included in the form and context in which it is included, and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration;

(*ii*) the statement that he has given and has not withdrawn his consent as aforesaid appears in the prospectus.

Section 59(2) of the Act has also defined the term 'Expert', which includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.

A company, which includes statements of expert must ensure that:—

(*i*) the expert has given his written consent to the issue of prospectus containing his statement;

(*ii*) the expert's statement has been included in the prospectus in the same form and context in which he has given the same;

(*iii*) the expert has not withdrawn his consent as given in writing before the delivery of a copy of a prospectus to the Registrar of Companies for registration;

(*iv*) prospectus shall contain a statement that the expert has given his consent and has not withdrawn the same; and

(*v*) the expert must be a person who is not or has not been engaged or interested in the formation or promotion, or in the management of the company.

If any prospectus is issued in contravention of section 57 or 58 of the Companies Act, 1956, the company, and every person, who is knowingly a party to the issue thereof, shall be punishable with a fine which may extend to fifty thousand rupees. [Section 59(1)] Prosecution powers have been delegated to the SEBI *vide* Notification No. 727(E), dated 18-9-2000.

12. Registration of prospectus and related formalities

After the company has finalized all matters regarding its public issue of securities and after getting the draft prospectus finalized in consultation with the lead manager and after incorporating the changes, if any, specified by the SEBI within 21 days of submission of the draft to SEBI, which is the equivalent of the clearance of the SEBI, the prospectus will be considered by the Board of directors. The Board of directors will approve the draft prospectus and also simultaneously accord approval to the appointment of various intermediaries who will be named in the prospectus, like registrars, brokers, lead managers, bankers, share transfer agent, underwriters, advisors, etc. After approval by the Board, the prospectus will be signed by the directors or their duly constituted attorneys in writing. The Board may also authorize the company secretary or any other official to deliver a copy of prospectus to the Registrar of Companies for its registration. Delivery of a copy of prospectus to the concerned Registrar for registration is a pre-condition to issue of a prospectus by or on behalf of a company. The copy of prospectus being delivered to the concerned Registrar of Companies must satisfy the following conditions:—

(*i*) it must be signed by every person who is named in the prospectus as a director or proposed director of the company or by his agent or attorney duly authorised in writing;

(*ii*) the following documents/evidences must be endorsed on or attached to the copy of prospectus:—

(*a*) any consent of the expert to the issue of the prospectus from any person as required by section 58; and

(*b*) in the case prospectus is issued generally, also—

(1) a copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(2) where the persons making any report required by Part II of that Schedule have made therein, or have without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

Section 60(2) specify that every prospectus issued by or on behalf of a company or in relation to an intended company shall state following facts on the face of it:—

(*i*) a copy of prospectus has been delivered to the concerned Registrar of Companies for registration as required by section 60 of the Companies Act, 1956;

(*ii*) mention that if any documents which are required by section 60 of the Act to be endorsed on or attached to the copy so delivered to Registrar, or refer to any statements included in the prospectus which specify those documents.

13. Alterations in prospectus, etc., at the instance of the Registrar

Sometimes, it may happens that prospectus delivered for registration to the Registrar is not in conformity with the law or does not furnish adequate information and as such on being called upon by the Registrar to make such corrections, additions, etc., and necessary corrections, alterations are made by companies as desired by the Registrar. It is, however, noted that such alterations, deletions or additions are not incorporated in all the copies of prospectus, which have actually been circulated and published.

It would be appropriate for a company to deliver the prospectus to the Registrar well in advance of its publication and to ensure that no prospectus would be issued to the public except, in the form in which it was registered by the Registrar so that any alterations necessary to bring is in full conformity with the provisions of the Act could be pointed out by the Registrar and effected by the company before the final prospectus is delivered to the Registrar in terms of section 60.

Printed copies of the prospectus as registered by the Registrar of Companies, should be delivered again to the SEBI, Stock Exchange and all the concerning authorities as true copy of the prospectus registered by the Registrar of Companies.

14. Prospectus must be issued within 90 days after the date of delivery to the Registrar for registration

Section 60(4) states that no prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered to the concerned Registrar of Companies for registration under section 60(1) of the Act.

If a prospectus is issued more than ninety days after the date on which a copy thereof is delivered to the concerned Registrar of Companies u/s 60(1), it shall be deemed to be a prospectus, which has not been delivered under section 60(1) to the Registrar.

If a prospectus is issued without a copy thereof being delivered under section 60(1) to the concerned Registrar of Companies or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to Rs. 50,000. [Section 60(5)]

15. Procedural steps to be followed for preparation, registration and publication of prospectus

1. The Board of directors of the company shall consider the project or proposal for which capital is required. Project report together with the source of finance will be finalised and approved. If the proposed project requires license(s)/permission(s), etc., decisions shall also be taken for making applications where necessary;
2. Convene a general meeting, by issuing a proper notice, for passing the following resolutions:
   (*a*) Ordinary resolution relating to increase in the authorised capital, where necessary. [Section 94]
   (*b*) Special resolution relating to amendment of Memorandum and Articles in respect of authorised capital and for meeting other requirements of the Listing Agreement, where necessary. [Section 31]
   (*c*) Special resolution relating to issue of capital to person other than existing holders of equity shares. [Section 81(1A)]
   (*d*) Special resolution relating to commencement of new business, where necessary. [Section 149]
3. File necessary forms *i.e.* e-Form 5, 20A, 23 and amended copy of the Memorandum and Articles electronically with the Registrar of Companies in respect of increase of authorised capital, amendment of articles, issue of capital to person other than existing members and for commencement of new business. [All these forms may not be needed in every case]

4. If the scheme of finance for the project requires finance from public financial institutions or banks, necessary applications shall be made in the form required by the financial institutions or banks, as the case may be.
5. Orders may be placed for capital equipment, where necessary. Purchase/lease/tenancy right of land will be negotiated wherever necessary.
6. Make application with the Government/statutory authorities for power, water, clearance under the Pollution (Air and Water) Control Act, registration of unit with SIA or Department of Industries, RBI, etc. for their approvals as may be necessary as per requirement of the project.
7. The Board of directors of the company shall authorize a director or a committee of the Board for appointment of all agencies for the purpose of public issue *i.e*. lead managers, co-managers, registrars, printers, advertisers, legal advisors, book builder, broker, bankers, etc and also for taking decisions in respect of various allied matters.
8. The Director/committee authorised by the Board of directors, shall appoint merchant banker(s) as lead manager of the issue and book builder.
9. The company will appoint all other intermediary required for the issue in consultation with the lead manager. The lead manager shall ensure that all the intermediary appointed are duly registered with SEBI to act in their respective capacities.
10. Auditors shall be requested to audit the statement containing information relating to accounts to be given in the prospectus in accordance with Schedule II to the Act. The particulars in the auditor's report will have to be given up to a date not earlier than 6 months from the date of issue of prospectus. The auditors shall prepare their report with respect to profits and losses and assets and liabilities and the rates of dividends paid for each of the five financial years immediately preceding the issue of prospectus. The period of 5 years referred to a simple period of five years ending on a date three months before the issue of prospectus and hence every company will have to furnish in the prospectus, accounts up to a date not earlier than 6 months from the date of issue of the prospectus, irrespective of the fact whether or not the financial year of the company closes on a date three months before the issue of prospectus.
11. The lead managers to the issue will prepare the draft prospectus and for that purposes, the company is required to provide all the necessary information supported by documentary evidence to the lead managers. A draft prospectus will be prepared having regard to requirements of Chapter VI of SEBI Guidelines for Disclosure and Investors Protection and Part I of Schedule II to the Act.
12. The following reports specified in Part II of Schedule II to the Act shall be arranged:
    (*a*) Auditors' report.
    (*b*) Report by accountants (who are normally auditors as regards certain matters).

    Where accountant's report was not appended to the prospectus by a company which acquired the estate not as a property but as a going concern, a default under section 56(1) had occurred
13. If it is proposed to include any statement of an expert in the prospectus, his consent thereto shall be obtained. The expert should not be connected with formation and management of the company.
14. Obtain consent in writing from the auditor, legal advisor, attorney, solicitor, bankers, lead managers, registrar to the issue and all the directors, company secretary, compliance officer and all other persons whose names have to be given in the prospectus for inclusion of their names in the prospectus in their capacities.
15. The company shall also obtain expert's statement in writing duly signed by him.
16. Copies of material contracts will be made and a list thereof is prepared and provided to the lead managers for incorporation in the draft prospectus.
17. Extract of section 68A of the Act shall be reproduced in the prospectus and application form.
18. The draft prospectus is examined by the legal advisors/solicitors with a view to ensure due compliance with all the statutory requirements and SEBI Guidelines. The Lead Manager has to file a certificate of Due Diligence with SEBI in respect of compliance of SEBI Guidelines.

19. Ensure that prospectus contains statutory statement that compliance with the SEBI Guidelines does not guarantee financial soundness of the company.
20. Where it is proposed to list the shares, a draft copy of the prospectus shall be forwarded to the stock exchanges, where listing is proposed, for their approval.
21. Where the issue is proposed to be underwritten, arrange for underwriting and obtain consent of underwriting from underwriters and make contracts of underwriting.
22. A copy of the offer document shall be filed with SEBI through an eligible Merchant Banker at least 21 days before being filed with the ROC for registration. During this period, if any alteration is suggested by SEBI, then such alteration shall necessarily be incorporated in the offer document before being filed with ROC for registration.
23. The company shall soon after receiving final observations, if any, on the draft offer document from the SEBI, make an advertisement in an English national daily with wide circulation, one Hindi national newspaper and a regional language newspaper with wide circulation at the place where the registered office of the company is situated, which shall be in the format and contain the minimum disclosures as provided in Part A of Schedule XX of SEBI DIP Guidelines.
24. Section 60B authorises companies to issue information memorandum before issue of prospectus.
25. The prospectus will be approved at the meeting of the Board. The Board shall approve the underwriting contracts and decide the date of the opening date, closing date and earliest closing date for the company's issue. The dates shall be incorporated in the prospectus.
26. Six printed copies of the prospectus duly signed by every person named therein as a director or by his agent specifically authorized in writing by way of Power of Attorney is dated and delivered to the Registrar on the same day along with the following documents:
    (*a*) written consent of the experts where applicable.[Section 58]
    (*b*) copies of the following: -
        (*i*) Contract appointing or fixing remuneration of Managing Director or Manager.
        (*ii*) Any other material contract, not being a contract entered into in the ordinary course of business carried on or intended to be carried on by the company or contract entered into more than two years before the date of the prospectus.

        Where a contract is not in writing, a memorandum giving full particulars thereof should be prepared and filed.
    (*c*) Written statements (where applicable) by the Auditors/Accountants as regards any adjustments made in the reports submitted by them.
    (*d*) Consents in writing of auditors, legal advisor, attorney, solicitor, banker, underwriter or broker, if any, named in the prospectus, to act in their respective capacities.
    (*e*) A letter of authority (stamped as a specific Power of Attorney) where applicable signed by the directors empowering any one of them or other person to make such alteration/amendments in prospectus as may be required by the Registrar.
27. After registration of the prospectus with the Registrar, arrange for printing of sufficient number of copies of the prospectus and application forms and send to all the underwriters, brokers, bankers, and stock exchanges. Ensure that a memorandum containing salient features of the prospectus accompanies every application form. The requirements of section 56(3) are mandatory and any contravention of the provisions therein is punishable.
28. Announcement regarding the proposed issue of capital shall be made in the prescribed proforma.
29. Newspaper advertisements shall be published in different newspapers at least 10 days before the date of opening of subscription lists. It is not necessary to specify therein contents of memorandum or signatories thereto or number of shares subscribed for, by them.
30. Companies shall not publish either themselves or through their issue houses, etc., any material relating to the public issue between the date of announcement and the date of closing of the

subscription list. There is no bar to the terms of payment being included in the announcement regarding the proposed issue of capital made in the press provided it does not offend the provisions of section 56.

16. Shelf prospectus

Public financial institutions have sometimes accessed the capital market more than once in the course of a 365 day period and there may be more such instances. Under the Act, a company must issue a full-fledged prospectus each time it accesses the capital market, it certainly leads to needless repetition more so when a company takes recourse to capital markets more than once in a given year.

Section 60A provides that the financial institutions may issue a "shelf prospectus" for a specified time period. Such a prospectus has a limited life during which it remains on the "shelf", and is updated for any changes that may have occurred between two successive offerings. "Shelf prospectus" means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

According to section 60A(1), any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

16.1. Validity period of shelf prospectus

Shelf prospectus will be valid for a period of one year from the date of opening of the first issue of securities under a shelf prospectus. Section 60A(2) provides that a company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

16.2. Requirement for filing of information memorandum on all material facts for changes, which took place between the first offer of securities, previous offer of securities and the succeeding offer of securities

Section 60A(3) provides that a company filing a shelf prospectus shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government, prior to making of a second or subsequent offer of securities under the shelf prospectus.

An information memorandum shall be issued to the public along with the shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus.

Therefore, an update of information memorandum is required to be filed every time if an offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus.

16.3. Information memorandum

Section 2(19B), defines the term "information memorandum" means a process undertaken prior to the filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed, by means of a notice, circular or advertisement of document.

Section 60B contains procedural aspect in relation to 'information memorandum'. The procedure for circulation of information memorandum and inviting subscription therefrom has been given as under:—

(1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus. [Section 60B(l)]

(2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer. [Section 60B(2)]

(3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus. [Section 60B(3)]

(4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company. [Section 60B(4)]

For the purposes of sub-sections (2), (3) and (4), "red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered. [*Explanation* to section 60B(4)]

(5) Every variation as made and highlighted in accordance with sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities. [Section 60B(5)]

(6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post-dated cheques before the date of opening of the issue, without having individually intimated the prospectus subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of subscription paid. [Section 60B(6)]

(7) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters. [Section 60B(7)]

(8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund or return of its post-dated cheques or subscription moneys or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen per cent, from the date of encashment till payment or realisation. [Section 60B(8)]

(9) Upon the closing of the offer for securities, a final 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 were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only. [Section 60B(9)]

17. Terms of contract mentioned in prospectus or statement in lieu of prospectus not to be varied

A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus without the approval of, or except on authority given by the company in general meeting. If terms of a contract mentioned in prospectus are varied subject to the approval of the company then the approval of the general meeting shall be obtained subsequently. [Section 61]

18. Liability for misstatements in prospectus

18.1. Civil liability

The primary document in respect of every public issue of securities for subscription is the prospectus. It is solely on the basis of the prospectus that prospective investors get the information about the company and takes decision for investments. Therefore, the prospectus of the company must not suppress any material fact or omission of which may affect the decision of the investors. There are two kinds of liabilities provided under the Companies Act, 1956 for misstatements in prospectus. One is the civil liability provided under section 62 and the other is a criminal liability prescribed under section 63 of the Act. The criminal liability for misstatements in the prospectus provided under section 63 of the Act is in addition to civil liability.

It has been provided that where a prospectus invites persons to subscribe for any shares or debentures of a company, the following persons shall be liable to pay compensation to every person who subscribes for any shares in or debentures on the faith of the prospectus for any loss or damage he may have sustained by reason of any untrue statement contained in the prospectus:—

(*a*) every person who is a director of the company at the time of the issue of the prospectus;

(*b*) every person who has authorised himself to be named and is named in the prospectus either as a director, or as having agreed to become a director, either immediately or after an interval of time;

(*c*) every person who is a promoter of the company; and

(*d*) every person who has authorised the issue of the prospectus.

Consent given by a person as an expert in respect of his statement contained in the prospectus under section 58 or consent in writing given by any person named as auditors, etc., in the prospectus under section 60(3) shall not make such person liable as a person who has authorised the issue of the prospectus and such person can be held liable only in respect of an untrue statement, if any, purporting to be made by him as an expert. However, a person shall not be liable for misstatements in prospectus under section 62(1), if he proves that:—

(*a*) having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent;

(*b*) the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent;

(*c*) after the issue of the prospectus and before allotment thereon, becoming aware of any untrue statement contained therein, withdrew his consent to the prospectus and gave reasonable public notice of the withdrawal and of the reasons therefor; or

(*d*) (*i*) as regards every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement, he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(*ii*) as regards every untrue statement purporting to be a statement by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that person had given the consent required by section 58 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder; and

(*iii*) as regards every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, it was a correct and fair representation of the statement or a correct copy of, or a correct and fair extract from, the document.

It has been provided that section 62(2) shall not apply in the case of a person liable, by reason of his having given a consent required of him by section 58, as a person who has authorised the issue of the prospectus in respect of an untrue statement, purporting to be made by him as an expert.

18.2. Criminal liability

Section 63 of the Act says that where a prospectus issued, if it includes any untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. Fifty thousand rupees, or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

Therefore, in order to invoke the provisions of section 63 of the Act, there must be 'included' in the prospectus an 'untrue statement'. Untrue statement has been clarified by sub-section (1) of section 65. Although, the expression used is the same as in the case of section 62, yet the standard of proof required for successful prosecution under section 63 of the Act. Following are the relevant points which should be considered very carefully in this regard:—

(*i*) Every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term, which may extend to two years, or with fine which may extend to Rs. 50,000, or with both.

For defending from the criminal liability to such person has to prove that:—

(*a*) either that the statement was immaterial; or

(*b*) that he was having reasonable ground to believe, that the statement was true and did so up to the time of the issue of the prospectus.

(*ii*) If a person is to be prosecuted then the presence of *mens rea* is essential; language of the section itself provides that, in order to make a person liable for prosecution, it must be shown that untrue statement was made with criminal intention. It should also be noted that the principle of strict liability for criminal prosecution cannot be applied in this case. Also, prosecution under this section cannot be launched where the statement made would in any case be inconsequential or immaterial. A person charged with an offence under this section may also seek immunity under the 'general exceptions' to the criminal prosecution mentioned in the Indian Penal Code.

(*iii*) Every person authorising the issue can be prosecuted under section 63 of the Act. Every directors and promoters would necessarily come within the purview of the expression 'every person who authorised the issue of the prospectus'. Furthermore a person who agrees to be a director of the company can be branded as a person who authorised the issue of the prospectus.

However, the auditor, legal adviser, attorney, solicitor, banker and broker of the prospective company and even an expert giving his consent under section 58 will also be deemed to be persons who authorised the issue of the prospectus subject to the limited sphere of their liability.

(*iv*) An expert cannot be made liable for all the untrue statements that may appear in the prospectus, he is only liable when a particular untrue statement can be attributed to them under this section. Section 63(2) imposes a limited criminal liability for untrue statements, which can be properly attributed to them. However, the position of the directors are distinct and they are liable for all the untrue statements that may appear in the prospectus as also for any untrue statement that may appear in any report or memorandum appearing by way of separate annexure or documents available for inspection.

(*v*) In order to launch a prosecution, there must be included in the prospectus an untrue statement. The statement must be shown to be misleading or must be shown as being calculated to mislead. Clause (*a*) of section 65(1) encompasses a statement actually made while clause (*b*) refers to an omission of a statement from the prospectus. Therefore, both suppression vary and suggestions are used in interpretation of what constitutes an untrue statement.

(*vi*) A person may use language in such a way as though in the form of hope and expectation, it became a representation as to existing facts, and if so, and if it is brought to one's knowledge that these facts are false, it is a fraud.

(*vii*) The suppression of material facts might amount to misrepresentation in prospectus. According to its reasonable interpretation, where one has a written statement which is false, not in any specific words or any specific figures which it contains, but which is false in the way in which a document may be fraudulent, *viz*., where one can take every word and every figure and say:' Now there is nothing false about this, there is nothing false about that', but the document as a whole may be false-the document as a whole may be false, not because of what it states, but because of what it does not state, because of what it implies. However, mere silence cannot be a sufficient foundation for setting aside the allotment of shares. Mere non-disclosure of material facts would form no ground for an action in the nature of an action for misrepresentation. There must be some active misstatement of facts. The withholding of facts should be such, withholding which if not stated, makes that which is stated, absolutely false.

It may be concluded that in order to make a prospectus fraudulent it is not necessary that there should be false representation in it; even if every word is true, the suppression of material facts may render it fraudulent. To judge its effect, it should be read as a whole. It is not necessarily enough if the prospectus refers to the contracts and puts the intending shareholder upon enquiry as to their contents. As is said that sometimes half a truth is no better than downright falsehood.

(*viii*) Section 621 says that offences against the Act are cognizable on complaint by Registrar/ shareholder or on complaint of a person authorised by the Central Government in that behalf. The Central Government has authorised an officer of SEBI to file complaint in respect of an offence punishable under section 63. Notification No. GSR 716(E), dated 24-11-l993. Persons being prosecuted can take recourse to section 621A. Application for compounding the offence should be made to SEBI, which in turn would forward the same to the concerned Registrar of Companies. —Circular No. 13/93 (F. No. 10/8/82 Cl.V., dated 2-12-1993).

19. Deemed prospectus

Section 64 contains provisions as regards any document containing offer of shares in or debentures for sale shall be deemed to be prospectus. Following are the provisions in this regard:—

(*i*) Where a company allots or agrees to allot any shares in, or debentures of the company with a view to all or any of those shares in or debentures being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all the purposes, be deemed to be a prospectus issued by the company. The condition for deemed prospectus is that the implicit intention of the company behind allotment or agreement to allot shares in or debentures is that all or any of such shares in or debentures be offered for sale to the public and all enactments and rules of law as to the contents of prospectus shall apply.

(*ii*) It can be assumed that the shares in or debentures have been issued to public for subscription and the persons accepting the offer for shares in or debentures are subscribers for these shares in or debentures. But liability of persons by whom offer is made in respect of misstatements contained in the document or otherwise in respect thereof shall remain unaffected.

(*iii*) It shall, unless the contrary is proved, be evidence that an allotment of, or agreement to allot, shares in or debentures was made with a view to the shares in or debentures being offered for sale to the public if it is shown:—

(*a*) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or

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

(*iv*) Section 56 as applied by this section shall have effect as if it required a prospectus to state in addition to the matters specified in Part I of Schedule II and reports specified in Part II of Schedule II, the prospectus to be stated in a prospectus: [Section 64(3)]

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

(*b*) the place and time at which the contracts under which the said shares or debentures have been or are to be allotted may be inspected.

(*v*) The provisions of section 60 read with section 64 shall have effect as if the persons making the offer were persons named in a prospectus as directors of a company.

(*vi*) Where any person making an offer to which section 64 of the Act relates is a company or a firm, it shall be sufficient if the document referred in section 64(1) is signed on behalf of the company or firm by two directors of the company or by not less than one half of the partners in the firm, as the case may be and any such directors or partner may sign by his agent authorised in writing. [Section 64(5)]

(*vii*) An offer or invitation shall not be treated as made to the public if following two conditions are satisfied: [Section 67(3)]

(*a*) if the offer or invitation can properly be regarded as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(*b*) if the offer or invitation can properly be regarded as being a domestic concern of the persons making and receiving the offer or invitation.

The DCA has issued a Press Note No. 17/6/92/CLV, dated 6-7-1992, that it has come to the notice of Government that some companies utilise the services of brokers and other intermediaries for private placement of equity shares, out of promoters' quota or otherwise, insert advertisements in the print media and also mass-mail literature/material/brochures superscribed by the caption "Confidential/For private circulation only". It is also noticed that the rights of renunciation are floated in the market by the companies themselves, charging unofficial premium from the investing public. Under section 67(3) of the Act, no offer or invitation shall be treated as made to the public, if the same can be regarded, in all the circumstances:—

(1) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(2) otherwise as being a domestic concern of the persons making and receiving the offer or invitation. In the context of the above provisions of law, such offers cannot be treated as private placement and provisions relating to prospectus under the Companies Act, 1956 are applicable. The companies concerned, their promoters and their intermediaries are hereby warned that making of so called private placement of shares or collecting unofficial premium without recording the same in the books of account of the company, are serious contravention of the Companies Act and will invite penal action under the Act by the Government. It may be noted that, marketing of rights of renunciation by a private company is prohibited under section 3(1)(*iii*)(*c*) of the Act, as it cannot make any invitation to the public to subscribe for its shares.

(*viii*) If the articles of a company prohibit invitations to the public to subscribe for shares or debentures, such provision of articles, shall not be taken as prohibiting the making to members or debentureholders of an invitation which can properly be regarded as not being an offer or invitation by virtue of section 67(3).

(*ix*) Section 3(1)(*iii*) provides that articles of a private company must provide restrictions which *inter alia* include prohibition on any invitation to the public to subscribe for any shares in or debentures of the company. But a private company can make an offer or invitation to members or debentureholders provided that the offer or invitation can properly be regarded as—

(*a*) not being calculated to result directly or indirectly in the shares or debentures becoming available for subscription or purchase by persons other than those who received the offer or invitation, or

(*b*) being a domestic concern of persons making and receiving the offer as invitation. [Section 3(1)(*iii*) read with section 67]

20. Newspaper advertisements of prospectus

Where any prospectus is published as a newspaper advertisement, it is not necessary in the advertisement to specify following, namely:—

(*i*) contents of memorandum;

(*ii*) signatories to memorandum;

(*iii*) the numbers of shares subscribed for by signatories.

But the following matters must be included in the announcement of prospectus:—

(1) Date of incorporation of the company.

(2) Location of registered office.

(3) Names of the Stock Exchanges where listing is proposed.

(4) Minimum subscription.

(5) Dates of opening, closing and earliest closing of subscription list.

(6) Disclaimer clause of SEBI.

(7) Capital structure of the company.

(8) Highlights and risk factors.

(9) Brief history of the company.

(10) Main objects of the company.

(11) Present business activities of the company.

(12) Names and description of promoters/directors and changes if any.

(13) Management of the company.

(14) Objects of the present issue.

(15) Cost of the project.

(16) Means of financing.

(17) Details of the projects includes:—

— Location of project.

— Requirement of plant and machinery and arrangements made therefor.

— Land and building.

— Technical arrangements.

— Manufacturing process.

— Infrastructure facilities.

— Requirement and source of raw materials.

— Requirement of power and arrangements made therefor.

— Requirement of water and arrangements made therefor.

— Status of Pollution control and clearance obtained for that purpose.

— Requirement of manpower *viz*, skilled, semi-skilled and unskilled and their availability.

— Schedule of implementation.

— Market and business prospectus.

(18) Justification of premium.

(19) Outstanding litigations/disputes against the company and promoters and its impact on the company.

(20) Material developments since the date of the last balance-sheet.

(21) Authority for the present issue.

(22) Profitability projections and comments regarding appraisal, etc.

(23) Name and address of Company Secretary and Compliance Officer.

(24) Name and address of Legal Advisor.

(25) Auditor.

(26) Agents and Trustees for debentureholders.

(27) Credit rating.

(28) Underwriters to the issue.

(29) Bankers to the issue and their collecting branches.

(30) Availability of application forms and prospectus.

(31) Lead managers to the issue.

(32) Co-managers to the issue.

(33) Legal Advisor to the issue.

(34) Registrar to the issue.

21. Penalty for impersonation for acquisition, etc., of shares

Section 68A(1) provides that any person who:—

(*a*) makes in a fictitious name, an application to a company for acquiring, or subscribing for, any shares in or debentures therein, or

(*b*) otherwise induces a company to allot, or register any transfer of shares therein to him, or any other person in a fictitious name, shall be punishable with imprisonment for a term which may extend to five years. The provisions as contained in section 68A(1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for shares, which is issued by the company to any person. It is a general practice to reproduce the provisions of section 68A(1) in bold letters in the prospectus and form of application issued by companies.

Any person who, either knowingly or recklessly by making any statement, promise or forecast which is false, deceptive or misleading, or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into or to offer to enter into:—

(*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for or underwriting shares or debentures; or

(*b*) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of shares or debentures, or by references to fluctuations in the value of shares or debentures;

shall be punishable with imprisonment for a term which may extend to five years or with a fine which may extend to one lakh rupees, or with both.

Where SEBI had ordered company to refund subscription received from public issue but company diverted fund to sister concern which purchased land out of that fund, company's plea that it would be given an opportunity of being heard was to be granted but that would be on stringent terms. [*Jaltarang Motels Ltd.* v *Union of India* (1998) 17 SCL 455 (Guj)].

Where on basis of representation of accused that shares of company would be offered for sale to public by certain date, complainant purchased shares of company and an agreement had also been entered into between complainant and accused with regard to same but three days before that date, without knowledge of complainant, accused entered into supplementary agreement where 'date as agreed' stood altered as 'date to be decided by sponsor in his sole discretion', it was held that there was an element of cheating at time of representation and there was sufficient ground for Magistrate to take cognizance of offence as against accused. [*Sundaram Finance Service & Ltd.* v *Grandtrust Finance Ltd*. (2003) 42 SCL 89 (Mad)].

Appendix 1

Specimen of Board resolutions

I. Issue of Prospectus

RESOLVED THAT subject to the approval of the Financial Institutions and Stock Exchanges, the draft prospectus offering 100 lakhs equity shares of Rs. 10 each for cash at par, submitted to this meeting, be and is hereby approved.

RESOLVED FURTHER THAT the prospectus be signed by all the directors or their authorised nominees before being delivered to the Registrar of Companies, Madhya Pradesh, for registration.

RESOLVED FURTHER THAT Shri SKP, the Managing Director be and is hereby authorised to make such alterations, modifications or changes as may be suggested by various agencies while approving the prospectus.

RESOLVED FURTHER THAT Shri SKP, the Managing Director be and is hereby authorised to file the prospectus with Registrar of Companies for registration, issue the prospectus within the prescribed time limit 90 days, advertise the same in newspapers and comply with all other formalities in this regard.

II. Abridged Prospectus

RESOLVED THAT the Memorandum containing salient features of the prospectus offering 100 lakhs equity shares of Rs. 10 each for cash at par, submitted to this meeting, be and is hereby approved and that the same be printed on the reverse of each share application form for issue of equity shares.

III. Approval for advertisement of prospectus

RESOLVED THAT the draft text of Statutory Announcement in respect of the prospectus as well as the Memorandum and other documents to be issued to public, submitted to this meeting and initialed by the Chairman for the purpose of identification, be and is hereby approved.

RESOLVED FURTHER THAT Shri SKP, the Managing Director and Ms. SA, the Director of the Company be and are hereby severally authorised to arrange for publication of the text in accordance with the provisions of the Companies Act, 1956 in such newspapers as may be chosen by them and having circulation all over India.

Chapter 2

Listing of Securities

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	69	Prohibition of allotment unless minimum subscription received.	
2.	72	Time limit for opening/closing of subscription list.	
3.	73	Listing of shares.	
4.		SEBI (DIP) Guidelines, 2000.	

1. Compliance for the first time allotment of shares offered to public for subscription

Following conditions are applicable to first allotment of shares offered for subscription:—

(*i*) *Minimum subscription*.—Section 69(1) provides that no allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as minimum amount has been raised and the sum payable on application for the amount so decided by the Board has been paid to, and received by the company, whether in cash or by a cheque or other instrument which has been paid. This amount of minimum subscription will be exclusive of any amount payable otherwise than in money.

(*ii*) *Minimum amount payable on application*.—Section 69(3), state that the amount payable on application on each share shall not be less than twenty five per cent of the nominal amount of the share. As per the amendment made by SEBI on 28-5-2004 *vide* Circular No. SEBI/CFD/DIL/DIP/ 13/2004/28/5, it has now been decided that the minimum application value shall be within the range of Rs. 5,000 to Rs. 7,000. For example, if the issue price of the share is Rs. 500, the minimum application size would range from 10 shares to 14 shares. Applications can be made in multiples of minimum size/value.

(*iii*) *Requirement for deposit of application money in a bank account*.—Section 69(4) provides that all moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank:—

(*a*) until the certificate to commence business is obtained under section 149, or

(*b*) where such certificate has already been obtained, until the entire amount payable on applications for shares in, in respect of the minimum subscription has been received by the company. It is important to note that application moneys received by a company do not constitute a part of its paid up capital.

Whether application moneys could be deposited in any scheduled bank other than bankers to the issue?

The money could not be permitted to be deposited in any bank of the company's choice for that would give an opportunity to the company to resort to manipulations. If listing permission had not been granted by the sock Exchange or where the company was unable to make allotment of shares, the monies received had to be refunded within the time limit stipulated in section 73. If these monies were deposited in any bank of the company's choice there would be no control on the company to withdraw those monies in fragrant violation of the provision of section 69 and 73. [*Universal Incast Ltd.* v *Appellate Authority, SEBI* (2000) 38 CLA 332 (P&H)].

(*iv*) *Repayment of share application money and penalty in case of default*.—If the company fails to obtain the entire amount payable on applications for shares in respect of minimum subscription on the expiry of 120 days without interest after the issue of prospectus then the company shall forthwith repay all moneys received from applicants for shares with interest at the rate of six per cent p.a. from the expiry of 130 days. [Section 69(5)]

In case default is made in depositing or keeping deposited the application money received, in a Scheduled Bank or in repayment of application money without interest on expiry of 120 days, every promoter, director or any other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to fifty thousand rupees. It has also been provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

(*v*) *Binding nature of compliance with section 69 cannot be waived*.—Section 69(6) states that any condition purporting to require or bind any applicant for shares, to waive compliance with any requirements of section 69 shall be void.

(*vi*) *Registration of statement in lieu of prospectus*.—A company having a share capital which does not issue a prospectus on or with reference to its formation, or which has issued a prospectus but has not proceeded to allot any of the shares offered to public for subscription shall deliver a statement in lieu of prospectus to the Registrar for registration at least three days before the first allotment of its shares or securities. [Section 70(1)]

2. Subsequent allotment of shares

In case of subsequent allotment, the amount payable on application on each share shall not be less than twenty five per cent of the nominal amount of the share. Other prohibition of section 69 has got no meaning in relation to any allotment of share subsequent to the first allotment of share offered to the public for subscription and the application moneys so received in respect of subsequent allotment of share need not be deposited in a separate bank account. The provisions of section 75 govern subsequent allotment and the return as to allotment is required to be filed with the Registrar.

3. Time period for opening of subscription lists

Section 72(1)(*a*) provides that no allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after the date on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus:

The expression 'issued generally' has also been defined under section 2(22) of the Act as follows:—

"Issued generally" means, in relation to a prospectus, issued to persons irrespective of their being existing members or debenture-holders of the body corporate to which the prospectus relates.

4. Manner of reckoning days for opening of subscription list

Section 74 of the Act, specifies that in reckoning the fifth day, if any intervening day is a public holiday under the Negotiable Instruments Act, 1881, then it shall be disregarded and if the fifth day itself is a public holiday, then the first day thereafter, which is not a public holiday shall be substituted therefor. The day on which the prospectus is first issued generally refers to the day on which it is first issued as a newspaper advertisement.

If prospectus is first issued in any manner other than as a newspaper advertisement then the day on which prospectus is so issued in any other manner shall be deemed to be the day on which the prospectus is first issued generally, provided it is not issued generally as a newspaper advertisement before the fifth day after its issuance in any other manner.

5. Revocation of application

An application for shares in, or debentures of a company, which is made in pursuance of a prospectus issued generally, shall not be revocable until the expiry of the fifth day after the time of the opening of the subscription lists or the giving, before the expiry of the fifth day, by a public notice by any person responsible under section 62 for the prospectus, of a public notice having the effect under that section of excluding, limitation or diminishing the responsibility of the person giving it. [Section 72(5)]

6. Validity of allotment in contravention of section 72

Section 72(3) of the Companies Act, 1956 states that the validity of an allotment shall not be affected by any contravention of the provisions of section 72, but, in the event of any such contravention, the company and every officer of the company, who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

LISTING OF SHARES AND DEBENTURES

7. Listing of shares and debentures

Every company, intending to offer shares or debentures to the public for subscription by issue of prospectus is required to make an application to one or more recognised stock exchange(s) for permission for the shares or debentures intending to be so offered to be listed on each such Stock Exchange(s).

The relevant provisions of section 73 of the Companies Act, 1956 for listing of shares are stated hereunder:—

(*i*) *Make an application to the recognised stock exchange*(*s*)—An application is required to be filed by every company which intends to offer shares or debentures to public for subscription by the issue of prospectus to one or more recognised stock exchanges for obtaining permission as to the dealing of the securities offered at such stock exchange(s) before the issue of prospectus.

(*ii*) *Mention the name(s) of such stock exchange(s) in prospectus*—A prospectus, whether issued generally or not, shall state that an application under section 73(1) has been made and shall also state the name(s) of the stock exchange(s) to which application has been so made. [Section 73(1A)]

No prospectus shall state that an application has been made for permission for the shares or debentures offered thereby to be dealt on any Stock Exchange unless it is a recognised Stock Exchange. [Section 73(7)]

(*iii*) *Allotment made in the absence of permission/listing with the stock exchange(s) will be void* — Any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission/listing has not been granted by the stock exchange or each such stock exchange to whom application for listing has been made before the expiry of ten weeks from the date of the closing of the subscription lists. [Section 73(1A)]

It is very important to note that permission of all the stock exchange(s) as stated in its prospectus shall be obtained within ten weeks from the date of the closing of the subscription lists for allotment made by it to be valid. The Supreme Court held in the case of *Rishyashringa Jewellery Ltd*. v *Stock Exchange* (1995) SCL 227 (SC) that it is essential for valid allotment of shares that the required permission is granted by each and every one of all stock exchanges mentioned in prospectus for listing to which application is made by the company.

(*iv*) *Appeal against decision of the recognised Stock Exchange for refusal of listing*—Where any recognised stock exchange refuses to list securities of any company, *i.e.* it refuses permission for shares or debentures to be dealt in on the stock exchange, the company is entitled to make appeal to the SEBI against the decision of such stock exchange within a period of fifteen days from such refusal. [Section 22 of Securities Contracts (Regulation) Act, 1956]:

Provided that where an appeal under section 22 of the Securities Contracts (Regulation) Act, 1956 against the decision of the stock exchange for refusal of listing has been made then allotment made by the company in pursuance of the prospectus shall not be void until the dismissal of the appeal.

The following provisions are applicable for making an appeal:—

(*a*) *Time limit for preferring an appeal*—The company concern shall file such appeal within a period of fifteen days from the date on which the reasons for such refusal are furnished to it, or where Stock Exchange has omitted or failed to dispose of the application made by the company for listing within ten weeks from the date of the closing of the subscription lists, within fifteen days of the expiry of the aforesaid period of ten weeks or such extended time as the SEBI may allow.

(*b*) *Decision of the SEBI on appeal*—The SEBI may, after giving Stock Exchange an opportunity of being heard,—

(1) vary or set aside the decision of the Stock Exchange, or

(2) where the Stock Exchange has omitted or failed to dispose off the application within the specified time, grant or refuse the permission.

Where the SEBI sets aside the decision of the stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the SEBI.

(*v*) *Refund of application money in case of non-listing*—Where the permission of listing has not been granted, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus. All moneys received from applicants shall be repaid within eight days after the company becomes liable to repay it. A company becomes liable to repay such money on expiry of ten weeks after the date of the closing of the subscription lists. Therefore a company shall repay without interest all moneys received within a period of 78 days after the date of the closing of the subscription lists.

If the application money is not repaid within a period of 8 days after the company become liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of 8 days, be jointly and severally liable to repay that money with interest @ 15%.

[Section 73(2)]

(*vi*) *Refund of excess application moneys in case of over subscription*—Where the permission has been granted by the recognised stock exchange(s) for dealing in any shares or debentures and the moneys received on applications are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall forthwith refund without interest the excess application moneys without interest within 8 days from the day the company becomes liable to pay it. If such excess application money is not refunded within a period of 8 days from the day it becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of 8 days, be jointly and severally liable to repay that money with interest at such rate not less than 4% and not more than 15% having regard to the period of delay in making repayment of such money. [Section 73(2A)]

If default is made in complying with the provisions of section 73(2A), the company and every officer of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where repayment is not made within six months from the expiry of 8 days from the day it becomes liable to pay it, also with imprisonment for a term which may extend to one year. [Section 73(2B)]

It is pertinent to note that the Supreme Court has decided in the case of *Raymond Synthetics Ltd*. v *Union of India* (1992) 73 Comp Cas 762 (SC), that the liability of a company to repay the excess money under section 73(2A) arises on the expiry of ten weeks from the date of the closing of the subscription lists, and the interest begins to accrue thereon at the end of eight days therefrom. Neither the date of allotment, nor the date specified in the prospectus, is relevant to the commencement of liability for payment of interest on the excess money. The High Court of Punjab and Haryana has held in the case of *S.C. Bhatia* v *P.O. Wadhawa* (1998) 92 Comp Cas 511 that a person who is simply a director and not the managing director or whole-time director cannot be prosecuted under section 73(1A)/(2B) of the Companies Act, 1956.

The powers of prosecution under section 73(2B) have been delegated to the officials of SEBI.

The Department of Company Affairs *vide* its Circular No. 1/93 dated 16.3.1993 has stated that to protect the interest of investors, all the refund orders and cheques to be issued by the company to the investors for the amounts exceeding Rs.1,500 shall be issued by registered post and below that amount be issued under certificate of posting.

(*vii*) *Application moneys to be kept in a separate bank account*—All moneys received from applicants in pursuance of the prospectus shall be kept in a separate bank account maintained with a Scheduled Bank until permission of listing has been granted by the Stock Exchange(s) to whom the application under section 73(1) has been made or until the disposal of appeal, if any, filed under section 22 of the Securities Contracts (Regulation) Act, 1956 against refusal by Stock Exchange(s) to list the securities offered by the company for public subscription. [Section 73(3)]

(*viii*) *If the permission for listing has not been granted by the stock exchange(s) it shall be considered and deemed refusal and the application money shall be refundable*—Section 73(5) provides that it shall be deemed that permission has not been granted if the application made for permission has not been disposed of within the time limit stated under section 73(1) and the company shall repay the money standing in the credit of the separate account with a Scheduled Bank within the time and in the manner as specified in section 73(2).

It is also important to note that application moneys received on shares under private placements need not be kept in a separate bank account in a Scheduled Bank. On actual allotment of shares under private placements, the company can transfer the amounts received to share capital account. If allotment is, however, not made then the application moneys will have to be repaid to the applicants.

It has been held in the case of *S.C Bhatia, Director, Indana Spices & Food Industries Ltd.* v *Wadhava, P.O.* (1994) 2 SCL 284 (P&H), that cognizance of offence under section 621 for default under section 73 can be taken only if complaint was filed in writing by a person authorised by Central Government in that behalf. Further, a person who is simply a director cannot be prosecuted for offence under section 73.

(*ix*) *Conditions for utilisation of moneys standing to credit of separate bank account in Scheduled Bank*—In terms of the provisions of section 73(3A) of the Act, all moneys standing to the credit of a separate account in a Scheduled Bank shall be utilised for the following purposes namely:—

- (*a*) adjustment against allotment of shares, where the shares have been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus; or
- (*b*) repayment of moneys received from applicants in pursuance of the prospectus, where shares have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or where the company is for any other reason unable to make the allotment of shares.

(*x*) *Waiver of compliance with section 73 shall be void*—Section 73(4) provides that any condition purporting to require or bind any applicant for shares or debentures to waive compliance with any of the requirements of section 73 shall be void.

8. Mode of refund

SEBI has provided for various mode of making refund to the applicants *viz*.

(*a*) Direct Credit;

(*b*) RTGS (Real Time Gross Settlement);

(*c*) ECS (Electronic Clearing Service); and

(*d*) NEFT (National Electronic Funds Transfer).

8.1. Use of Electronic clearing scheme for refunds

SEBI *vide* its circular dated January 20, 2006, has permitted use of ECS for refunds in the issue process. ECS is applicable to those issues whose offer documents are filed with SEBI on or after January 20, 2006.

SEBI has made it mandatory that the applicants in 15 cities *viz*. Ahmedabad, Bangalore, Bhubaneshwar, Kolkata, Chandigarh, Chennai, Guwahati, Hyderabad, Jaipur, Kanpur, Mumbai, Nagpur, New Delhi, Patna and Thiruvananthapuram will get refunds through ECS.

The applicant having a bank account in banks in one of the aforesaid 15 centers will get refunds through ECS.

8.2. Procedure for refund

(1) The applicants are required to ensure that bank details including MICR code (a 10 digit code which appears in the cheque leaf) maintained at the depository level are updated.

(2) The bank account details will be directly taken from the depositories' database and hence are not required to be filled in the application form for issues wholly made in dematerialized form.

(3) The applicants will get individual intimations about details of the bank where refunds shall be credited along with amount and expected date of electronic credit of refunds. These individual intimations will be dispatched by the Registrars within 15 days (in case of a Book Built issue) and 30 days (in case of Fixed price issue) of closure of the issue. Accordingly, the concerned applicant can check with the relevant bank on the status of the refund.

9. SEBI (Central Listing Authority) Regulations, 2003 Repeal

The SEBI (CLA) Regulations were issued in February, 2003 which was later replaced by SEBI Notification No. SO No. 954(E) dated 21-08-2003. SEBI vide Notification No. S.O. (E) dated 02.01.2007 has repealed the SEBI (Central Listing Authority) Regulations, 2003. However, such repeal shall not affect—

(i) the previous operation of the said regulations or anything done or omitted to be done or suffered therein; or

(ii) any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said regulations; or

(iv) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and

(v) any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said regulations had not been repealed:

Consequent to repeal of the SEBI (Central Listing Authority) Regulations, 2003:

(i) all persons appointed as President or Vice-President or Members of the Central Listing Authority and holding office immediately before such repeal shall vacate their office upon such repeal;

(ii) such persons shall not be entitled to claim any compensation for loss of office;

(iii) the balance of all monies received by, or advanced to the Central Listing Authority shall, upon such repeal, stand transferred to and vest in the Board;

(iv) all property of whatever kind owned by, or vested in, the Central Listing Authority, shall, upon such repeal, stand transferred to and vest in the Board; and

(v) all liabilities and obligations of whatever kind incurred by the Central Listing Authority shall, upon such repeal, be deemed to be the liabilities or obligations of the Board.

10. Procedural steps to be followed for listing of securities at the stock exchange

1. Before mentioning name of any stock exchange in the company's prospectus at which company's securities will be listed, make initial listing application.
2. The application form is made available by the stock exchanges at which listing is intended.
3. The initial listing application shall be made with the necessary enclosures as are listed in the application form it.
4. Pay initial listing application fee.
5. Name of stock exchange shall be mentioned in the prospectus only after receiving a positive reply on the initial listing application.
6. Forward copy of the draft prospectus to the stock exchanges for approval.
7. Listing will be granted only if all the terms of stock exchanges are fulfilled in the issue i.e. minimum public participation, minimum amount of paid up capital, minimum size of the issue etc. All such terms and conditions are made known to the company by the stock exchanges at the time of conveying their positive consent for initial listing application.
8. Memorandum and Articles of association shall also be submitted to the stock exchanges for approval. If any alteration is required by the stock exchange, amend these documents where possible. Alternatively, an undertaking can be given for alteration of these documents in the first general meeting to be held at anytime thereafter.
9. Entire procedure of getting the listing approval from the stock exchanges should be completed before expiry of ten weeks from the closure of the issue failing which entire amount of application money becomes repayable except where listing has been refused by any stock and an appeal has been filed Securities Appellate Tribunal against such refusal under the Securities Contract and Regulations Act.
10. After the closure of the issue, the company in consultation with the Stock Exchange shall finalize the Basis of Allotment.

11. Make allotment of securities as per the basis of allotment approved by the Stock Exchange.
12. After allotment having been made, make an application for listing of shares, with all the enclosures listed therein (complete set of application form is provided by the stock exchange), along with the listing fee.
13. The company will also have to execute a Listing Agreement with the stock exchanges. Any director of the company authorised in that behalf by the Board of directors can execute this agreement along with the common seal of the company.
14. On being satisfied, the stock exchange sanctions listing of company's shares in the stock exchange.
15. After getting the listing approval from all the stock exchanges, the amount of application money in the public issue becomes available to the company.

11. List of documents to be filed with the listing application by companies not listed on the Stock Exchange

(1) Certified copies of—
- (*a*) Memorandum and Articles of Association
- (*b*) Debenture Trust Deed, if any

(2) Copies of all—
- (*a*) Prospectus
- (*b*) Statements in lieu of Prospectus
- (*c*) Offers for Sales made during the fast five years
- (*d*) Circulars offering securities for subscription or sale during the last five years.
- (*e*) Advertisement offering securities for subscription or sale during the last five years.

(3) Copy of every letter Report, Balance Sheet, Valuation, Contract, Court Order or other document any part of which is reproduced or referred to in any Prospectus, Offer for Sale, Circular or Advertisement offering securities for subscription or safe during the last five years.

(4) Certified copy of SEBI Acknowledgement card.

(5) Certified copies of—
- (*a*) Underwriting Agreements
- (*b*) Sub-underwriting Agreements
- (*c*) Sub-underwriting Letters together with a statement containing the names, addresses and description of the sub-underwriters and the amounts sub-underwritten by each of them.
- (*d*) Brokerage Agreements.
- (*e*) Letters of Appointment of Official Brokers and sub-brokers together with a statement of the terms and conditions of appointment.

(6) Certified copies of—
- (*a*) Vendors' Agreements
- (*b*) Promoter's Agreements

(7) Certified copies of Service Agreements with—
- (*a*) Managing Director/Whole-time Director
- (*b*) Technical Directors
- (*c*) General Manager, Manager or Secretary

(8) Certified copies of Agreements with—
- (*a*) Selling Agents
- (*b*) Sales Manager

(9) Statement containing particulars of the dates of and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other

documents (except those entered into in the ordinary course of the business earned on or intended to be carried on by the Company) together with a short description of the terms, subject-matter and general nature of the documents.

(10) Copies of Director's Reports and Balance Sheets for the last five years.

(11) Copies of agreements with the IDBI, IFCI, ICICI, State Industrial Investment/Development Corporation and such other bodies.

(12) Short history of the Company including particulars of any reorganisation, reconstruction, amalgamation, etc. together with details of the Company's activities.

(13) Specimens (cancelled and marked as such) of—

  (*a*) Share certificates/Fractional certificates

  (*b*) Refund orders

  (*c*) Debenture Certificates

(14) Specimens (if any) of—

  (*a*) Letters of Allotment

  (*b*) Letters of Acceptance

  (*c*) Letters of Renunciation

(15) Specimens (Cancelled and marked as such) of—

  (*a*) Transfer Receipts

  (*b*) Split Consolidation Receipts

  (*c*) Renewal Receipts.

Note.—The above list indicates documents ordinarily required in support of a listing application special circumstances.

12. Revision in BSE's listing norms for IPOs & FPOs

Bombay Stock Exchange Ltd. (BSE) has revised the norms for listing of companies on BSE for IPOs & Follow-on Public Offerings (FPOs), effective 1August 2006. The revised norms are:

For the purpose of listing, companies are classified as large cap and small cap companies. Large cap company means a company with a minimum issue size of Rs. 100 million and having market capitalization of not less than Rs. 250 million. Small cap company means a company other than a large cap company.

Eligibility criteria:

(*a*) In respect of Large Cap Companies:

  (*i*) Minimum post-issue paid-up capital shall be Rs. 30 million;

  (*ii*) Minimum issue size shall be Rs. 100 million; and

  (*iii*) Minimum market capitalization [number of equity shares (post-issue paid-up) multiplied by issue price] of Rs. 250 million.

(*b*) In respect of Small Cap Companies:

  (*i*) Minimum post-issue paid-up capital shall be Rs. 30 million;

  (*ii*) Minimum issue size shall be Rs. 30 million;

  (*iii*) Minimum market capitalization [defined above] of Rs.50 million;

  (*iv*) Minimum income/turnover of the company shall be Rs. 30 million in each of the preceding three 12-months period;

  (*v*) Minimum number of public shareholders post issue shall be 1000; and

  (*vi*) A due diligence study may be conducted by an independent team of Chartered Accountants or Merchant Bankers appointed by BSE, the cost of which will be borne by the company. Due diligence requirement may be waived if a financial institution or a scheduled commercial bank has appraised the project in the preceding 12 months.

(*c*) In respect of all companies:

(*i*) Issuers shall include in the disclaimer clause which forms a part of the offer document, that in the event of the market capitalisation requirement of BSE (defined above) not being met, the securities of the issuer would not be listed on BSE.

(*ii*) The applicant, promoters and/or group companies, should not be in default in complying with the listing agreement.

(*iii*) The above eligibility criteria shall be in addition to the conditions prescribed under SEBI (Disclosure and Investor Protection) Guidelines, 2000.

13. Procedural steps to be followed for further issue of equity shares by an existing listed company

1. In accordance with the provisions of section 81 of the Act, if any listed company intends to offer its new shares for subscription for increasing its share capital at any time after two years since incorporation or after one year since its first allotment of shares, whichever is earlier, than all such shares shall be offered to existing equity shareholders only.
2. If all or any of such new shares are not proposed to be offered to the existing equity shareholders, then, in accordance with the provisions of sub-section (1A) of section 81, the company shall obtain approval of members by way of special resolution. If company fails to pass a special resolution but the number of votes cast in favour of such proposal exceed the number of votes cast against the proposal then the company can give effect to its proposal with the consent of Central Government.
3. A company cannot access the capital market unless it is eligible to make public issue in accordance with Chapter II of SEBI (Disclosure and Investor Protection) Guidelines, 2000, as amended from time to time.
4. In the public issue, pricing of securities and promoters contributions are also important considerations.
5. In case of an existing listed company whenever Board meeting is proposed to consider issue of shares to public, an advance intimation of such Board meeting shall be given to all stock exchanges where company is already listed.
6. After the Board meeting, intimation of Board's decision in respect of public issue shall be given to the stock exchanges.
7. The Board shall decide to hold a general meeting for obtaining approval of members by way of special resolution under section 81(1A).
8. Make an application for obtaining in-principle approval for listing of new shares
9. Issue the notice of general meeting to all concerned. In case of listed companies notice shall also be forwarded to the stock exchanges.
10. Hold the general meeting where approval of members is obtained under section 81(1A) by way of special resolution.
11. A certified copy of the special resolution and the explanatory statement thereto shall be filed electronically with the Registrar in the e-Form 23 of the Companies (Central Government) General Rules and Forms, 1956, within 30 days after passing of the resolution, after paying the requisite filing fee.
12. Normally Board constitutes a committee for handling the public issue and all the powers of decision-making relating to public issue are delegated to such committee.
13. The company shall appoint a SEBI approved merchant banker as the Lead Manager for its issue. Depending upon the size of the issue, more merchant bankers can be appointed.
14. Appoint other agencies whose services will be availed for the issue *i.e.* bankers, advertising agency, registrars, printers etc. in consultation with the lead managers.
15. Prepare a draft offer document in consultation with the Lead Managers, in accordance with Schedule II to the Act and SEBI Guidelines.

16. The draft offer documents is forwarded for approval to the stock exchanges where securities of the company are proposed to be listed, along with the initial listing application for listing of securities which are proposed to offered for subscription through prospectus.
17. An agreement shall be made with the depository for dematerialisation of company's all shares *i.e.* existing as well as proposed. The investors will be given an option either to receive share certificates or in dematerialized form.
18. The Lead Manager shall file draft offer document with SEBI along with his Due Diligence certificate, at least 21 days before the filing of offer document with ROC for registration. During this period, if SEBI suggests any modification or alteration, it shall necessarily be incorporated in the prospectus before its filing with ROC for registration.
19. The company shall soon after receiving final observations, if any, on the draft offer document from the SEBI, make an advertisement in an English national daily with wide circulation, one Hindi national newspaper and a regional language newspaper with wide circulation at the place where the registered office of the company is situated, which shall be in the format and contain the minimum disclosures as provided in Part A of Schedule XX of SEBI DIP Guidelines.
20. If the price at which securities are proposed to be offered, has not been determined, the offer document can be filed with SEBI with a Price Band.
21. As per SEBI guidelines, underwriting is optional but in case of Book Building, the book building portion has to be underwritten by the lead manager referred as book runner and the net public offer may be underwritten by the outsiders. Underwriting of the net public offer is essential.
22. Where underwriting is compulsory or where it is desired, the underwriting proposal can be invited.
23. Hold a meeting of the Board of directors for—
    (*a*) approving the draft prospectus and abridged prospectus;
    (*b*) appointment of lead managers, advisors, registrars and bankers to the issue;
    (*c*) appointment of other agencies whose services will be availed for the issue;
    (*d*) authorizing printing of prospectus, application forms with the abridged prospectus, share certificates, allotment letters etc.
24. After the approval of prospectus by the Board of directors, all the directors of the company shall sign it either personally or through their authorised agent. If it is being signed by any agent of director(s), their shall be a specific power of attorney for the purpose.
25. The prospectus should be duly dated.
26. A duly signed copy of the prospectus and five extra copies shall be filed with ROC for registration, after paying the requisite filing fee. At the time of filing of prospectus for registration, all the documents referred in the prospectus shall also be filed along with the prospectus.
27. The prospectus so filed will be verified in the office of ROC and on being found in order it will be registered.
28. The prospectus so registered with ROC shall be issued to the public within 90 days from the date of filing for registration. It is to be noted that any issue of prospectus to the public without being filed for registration is a punishable offence.
29. The Lead Manager shall file final copy of the prospectus with SEBI and thereafter, application form and prospectus shall be distributed to the stock exchanges, underwriters, brokers etc.
30. Pass a resolution of the Board for opening of bank account for receiving the applications and for collection of application money. The collection centers shall be finalized in consultation with the Lead Managers to the issue.
31. The company shall advertise for marketing of the issue. The advertisement shall be worked out in consultation with the Lead Managers to the issue and all advertising campaign shall be in accordance with the SEBI Guidelines.
32. Entire amount of promoters' contribution shall be brought in at least one day before opening of the

subscription list for public except where the amount of promoters' contribution exceed Rs. 100.00 crores.

33. Where the amount of promoters' contribution exceeds Rs. 100.00 crores, they may also bring in their contribution in the same proportion in which money is called from public but every time their contribution will have to be brought in before collection from public.
34. On receipt of promoters' contribution, a certificate from company's auditor's certifying receipt of promoters' contribution together with a resolution of the Board in that regard, shall be filed with SEBI.
35. A list of persons who are to be regarded as promoters for the issue shall also be filed with SEBI before opening of the subscription list.
36. Entire amount received by way of application money received in public issue including the promoters' contribution is required to be kept in a separate escrow bank account and this amount will be made available to the company only after it has obtained approval of listing from all stock exchanges where listing was proposed in the offer document.
37. One percent of the amount of the issue is required to be deposited with the regional stock exchange as security deposit. This amount of security deposit is refunded on completion of all the formalities of the issue as per SEBI Guidelines and on compliance of all the conditions of the listing agreement. For refund of this amount, a No Objection certificate will have to be obtained from SEBI after listing of shares.
38. The subscription list shall be kept open for at least three working days. The list cannot be kept open for more than 10 days if the issue is underwritten and 21 days if the issue is not underwritten.
39. The Registrar to the issue shall monitor collection from all centers where applications are being accepted. On the basis of information provided by the Registrar regarding receipt of minimum subscription, decision is taken about closure of the issue.
40. If the issue is to be closed at any time before the latest date, then an advertisement shall be issued in that regard.
41. Within three days after the closure of issue, the Lead Managers will file a post-issue monitoring report with the Regional Office of SEBI. A copy of the report is also forwarded to the head office of SEBI.
42. All the application forms collected by bank's branches are forwarded to the controlling branch and these application forms are handed over to the registrar to the issue within 2 weeks of the closure of the issue.
43. All applications received will be scrutinized by the Registrar and multiple options of basis of allotment are prepared in accordance with SEBI Guidelines.
44. The Basis of Allotment is finalized in consultation with the Stock Exchange and allotment of shares is done accordingly.
45. After the allotment, a return of allotment is filed electronically with the ROC in the e-Form 2 within 30 days of allotment made.
46. Share certificates will be issued to the successful allottees in accordance with the Companies (Issue of Share Certificates) Rules, 1960.
47. Excess amount of application money, if any, received from the successful allottees may be adjusted towards the allotment money. Any surplus remaining after such adjustment and the entire amount of application money received from those applicants, to whom no allotment has been made, shall be refunded by way of refund order.
48. Final Listing application is made to all stock exchanges where listing was proposed in the offer document along with all necessary enclosures.
49. On receipt of final listing approval from all the stock exchanges, the amount of application

becomes available to the company.

50. Within 10 days after obtaining listing approval, an advertisement shall be issued containing following details:—
    (*a*) Over-subscription
    (*b*) Basis of allotment
    (*c*) Number, value and percentage of applications received with stock-invest
    (*d*) Date of completion of despatch of refund orders and share certificates
    (*e*) Date of filing listing application and the date of listing.
51. On completion of 78 days from the date of closure of the subscription list, within next three days, the Lead Managers will file a post-issue monitoring report with the Regional Office of SEBI. A copy of the report is also forwarded to the head office of SEBI.
53. Company's investors' grievances, if any, shall be sorted out immediately.

14. List of documents to be filed with the listing application by listed companies for further issue of shares

(1) Copies of the following to the new issue:
    (*a*) Prospectus
    (*b*) Statement in lieu of Prospectus
    (*c*) Offer for Sale
    (*d*) Circular offering the new issue for subscription
    (*e*) Advertisement offering the new issue for subscription

(2) Copy of every letter, Report, Balance Sheet, Contract, Agreement, Court order or other documents relative to the new issue.

(3) Certified copies of the following relative to the new issue
    (*a*) Underwriting Agreements
    (*b*) Sub-underwriting Agreements
    (*c*) Sub-underwriting letter together with statement containing the names addresses and description of the sub-underwriters and amount sub-underwritten by each of them.
    (*d*) Brokerage Agreements
    (*e*) Letters of Appointment of official Brokers and Sub-brokers together with a statement of the terms and conditions of appointments.

(4) Specimens (cancelled and marked as such) of the following relative of the new issue
    (*a*) Share Certificates
    (*b*) Debenture Certificates

(5) Specimen (if any) of the following relative of the issue.
    (*a*) Letters of Allotment
    (*b*) Letters of Acceptance
    (*c*) Letters of Renunciation

Note: The above list indicates documents ordinarily required in support of a listing application, in special circumstances, additional documents may be required.

15. Eligibility norms for making public issues

SEBI has laid down eligibility norms for entities accessing the primary market through public issues. There is no eligibility norm for a listed company making a rights issue as it is an offer made to the existing shareholders who are expected to know their company.

The main entry norms for companies making a public issue (IPO or FPO) are summarized as under:

Entry Norm I (EN I): The Company shall meet the following requirements:

(*a*) Net Tangible Assets of at least Rs. 3 crores for 3 full years.

(*b*) Distributable profits in atleast three years.

(*c*) Net worth of at least Rs. 1 crore in three years.

(*d*) If change in name, atleast 50% revenue for preceding 1 year should be from the new activity.

(*e*) The issue size does not exceed 5 times the pre- issue net worth.

Entry Norm II (EN II):

(*a*) Issue shall be through book building route, with at least 50% to be mandatory allotted to the Qualified Institutional Buyers (QIBs).

(*b*) The minimum post-issue face value capital shall be Rs. 10 crore or there shall be a compulsory market-making for at least 2 years; OR

Entry Norm III (EN III):

(*a*) The "project" is appraised and participated to the extent of 15% by FIs/Scheduled Commercial Banks of which at least 10% comes from the appraiser(s).

(*b*) The minimum post-issue face value capital shall be Rs. 10 crore or there shall be a compulsory market making for at least 2 years.

In addition to satisfying the aforesaid eligibility norms, the company shall also satisfy the criteria of having at least 1000 prospective allotees in its issue.

16. Entities, which are, exempted from the aforesaid eligibility norms

The following are eligible for exemption from entry norms.

(*a*) Private Sector Banks

(*b*) Public Sector Banks

(*c*) An infrastructure company whose project has been appraised by a PFI or IDFC or IL&FS or a bank which was earlier a PFI and not less than 5% of the project cost is financed by any of these institutions.

(*d*) Rights issue by a listed company

17. SEBI's Role in an Issue

Any company making a public issue or a listed company making a rights issue of value of more than Rs. 50 Lakhs is required to file a draft offer document with SEBI for its observations. The company can proceed further on the issue only after getting observations from SEBI. The validity period of SEBI's observation letter is three months only *i.e.* the company has to open its issue within three months period.

Appendix 1

Specimen of Resolutions

I. Appointment of bankers to the issue and opening/operation of bank accounts connected to public issue

RESOLVED THAT the following Banks be and are hereby appointed as Bankers to the proposed issue of the company and that separate accounts under the name and style of **ABC Limited -Equity Issue Account** be opened with each of the following Banks at the Controlling Branches indicated below:

[List of Banks and Controlling Branches]

RESOLVED FURTHER THAT the above said Banks be and are hereby severally authorised to receive through their various Branches the Share Applications along with the remittances for Equity Shares as per the instructions given by the Company from time to time and to honour cheques/Refund Pay orders drawn on behalf of the company severally by Shri SKP, the Managing Director and Ms. SA, the Whole-time Director and to act on any instruction so given by them in their absolute discretion.

II. Appointment of refund bankers to the issue

RESOLVED THAT the State Bank of India, New Palasia Branch, Indore be and is hereby appointed as Bankers for payment of refund warrants.

RESOLVED FURTHER THAT a Current Account styled **ABC Limited- Share Application Refund Order A/C** be opened with the State Bank of India, New Palasia Branch, Indore and the collecting branches be and are hereby authorised to transfer an amount equivalent to the amount to be refunded to the unsuccessful applicants.

RESOLVED FURTHER THAT the said Bank be and is hereby authorised to honor the "Refund Warrants" bearing the facsimile signature of Shri SKP, the Managing Director and to act upon any instructions given by him from time to time relating to the above matter.

RESOLVED FURTHER THAT the said Bank be requested to make necessary arrangements for payment of warrants at their all branches in India and the said Bank be and is hereby authorised to appoint a Correspondent Bank for this purpose at places where it does not have a branch.

RESOLVED FURTHER THAT the Company do execute necessary Agreement-cum-Indemnity, other forms and documents as may be required by the said Bank and/or its correspondent Banks for giving effect to the above arrangement and that Shri SKP, the Managing Director be and is hereby authorised to execute the necessary documents and give effect to the above arrangement.

III. Appointment of lead managers to the issue

RESOLVED THAT M/s XYZ Ltd. be are hereby appointed as the Lead Manager to the proposed issue of 1,00,00,000 equity shares of Rs. 10 each for cash at par, of the Company, on the terms and conditions set out in the Letter of Offer placed before the meeting and initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT Shri SKP, the Managing Director be and is hereby authorised to convey the acceptance to the Lead Manager on behalf of the Company of the said offer including any amendment/modification thereof as may be mutually agreed upon and generally to do all such acts, deeds and things as may be necessary for the purpose.

IV. Appointment of Registrars to the issue

RESOLVED THAT M/s Ankit Consultancy Pvt. Ltd. be are hereby appointed as the Registrars to the proposed issue of 1,00,00,000 equity shares of Rs. 10 each for cash at par, on the terms and conditions set out in the Letter of Offer placed before the meeting and initialled by the Chairman for the purpose of identification.

RESOLVED FURTHER THAT Shri SKP, the Managing Director be and is hereby authorised to convey the acceptance to the Registrar on behalf of the Company of the said offer including any amendment/modification thereof as may be mutually agreed upon and generally to do all such acts, deeds and things as may be necessary for the purpose.

V. Appointment of underwriters

RESOLVED THAT the Underwriting Commitments for a total sum of Rs.1,000 lakhs for the proposed issue of 1,00,00,000 equity shares of Rs. 10 each for cash at par, as per the details contained in the draft Prospectus placed before the meeting and initialed by the Chairman be and are hereby approved and accepted.

RESOLVED FURTHER THAT Ms. AJ, the Company Secretary be and is hereby authorised to convey the acceptance to the Underwriters on behalf of the Company of the said underwriting offers including any amendment/modification thereof as may be mutually agreed upon, sign and execute necessary documents and generally to do all such acts, deeds and things as may be necessary for the purpose.

VI. Signing and filing of listing application

RESOLVED THAT the Company does make an application to the Bombay Stock Exchange Ltd. and

National Stock Exchange Ltd. for permission to deal in and for the official quotation for 130 lakh equity shares of Rs. 10 each.

RESOLVED FURTHER THAT Ms. AJ, the Company Secretary be and is hereby authorised to sign the said application and execute listing agreements and comply with all other formalities in this regard.

RESOLVED FURTHER THAT the Common Seal of the Company be affixed to the Listing Agreement to be entered into with Bombay Stock Exchange Ltd. And National Stock Exchange Ltd. in the presence of Shri SKP, the Managing Director who shall sign the same in token thereof.

VII. Dematerialisation of securities

RESOLVED THAT the Company do enter into agreement with the National Securities Depository Limited (NSDL) and Central Depository Services Ltd. (CDSL) for dematerialisation of all existing securities of the company and that the draft agreement for the purpose as per bye-laws of the said depository, as placed before the meeting and initialled by the Chairman for the purpose of identification be and is hereby approved.

RESOLVED FURTHER THAT Shri SKP, the Managing Director of the Company be and is hereby authorised to sign the aforesaid agreement on behalf of the company and common seal of the company, if required, be affixed on the agreement in accordance with the Article 25 of the Company's Articles of Association.

VIII. Underwriting contracts

RESOLVED THAT to accept the underwriting offers received from the following underwriters *viz*.,

Sl. No	*Name & Address of underwriter*	*Underwriting Amount*
1.		
2.		

RESOLVED FURTHER THAT the letter No. _______ dated _________ received from Lead Managers to the issue confirming the net worth of the above underwriters be and is hereby considered and taken on record.

RESOLVED FURTHER THAT the terms and conditions of underwriting contracts, as per the draft submitted to this meeting and initialled by the Chairman for the purpose of identification, be approved and the same be signed by Shri SKP, the Managing Director on behalf of the Company and sent to each underwriter.

RESOLVED FURTHER THAT the names and commitment of each underwriter be included in the prospectus and that Shri SKP, the Managing Director be and is hereby authorised to deliver the contracts to the Registrar of Companies together with the prospectus.

Chapter 3

Issuance of Shares and Securities

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*E-Form Nos.*
1.	75	Return of allotment.	2/3
2.	78	Issue of shares at premium.	
3.	79	Power for issuance of shares at discount.	
4.	80	Issue of Redeemable preference shares.	
5.	86	Types of Share Capital.	

1. Meaning of issue of shares and securities

The term "issue" has not been defined under the Companies Act, 1956. The dictionary meaning of the term 'issue' as applicable in the context of shares and securities are "to send out for selling or circulation."

Issue of shares and securities means offering them through prospectus to public in the case of a public company. It does not create a binding contract between the applicant and the company. Only an allotment of shares gives rise to a binding contract and is enforceable by law.

2. Only public limited companies can issue shares through prospectus

Only a public company having a share capital can issue shares. Shares can be issued either to general public or to private section of persons comprising of friends, relatives, associates, etc.

Section 3(1)(*iii*) of the Act *inter alia* says that a private company is one which, by its Articles of Association, prohibits any invitation to the public to subscribe for any shares in, or debentures of the company. Moreover, a private company shall while issuing and allotting shares bear in mind that number of its members shall not exceed fifty.

3. Method for issuance of shares

Issues can be classified as under:

Initial Public Offering (*IPO*) is when an unlisted company makes either a fresh issue of securities or an offer for sale of its existing securities or both for the first time to the public. This paves way for listing and trading of the issuer's securities.

Follow on public offering (*FPO*) is when an already listed company makes either a fresh issue of securities to the public or an offer for sale to the public, through an offer document. An offer for sale in such scenario is allowed only if it is made to satisfy listing or continuous listing obligations.

Rights Issue (*RI*) is when a listed company which proposes to issue fresh securities to its existing shareholders as on a record date. The rights are normally offered in a particular ratio to the number of securities held prior to the issue. This route is best suited for companies who would like to raise capital without diluting stake of its existing shareholders unless they do not intend to subscribe to their entitlements.

Preferential issue (*PI*) is an issue of shares or of convertible securities by listed companies to a select group of persons under section 81 of the Companies Act, 1956 which is neither a rights issue nor a public issue. This is a faster way for a company to raise equity capital. The issuer company has to comply with the Companies Act and the requirements contained in Chapter pertaining to preferential allotment in SEBI (DIP) guidelines which *inter alia* include pricing, disclosures in notice, etc.

Qualified Institutions Placement (*QIP)* is a private placement of equity shares or securities convertible in to equity shares by a listed company to Qualified Institutions Buyers only in terms of provisions of Chapter XIIIA of SEBI (DIP). For further study refer Part IX.

4. Definition of allotment of shares

Allotment is a stage subsequent to issue and application. Allotment can be done on application made in writing and after due compliance of the relevant provisions of the Act and SEBI's guidelines and compliance of listing agreement (in case of listed companies).

However, the term "allotment" has not been defined under the Companies Act. In simple words, allotment may be defined as the appropriation out of previously un-appropriated capital of a certain number of shares to certain person(s). The term is also construed to mean "the act of allotting".

Allotment gives rise to a binding and enforceable contract between the allottee and the company. Allotment is an appropriation of a certain number of shares between the applicants.

5. Applicability of Laws and regulations in connection with issuance and allotment

Issuance and allotment of shares and securities are regulated by the following:—

(*i*) Provisions of the Companies Act, 1956.

(*ii*) Securities & Exchange Board of India guidelines, etc.

(*iii*) Related provisions of Foreign Exchange Management Act, 1999.

(*iv*) Listing requirements of Stock Exchanges.

(*v*) Company's own Memorandum of Association and Articles of Association, etc.

(*vi*) Relevant provisions of the Indian Contract Act.

The 'Guidelines for Disclosure and Investor Protection' issued by SEBI and the Stock Exchange Listing requirements deal with issue of shares to public by a new company, existing unlisted companies and existing listed companies.

6. Filing of return of allotment

(*i*) Whenever a company having a share capital makes allotment of its shares, it shall file a return of allotment with the concerned Registrar of Companies within a period of thirty days after the date of allotment. [Section 75(1)(*a*)]

(*ii*) Return of allotment shall be filed electronically in the prescribed e-Form 2 (Appendix 1) and requisite filing fees as per Schedule X to the Act shall also be paid. The return of allotment shall state the following details:—

(*a*) The number and nominal amount of the shares comprised in the allotment.

(*b*) The names, addresses and occupations of the allottees.

(*c*) The amount, if any, paid or due and payable on each shares.

(*d*) Amount of premium.

(*e*) The date of allotment of shares.

(*f*) Total paid up capital after the present allotment.

Provided that the company shall not show in the return of allotment any shares allotted for cash if cash has not actually been received in respect of such allotment [Proviso to section 75(1)(*a*)]. If proviso to section 75(1)(*a*) is contravened then every officer and every promoter of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees.

7. Allotment of shares for consideration otherwise than in cash

Issue of shares for consideration other than in cash can be made for any of the following considerations:—

(*a*) acquisition of assets of other company;

(*b*) acquisition of shares of other company;

(*c*) acquisition of technical know-how;

(*d*) other purposes.

Where shares are being issued in lieu of acquisition of assets of other company, it should be ensured that the transferor company has passed appropriate ordinary resolution in general meeting under section 293(1)(*a*) of the Companies Act, 1956.

In case if acquisition of assets of other company results in amalgamation with other company the Court/Tribunal order, if any, shall be forwarded with the Registrar.

In case the shares (not being bonus shares) are allotted as fully or partly paid up otherwise than in cash, the company shall produce, for the inspection and examination of the Registrar a contract duly stamped in writing constituting the title of the allottee to the allotment together with any contract of sale or a contract for service or other consideration in respect of which the allotment was made. [Section 75(1)(*b*)]

In such case the following documents shall be filed by company with the concerned Registrar of Companies:—

(1) Copies of all contracts, as aforesaid, verified in the prescribed manner to be filed by a company with the Registrar pursuant to section 75(1)(*b*) by an affidavit of a responsible officer of the company stating that they are true copies.

(2) Where a contract such as stated under section 75(1)(*b*) has not been reduced in writing, the company shall, within 30 days after the date of allotment, file with the Registrar of Companies the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract has been reduced to writing. The prescribed particulars shall be filed electronically in e-Form 3 (Appendix 2) in addition to the e-Form 2. [Section 75(2)].

If the Registrar is satisfied that in the circumstances of any particular case the period of thirty days specified in sections 75(1) and 75(2) for compliance with the requirements of this section is/was inadequate, he may, on application made in that behalf by the company, whether before or after the expiry of the said period, extend that period as he thinks fit, and if he does so, the provisions of sections 75(1) and 75(2) shall have effect in that particular case as if for the said period of thirty days the extended period allowed by the Registrar were substituted.

7.1. Procedure for issue of shares for consideration other than cash

(1) Convene a meeting of the Board of directors after issuing notice in accordance with the provisions of section 286 for considering allotment of shares for consideration other than cash. (See Appendix 3 for Board resolution)

(2) In case of listed company, immediately after the Board meeting send intimation of allotment of shares for consideration other than cash to the stock exchanges.

(3) If the allotment is to be made to the NRIs/Non-residents, obtain consent from RBI.

(4) After allotment having been made, within next 30 days, file a return of allotment of shares in e-Form 2 with the ROC.

(5) A certified copy of the agreement in pursuance of which allotment has been made shall also be filed with the ROC in e-Form 3, within 30 days after the allotment. If the agreement is not in writing, its main terms and conditions shall be reduced to writing in e-Form 3 and it shall be filed after being stamped.

(6) Issue share certificates in accordance with the Companies (Issue of Share Certificate) Rules, 1960.

(7) Make entry of the particulars in the Register of Members.

8. Allotment of shares at a discount

Section 79 of the Companies Act, 1956 deals with the power of a company to issue shares at a discount. The concept of issue of shares at a discount is of academic interest only, because most of the companies launch their issues of capital either at par or at a premium. If the shares of the face value of rupees ten each are issued at the price, which is lower than rupees, ten per share then it will be called that the issue is at a discount.

While allotment of shares at discount following conditions shall be fulfilled:—

(*a*) The shares must be of a class already issued by the company.

(*b*) The issue of shares at discount must be authorised by a resolution passed by the company in General meeting and sanctioned by the Company Law Board/Central Government.

(*c*) The resolution, as aforesaid, shall specify the maximum rate of discount at which the shares are to be issued.

(*d*) The Company Law Board/Central Government shall not sanction any resolution for issue of shares at discount which specifics maximum rate of discount exceeding 10% unless it is of the opinion that a higher percentage of discount (*i.e.*, exceeding 10%) may be allowed in the special circumstances of the case.

(*e*) At least one year has, at the date of the issue, elapsed since the date on which the company was entitled to commence its business under section 149.

(*f*) The shares to be issued at discount should be issued within a period of two months after the date on which the issue is sanctioned by the Company Law Board/Central Government or such extended time as the Company Law Board/Central Government may allow.

(*g*) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus. [Section 79(4)]

If default is made in complying with provisions of this section, the company, and every officer of the company who is in default shall be punishable with fine, which may extend to five hundred rupees.

Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Company Law Board/Central Government for an order sanctioning the issue, and on any such application, the Company Law Board/Central Government, if having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit. [Section 79(3)]

Whenever a prospectus is issued, it shall contain the particulars of discount allowed and the amount of discount, if any, that has not been written off at the time of issue of the prospectus.

By the Companies (Second Amendment) Act, 2002, the Company Law Board will be referred to the Central Government and in case of Sick Companies Central Government will be referred to the Tribunal.

The return of allotment has to be filed in the prescribed e-Form 2, manner and time limit as already stated with a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Central Government sanctioning the issue shall also be enclosed with such return. Where the rate of discount exceeds 10%, a copy of the order of the Central Government permitting the issue at the higher percentage shall also be enclosed to the return of allotment.

8.1. Application and order of the Company Law Board/Central Government thereon

Where company has passed a resolution authorising the issue of shares at a discount, exceeding 10% it may apply to the Company Law Board/Central Government for an order sanctioning the issue, and on any such application, the Company Law Board/Central Government, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

8.2. Filing of Order of the Company Law Board/Central Government with the Registrar

The order of the Company Law Board/Central Government shall be filed with the concerned Registrar of Companies in e-Form 21 electronically within a period of thirty days from the date of obtaining such order.

Every prospectus relating to issue of shares at discount shall contain particulars of the discount allowed on issue of shares or of so much of that discount as has not been written off on the date of issue of the prospectus.

8.3. Penalty

If a default is made in complying with the provision of this section (relating to contents of prospectus in case of issue of shares at discount), the company, and every officer of the company who is in default shall be punishable with fine, which may extend to five hundred rupees [Section 79(4)]. The default of section 79 is compoundable under section 621A of the Companies Act, 1956.

By the Companies (Second Amendment) Act, 2002, the Company Law Board has been substituted by the Central Government. However, the Act is yet to be enforced.

9. Return of allotment

Section 75 of the Companies Act, 1956 deals with the requirement of return of allotment of share capital. It is important to note that allotment of shares are the birth of share capital and return of allotment may be considered as a document of birth.

10. No need to file return of allotment for re-issuance of forfeited shares

Section 75 does not apply to the re-issuance of any shares, which have been forfeited by company for non-payment of calls in pursuance of the provisions contained in its Articles of Association. Thus, a company is not required to submit return of allotment in respect of re-issue of shares forfeited for non-payment of calls or other grounds. [Section 75(5)]

11. Extension of time period of thirty days for filing of return of allotment

It the Registrar is satisfied that in the circumstances of any particular case of the period of thirty days as specified under sections 75(1) and 75(2) for compliance with the provisions of this section is or was inadequate, he may, on an application made in that behalf by the company, whether before or after the expiry of the said period, extend that time as he thinks fit, and if he does so, the provision of sections 75(1) and 75(2) shall have effect in that particular case as if for the said period of thirty days, the extended period allowed by the Registrar were substituted. [Section 75(3)]

12. Penalty

If default is made in complying with the provision of section 75 of the Act, every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues. However, where contravention relates to sub-section (1)(*a*) proviso fine will be Rs. 50,000. [Section 75(4)]

13. Effect of irregular allotment [Section 71]

Section 69 of the Act places a prohibition on allotment of shares unless the company in case of first allotment of shares has received the amount of minimum subscription.

Section 70 provides for delivery to the concerned Registrar of Companies for registration, a statement in lieu of prospectus.

Section 71 deals with effect of irregular allotment and following are the provisions in this regard:—

(*i*) An allotment made by a company to an applicant in contravention of the provisions of section 69 or 70 shall be voidable at the instance of the applicant—

- (*a*) within two months after the holding of the statutory meeting of the company, and not later, or
- (*b*) in any case where the company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within two months after the date of the allotment, and not later.

If any director of a company knowingly contravenes, or willfully authorises or permits the contravention of any of the provisions of section 69 or 70 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby: [Section 74(3)]

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment [Proviso to section 71(3)].

14. Issuance of bonus shares

Issuance of bonus shares is a way of bringing the paid up capital of the company in line with actual capital employed in the business. Bonus shares are issued by capitalising the free reserves by issuing fully paid bonus shares to the existing shareholders who are required to pay nothing in lieu of bonus shares they get, because in a sense, free reserves belong to the equity shareholders who are ultimate owners of the company. By bonus shares, they are vested with such rights immediately and get shares in lieu thereof. Issue of bonus shares involves conversion of accumulated free reserves into paid up capital and it broadens the capital base of the company. It adds to the image of the company.

14.1. Issue of bonus shares by the capitalisation of profits or reserves

Proviso to section 205(3) stipulates that profits or reserves of a company may be capitalised by issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

14.2. Provisions of Table A in respect of issuance of bonus shares

A company cannot issue bonus shares, unless it is authorised by its articles, therefore, the articles of a company must contain provisions for authorisation for issue of bonus shares. In absence of such authorisation, articles will have to be altered by applying the procedure laid down under section 31 of the Act.

Regulations contained in Table A of the Act apply to a public company limited by shares to the extent they are not inconsistent with the articles of that company. Section 28(2) says that the regulations contained in Table A shall apply to a company limited by shares, insofar as the Articles of the concerned company do not exclude or modify them.

Regulation numbers 96 and 97 deal with capitalisation of profits by issuance of bonus shares. These are reproduced hereunder:

Regulation No. 96:—

(1) The company in general meeting may, upon the recommendation of the Board, resolve—

(*a*) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution; and

(*b*) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(2) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (3), either in or towards—

(*i*) paying up any amounts for the time being unpaid on any shares held by such members respectively;

(*ii*) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid up, to and amongst such members in the proportions aforesaid; or

(*iii*) partly in the way specified in sub-clause (*i*) and partly in that specified in sub-clause (*ii*).

(3) A share premium account and a capital redemption reserve account may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(4) The Board shall give effect to the resolution passed by the company in pursuance of this regulation. (Appendix 4)

Regulation No. 97:—

(1) Whenever such a resolution as aforesaid shall have been passed, the Board shall—

(*a*) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares, if any; and

(*b*) generally do all acts and things required to give effect thereto.

(2) The Board shall have full power—

(*a*) to make such provision, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares or debentures becoming distributable in fractions; and also

(*b*) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid up, of any further shares to which they may be entitled upon such capitalisation, or (as the case may require) for the payment by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares. (Specimen resolution has been given in Appendix 4)

(3) Any agreement made under such authority shall be effective and binding on all such members.

14.3. Factors affecting issue of bonus shares

A company has to consider many important factors before taking of decision for issuance of bonus shares. A list of such factors are given below:—

(*i*) quantum of free reserves built out of genuine profits including share premium collected in cash only;

(*ii*) present authorised and paid up share capital;

(*iii*) present equity share capital base in relation to earnings of the company;

(*iv*) quantum of earnings of the company in last two or three years;

(*v*) return on equity capital after deduction of tax and preference dividend, if any;

(*vi*) projected earnings of the company in next two or three years;

(*vii*) company's capacity to maintain earnings on the expanded capital after issuance of bonus shares;

(*viii*) tax benefits;

(*ix*) government policies;

(*x*) trends in capital markets;

(*xi*) present share price and estimated price of the company's shares after issuance of bonus shares.

14.4. Provisions contained in the Companies Act, 1956

The Companies Act, 1956 does not contain a separate set of sections dealing with bonus shares. The Act though has made references to bonus issue/shares in its certain sections.

Reference may be made to section 205 of the Companies Act, 1956, which provides that dividend could only be paid out of profits. The proviso to sub-section (3) of section 205 permits capitalisation of profits or reserve of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company. Clearly, the Companies Act specifically permits utilisation of reserve arising out of revaluation of assets for purpose of issuing fully paid up bonus shares.

By issue of bonus shares value of shares is likely to reduce proportionately, *i.e.*, in the ratio number of bonus shares bears to increased number of shares after bonus issue. [*Chandrakant Mulraj* v *Tata Engg. & Locomotive Co. Ltd.* (1985) 58 Comp Cas 320 (Bom)].

Bonus shares are capital in hands of shareholders and not dividend; bonus shares do not give them an immediate right to a larger amount of the existing assets but simply confer a title to a larger proportion of the surplus assets in the event of winding up. [*IRC* v *Blott* (1921) 2 AC 171 (HL)].

14.5. Bonus may also be issued from the reserves created out of revaluation of capital assets

The Supreme Court held in case of *Bhagwati Developers* v *Peerless General Finance & Investment Co. Ltd and Others* (2005) 62 SCL 574 (SC) decided on 9th August, 2005 that proviso of section 205(3) permits capitalisation of profit or reserves of a company for the purpose of issuance of fully paid up shares. However, the shares issued by way of capitalisation of revaluation reserves will not be considered for promoters contribution under the SEBI guidelines.

The paid up share capital after bonus issue must be within the authorised share capital of the company, otherwise authorised share capital of the company shall have to be increased at first place and then the company can go in for a bonus issue.

In the case of the allotment of bonus shares, a return of allotment shall be filed electronically in the prescribed e-Form 2 enclosing with the resolution of the Board of director authorising the issuance of bonus shares along with the requisite filing fee as per Schedule X to the Companies Act, 1956 within a period of thirty days after the date of allotment. Such return shall state the number and nominal amount of shares comprised in such allotment and the names, addresses and occupations of the allottees. [Section 75(1)(*c*)(*i*)]

14.6 Secretarial checklist for issue of Bonus shares

The company may capitalise its profit/reserves by issuance of Bonus Shares to the members of the company subject to the following terms and conditions fulfilled by the company:—

1. A company in terms of its Articles of Association may capitalise its profit/reserves created out of the genuine profit.
2. In case of unlisted company, the Rules and SEBI guidelines are not applicable.
3. Declaration of bonus shares in lieu of dividend is not allowed.
4. A company has not defaulted in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal or redemption thereof.
5. A company should not have any default in respect of payment of statutory dues to the employees such as P.F., Bonus, Gratuity, etc. as may be applicable to the company.
6. A company has to implement its decision for issuance of bonus shares within 6 months from the date of the Board meeting.
7. Once the bonus issue have been considered and declared the company cannot reverse its decision.

14.7. Procedural steps for issuance of Bonus shares

1. The Board of directors of the company at their meeting must consider the matter related to the availability of amount in current year profit and issuance of bonus shares.
2. It is advisable that the company should get report of the Auditors relating to the amount available for distribution as bonus shares to the members.
3. The Board should pass following necessary resolutions at their meeting:—
   (*a*) approval of the bonus issue subject to the approval in General Meeting.
   (*b*) approve the record date to determine the entitlement of bonus shares.
   (*c*) approval of the notice for the AGM/EGM
4. Send intimation of such proposal to the stock exchanges where securities of the company are listed before and after the Board meeting.
5. On the due date the company hold general meeting and pass the necessary resolution. (Specimen has been given in Appendix 4).
6. If shares have to be issued to NRIs/Non-residents, make an application to the RBI for seeking its consent for such issue.
7. In case of listed companies:—
   (*a*) The Board shall fix a record date for taking record of shareholders who would be entitled to receive bonus shares.
   (*b*) Intimation of such record in case of physical shares shall be given to the stock exchanges at least 21 days before the date and in case of D-mat, at least 15 days before the date.
   (*c*) General notice be published in the newspaper about issue of bonus shares; and
   (*d*) General notice be published in the newspaper about the record date in pursuance of section 154.
8. After the record date, a complete list of all members, who are entitled to receive the bonus shares, is prepared.
9. Submit an application to the Stock Exchange for listing of bonus shares.
10. Submit Corporate Action Form to the CDSL and NSDL for admission of new capital.
11. While finalizing list of persons entitled to receive the bonus shares, provisions of section 206A of the Act shall be kept in mind *i.e.* bonus shares in respect of those shares which have been lodged with the company for registration of transfer.
12. The Board of directors of the company passes a resolution for allotment of shares.
13. A return of allotment is filed in e-Form 2 with the ROC within 30 days of the allotment being made.
14. File e-Form 23 to ROC within 30 days from the date of the general meeting.

15. Share certificates are issued to the allottees in accordance with the Companies (Issue of Share Certificate) Rules, 1960 and give credit to the Members through CDSL and/or NSDL in case of having shares in the electronic mode.
16. Fraction of shares resulting on issue of bonus shares shall be dealt as decided in the general meeting. Usually, all fractions are collected and disposed of by the company in the market and realization on such disposal is distributed among the shareholders in the proportion of their entitlement.
17. Make suitable entries in the register of members.
18. In case of listed companies, application shall be made to stock exchanges for final listing and permission for trading of bonus shares and a compliance report be sent to the SEBI.
19. Submit a certificate to the SEBI of compliance of provisions of the SEBI Bonus Issues Guidelines duly signed by a company and counter signed by a statutory auditor or a company secretary in practice.

15. Issue of shares at a premium

Issuance of shares at premium is the most prevalent mode of issue by reputed and well established companies. When shares of the face value of rupees ten each are issued at a price, which is greater than rupees ten per share, it will be said that the issue is at a premium.

Section 78 of the Companies Act, 1956 deals with application of premium received on issue of shares. The various aspects relating to the issue of shares at premium are stated hereinbelow.

15.1. Requirement for transfer of premium amount to share premium account

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called "the shares premium account", and the provisions of the Companies Act relating to the reduction of the share capital of a company shall, except as provided in section 78, apply as if the shares premium account were paid-up share capital of the company. [Section 78(1)]

15.2. Utilisation of share premium account

The security premium account may, notwithstanding anything contained in para 5, *supra*, be applied by the company—

(*i*) in paying up un-issued securities of the company to be issued to members of the company as fully paid bonus securities;

(*ii*) in writing off the preliminary expenses of the company;

(*iii*) in writing off the expenses of, or the commission paid or discount allowed on, any issue of securities or debentures of the company; or

(*iv*) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

16. Share premium account is not a reserve fund

Share premium account or security premium account, though treated as paid-capital of company for a limited purpose, cannot be treated as reserve fund and, therefore, a company cannot write off its loses against share premium account unless it is permitted by law. Unless and until there is diminution of share capital and corresponding reduction in share premium account, no company can be allowed to write off or adjust loss against share premium account. Company court cannot mechanically approve minute of banking company to adjust its cumulative losses against share premium, especially when such company has already appropriated all reserves for writing off its losses and bad debt. [*Global Trust Bank Ltd*., *In re* (2005) 57 SCL 164 (AP)].

In terms of section 78 and section 100 unless and until there is diminution of share capital and corresponding reduction of share premium account, no company can be allowed to write off or adjust loss against share premium account. Unless articles of association of company permit utilization of share premium account for purposes other than section 78(2), company cannot pass resolution to that effect, nor company court can approve such a resolution. If subscribed share capital in another company is lost or not properly represented by assets, same would not fall u/s 78, read with section 100. Where articles of association of petitioner company did not specifically permit utilization of share premium account for purposes other than those mentioned in section 78, share premium account could not be utilized for setting off of loss incurred due to investment in another company and therefore, petition seeking approval of resolution to that effect was to be dismissed. [*Hyderabad Industries Ltd*., *In re* (2004) 53 SCL 376 (AP)].

Appendix 1

Specimen of e-Form 2

Return of allotment

[Pursuant to section 75(1) of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*) *Corporate identity number (CIN) of company: xxxxxxxxxxxxx
   (*b*) Global location number (GLN) of company:
2. (*a*) Name of company: ABC PRIVATE LIMITED
   (*b*) Address of the registered office of the company: 4TH FLOOR, SILVER ARK PLAZA 20A, NEW PALASIYA INDORE (M.P) 452001
3. *Date of allotment: 30/12/2006 (DD/MM/YYYY)
4. Shares allotted payable in cash

Class of Shares [ ] Preference [√] Equity

Class of shares		*Preference*	*Equity*
Number of shares allotted			10000
Nominal amount per share	(in Rs.)		10
Total nominal amount	(in Rs.)		100000
Amount paid per share on application	(in Rs.)		10
Total amount paid on application	(in Rs.)		100000
Amount due and payable per share on allotment (excluding premium)	(in Rs.)		
Total amount paid on allotment (excluding premium)	(in Rs.)		
Premium amount per share due and payable (if any)	(in Rs.)		
Total premium amount due and payable (if any)	(in Rs.)		
Premium amount paid per share (if any)	(in Rs.)		
Total premium amount paid (if any)	(in Rs.)		
Amount of discount per share (if any)	(in Rs.)		
Total discount amount (if any)	(in Rs.)		

5. Shares allotted for consideration otherwise than in cash

Class of Shares [ ] Preference [√] Equity

Class of Shares	*Preference*	*Equity*
Number of shares allotted		10000
Nominal amount per share (in Rs.)		10
Amount to be treated as paid-up on each share (in Rs.)		100000

Class of Shares	*Preference*	*Equity*
The consideration for which such shares have been allotted		
(*a*) Property and assets acquired — Description		Land
Amount (in Rs.)		100000
(*b*) Goodwill — Description		
Amount (in Rs.)		
(*c*) Services (give nature of services) — Description		
Amount (in Rs.)		
(*d*) Other items (to be specified) — Description		
Amount (in Rs.)		

6. Bonus shares issued
   - (*a*) Number of bonus shares
   - (*b*) Nominal amount per share (in Rs.)
   - (*c*) Amount to be treated as paid-up per share (in Rs.)

7 (*a*) Total nominal value of equity shares issued including the present allotment (in Rs.) 300000

(*b*) Total nominal value of preference shares issued including the present allotment (in Rs.)

8 (*a*) Date of passing the special resolution authorising issue under section 81 (DD/MM/YYYY)

(*b*) Service request number (SRN) of Form 23

Attachments

1.	Copy of the resolution authorising the issue of bonus shares.		
2.	List of allottees.	Attach	
3.	Copy of the resolution for the issue of shares at a discount with a copy of the order of the Central Government		
4.	Copy of the contract, if any, for allotment of shares for consideration otherwise than in cash.	Attach	
5.	Optional attachment(s) – if any	Attach	Copy of Board resolution

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated * (DD/MM/YYYY) to sign and submit this form. 01/01/2007

To be digitally signed by

Managing director or director or manager or secretary of the company VKL

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of ABC Private Limited and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice)	D.K. Jain

For office use only

This e-Form is hereby registered	
Digital signature of the authorising officer	

Appendix 2

Specimen of e-Form 3

Particulars of contract relating to shares allotted as fully or partly paid-up otherwise than in cash
[Pursuant to section 75(2) of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*)	*Corporate identity number (CIN) of company	xxxxxxxxxxxxxx
(*b*)	Global location number (GLN) of company	
2. (*a*)	Name of company	ABC PRIVATE LIMITED
(*b*)	Address of the registered office of the company	4TH FLOOR, 406 SILVER ARK PLAZA 20A, NEW PAASIYA INDORE (M.P) 452001

3. If the consideration for allotment of such shares is services, or any consideration other than that mentioned below in (4) state

(*a*)	Nature of such consideration	FOR ACQUISITION OF LAND
(*b*)	Number of shares so allotted	10000

4. If the allotment is made in full or part satisfaction of the purchase price of property, give a brief description of such property, and full particulars of the manner in which the purchase price is to be satisfied.

(*a*)	Nature of such consideration	PLOT NO. 123, MAHAVIR NAGAR, INDORE (M.P) HAVING AREA ABOUT 150 SQ.FT.
(*b*)	Purchase price (in Rs.)	100000

(*i*)	Total amount considered as paid on shares allotted, otherwise than in cash	(in Rs.)	100000
(*ii*)	Debentures issued	(in Rs.)	
(*iii*)	Cash	(in Rs.)	
(*iv*)	Amount of debt released or liabilities assumed by the purchaser (including mortgages on property acquired)	(in Rs.)	
(*v*)	Total purchase price [(*i*) to (*iv*)]	(in Rs.)	100000

5. Give full particulars, in the following form, of the property which is the subject of the sale, showing in detail how the total purchase price is apportioned between the respective heads:

   (*a*) Immovable property held, in absolute ownership by the company and fixed plant and machinery and other fixtures thereon

(*i*)	Leased hold property (if the property is sold subject to mortgage, the gross value)	(in Rs.)	
(*ii*)	Fixed plant and machinery on leased property (including tenants, trade and other fixtures)	(in Rs.)	
(*iii*)	Other interests in immovable property (if the property is subject to mortgage, the gross value)	(in Rs.)	
(*b*)	Loose plant and machinery, (no plant and machinery which was not in actual state of severance on the date of the sale should be included under this head)	(in Rs.)	
(*c*)	Stock in trade and other chattels	(in Rs.)	
(*d*)	Goodwill and benefit or contracts	(in Rs.)	
(*e*)	Patents, designs, trademark, licences, copyright etc.	(in Rs.)	
(*f*)	Book debts and other outstanding	(in Rs.)	
(*g*)	Cash in hand and at bank on current account, bills, notes etc.	(in Rs.)	
(*h*)	Cash on deposit at bank or elsewhere	(in Rs.)	
(*i*)	Shares, debentures and other investments	(in Rs.)	
(*j*)	Other property *viz*		

FREEHOLD PLOT NO. 132, MAHAVIR NAGAR, INDORE (M.P.) HAVING AREA ABOUT 150 SQ.FT.

100000

Total [(*a*) to (j)] 100000

Attachments

1.	* Board resolution approving allotment of shares otherwise than in cash	Attach	
2.	Optional attachment(s) — if any	Attach	

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the Board of directors' resolution dated * (DD/MM/YYYY) to sign and submit this form. 01/01/2007

To be digitally signed by

Managing director or director or manager or secretary of the company VKL

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of ABC Private Limited and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice) D.K. Jain

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For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 3

Specimen of Board resolutions

I. Allotment of shares for consideration other than cash

RESOLVED THAT pursuant to Clause ____ of the contract for the supply of machinery, 20,000 equity shares of Rs. 10 each, bearing distinctive numbers from ______ to ______, fully paid be allotted to the suppliers M/s. _____________ Limited in full and final settlement of the contract value.

RESOLVED FURTHER THAT Shri PJ, Company Secretary be and is hereby authorised to file the return of allotment in Form No. 3 with the Registrar of Companies, file the distribution schedule with the Stock Exchange, dispatch the share certificates and comply with all other formalities in this regard.

Alternate resolution

RESOLVED THAT pursuant to Clause ____ of the contract for the transfer of Plot No. ………………. admeasuring about ……… square ft. on the total consideration of Rs. 20.00 Lacs only 2,00,000 equity shares of Rs. 10 each, bearing distinctive numbers from 5,00,001 to 7,00,000, fully paid be allotted to the suppliers M/s. XYZ Private Limited in full and final settlement of the contract value for consideration otherwise than in case.

RESOLVED FURTHER THAT 10,000 Fully paid up Equity Shares of Rs. 10 each of the Company be issued to the said allotees and the entries be made in the Register of Members of the Company.

RESOLVED FURTHER THAT Shri BSJ and Shri VKL Directors of the Company be and are hereby authorised to sign the Share Certificates for and on behalf of the Board of Directors of the Company and the Common Seal of the Company be affixed in presence of above said two Directors and Shri AB, Company Secretary of the Company.

RESOLVED FURTHR THAT Shri ABC the Director of the Company be and is hereby authorized to file e-Form 2 & 3 with the MCA/Registrar of Companies for and on behalf of the Company.

II. Allotment of shares at discount

RESOLVED THAT pursuant to the provisions of section 78 and other applicable provisions, if any, of the Companies Act, 1956 and subject to the approval of members by way of special resolution and confirmation thereof by the Central Government, 25,000 equity shares of Rs. 10 each of the company be offered and allotted at a discount not exceeding 10%.

RESOLVED FURTHER THAT an extraordinary general meeting of the members of the company be convened on 08th Jan., 2007 for obtaining consent of the members and that the draft notice for the general meeting as placed before the meeting and initialed by the Chairman for the purpose of identification be and is hereby approved and that the company secretary be and is hereby instructed to forward the notice to all members of the company and also to make all such arrangements as may be necessary for properly convening and holding the extraordinary general meeting and also to make an application to the Central Government for seeking confirmation.

Explanatory Statement to the above Resolution

As the shareholders are aware, the Company's expansion project at ……….. call for mobilization of finance for which it felt expedient to go for public issue. The existing shares of the Company are quoted on ……… Stock Exchange whereas the present quotation varies between Rs. 8.85 to Rs. 9.20. The new shares will be quoted automatically on …….. Stock Exchange. On the advice of the Stock Exchange authorities, the proposed issue is being made at a discount, the issue price corresponding as nearly as possible to the quoted price.

The fair value of the shares is Rs. 10 as per the valuation made by the Company's auditors. It is proposed to issue the new shares at a discount of 10%, the maximum permissible under the Companies Act, 1956 *i.e.* at a price of Rs. 9 per share. This should make the offer attractive to the public.

In terms of the section 78, an application for the necessary sanction is being made to the Central Government.

Copy of the statement of valuation indicating the calculation of fair value by the Company's Auditor is available for inspection at the registered office of the Company during business hours on any working day.

III. Allotment of Equity Shares

RESOLVED THAT 10,000 Equity Shares of Rs. 10 each for cash at par aggregating Rs. 1,00,000 be and are hereby allotted to the applicants as per the statement of allotment placed on table and further 10000 Equity shares be allotted to Shri KA for consideration otherwise than in cash as under

Name of allottee	*No. of Shares allotted*
RA Ltd.	5000
Shri AB	5000
Shri KA	10000
Total	20000

FURTHER RESOLVED THAT 20,000 Fully paid up Equity Shares of Rs. 10 each of the Company be issued to the said allotees and the entries be made in the Register of Members of the Company.

FURTHER RESOLVED THAT the draft of the agreement for acquisition of land situated at 123 Mahavir Nagar, Indore admeasuriung 150 Sq.ft. from Shri KA at a price of Rs. 1,00,000 be and is hereby accepted and Shri VKL, Director of the Company be and is hereby authorised to execute the agreement for and on behalf of the Company.

FURTHER RESOLVED THAT Shri BSJ and Shri VKL, Directors of the Company be and are hereby authorised to sign the Share Certificates for and on behalf of the Board of Directors of the Company and the Common Seal of the Company be affixed in presence of above said two Directors and Shri AB, Company Secretary of the Company.

FURTHER RESOLVED THAT Shri KVL, Director of the Company be and is hereby authorized to file e-Form 2 alongwith e-Form 3 with the MCA/Registrar of Companies for and on behalf of the Company.

Appendix 4

Special resolution for capitalisation of profit and issuance of bonus shares

RESOLVED THAT pursuant to the provisions of section 205 and Article Nos. 238 and 247 of Articles of Association of the company and such other applicable provisions of the Companies Act, 1956 if any, an amount of Rs. 1,20,02,500 (Rs. One Crore Twenty Lacs Two Thousand Five Hundred Only) standing to the credit of the company's Profit and Loss Account be and is hereby capitalised and such amount be applied in paying up fully paid up 12,00,250 (Twelve Lacs Two Hundred Fifty) Equity Shares of Rs. 10 (Rs. Ten) each in the capital of the company, to be allotted and distributed as fully paid bonus shares to the members of the company registered as the Equity Shareholders of 24,00,500 (Twenty-Four Lakhs Five Hundred) Shares of the company in proportion of 1 (One) Equity Share of Rs. 10 (Rs. Ten) each for 2 (Two) Equity Shares held by such member as on 28th Jan., 2007, the record date as determined by the Board of directors of the company and upon the footing that they become entitled to such new Equity Shares as capital and not as income.

RESOLVED FURTHER THAT the new Equity Shares shall be allotted subject to the provisions of Memorandum and Articles of Association of the company and shall in all respects rank *pari passu* with the existing fully paid up Equity Shares of the company, with a right, if the directors so determine, to participate in full in dividend if any declared by the company for whole of the year.

RESOLVED FURTHER THAT no allotment letters shall be issued to the allottees of the said Bonus Shares and that the Certificates in respect of the said Bonus Shares allotted shall be sent to the respective allottees within two months of the respective dates of allotment.

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution and to deal in case of any doubts or difficulties, the Board of directors be and are hereby authorised to do all such acts, deeds, matters and things and to give from time to time such directions as may be necessary, expedient, usual or proper and to settle any question or doubt that may arise in relation thereto or otherwise reconsider the matter with the changed circumstances, if any, as the Board in its absolute discretion as they may think fit and its decision shall be final and binding on all members and other interested persons.

Chapter 4

Transfer and Transmission of Shares

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	3(1)(*iii*)(*a*)	Articles of Private company to provide for restrictions on right to transfer shares.	
2.	108, 108(1A)	Requirement of Share Transfer Deed and Share Certificate to be produced for registration of transfers.	7B
3.	108(1B)	Validity period of Transfer Deed.	7C
4.	108A	Restriction on acquisition of more than 25% shares.	
5.	108B	Restriction on transfer of shares.	
6.	108C	Restriction on transfer of shares of foreign companies.	
7.	108D	Power of the Central Government to direct companies not to give effect to the transfer of shares.	
8.	109	Transfer by legal representative.	
9.	109B	Transmission of shares.	
10.	212 of Indian Succession Act, 1925	Right to interested property.	
11.	213 of Indian Succession Act, 1925	Probate, whether necessary.	
12.	110	Submission of application for transfer of shares or other interest.	
13.	111	Power for refusal of transfer and appeal against refusal to Tribunal.	
14.	111A	Rectification of register on transfer.	
15.	112	Certificate of transfer.	
16.	113	Limitation of time for issue of share certificates.	

1. Meaning of transfer and transmission

The word 'transfer' is an act of the parties by which title to property is transferred from one person to another. The word 'transmission' is referable to devaluation of title by operation of law. It may be by succession or by testamentary transfer.

2. Transfer Deed

2.1. Compulsory requirement of transfer deed for effecting transfer

Section 108 provides that a company shall not register a transfer of shares of, the company, unless a proper transfer deed in Form 7B as given in the Companies (Central Government's) General Rules and Forms, 1956 duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company, alongwith the certificate relating to the shares, or if no such certificate is in existence, alongwith the letter of allotment of the shares:

2.2. Transfer of shares in case of loss of transfer deed

It has been provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the Transfer Deed signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer on such terms as to indemnify as the Board may think fit.

In the case of *Fox* v *Martin* (1895) 64 LJ CH 473, a registered holder of shares instructor a broker to sell them for cash and signed a blank transfer which he handed to the broker with the share certificates. The broker deposited and transfer the certificates in favour of his banker as security for an advance to himself. It was held that the banker had no title to the shares as against the registered holders.

2.3. Validity of unstamped/non-cancelled stamped on transfer deed

Section 108 requires that where share transfer form is delivered to the Board it should be duly stamped. It means stamp of adequate value should be affixed and cancelled on transfer deed. Unless a transfer form is duly stamped when it was delivered to the Board of directors for registration of transfer, it could not be said that the mandatory requirement of section 108 is complied with and the company is justified to refuse the transfer. [*Patel Engineering Co.* v *B.Y. Invest. Pvt. Ltd. & Others* Case No. 20/CLB/WR/91]

It is not necessary that stamps be affixed before transfer deed is executed, they are to be affixed before delivery. [*Prafulla Kumar Rout* v *Orient Engg. Works* (*P*) *Ltd*. (1986) 60 Comp Cas 65 (Ori)].

If adhesive stamp on transfer deed is not defaced, a fresh deed is to be submitted; company is not obliged to cancel stamp. [*Nuddea Tea Co. Ltd.* v *Asok Kumar Saha* (1988) 64 Comp Cas 775 (Cal)].

Unless a particular mode of cancellation is prescribed in any State, crossing of stamps is sufficient. [*Prafulla Kumar Rout* v *Orient Engg. Works (P) Ltd*. (1986) 60 Comp Cas 65 (Ori)].

2.4. Determination of valuation of shares for affixing stamps on the transfer deed

In case shares are not quoted, the value of the shares for the purpose of stamp means the price that the shares would fetch at the time of transfer or consideration agreed, whichever is higher. [*Union of India* v *Kulu Valley Transport Ltd*. (1958) 28 Comp Cas 29 (Punj)].

In case if the shares are listed on stock exchange, the valuation will be determined on the basis of the quotations available on the stock exchange on the date of execution of transfer deed or the consideration paid which ever is higher.

However, no transfer duty is applicable for transfer of shares in case of shares are in D-mat form.

2.5. Value of share transfer stamps to be affixed on the transfer deed

Stamp duty for transfer of shares is 25 paise for every Rs. 100 or part thereof of the value of shares as per Notification No. SO 130(E), dated 28-01-2004 issued by the Ministry of Finance, Department of Revenue, New Delhi.

2.6. Exemption from payment of transfer duty

No duty shall be chargeable in respect of any instrument executed by or on behalf of or in favour of the Government in cases where but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

2.7. Transfer procedure not applicable under the depositories system

Section 108(3) provides that the provisions of section 108 shall not apply to transfer of securities under the depositories system. Accordingly, the instrument of transfer and the connected formalities in section 108 do not apply to the transfer of securities held under the system of depositories.

2.8. Validity of transfer deed

In the case of shares dealt in or quoted on a recognised stock exchange, at any time before the date on which the register of members is closed, in accordance with law, for the first time after the date of the presentation of the prescribed form to the prescribed authority under clause (*a*) of section 108(1A) or within twelve months from the date of such presentation, whichever is later. In any other case, within two months from the date of such presentation.

Period specified in sub-section (1A) is not applicable in the following cases in terms of sub-section (1C):

(1) Where a nominee of company 'A' is appointed a director in company 'B' and where such nominee is required to hold 'qualification shares' in the latter company, in terms of section 49 company 'A' may transfer the required number of shares held by it in company 'B' in the name of the said nominee. At the same time company 'A' will keep with itself a blank transfer form duly signed by the nominee. When the company 'A' decides that the shares will not be held in the name of the nominee, the company shall indicate on the instrument the date when it so decides and the instrument duly executed and stamped will be forwarded to the company 'B' for transferring the shares to the company 'A'. In this case the period within which the instrument shall be delivered to the company will not apply.

(2) The same procedure will be followed where the holding company transfers a share to a nominee in order to ensure that the number of members in its subsidiary does not fall below two in case the latter is a private company or below seven if it is a public company. When the holding company decides to retransfer the shares in it name, it will indicate such date on the blank transfer form held by it and deliver the deed duly executed to the subsidiary. Here also the period of delivering an instrument to the company as per section 108(1A) will not apply.

In so far as sub-section (1C) is concerned, if the transfer of shares falls within any one of the exempted cases mentioned in that sub-section, the requirements as to presentation of the instrument of transfer in favour of the prescribed authority and delivery thereof to the company within the prescribed time limit, as contemplated in sub-section (1A) are not applicable, provided the conditions stipulated in sub-section (1C) are satisfied. In view of the same, if any bank or financial institution or the Central Government or a State Government or any corporation owned or controlled by the Central Government or a State Government, granting a loan against the security of shares, intends to get such shares registered in its own name, in the event of failure on the part of the borrower to repay the loan amount, it shall complete the instrument of transfer and lodge it with the company for registration of the transfer in its own name. In such a circumstance, they will have to stamp or otherwise endorse on the instrument of transfer the date on which the bank or financial institutions decides to get such share registered in its own name and the instrument so stamped or endorsed will have to be delivered to the company, together with the share certificate, for registration within two months from the date so stamped or endorsed. [*Dove Investments P. Ltd.* v *Gujarat Industrial Investment Corpn. Ltd.* (2005) 60 SCL 604 (MAD)].

3. Consequence of non-compliance of section 108

Section 108 requires the applicant desiring to obtain the registration of transfer of shares in its favour to comply with the provisions contained therein. It is, therefore, for the applicant company to comply with all the formalities. If it does not do so it cannot make the company bound to effect the transfer, unless sufficient and cogent reasons are assigned. [*Sterling Holiday Resort* (*India*) *Ltd.* v *Gujarat Industrial Investment Corpn. Ltd.* (2006) SC 164; (2006) 129 Comp Cas 929; (2006) 71 CLA 112 (SC); (2006) 66 SCL 89 (SC)].

It cannot be said that provisions contained in section 108 are directory because non-compliance with section is not declared an offence. [*P.V. Chandran* v *Malbar & Pioneer Hosiery* (*P*) *Ltd*. (1990) 69 Comp Cas 164 (Ker)].

Except sub-section (1) of section 108, other provisions, namely sub-section (1A) and (1C) are directory and not mandatory in nature. [*Dove Investments* (*P*) *Ltd.* v *Gujarat Industrial Investment Corpn. Ltd*. (2005) 60 SCL 604 (Mad)].

4. What should constitute a gift document and whether in any case a gift of shares be invalidated for non-compliance of the Act?

It was held in the case of *Shree Shanti Textile Mills* (*P*) *Ltd.* v *Siddharth N Shah* in CLB Petition No.30 of 1999, the Registration Act does not require registration of a movable gift. Where the thing to be gifted is a share certificate and the company is already in possession of the certificates in question, a mere letter from the transferor addressed to the company expressing the transferor's intention to gift the shares to the transferee, should constitute a valid gift document. In terms of *Vasudev Ramachandra Shelat* v *Pranlal Jayanand Thakur* AIR 1974 SC 1728, a gift does not become invalid for non-compliance with the formalities prescribed in the Act.

Where the shares are gifted by delivery under a proper instrument of gift and prescribed share transfer form is duly signed by the transferor, gift of title to the shares is complete, even though transfer of shares in the books of the company has not yet been registered. [*Vasudev Ramchandra Shelat* v *Pranlal Jayanand Thakur* (1975) 45 Comp Cas 43 (SC)].

Where share certificate along with duly executed transfer form is handed over to donee by the donor, gift is complete and donee is entitled to have shares registered in his name. [*Sheila Devi Chamaria* v *Tara Chand Saraogi* (1986) 60 Comp Cas 735 (Cal)].

5. Submission of instrument for transfer to the Company

Transfer Deed duly executed for the registration of a transfer of the shares or other interest of a member in a company may be submitted either by the transferor or by the transferee together with the relevant share certificates.

Requirement that only transferor should execute instrument of transfer of shares is not absolute and such execution could be on behalf of transferor if it is authorised by transferor or by law; therefore, when articles of association authorised execution of instrument of transfer by one of directors in contingencies contemplated therein, it would be incorrect to say that transfer of shares in question was in contravention of section 108; however, such a compulsory transfer must be in interest of company but not for benefit of some of shareholders even if they are majority shareholders. [*Gothami Solvent Oils Ltd.* v *Malliana Bharathi Rao* (2001) 31 SCL 178 (AP)].

6. Transfer of partly paid up shares

Where the application is made by the transferor and relates to partly paid shares, the transfer shall not be registered, unless the company gives notice of the application to the transferee and the transferee makes no objection to the transfer within two weeks from the receipt of the notice. The notice to the transferee shall be deemed to have been duly given if it is despatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.

7. Time limit for issue of certificate on transfer

7.1. Within a period of two months in case of unlisted companies

Every company, unless prohibited by any provision of law or of any order of any Court, Company Law Board/Tribunal or other authority, shall, within two months after the application for the registration of the transfer of any such shares, debentures or debenture stock, deliver, in accordance with the procedure laid down in section 53, the certificates of all shares transferred.

7.2. Within a period of one month in case of a listed companies

In the case of a listed company, the listing agreement requires that the registration of transfers will be made within 30 days of receipt of the transfer deeds.

7.3. Powers of the Central Govt. the extend time

The Central Government may, on an application being made to it in this behalf by the company, extend any of the periods within which the certificates of all debentures and debenture stocks transferred shall be delivered under this sub-section, to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver such certificates within the said periods. The expression "transfer", for the purposes of this sub-section, means a transfer duly stamped and otherwise valid, and does not include any transfer which the company is for any reason entitled to refuse to register and does not register.

7.4. Penalty

If default is made in complying with the company, and every officer of the company who is in default, shall be punishable with fine, which may extend to five thousand rupees for every day during which the default continues.

8. Extension of validity of transfer deed

Where the validity period of an instrument of transfer has expired, namely, the instrument is beyond 12 months from the date of presentation to the prescribed authority or from the date of book closure which ever is later in case of shares of a listed company and in other case 2 months from the date of presentation, the holder may make an application in Form 7C (Appendix 6) to the Registrar of Companies requesting for extension in the validity. The fee for such application is Rs.50 where the nominal value of the shares is upto Rs. 5,000 and the fee is Rs. 100 where the value exceeds Rs. 5000.

The application shall be made to the Registrar of Companies, where the registered office of the Company is situated or under whose jurisdiction the transferor or transferee resides. The Registrar on satisfaction of the cause shown in the application shall extend the validity for a period of 30 days from the date of approval by the Registrar. It should be noted that further extension will not be provided by the Registrar. Therefore, the transfer deed should be lodged with the company within the extended period only.

9. Bulk lodgment of instruments of transfer

The Department of Company Affairs has simplified the procedure of transfer deeds in respect of the bulk transfers, in which there are a few transferees but the number of shares may be quite large and the transferors are also several persons. The Companies are advised to accept transfer deeds in the manner specified below:

(*i*) The transferees may fill up and sign a covering deed complete in all respects containing the total number of shares and the number of certificates involved and enclose all the related transfer deeds in the usual format;

(*ii*) The covering transfer deed shall contain by way of Annexure details of distinct numbers and corresponding serial numbers;

(*iii*) The individual transfer deeds forming part of the covering transfer deed need not be signed by the transferee but may be stamped with the name and address of the transferee;

(*iv*) The covering transfer deed may contain the stamp for all the shares involved.

Where a certificate is for a larger number of shares out of which a small number has been transferred, and the certificate along with the transfer form is lodged with the company, the requirement of section 108 is complied with. [*Kumar Exporters* (*P*) *Ltd.* v *Naini Oxygen Acetylene & Gas Ltd.* (1985) 58 Comp Cas 97 (All)].

10. Separate transfer instrument for shares listed in OTC exchange

Form 7B has been prescribed as the instrument for transfer of shares under section 108(1A) of the Companies Act. As the custody and issue of share certificates in respect of shares listed with OTC Exchange is governed by the rules and regulations applicable to the OTC Exchange, the Central Government had notified *vide* Notification GSR No. 16(E) dated 6-1-1999, a separate Form No. 7BB for shares listed in OTC Exchange of India in respect of counter receipts allowed to be traded by OTCEI. The issue of share certificates rules have also been amended by Notification GSR 17(E) dated 6-1-1999 to the effect that no counter receipt shall be issued after 28-2-1999.

11. Issue of jumbo certificate to custodian

The companies listed with OTC Exchange of India, may issue a Jumbo Share Certificate in favour of the custodian for the total number of shares of the company and issue a consolidated counter receipt and transfer form in favour of other allottee with respect to his individual holding.

TRANSFERABILITY OF SHARES IN A PRIVATE COMPANY

12. Private company shall restrict right to transfer its shares

A private company is a 'close corporation' of its members connected by and the induction of an outsider as a member is undesirable, since it is a body corporate with attributes of partnership.

Entire shareholding of a private company may be owned by a family or other private group.

Section 3(1)(*iii*)(*a*) of the Companies Act, 1956 provides that the Articles of a private company shall restrict the right to transfer the company's shares.

Section 27(3) of the Companies Act, 1956, requires that in the case of a private company having a share capital, the articles shall contain provisions relating to following matters which are specified in section 3(1)(*iii*) of the Act:—

(*i*) Restriction on right to transfer the company's shares;

(*ii*) Limiting the number of its members to fifty not including—

- (*a*) persons who are in the employment of the company, and
- (*b*) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and

(*iii*) Prohibition on any invitation to the public to subscribe for any shares in, or debentures of, the company.

As already stated, a private company has to place restriction on the right of members to transfer shares. Any restriction imposed by the Articles is binding upon the company and members thereof to the same extent as if they respectively had been signed by the company and by each member. It has all along been held by Company Law Board/Tribunal that restriction upon transfer here means any restriction, which will give some control to the company over transferability. Restriction would apply to all shares and to all classes of shares. No share of a private company can be free from restriction. [Section 36]

12.1. Restriction on transfer not applicable in certain cases

Restriction upon transfer of shares is in private company are not applicable in the following cases:—

(*i*) on the right of a member to transfer his/her shares cannot be applicable in a case where the shares are to be transferred to his/her representative(s).

(*ii*) in the event of death of a shareholder, legal representatives may require the registration of share in the names of heirs, on whom the shares have been devolved.

(*iii*) in respect of shares which are proposed to be issued on a rights 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 renouncees for the first time and therefore no transfer of shares will take place.

However, a private company may, by articles, restrict the 'right of a member to renounce his shares' otherwise, it is not possible to restrict the number of its members.

12.2. Restriction should not be in the form of prohibition

As per provisions of section 82 of the Act, 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 a total prohibition or ban on transferability. Shares or other interests of any member in a company are personal estate transferable in the manner provided by its Articles and are not of the nature of real estate. Therefore, only permissible restrictions on transferability may be contained in the company's Articles of Association.

12.3. Restriction can only be by the Articles of Association

Any restrictions not contained in the Articles, but in a private agreement between shareholders are not binding either on the company or on the shareholders. In determining the extent of any restriction on transfer contained in Articles, a strict construction should be adopted. The restriction must be set out clearly and unambiguously.

Further that only permissible restrictions on transferability of shares contained in the company's Articles of Association are applicable. Any restriction outside the Articles is inoperative and unenforceable. [*Rangraj* (*V. B.*) v *V. B. Gopalakrishnan* (1992) 73 Comp Cas 201 (SC)].

Restriction on right to transfer shares is generally placed by use of the following two methods:—

(*i*) right of pre-emption, and

(*ii*) powers of directors to refuse registration of transfer of shares.

13. 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 company's auditors 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.

Right of pre-emption seeks to restrict the transfer between a member and non-member, but there may take place transfer of shares between the existing members to make balancing position between the group of promoters. The transfer between members is outside the purview of pre-emption clause. The pre-emption clause cannot, however, place a complete ban on right to transfer, they cannot completely prohibit the transfer.

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.

Where, articles contain a pre-emption provision, then such provision is not only binding on a member who wishes to transfer his shares but also on a mortgagee of member's shares and is also binding on the company itself, if it claims a lien on the shares under its Articles. Therefore, before exercising any power to sell the share in order to realise the mortgage or to enforce the lien, the mortgagee or the company must offer the shares for purchase by other existing members of the company in accordance with the pre-emption provision.

Where shareholder, being fully aware of its pre-emptive right to purchase shares of other shareholder, participated in transaction of sale of shares of other shareholder and sent its bid to purchase shares, it was held that said shareholder waived its pre-emptive right. [*Samayanallur Power Investment* (*P*) *Ltd.v. Covanta Energy India* (*Balaji*) *Ltd*. (2006) 130 Comp Cas 21 (Mad)].

Where petitioner had pre-emptive right to purchase shares of members of the company and as a result of petitioner's failure to agree with price fixed by the auditors, shares were sold to outsiders as there was no other member came forward to purchase the shares, sale to outsiders was held to be valid and transfer effected in favour of the outsider could not be disturbed so as to effect rectification of register of members at the instance of the petitioner. [*Dr. Banoo J. Coyajee* v *Shanta Genevieve Pommeret Parulekar* (1995) 84 Comp Cas 534 (Bom)].

14. Procedure for transfer of shares of private company

Generally articles contain the detailed provisions as regards the procedure for transfer of shares. Usually following steps shall be followed by a private company to give effect to the transfer of shares:—

(*i*) Transferor should give a notice in writing for his intention to transfer his share to the company.

(*ii*) The company in turn should notify to other members as regards the availability of shares and the price at which such share would be available to them.

(*iii*) Such price is generally determined by the directors or the auditors of the company.

(*iv*) The company should also intimate to the members, the time limit within which they should communicate their option to purchase shares on transfer.

If none of the members comes forward to purchase shares then the shares can be transferred to an outsider and the company will have no option, other than to accept the transfer.

It is to be noted that any transfer of shares to an outsider without complying with the procedure as specified in the articles for effecting transfer of shares will not be operative against the company. Even in the case where the procedure prescribed by the articles was not followed and such failure was not due to any fault on the part of the selling shareholder, the transfer to an outsider was held not to be effective.

Transfer of shares without consent of holder of shares and without prior sanction of board of directors as required under articles of association of a private company concerned could not be held to be valid. [*John Tinson Co.* (*P*) *Ltd.* v *Mrs. Surjeet Malhan* (1997) 88 Comp Cas 750 (SC)].

15. Valuation for consideration for transfer of shares of a private company

Usually, Articles of a private company provides that the shares are to be sold under pre-emption clause at a fair price determined by directors or the company's auditors. It may also be provided that the fair price would be certified by the company's auditors.

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 auditors, the Courts are 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 shares, in such case the transferor may sue for 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.

The Company Law Board/Tribunal ordinarily do not interfere with the valuation made by experts. Therefore, if valuation is challenged then there must be sufficient evidence in support to show that valuation is improper.

16. Transfer of shares in a public company

Section 111A(2) provides that the shares or debentures and any interest therein of a public company shall be freely transferable. Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the Company Law Board/ Tribunal and it shall direct such company to register the transfer of shares.

The Company Law Board/Tribunal may, on an application made by a depository company participant or investor or the SEBI, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992, or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 or any other law for the time being in force, within two months from the date of transfer of any shares or debentures held by a depository or from the date on which the instrument of transfer or the intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records. [Section 111A(3)].

The Company Law Board/Tribunal while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry. The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the Company Law Board/Tribunal.

17. Refusal to register of transfer of shares by a public limited company

In the case of *P.R. Gokkale* v *Tamilnadu Mercantile Bank Ltd*., the petitioner has sought for a direction to the respondent Bank to register 10 shares lodged by the petitioner for registration of transfer, which the Bank has refused to do.

According to the petitioner, he had purchased 10 shares in June, 1999 and lodged the same with the Bank for registration of transfer. The Bank returned the share certificate along with the transfer deed on the ground that the documents had been filed beyond the validity period of two months from the date of presentation to the prescribed authority and that the stamps had not been properly cancelled. Thereafter, he lodged proper transfer instrument alongwith the share certificate to the Bank on 19th August, 1999. However, the Bank through a letter dated 12th October, 1999 informed the petitioner that the Board of Directors had decided to refuse registration of transfer. On a further representation made by the petitioner seeking registration of transfer, the Bank informed the petitioner that the Board of Directors had once again refused registration of transfer on the ground that the admission of the petitioner as a shareholder would not be in the best interest of the Bank, and as such once again, the Bank refused to register the transfer of shares.

In its reply, the Bank has submitted that the petitioner is an ex-employee of the Bank and had been dismissed for various irregularities committed by him while in service with the Bank and therefore the Board of Directors suspected that the purchase of the shares by the petitioner would not be for the purpose of investments, but to devise strategy to drag the bank into further litigation and therefore, rejected the registration of transfer.

It was held that the Bank being a public company, is governed by the provisions of section 111A, according to which, the shares of a public company are freely transferable. The power to refuse registration of transfer in public companies is limited only to the grounds as indicated in section 111A(3). In the present case, the ground on which the Board of Directors of the Bank had refused registration of transfer of the 10 shares lodged by the petitioner is not governed by the provisions of section 111A(3). Therefore, the refusal to register the transfer of shares is without sufficient cause and the Bank was directed to register the shares impugned in the petition within one month from the date the petitioner lodges transfer instrument along with the share script with the Bank.

In the case of *Satyam Computer Services Ltd.* v *Pratibha Dilip Karnad & Dilip Raghuveer Karnad, C.P.* No. 13/111A/SRB/2000 (Chennai) M/s Satyam Computer Services Limited in which the petitioner hold shares, has not dematerialised 100 shares for which the petitioner has made a request to the Company and that it has not issued 100 bonus shares in respect of the above 100 shares.

According to the petitioner, he acquired 700 shares by way of transfer which were all registered in his name. In addition, he had purchased another 550 shares which were also registered in his name. These 550 shares were dematerialised while the other 700 shares were in physical form. Later when he sent these 700 shares for de-mat, the Company dematerialised only 600 shares. The Company had declared 1:1 bonus shares and as against the entitlement of the petitioner of 1,250 bonus shares, the Company credited in his de-mat account only 1,150 shares. Thus, according to the petitioner, the Company has failed to credit his demat account with 200 shares (including 100 bonus shares) and as such he has sought for suitable direction to the Company in this regard.

According to the Company, when the petitioner sent his 700 shares for dematerialisation, one Mrs. Veena Agarwal had filed a civil suit before Additional Civil Judge Court, Agra claiming title over 100 shares in respect of share certificate 117752 and the said Court has passed a decree directing the respondents to issue duplicate shares in respect of these 100 shares. Since the proceedings in respect of the 100 shares were pending in the civil court, the impugned shares have been marked under Stop Transfer and also kept the 100 bonus shares in reserve. All the dividends attributable to these shares are also kept in reserve. According to the Company, the name of the petitioner continues as the registered holder of these 200 shares and as such the question of rectification of register does not arise. However, the petitioners have in rejoinder contended that the civil suit filed by Mrs. Veena Agarwal cannot in any way affect title of the petitioner in respect of the impugned shares and claimed compensation for the loss sustained by the petitioners on account of callous attitude of the Company. It has also been contended in the rejoinder that the Company had delayed dematerialising 600 shares by over 10 months, because of which, the petitioners could not sell the shares either in physical form or in dematerialised form, because of which they have lost about Rs. 32 lakhs. They have sought for directing the Company to compensate them for loss.

The Court has ordered delivery of the 100 shares to the plaintiff. Since the date of order of the Civil Court is 20.06.1998 and since bonus shares were issued in respect of these 100 shares only in 1999, the order of the civil court in respect of the original 100 shares would cover these bonus shares also. Since the name of the petitioner continues as the registered shareholder in the register of members of the Company, the question of ordering rectification of the register of members does not arise. As far as the prayer of the petitioners for directing the Company to pay compensation for the delay in dematerialization of 600 shares, the granting of such prayer is beyond the scope of section 111A.

In the case of *Goutam Mukherjee* v *D N Choudhury Cotton Mills Ltd.* (2006) 72 CLA 377 (CLB) three petitioners filed petition seeking for direction to the company to register the transfer of the impugned shares in their names. The company took a stand that the petitions have been filed with an oblique motive at the behest of the transferor who has been trying to interfere in the management of the company for a very long time. The transferor has transferred the shares to the petitioners only with a view to cause mischief in the affairs of company. Therefore the Board of Directors at its meeting decided to reject the application for transfer on the ground that the motive of transfer of shares in favour of the petitioners was to clothe them with share qualification to become a director and in order to create mischief in the affairs of the company.

On behalf of petitioners, it was submitted that the shares impugned in these petitions being 65 in number, constitute a very negligible percentage of the total equity shares of 1.24 lakh. The petitioners are bona fide purchasers for valuable consideration. On behalf of company, it was submitted that it would not be in the interest of the company to register the transfer of the impugned shares in favour of the petitioners. The CLB held that it is a settled law that even when the articles clothe the Board of directors with unrestricted or absolute powers in the matter of registration of transfers, the same should be exercised bona fide and in the interest of the company and the registration cannot be refused on wrong principles.

In the present case, other than the allegation that the three petitioners are associated with the transferor, there is no other justifiable ground, which has been adduced for rejection to register the transfer of impugned shares. Thus it is apparent that the stand taken by the company is definitely on wrong and unsustainable grounds. Therefore the company should register the impugned shares in favour of the petitioners.

18. Whether period of limitation would start from the date of transfer or from the date of knowledge

As per section 111A(3) an application for rectification is to be filed within two months of the date of transfers. In cases, where the statute itself mandates disclosure of the acquisition by transfer, then the date of disclosure failing which the date of knowledge of transfer of shares would be the starting date of limitation. In *Smt. Nupur Mitra* v *Basubani Private Limited* [CAL LT 1999 (2) HC 264], the petitioners filed a petition under section 111 in 1998 alleging that the company had allotted shares in 1950 without following the provisions of section 105C of the Companies Act 1913 and that the petitioners had come to know of the violation only in 1996. Since the petition was filed nearly 50 years after the allotment, the CLB dismissed that petition as time barred. On appeal, the High Court observed that in case of violation of mandatory statutory provisions, the limitation would start only from the date of knowledge of the violation and remanded the case back to the CLB for considering the merits of the case.

19. Transfer in less than marketable lot

As directed by the Stock Exchange, where the shares of a company are listed, the company may refuse to register transfer for less than the marketable lot. The Articles of the company must have provision to deal with this matter.

Where the marketable lot in a company is 50 equity shares of Rs. 10 each, its Articles may provide that the Directors, shall be entitled to refuse an application for registration of a transfer of less than 50 equity shares but the condition shall not apply in the following cases:—

(1) a transfer made in pursuance of a statutory provision or by order of a court.

(2) when a shareholder transfers his entire holding of less than 50 shares to a single name or in joint names.

(3) a transfer of all the equity shares of a shareholder having less than 50 shares to one or more transferees so that the holding of the transferees will not be less than 50 shares.

(4) a transferor holding shares in marketable lot and some odd lot may transfer the odd lot in less than marketable lot in such a way that the balance shares left with him will not be less than 50 equity shares.

In *Dipak Kumar Jayantilal Shah* v *Atul Products Ltd*. Case No. 42/111/CLB/WR 90, it was held that there is no prohibition under the Companies Act for holding share certificates below marketable lots. The provision of law will override the provision of Articles of Association.

20. Procedural steps to be followed for transfer of shares

(*i*) Obtain the transfer deed Form 7B, endorsed by the prescribed authority.

(*ii*) The instrument of transfer may not be in the prescribed form in the following cases:—

(*a*) Shares transferred by a director or nominee on behalf of another body corporate under section 49(2) and (3);

(*b*) Shares transferred by a director or nominee on behalf of a corporation owned or controlled by the Central or State Government;

(*c*) Shares transferred by way of deposit as a security for repayment of any loan or advance if they are made with any one of the following:—

(*i*) State Bank of India; or

(*ii*) Any scheduled bank; or

(*iii*) Any other banking company; or

(*iv*) Financial institution; or

(*v*) Central Government; or

(*vi*) State Government; or

(*vii*) Any corporation owned or controlled by the Central or State Government; or

(*viii*) Trustees who have filed the declarations.

(*iii*) For transferring debentures, the instrument of transfer need not be in the prescribed Form 7B but this Form can be used, being convenient to do so.

(*iv*) Get the transfer deed duly executed both by the transferor and the transferee or on their behalf in accordance with sections 108 and 109 of the Act and the Articles of Association, in case of shares, and also in accordance with trust deed in the case of debentures.

Requirement of execution of the transfer form by each of the joint shareholders cannot be met by execution of the transfer form by one of the shareholders even though between the share holders *inter se* there is an agreement that one shareholder can sign on behalf of all the other shareholders. [*Smt. Claude-Lila Parulekar* v *Sakal Papers* (*P*) *Ltd.* (2005) 59 SCL 414 (SC)].

(*v*) The transfer deed should bear stamps according to the Indian Stamp Act and Stamp Duty Notification in force in the State concerned. The present rate of transfer of shares is 25 Paise for every one hundred rupees of the value of shares or part thereof.

(*vi*) See that the stamps affixed on the transfer deed are cancelled at the time or before signing of the transfer deed.

(*vii*) The signatures of the transferor and the transferee in the share/debenture transfer deed must be witnessed by a person giving his signature, name and address.

(*viii*) Attach the relevant share or debenture certificate or allotment letter with the transfer deed and deliver the same to the company. The share transfer deed should be deposited with the company within the time limits.

(*ix*) Where the application is made by the transferor and relates to partly paid-up shares, the company has to give due notice of the amount due on shares/debentures to the transferee and the transferee shall raise objection, if any within two weeks from the date of receipt of the said notice.

(*x*) If signed transfer deed has been lost, affix the same stamp on a written application. In such case, the Board may, if it thinks fit to do so, register the transfer on such terms of indemnity as it thinks fit.

(*xi*) If the shares of the company are listed on a recognized Stock Exchange, then the company cannot charge any fee for registration of transfers of shares and debentures.

21. Power of directors to refuse transfer of shares

Section 111(13) of the Act, contains provisions regarding the power of directors to refuse registration of transfer of shares which says that, "Nothing contained in this section and section 108, 109 or 110 shall prejudice any power of a private company under its articles to enforce the restrictions contained therein against the right to transfer the shares of such company."

The Articles of private company contain provisions to restrict the transfer of its shares, so a wide discretion is vested in directors to refuse transfer and empowering the Board of directors to refuse to register transfers on any ground even without assigning any reason.

Thus, if the Articles empower the directors to refuse registration, if they do not approve of the transferor or transferee, they may do so only if they have some personal objection to the transferee, and it is not sufficient that they consider that the number of shares transferred to him is too small.

If a private company refuses to admit a person as a member by reason of the fact that the articles contain provisions to the effect that, if another member is willing to acquire the shares available for transfer, such member shall have priority over the outsider, in this situation the Company Law Board/Tribunal cannot find that such decision to decline admission to the outsider is improper or arbitrary or oppressive. The anxiety of the company to prefer a member or an outsider, to hold the shares subject of transfer, cannot be considered unreasonable or capricious. [*Chandran* (*PV*) v *Mabar and Pioneer Hosiery P. Ltd.* (1988) 2 Comp LJ 146 (Ker)].

If the Articles permit the directors to decline to register transfer of shares without stating the reasons, the Company Law Board/Tribunal would not draw unfavourable inference against the directors because they did not give reasons and the Company Law Board/Tribunal may assume that the directors acted reasonably and *bona fide* and those who allege to the contrary would have to prove and establish the same by evidence. However, if the directors gave reasons, the Company Law Board/Tribunal would consider whether they were legitimate and whether the directors proceeded on a right or wrong principle.

Therefore, while refusing to register transfer of shares, it is necessary that the directors must act in a good faith and for the benefit of a company and shareholders and not for some other purpose.

Power of refusal to register transfer of shares should be exercised strictly on the grounds specified in the Articles and not on the basis of any other grounds.

22. Whether registration of transfer of shares can be withheld on minor typographical errors?

Right of transferor could not be denied on minor grounds of technical discrepancies and this clearly amounted to denial of natural justice to him as well as denial of his legitimate legal rights as a member of the company.

The term 'sufficient cause' occurring in section 111(2) has to be seen with reference to the grounds under which a register of a company can be rectified after registration. It was only when a company refused to register transfer of shares on the grounds that transfer was in violation of the provision of SEBI act and regulation or any other law for the time being in force such refusal could be considered to be with sufficient cause.

23. Transfer of share certificate when original share certificates lost

If the transferee lost the share certificates, according to section 111A still the transferee can be register as a shareholder of company but he has to approach the CLB praying the issuance of duplicate share certificate and the register the same in his name. However, by executing indemnity bond, company can issue duplicate share certificate. [P*altina Securities (P) Ltd. Satyam Computers Services Ltd & others* Comp.Case 118, 7 Oct 2006]

24. Difference in the signature of transferor

It is common cause for refusal of transfer of shares due to the change or difference in the signature(s) of the transferor in the transfer deeds with the specimen signatures available in the records of the company. Generally, the signature(s) of the members changes after a period of time, and it creates a lot of time and burden on the company as well as the transferee. To avoid these situation, it is advisable to provide an option to the members for furnishing fresh specimen signatures for the records of the company. (*See* Appendix 1 for Format)

25. Whether it can ask transferee to furnish information on source of income, income tax returns for previous years?

There is no justification in the Bank asking for information on income tax returns, including that of nominees of the transferee, the source of consideration paid. The information sought had no nexus to the spirit of guidelines that were meant to alert the Board of directors against manipulations of the buyers to gain controlling interest in Banks. [*T.S. Premkumar* v *Tamil Nadu Mercantile Bank Ltd.* decided on May 11, 2001 (CLB)].

26. Whether the company has power to split share certificate into two values at the merger request of one of the shareholder without instrument of transfer?

The company has no power to divide and allot shares amongst joint holders of shares. In a case of this nature the company cannot register transfer of shares unless a proper instrument duly stamped was lodged in accordance with the provision of section 108. Without submission of such document the company's refusal to rectify its register would not amount to default and application under section 111/111A would not be maintainable. [*Dr. Rajiv Das* v *The United Press Ltd*. (CLB)].

27. Burden of proof on the transferee that Board of directors not acted *bona fide*

The Company Law Board/Tribunal will presume that Board of directors acted *bona fide* and the wrongful nature of refusal has to be proved by those who complain of it, *i.e.* the transferee. The directors cannot be compelled to disclose the reason for refusal to register transfer of shares and this cannot be taken as a ground for any adverse presumption against them. It is necessary for the aggrieved parties to establish that directors were failed to exercise their discretion for proper purpose or that they went outside the provisions of the Articles.

28. Refusal for transfer of shares should be exercised within two months

Power of refusal to register transfer of shares is to be exercised by the company within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be is delivered to the company. Therefore, the company shall be required to give notice of the refusal to register transfer of shares to the transferor and transferee within a period of two months from the lodgment of transfer documents. However, the company does not lose right of refusing to register a transfer by reason of its failure to exercise the power of refusal within two months. [*Shailesh Prabhudas Mehta* v *Calico Dyeing & Printing Mills Ltd.* (1994) 80 Comp Cas 64 (SC)].

29. Procedure for certification of transfer

(*i*) The transferor executes the instrument of transfer (after endorsement by the prescribed authority) and it is sent to the company along with the share certificate. The instrument need not then be dated and stamped.

(*ii*) The company shall retain the certificate and endorse the instrument as follows:

"Certificate for .... shares lodged with the company".

(*iii*) The endorsement will be authenticated by any officer or employee of the company or any other person, authorised to certify transfers on the company's behalf.

(*iv*) The instrument of transfer is then returned to the depositors along with balance receipt representing the shares not being transferred. No charge is made for issue of such receipts.

(*v*) It should be noted that certification does not give any warranty of the transferor's title, however, the company is responsible for negligent certification.

(*vi*) The particulars of registration shall be entered in a certification register for the purpose of record with the following particulars:

- (*a*) Date
- (*b*) Name of the transferor
- (*c*) Certificate of
  - (*i*) No.
  - (*ii*) Shares

(*d*) Particulars of certification:

(*i*) Shares

(*ii*) Distinctive numbers

(*e*) (*i*) Balance certificate No. and date

(*ii*) New share certificate No.

(*f*) (*i*) Name and address of the depositor.

(*ii*) Date of delivery of the new share certificate.

(*vii*) A new certificate for the balance shares will be delivered against surrender of the balance receipt.

(*viii*) When the certificated instrument is duly stamped, executed and delivered to the company, the transfer will be processed.

(*ix*) After the transfer is approved, a new certificate will be prepared in the name of the transferee and delivered to him.

30. Forged transfers

A person who brings a transfer to a company for registration not only affirms it is a genuine document, but warrants that it is so. The company is simply ministerial in registering a transfer; it cannot inquire into the transaction out of which the transfer arises. Where, therefore, a company acts in good faith and registers a transfer produced by the transferee and issues fresh certificates to him but later it is found that the transfer was forged and the company is compelled to restore the shares, the transferee is liable to indemnify the company against its liability. The company may not however be able to claim a complete indemnity if it is guilty of negligence in failing to spot the forgery.

Thus, if a forged transfer is presented for registration and the company acts upon it, it may incur a serious liability, for the registration of the transfer does not defeat the title of the true owner of the shares, and has a right to require the company to restore his name. The company may, on discovering the forgery, remove the name of the transferee from the registration; it is not estopped by registration. But if the company has issued to the transferee a share certificate and *a bona fide* buyer has, acting upon the certificate, purchased the shares from the transferee (who had forged the transfer) the company may be liable in damages to the subsequent buyer, since a certificate under the seal of the company estoppes the company from denying the title of a person who has accepted acted on the certificate.

A forged transfer of shares is a nullity and cannot affect the title of the shareholder whose signature is forged. If the company, therefore, has registered the forged transfer and removed the true owner of the shares from the register, it can be compelled to replace him. It can then claim an indemnity from the person who sent the forged transfer for registration if it has sustained loss through acting thereon. No estoppel in favour of such person arises from a share certificate issued to him even though he knows nothing of the forgery he has not relied on the act of the company in issuing the certificate.

If there is any fraud or forgery in holding shares or very title to the shares, then such issues will be beyond the jurisdiction of company court and will have to decide by the Civil Court.

31. Remedy for refusal of transfer of Shares

31.1. Appeal against refusal to register transfer of shares

In the case of refusal, the transferee, or the person who gave intimation of the transfer or transmission of shares by operation of law, as the case may be, may appeal to the Company Law Board/Tribunal against any refusal of the company to register the transfer or transmission or against any failure on its part within the period of two months as stated under section 111(1) of the Act, either to register the transfer or transmission or to send notice of its refusal to register the same. [Section 111(2)].

31.2. Whether the Registrar is an 'aggrieved person'?

The person aggrieved would be the person who was personally and directly affected by an offence and not any member of the public or even a person who was charged with the duty of enforcing prohibitory regulations under a statute.

In *Nestle India Ltd.* v *State* (2000) 36 CLA 280 (Del), it was held that when an offence was committed against a person, the Court could take cognizance of the offence either on a police report or on the complaint of the aggrieved person. In both these cases a complaint could be made within six months of the commission of the offence. Police officer was an officer enjoined by Law to take steps to bring the offender to book. The position of the Registrar who was the complainant in this case akin to that of a police officer. If the police officer was not an aggrieved person, the RoC would also not be an aggrieved person. An aggrieved person would be one who was directly affected by the acts of commission or omission of another person.

31.3. Time limit for preferring appeal to the Company Law Board/Tribunal

An appeal to the Company Law Board/Tribunal under section 111(2) of the Act shall be made within two months of the receipt of the notice of such refusal or, where no such notice has been sent by the company, within four months from the date on which the instrument of transfer, or the intimation of transmission, as the case may be, was delivered to the company. [Section 111(3)].

In the recent decision of the Supreme Court in *Canara Bank* v *Nuclear Corporation of India* (1995), it was held that the provision of the Limitation Act would be applicable to proceedings under section 111 of the Companies Act, 1956.

31.4. Order of Company Law Board/Tribunal

On appeal under section 111(2) of the Act, the Company Law Board/Tribunal may, after hearing the parties, either dismiss the appeal or reject the application or by order direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within ten days of the receipt of the order. The Company Law Board/Tribunal may, in the latter case, direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved [section 111(5)]. Further, the Company Law Board/Tribunal, while acting under section 111(5) of the Companies Act, 1956, may, at its discretion, make—

(*a*) such interim orders, including any orders as to, injunction or stay, as it may deem fit and just;

(*b*) such orders as to costs as it thinks fit; and

(*c*) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

31.5. Whether complaint for transfer of shares is to be filed in the state of corporate office or in the state of transferor where he resides?

Registration of the transferred shares is the duty of the company, in the course of conducting its business according to the provision of law applicable to its business. Once the company and the law applicable to its functioning had permitted the transactions of purchase and sale of its shares throughout the length and breadth of the country for its gain, the interest of the members of the public transacting such business could not be allowed to be defeated on the plea that relief to the aggrieved person could be granted only at the place where the office of the company was located. Such approach would frustrate the very purpose of the relevant provisions of the Companies Act and other allied Acts. [*Dr. Jitendra Nath Saha & ANR* v *Shyamal Mondal*, Petition 245 (111) ERB/92]

32. Rectification in the Register of members

Sections 111(4) to 111(8) of the Companies Act, 1956 contain provisions as regards rectification of register of members and debentureholders.

Section 111(11) of the Act, stipulates that in the case of a private company which is not subsidiary of a public company, where the right to any shares or interest of member in, or debentures of, the company is transmitted by a sale thereof held by a Court or other public authority, the provisions of sections 111(4) to 111(7) of the Companies Act, 1956 shall apply as if the company were a public company.

As per section 111(2) register of members can be rectified only on three grounds namely the transfer was in contravention of the provision of SEBI Act, 1992 or regulations hereunder, the provisions of Sick Industrial company (Special Provision) Act, 1985 or any other law for the time being in force. Refusal on any other ground could not be considered to be for 'sufficient cause'.

The expression 'or any other law for the time being in force' has to be read in the context of the other words used in the sub section and would be confined to statute law and not case law. [*McDowell & Co. Ltd.* v *Shaw Wallace & Co. Ltd.* (2002) 108 Comp Cas 306 (CLB)].

Tradable warrants are neither nether shares nor debentures. In the case of *Indian Petro Chemicals Corp. Ltd.* v *State of Rajasthan* (2000) 39 CLA 70 (Raj), it was held that under the terms of offer only those warrant holder who had exercised the option and had paid for shares are entitled for allotment of shares and on such failure their right will become extinct.

Section 111A has to be interpreted in such manner that it provides additional benefit to shareholders in public companies which they already enjoyed and continue to enjoy under section 111. Absence of term 'intimation of transmission' in proviso to section 111A(2) cannot be construed to mean that no remedy of appeal is available to shares which are transmitted by operation of law. Remedies of appeal and rectification are available to all kinds of shares held in public company under proviso to section 111A(2) and section 111A(3); the remedies under the proviso to sections 111A(2) and 111A(3) are available to transfer as well as transmission matters. [*Finolex Industries Ltd.* v *A.R. Chhabria* (2000) 26 SCL 233 (Bom)].

Remedy of rectification of register on transfer provided in section 111A would not be applicable to private companies. [*Finolex Industries Ltd.* v *Anil Ramchand Chhabria* (2000) 26 SCL 233 (Bom)].

33. Who can apply for rectification?

Any of the following persons may apply to the Company Law Board/Tribunal for rectification in the register of members:—

(*a*) aggrieved person;

(*b*) any member of the company; or

(*c*) the company.

34. Circumstances in which application may be made to the Company Law Board/Tribunal

Section 111(4) provides that application to the Company Law Board/Tribunal may be made if—

(*a*) the name of any person—

(1) is without sufficient cause, entered in the register of members of a company; or

(2) after having been entered in the register, is without sufficient cause, omitted therefrom; or

(*b*) default is made, or unnecessary delay takes place in entering in the register the fact of any person having become, or ceased to be, member including a refusal under section 111(1).

35. Order of the Company Law Board/Tribunal on the application

The Company Law Board/Tribunal may, after hearing the parties, either reject the application 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 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 aggrieved party. [Section 111(5)]

Section 111(6) of the Companies Act, 1956 states that the Company Law Board/Tribunal, while acting under section 111(5) of the Companies Act, 1956 may, at its discretion, make—

(1) such interim order, including any order as to, injunction or stay, as it may deem fit and just;

(2) such order as to costs as it thinks fit; and

(3) incidental or consequential orders regarding payment of dividend or the allotment of bonus or right shares.

CLB [substituted by the Tribunal by the Companies (Second Amendment) Act, 2002, necessary notification is yet to be issued by the Central Government] under section 111(6) may make such interim orders as it may deem fit and it may pass an order of injunction or stay. It may also make incidental or consequential orders regarding payment of dividend etc. Order of injunction against the sale of a substantial asset could be passed by the CLB. [*A.J. Coelho* v *South India Tea & Coffee Estates Ltd.* (1997) 25 CLA 89 (CLB)].

36. Scope of inquiry of the Company Law Board/Tribunal

The Company Law Board/Tribunal, on an application made under section 111 of the Companies Act, 1956—

(*a*) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register;

(*b*) generally, may decide any question which is necessary or expedient to decide in connection with the application for rectification. [Section 111(7)]

In the case of *Centurion Bank Ltd.* v *Bellary Steels and Alloys Ltd*. (2004) 120 Comp Cas 439 (CLB), the petitioner bank had provided a term loan to the borrower and the borrower by way of security pledged shares of the respondent company with the bank. Upon failure of the borrower to repay the loan, the bank sought to register the pledged shares in its name and sent the same to the respondent company which refused to register the shares on the ground that they belong and form part of promoter's holding and prior permission of the financial institutions was necessary to effect transfer. Aggrieved by the refusal to register the shares the bank approached the CLB. It was held by the CLB that the bank sought transfer of shares on non repayment of the loan by the borrower, thus, there was no requirement of notice u/s 176 of the Contract Act. The power of refusal of registration of the transfer in favour of the bank exercised by the Board of Directors invoking Article 12(*c*) of the AOA of the respondent company, apart from not falling within 'sufficient cause' specified in section 111A of the Act, could not bar the bank from enforcing its rights as pledgee of shares. Hence, the company should register the transfer of shares in favour of the bank.

TRANSMISSION OF SHARES

37. Transmission of shares

A transmission of shares or other interest in a company of a deceased member thereof made by the legal representative of a deceased member of the company shall be considered as transmission of shares by operation of law and will be registered by a company in the Register of Members.

37.1. Execution of transfer deed not required in case of transmission of shares

Section 108(1) of the Act states that nothing in section 108 shall prejudice any power of the company to register as holder of shares or debentures any person to whom the right to any shares in, or debentures of, the company has been transmitted by operation of law. It is not necessary to have any instrument of transfer executed for the purpose of transmission of shares.

Where title to the shares comes to vest in another person by operation of law, it is not necessary to submit transfer form. [*Life Insurance Corpn. of India* v *Bokaro & Ramgur Ltd*. (1966) 36 Comp Cas 490 (Del].

The procedure provided under sections 108 to 111 is not applicable to transmission of shares by order of a Court. [*Hanuman Mills* (*P*) *Ltd*., *In re* (1977) 47 Comp Cas 644 (All)].

However, Regulation Nos. 25 to 28 of Table A in Schedule I to the Act contains some regulations dealing with transmission of shares which are generally found in the Articles of most companies. On registration of the transmission of shares, the person entitled to such transmission becomes the shareholder of the company and enjoys all rights and liabilities of a shareholder.

37.2. Transmission shall be subject to the liabilities, if any

In the case of a transmission of shares, shares continue to be subject to the original liabilities, and if there was any lien on the shares for any sums due, the lien would subsist, notwithstanding the devaluation of the shares.

37.3. Requirement of documents/evidences for transmission of shares

Where title to shares comes to vest in another person by operation of law, it is not necessary to execute and submit transfer deed. A simple application (Appendix 2) to the company by a legal representative alongwith the following necessary evidences is sufficient:—

(*i*) Certified copy of death certificate;

(*ii*) Succession certificate;

(*iii*) Probate;

(*iv*) Specimen signature of the successor.

However, requirement of these certificates is not essential and depends on various circumstances of the case. Where a succession certificate has been granted in respect of shares, the company cannot insist on the production of probate or letters of administration; the certificate affords full indemnity to company. [*Thenappa Chettiar* v *Indian Overseas Bank Ltd*. (1943) 13 Comp Cas 202 (Mad)].

37.4. No requirement of consideration and payment of stamp duty

Since the transmission is by operation of law, neither consideration for transfer nor stamp duty is required on instruments for transmission.

37.5. Transmission in case of joint holding

Regulation 25 in Table A provides that on the death of a member where he was a joint holder, the survivor or survivors shall be the only persons recognised by the company as having any title to his interest in the shares. The legal heir of the deceased member is not entitled to get registered as a jointholder alongwith the surviving holder.

38. Procedure for transmission of shares

(*i*) The survivors in case of joint holding can get the shares transmitted in their names by production of the death certificate of the deceased holder of shares. The company records the particulars of the death certificate and a reference number of recording entry is given to the shareholder so as to enable him to quote such number in all future correspondence with the company.

(*ii*) If a member of a company dies and he leaves after him a will or letter of administration then the survivors shall get a copy of 'will' certified under the seal of a Court of competent jurisdiction. The certified copy of the will is called a 'probate' and it shall be forwarded to the company.

(*iii*) If a member of a company dies without leaving a will, then succession certificate issued by a Court of competent jurisdiction shall be submitted to the company.

(*iv*) In case a member of a company becomes bankrupt, the official receiver shall produce documentary evidence of his appointment from a competent Court.

38.1. Transmission could be effected without succession certificate in case of small holdings

In the case of small holdings, transmission of securities may be considered and effected by a company without obtaining succession certificate. However, the Board of directors should ensure that sufficient evidence has been produced by the legal heirs. The following documents are required to be submitted to the company:—

(*a*) Certified copy of a death certificate.

(*b*) Particulars and signature of all legal heirs.

(*c*) Affidavit on non-judicial stamp paper certified by a first class magistrate or notary public. (Appendix 3)

(*d*) Deed for disclaimer. (Appendix 4)

(*e*) Indemnity bond on non-judicial stamp paper. (Appendix 5)

It would be in order for the Board to register transmission of shares by obtaining indemnity bond rather than insisting upon production of succession certificate.

38.2. Right to intestate property on grant of letters of administration

Section 212 of Indian Succession Act, 1925 provides that no right of the property of a person who had died without leaving any will can be established in any Court, unless letter of administration has been granted by a Court of competent jurisdiction.

This section does not apply in the case of the intestacy of a Hindu, Mohammedan, Buddhist, Sikh, Jain, Indian Christian or Parsi and thus has very limited application.

38.3. Right to dividend, rights shares and bonus shares to legal representative shall be kept in abeyance

As per the regulation 28 in Table A, a person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the shares.

According to section 206(1) of the Companies Act, it is not permissible for a company to pay dividend declared after the death of a shareholder to his legal representatives, even though they may have obtained legal representation, unless they have been brought in the register as shareholders. However, dividend declared before the death of the shareholder will be payable to them as debt due to the estate of the deceased shareholder.

When a succession certificate is granted by the Court, it shall specify the debts and securities set forth in the application for the certificate and may empower the applicant to receive interest or dividend on the securities, etc.

38.4. Legal representatives of a deceased member shall not be entitled to exercise voting rights

The legal representative of a deceased member shall not be entitled to exercise voting and other rights in general meetings of the company unless he is registered as a member in respect of the shares.

Transfer is a transfer of property during the lifetime of the owner and it has to be distinguished from testamentary transfer and succession where the property passes on death. Under section 211 of the Indian Succession Act the executors of a deceased person are the legal representatives for all purposes and the property of the deceased person vest in him or them as such. But the executors do not become members of the company unless their names are registered. Therefore, on the death of the shareholder his right to the shares or other interest as a member of the company devolved on the petitioners as executors. [*Hemendra Prasad Barooah* v *Bahadur Tea Co.* (*P*) *Ltd*. (1997) 4 Comp LJ 436 (Gau)].

38.5 Requirement of probate

Section 213(1) of Indian Succession Act, 1925 provides that no right as an executor or legatee be established in any Court, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed. It is not necessary to have the will registered for the purpose. This section requires production of probate only in two cases: (*i*) when a person wants to establish a right as an executor, and (*ii*) when he wants to establish his right as a legatee.

38.6 Succession certificate is not required if probate is issued

Section 370 of the Indian Succession Act states that a succession certificate shall not be granted under Part X with respect to any debt or security to which a right is required by section 212 of the Act or section 213 of the Act to be established by letter of administration or probate, *i.e.* no succession certificate is required when probate or letter of administration is issued.

Succession certificate granted under Part X with respect to shares held by a deceased affords full indemnity to the company in respect of such shares and the applicant is entitled to have the shares transmitted by operation of law in his own name.

38.7 Transmission in case of amalgamation

The transfer of shares in amalgamation would not require execution of instrument of transfer or any other formalities under section 108 of the Companies Act. This is a case of transmission of shares by operation of law, inasmuch as, by virtue of an order of the High Court/Tribunal under section 394 of the Companies Act on sanctioning a scheme of amalgamation, all assets and liabilities of the transferor company vest, by operation of law, in the transferee company.

39. Refusal to register transfer/transmission of shares

A private company may refuse to register transfer or transmission of shares in pursuance of any power conferred on it by the Articles or otherwise, provided intimation shall be sent to this effect by the company. The company shall, within two months from the date on which an application of transmission was delivered, to the company, send notice of the refusal to the person giving intimation of such transmission, giving reasons for such refusal under section 111(1) of the Act.

A private company can decline to register transfer or transmission of shares only on those grounds, which are contained in its Articles.

Provisions of section 111 of the Companies Act, 1956 would no longer apply to the cases of refusal to register transfer/transmission of shares, debentures of both listed and unlisted public companies. Now the only remedy to aggrieved person is as provided under section 111A of the Companies Act, 1956, which is rectification of registration only on grounds specified in sub-section (3) of section 111A.

As per provisions of section 111A(3), the Company Law Board/Tribunal may, after such inquiry as it thinks fit, direct any company or depository to rectify register or records if the transfer of the shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 or regulations made thereunder. Thus, it has abrogated the right to refuse registration of transfer of shares in all public companies on any ground. It would be obligatory for them to register such transfer but after having registered such transfer, the company may approach the Company Law Board/Tribunal for an order of rectification so that it can delete the transferor's name from its register subsequently.

39.1. Was the delay in refusal to register transmission with sufficient cause?

The term 'sufficient cause' would cover only those grounds under which one can seek rectification of the register of members under section 111A(3).

39.2. Registration of transmission of shares

In the case of transmission there is an instantaneous transfer of ownership of shares to the heirs of last holder from the moment of his death except that it may be necessary for the heir to produce a succession certificate. The succession certificate produced by the petitioner is conclusive evidence; it is the statutory duty of a company to register transfer/transmission once there is legal compliance.

39.3. Petition for transmission not considered by the Board

In *Anil Chhabria* v *Finolex Industries Ltd.* (1999) 35 CLA 213 (CLB), it was held that there was nothing on record to show that the Board of directors considered the delivery of intimation of transmission after the succession certificate has been lodged. Indeed there is no indication that the Board of directors had ever considered the matter; all the time it was Company Secretary who had been writing to the petitioner. In the instant case the chairman is related to the petitioners. There is an allegation that he was delaying the transmission. The delay in transmission in the circumstances is not bona fide.

40. Appeal against refusal to register transmission of shares

The transferee, or the person who gave intimation of the transmission by operation of law, as the case may be, may appeal to the Company Law Board/Tribunal against any refusal of the company to register the transfer or transmission or against any failure on its part as stated under section 111(1) of Companies Act, either to register the transfer or transmission or to send notice of its refusal to register. [Section 111(2)]

40.1. Whether intermediatory in transaction of transfer of shares has a right to file appeal under section 10F?

A stranger to section 111(2) by no means can be called 'any person aggrieved'. The word 'aggrieved' refers to a person having a substantial grievance, a person who has been denied some personal or property right. The mere fact that the transferor to transferee had not chosen to prefer an appeal before the Board, it would be no ground to permit the appellant to prefer an appeal on the alleged ground that he had suffered monetary loss. [*Vinod K. Patel* v *Industrial Finance Corporation of India* (1999) 35 CLA 376 (Del)].

40.2. Company cannot withhold transmission on account that the Court fee paid was insufficient

So far as the court fee is concerned, it is for the Court to satisfy about its correct payment and if it is found that it was insufficiently paid, the court can direct its recovery together with penalty, if any leviable. At any rate it is not for the company to withhold transmission of shares on this count. Once the succession certificate has been produced, the company ought to have effected transmission of shares on the basis of that certificate. [*Arjun Kumar Israni* v *Cipla Ltd.* (Appeal No. 2/111/CLB/WR/95 (CLB)].

40.3. Time-limit for filing an appeal with the Company Law Board/Tribunal

An appeal under section 111(2) of Companies Act, 1956 shall be made within two months of the receipt of the notice of such refusal or where no notice has been sent by the company within four months from the date on which intimation of transmission was delivered to the company under section 111(3) of Companies Act, 1956.

41. Procedure relating to transmission of shares

(*i*) Transmission is devaluation of title by operation of law.

(*ii*) No instrument of transfer (Transfer Deed) is necessary.

(*iii*) If there was any lien on the shares or any original liabilities, it would subsist even after transmission.

(*iv*) A simple application with certain documents such as death certificate, succession certificate, probate, etc., depending upon various circumstances may be sufficient for transmission.

(*v*) In case of joint holding, the survivor or survivors shall only be entitled for registration and the legal heir of the deceased member shall have no right or claims.

(*vi*) Dividend declared before the death of the shareholder will be payable to legal representative but dividend declared after the death of a member can be paid to him only after registration of his name and till that period it has to be kept in abeyance.

(*vii*) Succession certificate is not required when probate or letter of administration is issued.

(*viii*) Once succession certificate is granted, it provides full indemnity to the company to transmit the shares by operation of law.

(*ix*) In case of amalgamation, no instrument of transfer is required to be executed.

(*x*) In case of shares of a private company, if company refuses to register transmission, notice of such intention within two months giving reasons must be sent by the company to the person sending intimation.

(*xi*) Remedies provided under section 111 are no longer applicable on listed/unlisted public companies.

(*xii*) New section 111A abrogates the right of the public company to refuse registration of transfer/transmission of share and debenture on any grounds.

(*xiii*) The companies, after registration of transfer, may approach the Company Law Board/Tribunal for an order of rectification in case the transfer is in contravention of any of the provisions of the Companies Act, 1956 or any other Act.

42. Brief checklist for scrutiny for transfer documents

42.1. Instrument of transfer

1. Instrument of transfer in prescribed Form 7B
2. Form 7B dated by the prescribed authority under section 108(1A)
3. Form 7B to be lodged within the time limit prescribed in section 108(1A)(b)
4. Is the time limit for lodgement of instrument extended by the Registrar under section 108(1D)?
5. Amount of consideration should be correctly mentioned in words and figures
6. Submission of related share certificate(s) to be transferred

42.2. Particulars of Transferor

1. The following particulars written in the instrument shall conform to those in the Register of members:

(*i*) Transfer's folio

(*ii*) Transferor's name(s)

(*iii*) Number of shares

(*iv*) Distinctive number of shares

(*v*) Number(s) of share certificates.

2. Form 7B shall be signed by all the joint transferors

3. Transferor's signature shall tally with the specimen signature

4. Transferor's signature shall be attested by the proper authority if it do not tally

5. Transferor's signature/thumb impression shall be duly witnessed.

42.3. Transferee's particulars

1. All the particulars of transferee should be fully and properly written

2. Form 7B shall be signed by the transferee and his signature/thumb impression shall be duly witnessed

42.4. Stamp Duty

1. Form 7B shall bear share transfer stamps of requisite value on the basis of the value of shares as on the date of execution of the instrument

2. Stamp affixed shall be duly cancelled

42.5. General

1. If the transferee is a minor, Form 7B should be properly executed by the minor's guardian

2. If the transferee is a body corporate, a copy of Board resolution/general meeting resolution, as the case may be, shall be furnished

3. In case any of the party is a person resident outside India, necessary approval under FEMA Act shall be obtained

4. In case of listed company, comply with the formalities of listing agreement and SEBI (DIP) Guidelines.

Appendix 1

Specimen of Signature(s) Form

To

Dear Shareholder(s)

Sub: Request for fresh Specimen Signature(s)

1. Your specimen signature(s) recorded with us are old and/or pattern of which in course of time may have undergone changes.
2. For providing better services to our shareholders and also to update our records we request you to kindly arrange to forward to us your fresh specimen signature(s) (in enclosed form) signed by you/all shareholder(s) and duly attested by the Manager of a Bank with whom you are maintaining your bank account.
3. On receipt of your duly attested signature(s), we shall update our records.
4. Please always quote your Ledger Folio while replying to us.
5. We solicit your kind co-operation in the matter.

Thanking You,
Yours faithfully,

DKJ
Company Secretary

SPECIMEN OF SIGNATURE(S) FORM

Ledger Folio No. .... Date: …...........

Name of the shareholder(s)	*Specimen signature(s) of shareholder(s)*	*Father's/husband's name*	*Occupation*
1.			
2.			
3.			

Address of the sole/1st shareholder:			
City:	State:	Pin Code:	

Signature to be Attested by Bank Manager

(Seal with Stamp of Bank, Full Name, designation of Manager of Bank
and address of the Bank)

Appendix 2

Specimen of application for transmission of shares

Dated 1st January, 2007

To,

The Board of Directors
FL Limited
117, Navneet Darshan,
16/2, Navneet Plaza,
Old Palasia,
Indore (M.P.)

Sub: Transmission of 2,500 Equity shares held by Shri Mubarik

Ref.: L.F. No. ....
Dear Sir(s),

I have to inform that my husband Late Shri Mubarik expired on ....………….. He was holding 2,500 Equity Shares of Rs. 10 each dully fully paid up in the company under L.F. No. .... Details of the Equity Shares being given hereunder:

Sl. No.	*Certificate No.* *From ..….... to.....*	*Dist. No*	*No. of Shares*

I, hereby submit the following documents for transmission of 2,500 Equity Shares in my name:

1. Copy of the death certificate obtained from Nagar Nigam, Indore.
2. Original disclaimer deed given by the other legal heirs in my favour duly notarized.
3. Original share certificates. (25 certificates as described above)
4. Specimen signatures of mine.

Kindly consider and arrange for transmission of the abovesaid shares in my favour as earliest and oblige.

Thanking you.
Yours faithfully
(MRS. ………............)
(WIFE OF LATE SHRI MUBARIK)

Encl.: a/a

Appendix 3

Specimen of Affidavit by legal heirs of deceased shareholder for Transmission of shares

I, XYZ aged about 45 years, residing at 32, Jawahar Marg, Indore do solemnly affirm and declare as follows:

1. That 2000 Equity shares in ABC Ltd, bearing distinctive no. from 2001 to 4000 of the face value of Rs. 10 each are registered in the name of Shri PQR in the books of the Company.
2. That Shri PQR died instate on 31st Dec., 2006 at his residence in Indore.
3. That under the Hindu Succession Act, 1956 Smt. XYZ aged 45 years residing at 32, Jawahar Marg, Indore is the only legal heir of Late Shri PQR.
4. That Late Shri PQR has not sold, transferred, pledged or otherwise disposed of the said shares.
5. That the said shares were the separate and self acquired property of Late Shri PQR.
6. That Late Shri PQR has left no other heir than person mentioned in para 3.
7. That I therefore request the Company to transmit the aforesaid shares and register them in my name in the books of the Company without production of succession certificate or letter of administration.

Dated: 20th Jan., 2007 — Signature of the Deponent

Before me — Signature and seal of Notary Public/Magistrate

Appendix 4

Specimen of Disclaimer Deed

THIS DISCLAIMER DEED is made at Indore (M.P.) on this day of .., 2007 between (1) Shri ...., (2) Shri ...., (3) Shri .... and (4) Shri .... all being sons of Late Shri ……… and all resident of .... hereinafter called as "the Disclaimers", of the ONE PART and Smt. ....W/O Late ……….. .... resident of ...., hereinafter called as Smt. ....., of the SECOND PART.

WHEREAS Shri ………….. now deceased was seized and possessed of the ………….. Equity Shares of Rs. 10 each fully paid of ………….. property bearing Share Certificate No. .... to .... Distinctive No. .... to .... and the said Shri ………….. has died on .... intestate.

AND WHEREAS the parties to this deed are the only persons entitled to in his estate.

AND WHEREAS on account of their natural love and affection, the disclaimers are desirous to transfer their rights in the above said shares of ………….. to Smt. .... for her own absolute use and benefit free from any encumbrances.

NOW THIS DEED WITNESSETH AS FOLLOWS:

(1) In pursuance of the said disclaimer deed, the said disclaimers as beneficial owner hereby assign and release unto Smt. .... from all their respective shares and interest in the Equity Shares of ………….. as detailed hereinabove and to hold the same unto the said Smt. .... as absolute owner without any encumbrance or charge.

(2) The disclaimers hereby agree, undertake and declare that none of them will have any right, title or interest in the above said Equity Shares of ……….. hereto which is left by the deceased Shri ……….. and Smt. .... will hold the said Equity Shares as absolute owner without any encumbrance or charge.

(3) The disclaimers include their respective heirs.

(4) The cost of the execution and registration of this Disclaimer Deed shall be borne by Smt. ....

(5) The disclaimers have obtained independent advice and they are fully aware of meaning and effect of this deed.

IN WITNESS THEREOF, the parties have set and subscribed their hands to this writing the day and year first hereinabove written.

Signed and delivered by the within named disclaimers

(1) Shri ....…....………………..
(2) Shri ....……....……………..
(3) Shri ....………....…………..

WITNESSES 1.
2.

Appendix 5

Specimen of Indemnity Bond for Transmission of shares

I, XYZ, aged about 45 years, residing at 32, Jawahar Marg, Indore do solemnly affirm and declare as follows:

1. That 2000 Equity shares in ABC Ltd, having its registered office at Silver Arc Plaza, Indore bearing distinctive no. from 2001 to 4000 of the face value of Rs. 10 each and on which Rs. 10 per share is paid are registered in the name of Shri PQR in the books of the Company.
2. That Shri PQR died instate on 31st Dec., 2006 at his residence in Indore leaving behind Smt. XYZ aged 45 years residing at 32, Jawahar Marg, Indore as the only legal heir under the Hindu Succession Act, 1956 entitled to inherit solely the aforesaid shares.
3. That the abovesaid shares were the separate and self acquired property of Late Shri PQR.

NOW THEREFORE

I, the undersigned, request the Company to transmit the aforesaid shares standing registered in the name of Late Shri PQR in my name and also to pay me any dividend payable on the aforesaid shares by the Company without production of succession certificate or letter of administration or probate.

In consideration of the Company having agreed to transmit and register the aforesaid shares in my name on my executing a bond in favour of the Company, I the applicant hereunder for myself, my executors, administrators and assigns do jointly and severally hereby covenant with the Company, its successors and assigns that I and each of my executors, administrators and assigns will, upon the Company transmitting and registering the said shares in my name and paying to me the dividend already due on the said shares, at all time save, defend, indemnify and keep indemnified the Company, its successors and assigns, its estate and effects, and its directors, manager, secretary and shareholders and their heirs, executors and assigns from and against all actions, proceedings, accounts, claims and demands whatsoever for or on account of the said shares or the dividends or any part thereof, or otherwise in connection with the shares or the dividends or any part thereof, or otherwise in connection with the same, and from and against all claims, damages, expenses and losses arising in any manner howsoever.

In witness whereof I, the applicant herein has signed and set my hand this 20th day of January, 2006.

WITNESS

1.

2.

Appendix 6

Specimen of Form 7C

[Pursuant to section 108(1D)]
Application for extension of time u/s 108(1D)

To,

The Registrar of Companies
Madhya Pradesh

Sanjay Complex
Jayendraganj
Gwalior (M.P.)

Sub: Extension of time u/s 108(1D) of the Companies Act, 1956

Dear Sir,

I, beg to apply for extension of time u/s 108(1D) of the Companies Act, 1956 and request you to kindly accord the same at an early date.

The brief particulars in respect of my holding are as under:

1. Name of the Company (with address) whose shares are the subject of transfer: PURVI ELECTRONICS LTD., Umbergam, Gujrat-396171
2. Name & address of the applicant seeking extension of time: Premala Prakash Mahajan, 301-C, Rajendra Nagar, B/H Tankey Hall, Indore
3. Number and nominal value of shares involved in each instrument of transfer: 200 Equity shares of Rs.10 each.
4. Name of the Transferee: 1. Premala Prakash Mahajan 2. Prakash Mahajan
5. Date of execution of transfer: 10th July, 1995
6. Date of expiry of the period of validity of the instrument of transfer in question: 17th August, 1995
7. Whether the applicant is still the rightful holder of transfer form: Yes
8. Name of the person in whose favour the shares stand registered in the books of the Company: 1) Limaye Shirish G. 2) Jt. Thorat Sayajirao
9. Reason given by the applicant for of the extension of time asked for: Due to non availability adequate time, deed could not be sent to the Company for effecting transfer and thereafter remained inadvertently with the transferee.
10. Particulars of the payment of application fee: Rs. 50 in cash

Place: PRAMALA P. MAHAJAN
Dated: APPLICANT

Appendix 7

Specimen of Board resolutions

I. For approval of share transfers

RESOLVED THAT the share transfer application(s) as described in the Share Transfer Register No. …….. to …….. for the transfer of Equity/Preference Shares of the company be and are hereby approved and that the transferees mentioned therein be registered as members of the company in the place of the respective Transferors in respect of the shares so transferred.

II. For approval of share transmission

RESOLVED THAT the application(s) as described in the Share Transfer Register being Transmission No. ..….. to ….. for the transfer of Equity/Preference Shares of the company be and are hereby approved and the persons mentioned in the column 'Transferees' in the share Transfer Register be registered members of the company in the place of the respective deceased shareholders.

III. For amendment in Articles for restriction on transfer

RESOLVED THAT the Articles of Association of the Company be altered by:

(*i*) inserting the following Article numbered Article 15A after Article 15:**—**

'15A. Notwithstanding anything contained in Article 15 hereof the Board may refuse any application for sub-division or consolidation of number of shares into denomination of less than

50 equity shares or less than 5 preference shares, as the case may be, except when such sub-division or consolidation is required to be made to comply with any law or statutory regulation or order or an order or a decree of a competent court;' and

(*ii*) inserting the following Article numbered 37A after Article 37:—

'37A. Without prejudice to the provisions of Article 37 hereof the Board may not accept any application for registration of transfer of less than 50 equity shares or less than 5 preference shares of the company, as the case may be, provided that the foregoing shall not apply to:

(a) a transfer of shares made in pursuance of any law or statutory regulation or order or an order or a decree of a competent court;

(b) a single transfer by a member holding less than 50 equity shares or less than 5 preference shares of the company, as the case may be, of all the shares so held by him to one or more transferees (subject to Article 13 hereof);

(*c*) a transfer by a member holding less than 50 equity shares or less than 5 preference shares of the company, as the case may be, to one or more transferees (Subject to Article 13 hereof) where after such transfer the shareholding of the said transferee or transferees will not be less than 50 equity shares or less than 5 preference shares, as the case may be;

(*d*) a transfer of not less than 50 equity shares or not less than 5 preference shares of the company, as the case may be, in the aggregate in favour of the same transferee by several transferors by two or more instruments of transfer submitted together by the said transferee where the said instruments of transfer together relate to not less than 50 equity shares or not less than 5 preference shares, as the case may be:

Provided nevertheless that the Board may at its discretion in exceptional circumstances and for avoiding any hardship or for any other just and sufficient cause (on which the Board's decision shall be final and conclusive) accept any application for registration of transfer of less than 50 equity shares or less than 5 preference shares of the company.

IV. For rejection of transfer of shares

RESOLVED THAT pursuant to section 111A of the Companies Act, 1956, registration of transfer of shares/debentures/bonds as per instruments of transfer lodged with the Company particulars whereof are contained in the respective Register submitted to the meeting at entries Nos….. (both inclusive) be refused for the reasons mentioned against each of the aforesaid entries and that the notice of refusal containing the aforesaid reasons be sent to the person(s) lodging the transfer/transferee and transferor.

RESOLVED FURTHER THAT in the event of any dividend being resolved to be paid pending the resolution of the question of registrability of the shares whose registration has been refused by the aforesaid resolution, the said dividend, in so far as it relates to the shares in question, be transferred to the Company's Unpaid Dividend Account.

RESOLVED FURTHER THAT pending the resolution of the question of registrability of the said shares offer of any rights shares or the issue of fully paid-up bonus shares, in do far as it relates to the shares in question, shall remain in abeyance in the interregnum.

Chapter 5

Calls, forfeiture and re-issuance of shares

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	292(1)(*a*)	Only Board may by resolution raise a valid call on shares.	
2.	91	Calls on shares of same class shall be made on uniform basis.	
3.	92	Powers of a company to accept unpaid share capital, although not called-up.	
4.	Regs. 13 to 18 and 29 to 35 of Table 'A'	Regulations of Table 'A' for calls and forfeiture of shares.	

CALLS

1. Call on shares may be raised by a resolution passed in the Board meeting

A company issuing shares to its members calls the money due on shares at intervals depending upon the requirements for funds for implementing the project, whereas the shareholders also prefer to pay the amount on their shares in installments.

The power to make calls is exercised by the Board in its meeting by means of a 'resolution' [Section 292(1)(*a*)]. The Board, in making a call, must observe the provisions of the articles, otherwise the call will be invalid, and the shareholder is not bound to pay. A call is a demand upon its shareholders to pay the whole or part of the balance still due on each class of shares allotted or held by them made at any time during the life of the company. The balance may be payable as and when called for in one or more calls. The prospectus and the articles of a company generally specify the amount payable at different times, as call(s).

2. In case of liquidation, calls may be made by the liquidator

A call may also be made by the liquidator in the course of winding up of the company.

3. Call is a debt due to the company

Under section 36(2) of the Act all moneys payable by any member to the company on the shares held by him under the memorandum or articles is a debt due from him to the company. In the event of default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares if the call is not paid. The liability of members is enforceable only after a proper notice which is called 'call letter' is given to him in accordance with the articles.

4. Notice for payment of calls must be in writing and must specify the amount called up, the date and place for payment

A proper notice must be given, and the notice must specify the amount called up, the date for payment and place and to whom it is to be paid. It may be emphasised that the time and place at which the call has to be paid are essential ingredients of a valid call. Apart from this rule, "in making call, care must be taken that the directors making it are duly appointed and qualified, the meeting of the directors has been duly convened, proper quorum was present, and that the resolution making the call was duly passed and specifies the amount of the call, the time and place of payment — for these are the essence and to whom the call is to be paid" (Palmer's Company Law). A proper resolution must be passed at a meeting of the Board. (*See* Appendix 1) Moreover, the call must be made uniformly on all shares relating to the same class.

The Board resolution must state the amount, time and place of payment. Otherwise, the resolution will be defective and the call will be invalid.

Omission to fix time for payment of call makes resolution of board invalid; fixing by directors of person to whom the payment is to be made and the place where the payment is to be made are not material requisites.

In *E & W Insurance Co. Ltd.* v *Kamala Mehta* AIR 1956 Bom 537, the directors of the company decided to make call and passed two resolutions therefor. None of the resolutions specified the date and time of payment. The blanks were filled subsequently by the secretary who sent the notice. The call notice was held to be invalid.

A call notice which does not specify time of payment is not valid but in case of directors who were present in meeting where resolution for call was adopted, plea of want of notice is not available. [*Major Teja Singh* v *Liquidator, Hindustan Petroleum Co. Ltd*. (1961) 31 Comp Cas 573 (Punj)].

5. Call must be made in the interest of the company

The power to make call is in the nature of trust and must be exercised only for the benefit of the company, and not for the private ends of the directors. If the call is made for the personal benefit of the directors, the call will be invalid. In *Alexander* v *Automatic Telephone Co.* (1900) 2 Ch. 56, the directors of the company paid nothing on their shares but did not disclose this fact to the shareholders and called on them to pay certain amount partly as allotment money and partly as call money. The directors were held guilty of breach of trust and the call was held invalid.

6. Call on same class of shares must be made on uniform basis

According to section 91 of the Companies Act, calls on same class of shares must be made on a uniform basis. Hence a call cannot be made only on some of the members unless they constitute a separate class. In other words there cannot be any discrimination between shareholders of the same class as regards amount and time of repayment of call.

Usually, articles of association of companies provides for the manner in which calls should be made. They follow the pattern set out in regulations 13 to 18 of Table A of Schedule l appended to the Companies Act, 1956.

7. Basic requirement for valid calls

While making calls the following basic requirements must be satisfied:—

(*i*) For each call at least 14 days' notice must be given to members.

(*ii*) Stock exchange(s) shall be advised of the proposal at least 2 days before the Board Meeting. The Stock Exchange(s) normally stipulates that no call shall be made payable within one month after the last call was made but not later than one year from the date of the issue.

(*iii*) An interval of thirty days is required between two successive calls and not more than twenty five per cent of the nominal value of shares can be called at one time. However, companies may have their own articles and raise the limit.

(*iv*) The Board of directors has the power to revoke or postpone a call after it is made.

(*v*) Provision for payment of call in installments can be made only by a resolution of Board. [*East & West Insurance Co. Ltd.* v *Mrs. Kamla Jayantilal Mehta* (1956) 26 Comp Cas 313 (Bom)].

(*vi*) Joint shareholders are jointly and severally liable for payment of calls.

(*vii*) If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue. The directors are free to waive the payment of interest.

(*viii*) If, any member desires to pay the call money in advance, the directors may at their discretion accept and pay interest not exceeding the rate specified in the articles.

(*ix*) A defaulting member will not have any voting right till call money is paid by him.

Time within which shares are to be made fully paid-up:—

(*i*) As per the SEBI Guidelines, capital issues henceforth have to be made fully paid-up within 12 months.

(*ii*) Where the total issue size exceeds Rs. 500 crores:—

(*a*) It is not necessary to make the capital issue fully paid-up within 12 months.

(*b*) The amount to be called up on application, allotment and on various calls should not each exceed 25 per cent of the total quantum of the issue.

(*c*) The company should make arrangements for monitoring of the use of proceeds of the issue by one of the financial institutions.

(*d*) A copy of the monitoring report must be filed with SEBI by the financial institution and by the company for the purpose of record.

8. Receipt of payment in advance of calls

Section 92 of the Act provides that the directors may, if authorised by the articles, allow shareholders to pay up the amount in whole or in part if due on their shares before any call has been made, and may pay interest on the amount so paid in advance of calls. Where the interest is agreed to be paid, it may be paid out of the capital, if profits are not available. The amount so paid is not refundable except, in winding up and such shareholders rank after creditors in respect of the advance, but in priority to the other shareholders.

The effect of the payment in advance of calls is that the shareholder's liability in respect of the calls or call is extinguished. But they will not be entitled to any voting right in respect of the moneys paid in advance of the calls. When, however, the calls are made and these moneys become presently payable, they will acquire the voting right.

The rate of interest permitted by the articles on such advance payment of calls is 6%. But it can be varied by the shareholders in general meeting.

9. Procedural steps for making calls on shares and calls in advance

(*a*) The proposal will be considered at a duly convened and properly constituted Board meeting.

(*b*) Resolution shall also be passed relating to bank accounts. A special call account may be opened for this purpose.

(*c*) The Board shall approve draft Call Letter. In case of listed companies, the call letter shall be approved by stock exchanges.

(*d*) Closure of register of members will be decided upon; otherwise a record date will be fixed. The stock exchanges insist on 21 days notice for closure of Register of members in case of physical shares and at least 15 days notice in case shares are in D-mat form or for fixing of a record date and publish a notice under section 154 in that regard in the newspaper.

(*e*) If the shares are listed, particulars of the call shall be advised to the stock exchange immediately after the Board meeting.

(*f*) A call list will be prepared giving the following particulars:—

- (*i*) No. of call letter.
- (*ii*) Folio in register.
- (*iii*) Name and address of member.
- (*iv*) No. of shares.
- (*v*) Total amount payable.
- (*vi*) Date paid.
- (*vii*) Remarks.

(*g*) The call letters shall be printed. They will have form of receipt to be signed by the bankers for delivery to members and acknowledgement for transmission to the company.

(*h*) The call letters shall be numbered consecutively, which will be specified in the call list.

(*i*) The call letters will be completed and posted to the members either by registered post or under certificate of posting. It may be noted that only registered holders may be made liable for the money due.

(*j*) Three copies of call notice will be sent to the stock exchange concerned at the same time as it is sent to members.

(*k*) Proper revenue stamps shall be affixed on the call letter.

(*l*) Once the call becomes payable, transfer of shares on which calls have not been paid should be temporarily withheld.

(*m*) The list and acknowledgements received from the company's bankers will be checked and particulars thereof entered in the call list.

(*n*) Particulars of payment will be entered on the share certificates, as and when they are submitted to the company along with call receipts. Alternatively, if the Board decides, stickers may be sent to the shareholders for endorsement of call money on the share certificates.

FORFEITURE OF SHARES

10. Shares may be forfeited if call is not paid within the stipulated time

If a member fails to pay a valid call within the stipulated time, the company may sue him for recovery of the amount of the call after waiting for a reasonable period. But articles often provide for forfeiture of shares for non-payment of any call or installment of a call. Thus shares can be forfeited for non-payment of any call or installment of a call if and only if special and clear power in the articles is given to the directors to do so.

Where shares were forfeited for default in paying calls but, subsequently, these calls were proved to have been invalid, it was held that the forfeiture was entirely *ultra vires*, the directors and the company was not estopped from relying on the *ultra vires* nature of the act, and showing they had no power to do what they purported to do. Unless the articles of a company regulating calls on shares and forfeiture for default to pay the calls are strictly complied with, the acts of the directors will not be binding on the members as they are in the nature of penal provisions. A forfeiture by a resolution passed at a meeting of the Board of directors at which proper quorum was not present would be invalid. But where one of the articles of a company provided that the directors of the company could increase the number of directors or could summon a general meeting of the company only if their member was at least three, but another article provided that the quorum necessary for the transaction of the business of directors shall be two, it was held that the forfeiture of shares declared by a meeting of two directors was valid.

A forfeiture of shares for non-payment of calls ought not to be lightly favored by the courts and a party aggrieved by it is entitled to rely on technicality of rule or regulation to invalidate it.

11. Shares can only be forfeited subject to the provisions of articles

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. The provisions of Table 'A' regarding forfeiture of shares are as under:

Regulation 29 provides that if a member fails to pay any call, or installment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

Regulation 30 state that the notice aforesaid shall specify a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made and should state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited. (Specimen of notice has been given in Appendix 2)

Regulation 31 states that if the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

Regulation 32 says that a forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. At any time before a sale or disposal as aforesaid, the Board may cancel by forfeiture on such terms as it thinks fit.

Regulation 33 provides that a person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

Further that the liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

Regulation 34 provides that a duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposal thereof.

The transferee shall thereupon be registered as the holder of the share. The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

Regulation 35 provides that the provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

12. Circumstances in which Forfeiture of shares cannot be made

The shares can be forfeited only of non-payment of calls and not for any other debt due from a member. Non-payment of calls is not the only reason for which shares can be forfeited; a company by its articles may provide for other grounds also. [*Naresh Chandra Sanyal* v *Calcutta Stock Exchange Association Ltd*. (1971) 41 Comp Cas 51 (SC)].

Shares of the shareholders who were running business of the company, cannot be forfeited for losses suffered by company. [*Dilbhajan Singh* v *New Samundri Transport Co.* (*P*) *Ltd*. (1985) 58 Comp Cas 247 (P&H)].

CLB (now Tribunal) cannot direct forfeiture of shares acquired in violation of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations. [*Aska Investments* (*P*) *Ltd.* v *Grob Tea Co. Ltd*. (2005) 61 SCL 134 (Cal)].

13. Forfeiture can be effected by a Board resolution

Forfeiture will be effected by means of a Board resolution. (Specimen of the Board resolution has been given in Appendix 4) Notice precedent to forfeiture must be given to the defaulting shareholder. In the matter of forfeiture of shares, technicalities must be strictly observed. "The defect in the notice, though slight, invalidates it and is fatal to the forfeiture", as held by the Supreme Court in *Public Passengers Service Ltd.* v *Khadar* AIR 1966 SC 439.

In *Sulochana Nathany* v *Hindustan Malleables & Forgings Ltd*. (2001) CLC 448 (CLB), it was held that to constitute a valid forfeiture articles should give such powers to the directors. There should be notice of forfeiture and power should be exercised following the procedure prescribed in the articles.

14. Intimation for forfeiture of shares

Further, articles generally provide that after the shares have been forfeited, an intimation is sent to the shareholder concerned and for sufficient reasons, the forfeiture may be annulled at the discretion of the Board of directors. (Appendix 3 & 5).

15. Whether High Court has jurisdiction to entertain a shareholder's application questioning the action of company?

There is no provision in the Companies Act enabling the High Court to entertain an application relating to forfeiture of shares. [*Tej Prakash Dangi* v *Coramandal Pharmaceuticals Ltd*. (2001) 43 CLA 21 (AP)].

16. Forfeiture must be *bona fide* and in the interest of a company

The power of forfeiture must be exercised *bona fide* and in the interest of the company. It should not be collusive or fraudulent. In *Re. Esparto Trading Co*. (1879) 12 Ch. D. 791, the forfeiture of shares was set aside, because it was found to have been carried out at the request of a shareholder to relieve him of liability. Such a forfeiture amounts to an abuse of power to forfeit and a fraud on other shareholders.

17. Board may cancel the forfeiture of shares

In case defaulting shareholder approaches after forfeiture to cancel the forfeiture, the Board has been empowered to cancel such a forfeiture and claim due amount with interest.

A forfeiture solemnly resolved upon and enforced for a long time, should not be set aside, nor can ex-member be reinstated without his consent. [*Dhunraj Keshrimal* v *N.H. Wadia* (1933) 57 ILR Bom 413].

Once forfeiture has been enforced, the contract between the company and the member comes to an end; there can be no subsequent recession of forfeiture without the shareholder's consent. [*Exchange Trust Ltd*., *In re* (1903) 1 Ch. 711].

If shares were forfeited for non-payment of a call which was invalid, the company could withdraw forfeiture and issue a fresh call. [*Bhagirath Spg. & Wvg. Co. Ltd.* v *Balaji Bhavani Power* AIR 1930 Bom. 267].

Mere waiver, acquiescence or laches does not disentitle a shareholder from challenging forfeiture. [*Sha Mulchand & Co.* v *Jawahar Mills Ltd*. (1953) 23 Comp Cas 1 (SC)].

18. Original shareholders shall be liable for unpaid calls

If the articles so provide, the original shareholder shall remain liable for payment of unpaid calls for a period of three years from the date of forfeiture. However, a company cannot recover from him more than the difference between the amount payable and the amount received on forfeited shares.

Meanwhile the original shareholder may be discharged from all liability on the share, except that he will be put on the 'B' list in the event of the company going into liquidation within one year of the cessation of his membership. Articles, usually provide that where a share has been forfeited the member shall be liable for payment of the call, and this created a new obligation, he can be sued as an ordinary debtor.

19. Forfeited shares becomes property of a company

Forfeited shares become the property of the company, to this extent forfeiture involves a reduction in the paid-up capital till the shares are re-issued. Normally, therefore, companies re-issue them.

20. Re-Issue of Forfeited Shares

Where a company had lien on fully paid shares belonging to the deceased shareholder, it is obligatory on the company to give notice of its sale to the legal representative of the deceased shareholder, but if this is not done the sale would nevertheless be a valid sale.

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. Generally, such shares are re-issued at a discount which cannot exceed the amount already paid on such shares provided that the total of the sum paid by the original owner of the shares together with the re-issue price is not less than the par value. This is done by a Board resolution. (Appendix 6)

After the money due is received from the new allottee, the company executes a transfer deed and issues a share certificate, and if the original holder has already surrendered the share certificate, it is duly transferred, otherwise after a public notice in a newspaper, a new share certificate is issued.

21. Allotment Money/Premium Payable on Calls/Forfeiture

Generally, articles of association of companies on the lines of regulations 17 and 35 of Table 'A' appended to the Companies Act, 1956 provide provisions relating to calls and forfeiture of shares for non-payment thereof to all moneys which by the terms of issue of the shares become payable on or at any fixed date, whether on account of the nominal value of the share and/or premium.

22. Surrender of Shares

The Companies Act, 1956 makes no provisions for surrender of shares. A company cannot accept surrender of shares and a shareholder who surrenders shares continues to be a member and a contributory. [*Mangal Sain* v *Indian Merchants Bank* AIR 1928 Lahore 240; *Mirza Ahamad Namazi*, *In re* AIR 1924 Mad. 703/*Collector of Moradabad* v *Equity Insurance Co. Ltd.* AIR 1948 Oudh 197].

There can be no valid surrender of shares that are not fully paid. [*Naraindas Lahoredas, In re* (1934) 4 Comp Cas 127 (Sind)].

Mere handing over of share certificates cannot constitute surrender of shares and a surrender of shares can be made if the articles give the directors power to accept a surrender of shares. [*Vasant Investment Corpn. Ltd., In re* (1982) 52 Comp Cas 139 (Bom)].

Appendix 1

Specimen of Board resolutions

I. For call on shares

RESOLVED THAT a call of Rs______ per share be and is hereby made on the holders of partly paid equity shares of Rs __________ aggregating to Rs__________ payable on or before the ______ day of _______ to the company's bankers ___________ and the Secretary be authorised to issue notice to the members and make arrangements with the bankers, and in the event of non- payment of call, interest @_______ p.a. be charged from such members.

RESOLVED FURTHER THAT the call letter, submitted to this meeting and initialed by the Chairman for the purpose of identification, be and is hereby approved and that Shri PJ, Company Secretary be and is hereby authorised to sign and issue the call letter to all registered equity shareholders, intimate the stock exchanges regarding the call and comply with all other formalities in this regard.

II. For paying of interest on calls received in advance

RESOLVED THAT pursuant to the provisions of article ___ of articles of association of the company, company do pay interest @ .....% per annum annually on all the calls received in advance for the period since amount of capital is received without call being made in that regard till the call is made.

III. For charging on interest on calls not paid in time

RESOLVED THAT pursuant to the provisions of article ___ of articles of association of the company, company do charge interest @ .....% per annum annually on all the calls not paid in time for the period since amount of capital becomes unpaid till the call is paid and that the Board of Directors shall have discretion to condone payment of interest to any shareholder at its discretion.

Appendix 2

Specimen of notices

I. For payment of call money

IIIrd & FINAL NOTICE — BY UPC

MSJ/DKJ/01/07 23rd January, 2007

To,

....

Reg.: Final Notice for forfeiture of shares on non-payment of allotment-*cum-call* money due on Partly Paid up Equity Shares of the company

Dear Sir/Madam

We draw your kind attention towards our previous Notice No. MSJ/DKJ/00/, dated 30th November, 2006 and MSJ/DKJ/07/01, dated 15th January,, 2007 reminding you to pay the Balance amount of Rs. ……. together with interest at 12% p.a. as under:

L.F. No.	*No. of shares allotted*	*Amount paid on application*	*Balance amount due on allotment of shares*		*Total*

We are sorry to state that even after repeated reminders you have not bothered to respond to our various call notices and make payment of the due amount. The Board have decided to provide you a last and final opportunity to make payment of the balance money on or before 31st January, 2007.

Your attention is once again drawn to the fact that in case if there is any default on your part regarding payment of the amount due with interest @ 12% p.a. your shares will be forfeited by the company without any further notice. Moreover, the company shall not be responsible for any consequences of this forfeiture.

Please treat this reminder as the last and final notice by the company and arrange to make payment of the due allotment-*cum*-call money on or before 31st January, 2007 to avoid forfeiture of shares.

Thanking you.
Yours faithfully

For, MSJ Co. Ltd.
Authorised Signatory

II. Public notice regarding extension of time for payment of call money

The Company has issued Forfeiture Notice dated 23rd January, 2007 wherein 31st January, 2007 was fixed as the last date for payment of outstanding call money with interest. In consideration of requests received from many shareholders/investors, the last date has been extended up to 28th February, 2007.

All the shareholders, who have not yet paid the call money in terms of Allotment Notice dated 22nd November, 2006 are requested to pay the same on or before 28th February, 2007 failing which, the shares allotted to them will be forfeited.

For ABC Ltd.

Abha Jaiswal

Company Secretary

III. Notice for publication in newspaper

NOTICE is hereby given to all members/investors who failed to pay allotment-*cum*-call money due on Partly Paid Equity Shares of the company, that the company have already issued three forfeiture notices, dated 30th November, 2006, 15th January, 2007 and final notice on 23rd January, 2007 wherein last and final opportunity is provided to all such members to make payment of the balance amount along with interest @ 12% p.a. due on or before 31st January, 2007.

The last final notice is hereby given to avail this opportunity and note that after expiry of 31st January, 2007, the Board may take decision for forfeiture of all the partly paid up shares without any further communication in this matter and the company shall not be responsible for any consequences of such forfeiture.

By Order of the Board

Appendix 3

Specimen of notice of forfeiture of shares

SSPL/CS/00/01/1st Feb., 2007

Regd.A/D

To

Shri X

MHOW (M.P.)

Sub: Forfeiture of 600 Partly Paid up Equity Shares

Dear Sir,

This has in reference to the allotment of 600 Partly paid up Equity Shares of Rs. 100 each (paid up Rs. 50) made on dated 31st March, 2006.

The Company had also given three notices dated. 17th April, 2006 and 30th Aug., 2006 and a final Notice on dated 10th January, 2007 for making payment by Registered Post, with clear cut notice that if the payment of balance amount on or before 28th January, 2007 alongwith interest of 18% p.a. from 30th April, 2006 not made the Board shall exercise its right to forfeiture of the partly paid up Share.

We have to state that in spite of the above said notices for payment of Balance amount of the Allotment Money which was overdue since long, and you were failure to pay the amount of Call money of Rs. 30,000 with interest @ 18% p.a. even after more than reasonable opportunity provided by the Company.

The Board of Directors of the Company had considered the matter at their meeting held on 1st February, 2007 and passed necessary resolution for forfeiture of all the partly paid up Equity Shares including your 600 Shares in the best interest of the Company.

You are requested to please treat the Equity Share as forfeited. Kindly acknowledge the receipt of letter.

Thanking you,

Yours faithfully

For, **SS PVT. LTD.**

Director

Appendix 4

Specimen of the resolution for the Board meeting

The Chairman placed before the Board a list of members of the company holding 10,54,700 partly paid up shares on which Rs. 69,39,000 is still unpaid on account of the share capital and share premium.

The Chairman further appraised that the company have made allotment of partly paid up Equity Shares on 12th March, 1997 under the public issue of the company. The company have also issued several reminders for payment of call money and a final notice was also sent on 23-11-2006 with specific caution that if the company do not receive balance amount till 31st December, 2006 the Board shall consider the matter for forfeiture of all such partly paid up shares.

The Board considered that looking into adverse secondary stock and non-availability of market quotations of the shares, the company will not be able to receive balance amount from these shareholders, therefore it would be appropriate to forfeit the shares in the best interest of the company.

After due consideration regarding various matters involved, the Board passed the following resolution unanimously.:—

RESOLVED THAT pursuant to Article No. 22 of the Articles of Association of the company and other applicable provisions, if any, of the Companies Act, 1956 and the Listing Guidelines, consent of the Board of directors of the company be and is hereby accorded for forfeiture of 10,54,700 partly paid up Equity Share of Rs. 10 each on which total Rs. 69,39,000 remains unpaid on account of Share Capital & Share Premium Account due to failure to pay the balance amount of allotment money due thereon as per list of partly paid up shares placed before the Board, duly initialed by the Chairman for the purpose of identification.

FURTHER RESOLVED THAT the Share Transfer Agent M/S ABC Consultancy Pvt. Ltd. be and is hereby authorised to make entries in the register of members for giving effect to forfeiture of all the 10,54,700 partly paid up Shares as per list placed before the Board duly initialed by the Chairman for the purpose of identification.

FURTHER RESOLVED THAT Shri DSJ, the Managing Director of the company be and is hereby authorised to inform to the Stock Exchanges, SEBI and all such authorities about the decision of the Board for forfeiture of 10,54,700 partly paid up equity shares of the company and to do all such acts, deeds and things as may be necessary for and on behalf of the company.

Appendix 5(1)

Specimen of Intimation Letters

For forfeiture of shares made by the company

By Registered Post

To,

The Secretary,
Madhya Pradesh Stock Exchange,
Ahmedabad Stock Exchange,
The Pune Stock Exchange Ltd.
The Jaipur Stock Exchange Ltd.

Sub: Information for Forfeiture of 10,54,700 Partly Paid up Equity Shares

Dear Sir,

This has in reference to the allotment made by the company on 12th March, 1997, under the Public Issue of 15,50,000 Equity Shares of Rs. 10 each at a premium of Rs. 5 aggregating to Rs. 232.50 lakhs.

The company had complied with all the formalities and a final notice was given on 23rd November, 2006 for making payment of balance amount of allotment money to all the shareholders whose shares remains unpaid, with a last opportunity to make payment of balance amount on or before 31st December, 2006.

Press notice was also published to that effect in the newspapers on 8th December, 2006 in Free Press & Chotha Sansar, with specific caution that if the company do not receive balance amount on or before 31st December, 2006, the Board shall consider the matter for forfeiture of the shares whose amount remains unpaid.

We have to inform you that in spite of the abovesaid notices and press release for making payment of balance amount of the allotment money, which was overdue for a period of more than 4 years from the various shareholders of the company on 10,54,700 Equity Shares, the company could not receive any payment or other communication in that matter.

Therefore, the Board had considered the matter at their meeting held on 10th January, 2007 and passed necessary resolution for forfeiture of the 10,54,700 Equity Shares of Rs. 10 each in the best interest of the company (copy of the Board resolution enclosed).

You are requested to please take on record the forfeiture of 10,54,700 Equity Shares of Rs. 10 each as per list enclosed and put the same on the notice board of the Stock Exchange for information to the general investors. You are further requested not to entertain any of such shares for transaction on the floor of the Stock Exchange.

Thanking you.
Yours faithfully

Director

Encl.: List of the Forfeited Equity Shares of the company.
Copy of the Board resolution
Copy to the Securities & Exchange Board of India

Appendix 5(2)

Notice

NOTICE is hereby given that the Board of directors of the company at their meeting held on 10th January, 2007, have considered and forfeited 10,54,700 Equity Shares of Rs. 10 each on account of non-payment of amount due on allotment of shares from the concerned shareholders.

You are advised that please do not transact on any partly paid up shares and return the same to the company for record. Company have also canceled all such shares after forfeiture. If anybody transact in those forfeited shares the company shall not be responsible to such transactions.

By Order of the Board

Director

Place:
Date: 10th January, 2006

Appendix 6

Authority for re-issuance of forfeited equity shares

RESOLVED THAT out of the total 10,54,700 Equity Shares forfeited by the Board, 60,000 Equity Shares be and is hereby re-issued to the following persons:

Name of Shareholders	*No. of Shares re-issued*	*Amount in Rs. received*
1. Shri RB	27,500	Rs. 2,75,000
2. Shri KMB	32,500	Rs. 3,25,000
Total	60,000	Rs. 6,00,000

FURTHER RESOLVED THAT necessary entries in the Register of Members of the company be made to give the effect for re-issue of the above-said 60,000 fully paid up Equity Shares of the company.

FURTHER RESOLVED THAT an amount of Rs. 6,00,000 on account of the amount received from the abovesaid 60,000 forfeited Equity Shares (Rs. 10 each) which has been re-issued be and is hereby transferred to the Capital Account of the company.

FURTHER RESOLVED THAT Shri AC, the Managing Director of the company be and is hereby authorised to do all such acts, deeds and things as may be necessary for and on behalf of the company.

Appendix 7

Declaration in respect of forfeiture of shares

I, SKJ Director of ABC Ltd. solemnly and sincerely declare that:—

1. The persons whose names and addresses are given in Annexure 1 were on .... the registered shareholder in the Company (hereinafter referred to as "defaulting Equity Shareholders")

2. On .... a call for unpaid allotment money on shares to be paid on or before .... was made and accordingly notice of such call was duly given to the defaulting Equity Shareholder.

3. On .... reminder letters to pay the allotment money were sent to all the defaulting shareholders who failed to pay the allotment money before the due date.

4. The defaulting Equity Shareholders having failed to pay the call by the appointed day notices in writing were given to them on ..... followed by a reminder dated ...... informing them that on their failure to pay the allotment money their shares would be forfeited.

5. The defaulting Equity Shareholders having failed to pay such unpaid allotment money, their shares were duly forfeited by the Board of directors at its meeting held on .... and notices of such forfeiture were given to the defaulting Equity shareholders.

6. The Company is now entitled by Articles .... of its Articles of Association to sell such forfeited shares.

AND as per Article........ of Articles of Association of the Company, I make this solemn declaration conscientiously having the same to be true.

Dated this ..... Declarant