PART X

SHARES AND DEBENTURES

Chapter 1

Share Capital

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The shares, debentures or other interest of any member in a company) shall be a movable property, transferable in the manner provided by the articles of a company. Apart from shares or debentures, interest of any member referred to above refers to right of membership in a guarantee company. This provision applies to both, a public company and a private company.

TYPES OF SHARE CAPITAL

In terms of the provisions of section 86 of the Act, the share capital of a company limited by shares shall be of two kinds only, namely:—

(*a*) equity share capital—

  (*i*) with voting rights; or

  (*ii*) with differential rights as of dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed.

(*b*) preference share capital.

Equity share capital means all such share capital which is not preference share capital.

EQUITY SHARES

1. Equity share capital and rights attached thereto

Section 86(*a*) of the Act provides that the equity share capital may be in two categories *viz*:—

(*i*) with voting rights; or

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

The word 'otherwise' in the view of Department of Company Affairs may include, *inter alia* rights as to participating in surplus in the events of winding up, mode of repayment, etc.

The Central Government has prescribed rules *vide* Notification No. GSR 167(E), dated 9-3-2001 namely Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 which have been given in Appendix 1.

2. Equity shares do not vest in their holders following rights

In case if a company has equity and preferential capital, both, the holder of equity shares does not have the following rights:—

(*a*) Preferential right in respect of payment of dividend;

(*b*) Preferential right in respect of payment of capital in the event of liquidation of a company.

In such cases the preferential shareholders shall get preferential rights in the payment of dividend, if any and payment of capital if company goes into liquidation.

EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

3. Issue of Equity Shares with Differential Voting Rights

A company which proposes to issue equity shares with differential voting rights has to comply with the requirements of the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 and it has to check the following points and must ensure that the company is eligible for issuance of these shares:—

(*a*) A company limited by shares may issue equity shares with differential rights as to dividend, voting or otherwise.

(*b*) The following requirements shall be fulfilled:—

— the company has distributable profits in terms of section 205 for preceding 3 financial years preceding the year in which it was decided to issue such shares;

— the company has not defaulted in filing of annual accounts and annual returns for 3 financial years immediately preceding the financial year of the year in which it was decided to issue such share;

— the company has not failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend;

— the articles of association of the company authorises the issue of shares with differential voting rights;

— the company has not been convicted of any offence arising under Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, Foreign Exchange Management Act, 1999; and

— the company has not defaulted in meeting investors' grievances.

(*c*) The company shall obtain the approval of the shareholders in general meeting by passing resolution as per section 94.

(*d*) In the case of a listed company, the approval of shareholders shall be obtained through postal ballot.

(*e*) The notice of meeting of the resolution shall be accompanied by an explanatory statement stating:—

— the rate of voting right which the equity share capital with differential voting right shall carry;

— the scale or proportion to which the voting rights of such class or type of shares will vary;

— the company shall not convert its equity capital with voting rights into equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;

— the shares with differential voting rights shall not exceed 25% of the total share capital issued;

— that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, right shares of the same class;

— the holders of the equity shares with differential voting rights shall enjoy all other rights to which the holder is entitled to except right to vote as indicated above.

(*f*) A Register shall be maintained as required under section 150 containing the particulars of differential rights to which the holder is entitled.

SWEAT EQUITY SHARES

4. Issue of sweat equity shares

According to section 79A, a company may issue sweat equity shares of a class of shares already issued if the following conditions are fulfilled:—

(*a*) the issue of sweat equity shares is authorised by a special resolution passed by the company in general meeting;

(*b*) the resolution specifies the number of shares, current market price, consideration, if any, and the class(es) of directors or employees to whom such equity shares are to be issued;

(*c*) not less than one year has, at the date of the issue elapsed since the date on which the company was entitled to commence business.

If the equity shares of a company are not listed on any recognised stock exchange, the sweat equity shares are issued in accordance with the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 issued by the Department of Company Affairs *vide* Notification No. GSR 923(E), dated 4-12-2003 (*See* Appendix 2). As per section 79A of the Companies Act, 1956 Sweat Equity Shares means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The following provisions shall be kept in view by the unlisted public company and private company before making issuance of sweat equity shares in terms of section 79A(1)(*b*) and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003:—

(*a*) a special resolution shall be passed for the issue of sweat equity shares (Appendix 3);

(*b*) the resolution shall specify the number of shares to be issued, current market price, consideration, if any, and the classes of directors or employees to whom such equity shares are to be issued;

(*c*) not less than one year should have elapsed since the date on which the company was entitled to commence business;

(*d*) in the case of a company whose equity shares are not listed on any recognised stock exchange, the sweat equity shares shall be issued in accordance with the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003;

(*e*) necessary disclosures are made in the explanatory statement to be sent to the shareholders as given under rule 4 of the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003;

(*f*) in the case of listed company, the promoters to whom sweat equity shares are proposed to be issued shall not vote in such resolution whereas there is no such restriction for an unlisted company;

(*g*) within 30 days of passing the special resolution, e-Form 23 alongwith a copy of the special resolution as well as a certified true copy of the explanatory statement and the receipted challan for the requisite filing fees shall be filed with the Registrar of Companies.

4.1. Who may be allotted sweat equity shares

In terms of the reading of section 79A and the prescribed rules, the following persons may be issued the sweat equity shares:

(*i*) The class or classes of directors or employees;

(*ii*) Whole-time director, Executive director and the permanent employees working in India or abroad are considered as employees;

(*iii*) Manager;

(*iv*) Promoters;

(*v*) Non-employee;

(*vi*) For consideration other than cash for providing know how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

4.2. Promoters

There is no specific mention about the promoter being eligible for sweat equity shares in section 79A, but both in SEBI Guidelines and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 promoters have been given the right to get the sweat equity shares allotted.

5. Voting Rights on Shares

Section 87 of the Companies Act, 1956 deals with voting rights and following are the provisions in this regard:—

(*a*) *Voting rights of equity shareholders*.—Every member of a company limited by shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company. [Section 87(1)(*a*)]

(*b*) *Voting rights on poll*.—Voting right of every member on the poll shall be in proportion to his share of the paid up equity capital of the company. [Section 87(1)(*b*)]

However, section 87 is not applicable in case of an independent private company. [Section 90(2)]

PREFERENCE SHARE

A company limited by shares may, if authorised by its Articles, issue preference shares. This means that a public company or a private company may issue preference shares only if its Articles authorise to do so.

6. Basic requirements of the preference shares

To qualify the preference share, it should fulfill both the following requirements namely:—

(*a*) that it carries or will carry a preferential right to be paid dividend of a fixed amount or at a fixed rate; and

(*b*) that it carries or will carry a preferential right to repayment of capital paid up where or not there is any other preferential right.

In view of the above inclusion of a right to get dividend, whether cumulative or non-cumulative is an inseparable element of preference shares and right to the repayment of capital on winding up.

Dividends can be paid to cumulative preference shareholders in winding up whilst assets of the company are being distributed, and they rank in priority to other shareholders both as regards dividend and capital. [*Bombay Chlorine Products Ltd*., *In re* (1965) 35 Comp Cas 282 (Bom)].

Where cumulative preference shareholders are entitled to share in surplus of assets on winding up, they are not entitled to preference for arrears of dividend unless there is specific provision for priority to such arrears.

Where the preference shareholders are entitled to participate in surplus assets on winding up, surplus assets will include undistributed profits on the date of liquidation. [*Dimbula Valley (Ceylon) Tea Co. Ltd.* v *Laurie* (1961) 31 Comp Cas 655 (Ch. D)].

7. Types of preference shares

Preference shares may be classified into the various categories and may carry preferential rights as per the provisions of the articles of the company.

1. *Cumulative preference shares*.—In the case of cumulative preference shares, the shareholders are entitled to receive the dividend for a year which could not be paid due to losses or inadequate profits in the subsequent year(s) whenever there are sufficient profit.
2. *Non-cumulative preference shares*.—If dividend on non-cumulative preference shares is not paid in any year on account of losses or inadequate profits or otherwise, then the right to dividend for that year is lost and cannot be carried over in subsequent years.
3. *Participating preference shares*.—These types of shares are entitled to participate in the surplus profit/dividend besides, entitlement to fixed dividend or dividend at fixed rate.
4. *Non-participating preference shares*.—These types of shares are entitled to receive fixed amount of dividend or dividend at fixed rate but do not have right to participate in surplus profits.
5. *Redeemable preference shares*.—Section 80(1) provides that a company limited by shares may, if so authorised by its Articles, issue preference shares which are to be redeemed at the option of the company.
6. *Irredeemable preference shares*.—Section 80(5A) provides that a company shall not issue preference shares which are either irredeemable or redeemable after the expiry of a period of 20 years from the date of its issue.
7. *Convertible preference shares*.—These shares may be converted into equity shares as per the terms and conditions of their issue.
8. *Non-convertible preference shares*.—These shares are not convertible into equity shares but have the preferential rights to payment of capital in the event of liquidation of the company or otherwise.

8. Voting rights of preference shareholders

Section 87(2)(*a*) provides that every member of a company limited by shares and holding any preference share capital therein shall have a right to vote in respect of such share capital, on every resolutions placed before the company which directly affect the rights attached to his preference shares.

It is only if the dividend due on cumulative preference shares remains unpaid for a aggregate period of not less than two years preceding the date of commencement of meeting that a cumulative preference shareholder gets the right to vote on all resolutions. [*Hotel Queen Road* (*P*) *Ltd.* v *Hill Crest Reality Sdn. Bhd*. (2006) 68 SCL 197 (Del)].

If voting is done by way of poll then preference shareholders will have right to vote in proportion to their shares of the total paid up share capital of the company.

The voting right shall be in the same proportion as the capital paid up, in respect of the preference shares bears of the total paid up equity capital of the company.

Explanation of section 87(2)(*a*) provides that any resolution for winding up the company or for repayment or reduction of its share capital shall be deemed directly to affect the rights attached to preference shares within the meaning of this clause.

However, as per section 90, provisions of section 85 to 89 are not applicable to a private company as such.

9. Circumstances when preference shareholder can vote on all resolutions

Every member of a company limited by share, holding any preference share capital therein shall, in respect of such capital shall be entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such capital or any part of such dividend has remained unpaid for a specified period, which differs in respect of cumulative and non-cumulative preference shares as under:—

(*a*) *Cumulative preference shares*.—In the case of cumulative preference shares, if the dividend due on such shares in respect of an aggregate period of not less than two years proceeding the date of commencement of the meeting has remained unpaid. [Section 87(2)(*b*)(*i*)]

(*b*) *Non-cumulative preference shares*.—In the case of non-cumulative preference shares, if the dividend due on such capital or any part of such dividend has remained unpaid either in respect of a period of at least 2 years ending with the expiry of the financial year immediately preceding the commencement of the meeting or in respect of an aggregate period of at least 3 years comprised in 6 years ending with the expiry of the financial year immediately preceding the date of commencement of the meeting. [Section 87(2)(*b*)(*ii*)]

(*c*) Any resolution for winding up the company or for repayment or reduction of capital shall also be deemed directly to affect the rights attached to the holders of the preference shares. When such resolutions are proposed in a meeting, the holders of preference shares shall have voting rights as in the case of holders of equity shares.

10. Period for redemption of preference shares

Section 80(5A) of the Act provides that w.e.f. 1-3-1997, a company cannot issue preference shares which is irredeemable or redeemable after the expiry period of 20 years from the date of its issue.

If a company fails to comply with the provisions of section 80A, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 10,000 for every day during which such default continues and every officer of the company in default shall be punishable for a term which may extend to 3 years and shall also be liable to fine.

11. Requirement for redemption of shares

Section 80(1) provides conditions for redemption of preference share which has to be complied with by a company (Appendix 4 & 5):—

(1) The preference shares shall be redeemed out of profits of the company which would otherwise be available for distribution as dividend or out of the proceeds of a fresh issue of shares made for the purpose of redemption.

(2) Only fully paid preference shares shall be redeemed.

(3) The premium, if any, payable on redemption shall be provided out of profits or out of the company's security premium account, before the shares are redeemed.

(4) Where any preference shares are redeemed out of profits, a sum equivalent to the nominal value of the shares redeemed shall be transferred to the capital redemption reserve fund.

12. Alteration of rights of holders of preference shares

Section 106 of the Act provides that where the share capital of a company is divided into different classes of shares, the rights attached to may be varied either with the consent in writing of the holders of not less than three-fourth of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class. (Appendix 4)

Variation of rights of a class of shareholders can be effected either by consent or by special resolution; it is not necessary that the consent given should be further confirmed by a special resolution. [*Rampuria Cotton Mills Ltd., In re* (1959) 29 Comp Cas 85 (Cal)].

Accordingly, where there are equity shares and preference shares in a company the rights attached to the preference shares, namely the rate of dividend payable on such shares or the period of redemption can be varied by passing a special resolution at a meeting of the holders of the preference shares. The special resolution in respect of section 106 in a listed company shall be passed by postal ballot. The variation can be made, provided there is provision in the Articles or Memorandum or in the absence of any such specific provision, the variation shall not be prohibited by the terms 'of the issue of the shares. If the company has issued more than one series of preference shares, each having different rights, each issue will belong to a class and action shall be taken for each class separately.

13. Rights of dissentient shareholders

Dissentient holders of the said shares, who did not vote in favour of the resolution and who in the aggregate are holding not less than 10% of the said issued shares, may apply to the court within 21 days from the date of passing resolution as per provisions of section 107 to cancel the variation. In that case the variation shall not have any effect unless and until it is confirmed by the court.

The decision of the court on any such application shall be final. Copy of the order of the court shall be filed with the Registrar of Companies within 30 days of the service of the order on the company. [Section 107]

14. Presentation of the share capital

A company has to disclose its share capital in the various statements and returns *viz* Annual Return, Balance Sheet, Forms and various applications to be submitted to various authorities from time to time. It has to represent the status of share capital as per requirements, which may be shown as under:

14.1. Authorised

The capital clause of the Memorandum of Association of a company contains description of the authorised share capital. This is the capital with which a company is to be registered originally or the increased authorised share capital as the case may be. The company is required to pay adequate registration fee to the concerned Registrar of Companies.

14.2. Issued

Issued capital is a part of the authorised capital, which is offered for subscription in form of shares of the company. It also includes share capital issued for consideration otherwise than in cash.

14.3. Subscribed

It is a part of the issued share capital which has been subscribed by the public in case of a public limited company and includes shares purchased by the vendors.

14.4. Called up

It is the sum of total amount called on all shares comprised in the issued and subscribed capital. If the full value of the shares is called up on application then the subscribed capital and called up capital will be the same.

14.5. Paid up

This consists of the amount actually paid up or credited as paid up on the shares subscribed. Share premium received on issuance of shares are not considered in the paid up capital and hence, it is separately shown as share premium account in the reserves and surplus.

14.6. Uncalled

Uncalled capital is a part of the subscribed capital which has not been called up but it may be called up in future.

14.7. Reserved

It is that part of uncalled capital which company has decided to call on liquidation of the company and is termed as reserved capital.

CERTIFICATE OF SHARES

Section 84 of the Act provides the following in respect of share certificates issued by a company:

15. Share certificate shall be *prima facie* evidence of the title of shares

A certificate issued under the common seal of the company, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to such shares.

Every company pursuant to section 113 shall within 3 months of allotment of shares or debentures, issue certificates. The certificates after registration of transfer, shall be delivered within 2 months.

Issue of share certificates after allotment of shares can be made only by:

(*i*) a resolution passed by the Board/Committee, and

(*ii*) surrender to the company of the letter of allotment if any issued or of the & coupons if any issued the case of bonus shares. If the allotment letter is holder shall furnish such indemnity as may be required by the company.

No certificate for shares shall be issued in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, torn or worn-out or where the cages on the reverse for recording transfers have been fully utilised unless the share certificate in lieu of which a new one is issued is surrendered to the company.

16. Issuance of shares certificates

The moment shares had been allotted, share certificates signed and the shareholder's name is entered in the register maintained for the purpose, the person would become the shareholder of the company irrespective of whether the person had received the share certificate or not.

Under section 113 allotment of shares, which shall be the date on which the offer of allotment of rights issues has been accepted by the petitioners by depositing the amount, the company is bound to issue share certificates within the period of three months. If share certificate is not issued within the period of three months and if the company has not obtained the order of extension of period from the CLB (now Tribunal) for issuance of share certificates, the period of limitation commences for enforcement of rights for issuance of shares and consequently on completion of three months from allotment of shares by the company period of limitation for recovery of the amount shall commence under article 47 of the Limitation Act, 1963. [*Gurdino Jiwatram Kukreja* v *Eastern Mining and Allied Industries Ltd*. (2004) 121 Comp Cas 762 (Gau)].

17. Service of shares certificates

When a document is sent by post, service thereof should be deemed to be effective by properly addressing, prepaying and posting the letter containing the document. The presumption, which had been raised under section 53, was reputable and a shareholder might allege that he had not been delivered the share certificate or that it was not properly addressed.

Section 113 only requires company to keep certificates ready for delivery and does not impose an obligation on company to deliver them.

What is punishable under sub-section (2) of section 113 is non-delivery in accordance with the provision laid down under section 53 of the certificates of shares within prescribed time. So, if the documents are posted within stipulated time, there would be compliance of section 113 and there would not be any offence. [*H.V. Jayaram* v *Industrial Credit & Investment Corpn. of India Ltd*. (2000) 23 SCL 64 (SC)].

In the case of *Herdilia Unimers Ltd.* v *Renu Jain* (1998) 92 Comp Cas 841 (Raj), the registration receipt produced was bulk registered receipt from which it was not evident whether it was sent to registered address and/or on the basis of a document, which was not complete in itself.

18. Complaint for delay in issue of share certificates within stipulated time should be filed only in a Court within whose jurisdiction the registered office of the company is situated

Section 113(2) provides for non-delivery of share certificates to the allottees whereas sub section (3) provides for delivery of share certificates. Under sub section (2) the Court is authorised to impose penalty whereas sub section (3) gives authority to CLB (now NCLT) to issue direction to deliver share certificates. If the Complainant wants to proceed against the company under sub section (2) the complaint will have to be filed in the Court of Magistrate having jurisdiction over the registered office of the company is situated whereas if he wants to resort to summary remedy for delivery of share certificates he can approach the CLB (now Tribunal) under section 113(3). [*Indian Petro Chemicals Corp. Ltd.* v *State of Rajasthan* (2000) 39 CLA 70 (Raj)].

In *H.V. Jayaram* v *ICICI* (2000) (2) SCC 36 CLA, it was explained that a complaint relating to non delivery of share certificates could be filed only in the court within whose jurisdiction the company's registered office is situated and not where the complainant resides.

Criminal Court has jurisdiction to entertain a complainant for an offence committed under section 113(2). [*Bank of Rajasthan Ltd.* v *State of Bihar* (2000) 26 SCL 1 (Pat)].

19. Stamping of share certificates

Every shares certificate shall be stamped in terms of the Stamp Act/Rules applicable at the place of execution and issue which is generally the place of registered office of the company. The Stamp Rules allow payment of consolidated stamp duty for the whole lot of share certificates that may have to be issued at any time and in that case stamping in certificates individually can be avoided. For this purpose an application shall be made to the Department in the Ministry of Finance of the concerned State Government.

20. Format of share certificate

Every share certificate shall specify the name(s) of the person(s) in whose favour it is issued, the number of shares it relates and the distinctive numbers. The reverse of the certificate contains the columns for transfers (namely Date/Transfer No., Name(s) of the transferees, Register Folio, Attestation by Authorised Signatory). (Appendix 13)

In the case of a listed company, the format shall be got approved by the Regional stock exchange.

21. Sealing and signing of certificates

Every share certificate shall be issued under the common seal of the company and shall be signed by two directors or by persons acting on behalf of the directors under a duly registered power of attorney and by the secretary or some other person appointed by the Board. One of the two directors mentioned above shall be other than the managing or whole time director, if any. The directors may sign manually or their signature may be machine printed. [Appendix 12 for the text of the Companies (Issuance of Share Certificate) Rules, 1960].

Sealing of Debenture Certificates is not mandatory, if the Articles do not contain any provision in this regard, the same procedure as mentioned above may also be followed in respect of issue of Debenture Certificates.

22. Register for particulars of share certificates issued

Particulars of share certificates issued after allotment of shares shall be entered in the Register of members. The particulars of certificates issued in replacement of certificates sub-divided or consolidated or damaged or lost will be entered in the Renewed and Duplicate Share Certificates Register. All the entries made in the said Registers shall be authenticated by the Company Secretary or such other person as may be appointed by the Board for sealing and signing the share certificates.

23. Renewal or issuance of duplicate share certificate

A company may renew or issue duplicate share certificates in the following conditions:—

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

(*b*) having been defaced or mutilated or torn is surrendered to the company.

Section 84(3) states that if a company with intent to defraud renews a certificate or issues a duplicate thereof, the company shall be punishable with fine which may extend to Rs. 10,000 and every officer of the company who is in default shall be punishable with imprisonment for a term, which may extend to six months or with fine, which may extend to Rs. One Lakh or with both.

Where the directors of the company resolve to issue duplicate shares to the third respondent in lieu of original share certificates retained in the custody of the petitioner, the duplicate hare certificates so issued amount to dead security. [*Shailesh Rajnikant Parekh* v *Starline Travels* (*P*) (*Ltd.*) (2004) 60 CLA 41 (CLB)].

24. Issuance of share certificates on sub-division/consolidation or in exchange of those defaced or where the pages have been utilised

When shares are sub-divided or consolidated, new share certificates can be issued only against surrender to the company of the original certificate in respect of the shares sub-divided or consolidated.

Similarly, shareholder may ask the company to issue fresh certificates in place of those which are defaced or torn or where the space for recording endorsements has been completely utilized. In these cases, fresh certificates can be issued when the original certificates are surrendered to the company for cancellation.

The purposes of the issue of the duplicate certificate like "Issued in lieu of share certificate No. ..... on sub-divided consolidated/defaced or lost" will be indicated in the duplicate certificate issued and in counterfoil, kept with the company. Further, the words "Duplicate certificate No. …… issued on dated ………." will be written on the face of the duplicate certificate issued to the shareholder and in the stub or counterfoil as well as in the Register of members.

Further the word "Duplicate" shall be stamped in bold letters across the face of the certificate in respect of issue against certificate lost.

25. Procedure for issuance of duplicate share certificates

1. The Company Secretary shall get from the shareholder an indemnity bond, surety bond, copy of the FIR filed with the police and such other evidence as may be prescribed by the Board of directors for consideration of such request. Bank or insurance guarantee may also be required. (*See* Appendix 6 to 10)
2. It is usual to publish a general notice in a newspaper in the place of the registered office intimating the public of the loss of the share certificate and of the company's proposal to consider issue of a duplicate share certificate, in lieu of the one that is lost, in case no objection is received by the company within a prescribed time. (Appendix 11)

   Absence of response to unauthorised issuance of advertisements in newspapers cannot make the issue of duplicate share certificates valid or proper, particularly when the registered shareholder is alive at the time and the company is considering the application for registration of transfer of shares by him. [*Pradip Kumar Sarkar* v *Luxmi Tea Co. Ltd.* (1990) 67 Comp Cas 491 (Cal)].
3. The cost of the publication of the general notice is normally borne by the shareholder.
4. In the case of the smallness of value of the shares for which a duplicate share certificate is desired, the Board may, at its discretion, dispense with the costly procedure of publication of general notice and may be satisfied with the execution of an indemnity and surety bond and production of other evidence by the shareholder to establish the fact the share certificate has actually been lost.
5. On receipt of compliance of the formalities, as required by the Board or Committee thereof, from the shareholder, and after expiry of the period specified in the general notice, and if the company does not receive any objection to its proposal, wherever applicable, the proposal for issue of duplicate share certificate will be placed at a meeting of Board or Committee.
6. If the proposal is approved, such approval will be by way of a resolution, which will, *inter alia*, include approval for issue of new share certificate and will authorise two directors and Secretary or other person specified to sign the share certificate and affix common seal in their presence. (Appendix 13)
7. The following words shall be written on the face of the duplicate share certificate "Duplicate issued in lieu of share certificate No..." and the word "Duplicate" will be stamped in bold letters across the face of the share certificate.
8. Particulars of duplicate share certificates issued will be entered in the Register of Renewed and Duplicate Share Certificates indicating the name of the person to whom it is issued, the number and date of the new share certificate.
9. The issue of duplicate share certificate will also be entered in the Register of members and the ledger folio of the concerned member indicated in "Remarks" column of the said Register of Duplicate Share Certificates.
10. Intimation shall also be given to all stock exchanges where the shares of the company are listed regarding issue of duplicate share certificate and cancellation of old share certificate.

26. Procedure to be followed for consolidation/sub-division of shares

1.

(1) Check if sub-division of shares is permitted by the Articles of Association;

(2) Call a Board meeting to consider sub-division of shares and to fix the date, time and place for calling the General meeting;

(3) Send intimation about sub-division of shares and holding of General meeting to the Stock Exchange immediately after the Board Meeting;

(4) Issue notice at least twenty-one days before the date of the General meeting with suitable Explanatory Statement to all the shareholders and Stock Exchange(s);

(5) At least twenty-one days before the General meeting publish a notice in leading newspapers;

(6) Hold General meeting and pass the required resolution;

(7) Send copy of the proceedings of the General meeting to the Stock Exchange;

(8) File the resolution with the MCA in e-Form 23 and e-Form 5 for notice of sub-division of shares;

(9) Call a Board meeting to fix the Record Date for the purpose of subdivision of shares;

(10) Send advance intimation to the Stock Exchange for holding a Board meeting to fix a Record Date for the purpose of sub-division of shares;

(11) Obtain Stock Exchange approval for printing of new share certificate consequent to sub-division of shares;

(12) In case of shares held in physical form, if the company decides to dispatch new share certificate without surrender of old share certificate, then intimation to that effect be sent to the Stock Exchange;

(13) Hold a Board meeting and fix a Record Date in consultation with the Stock Exchange for the purpose of sub-division of intimation to Stock Exchange(s), Depositories (NSDL/CDSL) about the Record date for the purpose of subdivision of shares;

(14) Based on the Record date the Stock Exchange fixes a ‘No Delivery period’ and accordingly issues a Notice to its Members. Obtain a copy of the Notice fixing the ‘No Delivery period’ to be submitted to the Depository;

(15) In terms of Depository Business Rules, the company to provide an option to the shareholders to be allotted securities either in physical or electronic form;

(16) Download data on any given date prior to Record Date to ascertain the shareholders eligible to receive the shares in Demat form;

(17) Corporate Action on account of sub-division of shares will results in the creation of new ISIN and hence send request letter to NSDL to generate a new ISIN;

(18) Send request letter to Depositories for ISIN deactivation/ activation as on the Record Date;

(19) Ascertain the partly paid up shares and ensure that on subdivision of shares the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the shares from which the reduced share is derived;

(20) Reconcile the capital held in Demat and Physical form as on the Record Date;

(21) File Corporate Action Form with the respective Depository and pay the requisite charges based on the number of records along with a copy of Notice published by Exchange for 'No Delivery Period';

(22) Sub-division of shares is defined as system built corporate action and hence on compliance of all the formalities pertaining to the Corporate Action, the Depository shall automatically debit the account of the respective beneficiary with the shares of the face value of Rs.10 (value assumed) and credit the account with the face value of Rs.2 (value assumed) under the new ISIN at the end of day, being the day subsequent to the Record Date;

(23) On corporate action on account of sub-division of shares, the status of the beneficiary does not change, that is to say, tax status, bank details, lock-in details etc. does not change. It is only Depository Participant (DP) who can update the changes in the beneficial owners' account;

(24) Review all 'Stop Transfer' cases prior to printing of new share certificates;

(25) Generate fresh Distinctive numbers consequent to subdivision of shares. It is advisable to create a range of Distinctive numbers for the shares held in DEMAT and Physical form;

(26) Print the share certificates to be issued in Physical mode and maintain a Register with cross reference of New/Old Folio/ Certificate/Distinctive Nos.;

(27) No stamp duty is payable on sub-division of shares. It is advisable to make a cross reference of old share certificate on the new share certificate, e.g. "ISSUED IN LIEU OF SHARE CERTIFICATE NO ...." OR "ISSUED CONSEQUENT TO SUBDIVISION OF SHARES".

27. Register of Renewed or Duplicate Certificates

Notwithstanding anything contained in the Articles of Association of a company, the manner of issue or renewal of a certificate or issue of a duplicate thereof, the form of a certificate (original or renewed) or of a duplicate thereof, the particulars shall be entered in the Register of members or in the Register of Renewed or Duplicate Certificates, the form of such registers, the fee on payment of which, the terms and conditions on which, a certificate may be renewed or a duplicate thereof may be issued, shall be such as may be prescribed. The manner of issue of share certificates is governed by the Companies (Issue of Share Certificates) Rules, 1960.

28. Company Law Board has no powers to grant relief u/s for issuance of duplicate shares

Issue of duplicate share certificates also comes under the purview of rule 4(3) of the Companies (Issue of Share Certificates) Rules, 1960, therefore, relief of issue of duplicate share certificates falls out side the ambit of section 113, CLB has no power to give direction u/s 113. [*Ajit Jjayantilal Sheth Vs. Shri Ram Transport Finance Co. Ltd.* Comp. Cas 359CLB dated 30th May, 2006*]*

29. Restrictions on use of voting rights on such shares if calls not paid

The Articles of a company may provide that no member shall exercise any voting right in respect of any shares acquired in his name on which any call or other sums presently payable by him have not been paid, or in regard to which the company has and has exercised any right of lien. [Section 181]

Section 182 provides that a public company or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting rights on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken, or on any other ground not being a ground as stated in section 181 of the Act.

30. Voting rights in case of pledge, attachment, etc., of shares

The voting rights of shareholders as conferred upon them by section 87 remain intact irrespective of the fact that the shares have been pledged by the shareholders concerned or their shares have been attached or a receiver has been appointed in respect of their shares. The shareholders can requisition a meeting and vote at a meeting under section 169 of the Act, irrespective of the pledge or attachment of his shares and appointment of a receiver.

31. Calls on shares of same clause to be made on uniform basis

Section 91 provides that where calls are made on shares for further share capital, such calls shall be made on uniform basis on all shares falling under the same class.

32. Company may accept unpaid share capital, although the amount is not being called up

A company may if so authorised by its articles, accept from any member, the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called-up. The members shall not however be entitled to exercise voting rights in respect of the money so paid until the same become presently payable.

Appendix 1

Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001[1]

In exercise of the powers conferred by sub-clause (ii) *of clause* (a) *of section 86 read with clauses (a) and* (b) *of sub-section* (*1*) *of section 642 of the Companies Act, 1956, the Central Government hereby makes the following rules, namely:—*

1. Short title and commencement.—(1) These rules may be called the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the contexts otherwise requires,—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "differential voting rights" includes rights as to dividend or voting;

(*c*) "financial year" means financial year as defined under clause (17) of section 2 of the Act.

(2) Words and expressions used and not defined in these rules, but defined in the Companies Act, 1956 shall have the same meaning respectively assigned to them in that Act.

3. Conditions.—Every company limited by shares may issue shares with differential rights as to dividend, voting or otherwise, if—

1. the company has distributable profits in terms of section 205 of the Companies Act, 1956 for three financial years preceding the year in which it was decided to issue such shares;
2. the company has not defaulted in filing annual accounts and annual returns for three financial years immediately preceding the financial year in which it was decided to issue such share;
3. the company has not failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend;
4. the Articles of Association of the company authorises the issue of shares with differential voting rights;
5. the company has not been convicted of any offence arising under Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, Foreign Exchange Management Act, 1999;
6. the company has not defaulted in meeting investors' grievances;
7. the company has obtained the approval of shareholders in general meeting by passing resolution as required under the provision of sub-clause (*a*) of sub-section (1) of section 94 read with sub-section (2) of the said section;
8. the listed public company obtained approval of shareholders through Postal Ballot;
9. the notice of the meeting at which resolution is proposed to be passed is accompanied by an explanatory statement stating—
   (*a*) the rate of voting right which the equity share capital with differential voting right shall carry;
   (*b*) the scale or in proportion to which the voting rights of such class or type of shares will vary;
   (*c*) the company shall not convert its equity capital with voting rights into equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;
   (*d*) the shares with differential voting rights shall not exceed 25% of the total share capital issued;
   (*e*) that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, right shares of the same class;
   (*f*) the holders of the equity shares with differential voting rights shall enjoy all other rights to which the holder is entitled to excepting right to vote as indicated in (*a*) above.

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1 **See** section 86(*a*)(*ii*) of the Companies Act, 1956.

4. Register.—Every company referred to in rule 3 shall maintain a register as required under section 150 of the Act containing the particulars of differential rights to which the holder is entitled to.

Appendix 2

Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003

[Notification No. GSR 923(E), dated 4-12-2003]

In exercise of the powers conferred by proviso to sub-section (*1*) *of section 79 A of the Companies Act, 1956* (*1 of 1956*) *read with sub-section* (*1*) *of section 642 of the said Act, the Central Government hereby makes the following rules, namely:—*

1. Short title and commencement

(1) These rules may be called the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules, unless otherwise defined,—

(*i*) "Asset" means a resource controlled by the company and from which future economic benefits are expected to flow to the company;

(*ii*) "employee" means—

- (*a*) a permanent employee of the company working in India or out of India; or
- (*b*) a director of the company, employed as a whole-time director or executive director of a company;

(*iii*) "intangible asset" means an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes;

(*iv*) "share price" means price of a share on a given date arrived on the net worth basis;

(*v*) "value addition" means anticipated economic benefits derived by the enterprise from expert and/or professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is issued for which the consideration is not paid or included in:—

- (*a*) the normal remuneration payable under the contract of employment, in the case of an employee and/or
- (*b*) monetary consideration payable under any other contract, in the case of non-employee.

3. Applicability

These rules shall be applicable to issue of sweat equity shares by all unlisted companies.

4. Special resolution

(1) For the purpose of passing a special resolution under clause (*a*) of sub-section (1) of section 79A of the Companies Act, 1956 (1 of 1956), the explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the said Act shall contain particulars as specified below:—

(*i*) the date of the meeting at which the proposal for issue of sweat equity shares was approved by the Board of directors of the company;

(*ii*) e reasons/justification for the issue;

(*iii*) the number of shares/consideration for such shares and the class or classes of persons to whom such equity shares are to be issued;

(*iv*) the value of the sweat equity shares alongwith valuation report/basis of valuation and the price at which the sweat equity shares will be issued;

(*v*) the names of persons to whom the equity will be issued and the person's relationship with the company;

(*vi*) ceiling on managerial remuneration, if any, which will be affected by issuance of such equity;

(*vii*) a statement to the effect that the company shall conform to the accounting policies specified by the Central Government; and

(*viii*) diluted earning per share pursuant to the issue of securities to be calculated in accordance with the Accounting Standards specified by the Institute of Chartered Accountants of India.

(2) Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of grant of shares to identified employees and promoters, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversion) of the Company at the time of grant of the sweat equity shares.

5. Register of shares

The company shall maintain a Register of Sweat Equity Shares issued under section 79A in the Form specified in Schedule annexed to these rules.

6. Restriction on issue of sweat equity shares

The company shall not issue sweat equity shares for more than 15% of total paid up equity share capital in a year or shares of the value of 5 crores of rupees, whichever is higher except with the prior approval of the Central Government.

7. Disclosure in the Directors' Report

The Board of directors shall, *inter alia*, disclose either in the Directors' Report or in the annexure to the Directors' Report, the following details of issue of sweat equity shares:

(*a*) number of shares to be issued to the employees or the directors;

(*b*) conditions for issue of sweat equity shares;

(*c*) the pricing formula;

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

(*e*) money realised or benefit accrued to the company from the issue of sweat equity shares;

(*f*) diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

8. Pricing of sweat equity shares

The price of sweat equity shares to be issued to employees and directors shall be at a fair price calculated by an independent valuer.

9. Issue of sweat equity shares for consideration other than cash

Where a company proposes to issue sweat equity shares for consideration other than cash, it shall comply with following:

(*a*) the valuation of the intellectual property or of the know-how provided or other value addition to consideration at which sweat equity capital is issued, shall be carried out by a valuer;

(*b*) the valuer shall consult such experts, as he may deem fit, having regard to the nature of the industry and the nature of the property or the value addition;

(*c*) the valuer shall submit a valuation report to the company giving justification for the valuation;

(*d*) a copy of the valuation report of the valuer shall be sent to the shareholders with the notice of the general meeting;

(*e*) the company shall give Justification for issue of sweat equity shares for consideration other than cash, which shall form part of the notice sent for the general meeting; and

(*f*) the amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 198, 309, 310, 311 and 387 of the Companies Act, 1956 if the following conditions are fulfilled:

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

  (*ii*) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

10. Lock-in of sweat equity shares

Sweat equity shares issued to employees or directors shall be locked-in for a period of three years from the date of allotment.

11. Certificate from auditors

In the case of every company that has allotted shares under these rules, the Board of directors, shall at each annual general meeting place before the shareholders a certificate from the auditors of the company/ practising company secretary that sweat equity shares have been allotted in accordance with the resolution of the company in the general meeting and these rules.

12. Accounting policies

(1) Where the sweat equity shares are issued for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company:—

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

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

(2) In respect of sweat equity shares issued during accounting period, the accounting value of sweat equity shares shall be treated as another form of compensation to the employee or the director in the financial statement of the company.

Schedule

Register of Sweat Equity Shares

(Pursuant to rule 5)

The register of sweat equity shares issued by the company to be kept in the following format:

Sl. No.	*Folio No./Certificate No.*	*Date of passing of resolution*	*Date of issue of sweat equity shares*	*Name of the allottee*	*Status of the allottee-whether director or employee*	*Reference to entry in register of members*	*No. of sweat equity shares issued*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*

Face value of the shares	*Price at which shares issued*	*Total consideration paid by employee/director*	*Lock in period till which date*
9	*10*	*11*	*12*

Appendix 3

Specimen Resolutions for issuance of sweat equity shares

I. Board resolution for issuance of sweat equity shares

RESOLVED THAT subject to the authorisation by the company in general meeting and subject to the provisions of section 79A of the Companies Act, 1956 and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003, ... number of equity of shares of Rs. ..... be and are hereby issued at a discount of Rs. ..... per share (or for consideration other than cash for providing know-how or making available rights in the nature of intellectual rights or value additions, by whatever name called) .... to .... number of employees including some directors, as per the statement placed before the Board duly initialed by the Chairman for identification.

RESOLVED FURTHER THAT an Extraordinary General Meeting of the company be called and held at ...... on .... day of .... at ...... for obtaining the approval of the members for issue of the aforesaid shares (called Sweat Equity Shares) as per the draft notice and explanatory statement placed before the meeting duly initialed by the Chairman for identification.

RESOLVED FURTHER THAT the Company Secretary be and is hereby authorised to issue the said notice to the members and others who are entitled for the same, and take all necessary action in this respect.

II. General meeting resolution for issuance of sweat equity shares

RESOLVED THAT pursuant to section 79A, the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 and other applicable provisions, if any, of the Companies Act, 1956 and in accordance with Articles of Association of the company, consent of the company be and is hereby accorded to the Board of directors of the company for issue of .... Sweat Equity Shares at Rs. .... per share (Market price Rs. .... as on ....) (or for consideration other than cash for providing know-how or making available rights in the nature of intellectual rights or value additions, by whatever name called) to the employees and directors of the company as specified below. [give details of class of employees/directors to whom the shares are to be issued and the consideration for issue of such shares]

RESOLVED FURTHER THAT the Board of directors while issuing the said Sweat Equity Shares do ensure compliance with the guidelines prescribed by the Central Government.

RESOLVED FURTHER THAT the Board of directors do take all necessary actions in this respect to give effect to this Resolution.

Explanatory statement

Section 79A of the Companies Act, 1956 and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003 authorises a company to issue Sweat Equity Shares to its employees and directors. This is to enable to help the companies to reward their employees who have contributed for the growth and making available rights in the nature (intellectual property rights or value additions, by whatever name called).

The Board of directors has accordingly decided to issue such shares to the following class of employees/directors for their contribution to the company [give details] ....

The company has complied with the conditions specified in section 79A of the Companies Act, 1956 and the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003.

Your directors recommend to pass the special resolution as set out in the notice of the meeting.

Shri ...., Shri .... and Shri ...., directors are concerned or interested in this resolution in respect of the Sweat Equity Shares that may be issued to them. No other director is interested or concerned in this resolution.

Appendix 4

Specimen of Resolutions

I. Specimen of Board Resolution for redemption of Preference Shares

RESOLVED THAT pursuant to the provisions of section 80 of the Companies Act, 1956 1,00,000 12% Cumulative Redeemable Preference Shares of Rs 100 each aggregating to Rs 1,00,00,000 be redeemed out of the current years profits on 31st October, 2006, the due date of redemption, by surrender of shares by the shareholders thereof.

RESOLVED FURTHER THAT the Register of members relating to 1,00,000 12% Cumulative Redeemable Preference Shares of Rs 100 each and the Share Transfer books be closed from _______ to _______ (both days inclusive) and the notice thereof be duly given by the Company Secretary to the stock exchanges and in the newspaper by way of an advertisement.

II. Specimen of General meeting resolution for variation of shareholders' rights

RESOLVED THAT subject to the provisions contained in section 106 of the Companies Act, 1956 approval be and is hereby granted for increasing the rate of preference divided from 10% to 12% and for making consequential amendments to Clause V of the Memorandum of Association and Article 5 of the Articles of Association of the Company.

RESOLVED FURTHER THAT the Board of directors of the Company be and are hereby authorised to do all such acts, deeds and things necessary for the purpose of giving effect to this resolution.

Explanatory statement

The company had issued 1,00,000 10% Redeemable Cumulative Preference Shares of Rs. 100 each for augmenting meeting its working requirements immediately after commencement of commercial production. Now, the company's products have been well accepted in the market and company has been doing extremely well.

A demand was raised by the preference shareholders for increasing the rate of dividend on the preference shares and the Board of directors of the company has accepted the said demand.

Hence, the resolution is to be passed as special resolution u/s 106 of the Companies Act, 1956. None of the directors is interested in the proposed resolution.

II. Specimen of resolution for variation of preference shareholders' rights

RESOLVED THAT the terms and conditions of issue of 9% Redeemable Preference Shares of Rs.100 each be and are hereby amended as follows:

"The Redeemable Preference Shares shall be redeemed at the end of seven years instead of nine years, provided however that the said redemption shall be s per the terms of redemption specified in the terms and conditions originally greed to."

RESOLVED FURTHER THAT the Board of Directors be and is hereby authorized to take all decisions with respect to the redemption including settling of disputes, giving directions, etc.

Explanatory Statement

In the context of improved cash flow and in the light of requests from the preference shareholders, it is proposed to redeem the preference shares at the end of seven years instead of nine years as stipulated in the terms and conditions of issue.

Since the existing Articles of Association of the Company do not contain any provisions for variation of the terms and conditions of issue, this special resolution is submitted for approval of the shareholders.

No director is interested or concerned in this resolution. Copies of the Memorandum and Articles of Association of the Company are available for inspection by members during business hours on any working day.

Appendix 5

Specimen of notice to be published in newspaper for proposed redemption of preference shares

Notice is hereby given that the company will redeem 1,00,000 12% Redeemable Cumulative Preference Shares on .... Shareholders are requested to deposit their share certificates in respect of these shares on or before .... at the registered office of the company at .... to enable the company to make the payment in respect thereof. The Share Transfer Register in respect of 1,00,000 12% redeemable cumulative preference shares and the register of members will remain closed from .... to .... (both days inclusive) for the aforesaid purpose.

Notices have already been forwarded to the shareholders individually.

By Order of the Board
For ABC Ltd.
Company Secretary

Appendix 6

Letter to shareholder regarding issuance of duplicate share certificate

ABC Limited

Regd. Office: Silver Ark Plaza, 20A, New Palasiya, Indore (M.P.)

Ref.No.ABC/2006 Date 27th Dec., 2006

Dear Sir/Madam,

Re.: Issuance of duplicate Share Certificate

This has reference to your letter No. XXXX, dated XXXX reporting loss of Share Certificate(s) No(s) 002 to 005 for 400 Equity Shares of Rs. 10 each of the Company and requesting for duplicate thereof.

In order to enable us to place the matter before the Board of directors for their approval, you are requested to send us the following documents:—

1. Indemnity Bond on a non judicial Stamp paper of Rs. 100. (Supported by two sureties acceptable to us) as per the enclosed draft.
2. An affidavit on a non judicial Stamp paper of Rs. 20 duly verified by a First Class Magistrate or a Notary Public as per the draft enclosed.
3. A letter giving full particulars of shares in question such as No. of Shares, Distinctive No., Share Certificate No., Name of shareholder, Register folio No. etc.
4. A sum of Rs. 300 towards expenses in connection with the publication of notice in newspapers before issuance of duplicate share certificate, by way of Cheque/Bank Draft/Indian Postal Order drawn in favour of the Company.

On receipt of the above documents we shall take further action for issuance of duplicate Share Certificates, if approved by the Board of directors.

For ABC Ltd.

Abha Jaiswal
Company Secretary

Appendix 7

Specimen of Affidavit in respect of loss of certificates

(By the registered shareholder)

To

.... (Name and address of the Co./its STA)

I/We .... s/o........ aged .... years. ...,.......... and ....s/o........... aged .... years .... residing .... at .... solemnly affirm and declare as follows:

1. That I/we am/are the sole/joint holder/s of ………. Number of equity shares/debentures/bonds/units in .... (name of the company)

Folio No.	No. of shares	Certificate No.	Distinctive Nos.	
			From	To

2. That the above shares were acquired by me/us for valuable consideration out of my/our own investment/funds against allotment in Public issue/allotment in Right issue or acquired from the market in the years(s)......

3. That I/we have not pledged the original certificate by way of security or collateral or otherwise have not sold the above mentioned shares anytime to any person.

4. That the stop transfer instructions given by me/us are not on the grounds of the non-payment by my/ our Broker/Sub-broker.

5. That I/we have genuinely lost/misplaced the above mentioned shares.

6. That I/we am/are solely responsible for any future liabilities in respect of the above mentioned securities.

7. This Affidavit is executed in favour of the company on my/our own volition and is in the form as required by the company/its agent forwarded to me/us *vide* its letter No............... dated............

Verification

I/We solemnly affirm that the statement contained in the above paragraphs are true to the best of my knowledge, in formation and belief and that nothing material has been concealed from being disclosed.

Deponents

Solemnly declared and affirm on identification at..... on this ...... day of 2007

1. ....

2. ....

Before the Executive Magistrate or Notary Public.

(To be executed on a non-judicial stamp of such value as prescribed in the Stamp Rules of the State where it is executed)

Appendix 8

Specimen of Indemnity

(To be obtained from the unregistered transferee/holder in due course for issue of duplicate certificates documents lost in transit when being lodged for Transfer).

(Name and address of the Co./its STA)

……………
……………

Whereas:

l. I/We/Mr./Mrs./Ms. .... Mr./Mrs./Ms. .... residing at .... had purchased from the market for valuable consideration, securities of your company as detailed hereunder:

Name of the Shareholder & Folio No.	No. of shares	Certificate No.	Distinctive No.

Whereas:

2. The above certificate/s along with the Transfer Deed/s duly signed by the Registered Holder(s) and by me/us were sent by me/us to the Company/its agent and have been lost or misplaced in transit, and the same cannot be found despite best efforts to trace them.

3. I/We have purchased from the market through …….. Stock and Share Broker and Member of ....….. (Stock Exchange) ...... (number) Equity Shares for Rs...... each of .... (name of the company) *vide* Brokers/Bill No. .... dated., (copy enclosed). I/We have made payments to the said Broker *vide* cheque No..... dated ......…. drawn on...... (Bank) for Rs.........which stand paid, as confirmed by broker *vide* his letter dated .... (copy enclosed).

4. The property, beneficial interest and right in the said securities has been acquired by me and stand vested in me for the reason of my having paid the valuable consideration and that such consideration having been received by the transferor through his/their brokers through whom the aforesaid securities were sold and that the securities along with the Transfer Deed(s) signed by the transferors have been lost, mislaid in transit and I/we solemnly affirm and declare that the securities have not been sold by me/us and the property in the said securities belong to me/us as on the date of this declaration.

5. And whereas I/we are desirous of obtaining duplicate certificates to be issued in our name/s, against the original which have been lost or mislaid in transit.

Now this Deed of Indemnity witnesseth as under:

In consideration of the Board of directors/Committee of directors of the Company agreeing to issue duplicate certificate(s) in the name of the Registered Holder in respect of the shares aforesaid, I/we Mr./Mrs./Ms.......

Surety 1. ...... Residing at

Surety 2. ...... Residing at

(Names of the two sureties) for ourselves, respective heirs, executors and administrators do hereby jointly and severally convenient with the company, its successors or assignees that we and our heirs, executors and administrators respectively, will at all times and from time to time save, defend and keep harmless and indemnify the Company, its successors, assignees, agents and the directors thereof and their respective heirs, executors, administrators, each of their estates and effects from and against all actions, causes, on account of the said securities or any of them or part of any person or persons whomsoever and against all damages and costs, charges, expenses or sums of money incurred in respect thereof or otherwise in relation to the said securities.

I/We declare that I/we have not pledged or deposited the original certificate(s) byway of security or otherwise, or transferred or sold, the said securities or any of them and I/we agree and confirm to return forthwith to the company for the purpose of cancellation the said original certificate(s) in case, the same shall be found anytime hereafter.

I/We further declare and agree in writing, that in the event of my/our failure to compensate the Company/its agent in any action, suits and proceedings with the Company/its agent, which company/its agent might face for having issued the duplicate certificate(s) at my/our request/the Company/its agent can have a lien in general on all the securities, which I/we am/are now holding or I/we may be holding hereafter and also the Dividend/Interest declared or payable on the said securities or any other entitlements/payments due to me/us.

I/We the said Mr./Mrs./Ms. .... (names of all the shareholders/debenture holders/bond holders/unit holders) and surety

Surety 1................. Surety 2..................

(names of sureties) undertake on demand by the Company/its agent to return and redeliver such duplicate certificate(s) and without such demand to produce and return forthwith to company/its agent the original certificate(s) when found or traced and to take all actions, suits and proceedings at our own costs, as the company/its agent shall require for the recovery thereof, or otherwise in relation to the said securities.

I/We hereby unconditionally and irrevocably submit to the exclusive Jurisdiction of the Competent Court/Forum to Mumbai, with regard to any question or matter arising out of these present and/or any other documents that may be ...... executed by me/us in pursuance hereby or arising herefrom.

Dated this .... day of .... 20 ....

Witness: (Name and address) Name and address

1.	……................………..
Witness: (Name and address)	……................………..
2.............	1. ……...........................
Witness: (Name and address)	(Signature of the surety)
1...........	2. ………......................
Witness: (Name and address)	(Signature of the surety)

1. Surety should not be a Joint Holder:

(To be executed on non-judicial stamp paper of such value as prescribed in the Stamp Rules of the State where this is executed).

Appendix 9

Another Specimen of Affidavit for loss of certificates

(To be obtained/from unregistered transferee that the shares have not been sold by them before the issue a/duplicate shares)

To

.... (Name and address of the Co./its STA)

I/We .... s/o.............. aged............ year............ and........... s/o.......... aged............. years residing ……......... at …………………solemnly affirm and declare as follows:

1. That I/we am/are the sole/joint holder/s of.............number of equity shares/debentures/bonds/units in............ (name of the company), as detailed herebelow:

Folio No.	Name of the Regd. Holder	No. of Shares Certf. No.		Distinctive No.	
		From	To	From	To

2. That the above shares were acquired by me/us for valuable consideration out of my/our own investment/funds against allotment in Public Issue/allotment in Right Issue or acquired from the market in the year(s)......

3. The above certificate/s along with the Transfer Deed/s duly executed by the registered holder(s) and by me/us which were sent by me/us to the company/its agent have been lost or misplaced in transit/has been lost from our end.

4. I/We have not sold the above-mentioned securities at anytime to any person nor have pledged these securities or acted upon in any manner so as to create any third party rights/interests.

5. That the stop transfer instructions given by me/us are not on the grounds of the non-payment of my/our Broker/Sub-broker.

6. That I/we have genuinely lost/misplaced the above-mentioned securities with/without validly executed Transfer Deed(s).

7. That I/we am/are solely responsible for any future liabilities in respect of the above-mentioned securities.

8. This Affidavit is executed in favour of the company on my/our own volition and is in the form as required by the company/its agent forwarded to me/us *vide* its letter No........dated ....

Verification

I/We solemnly affirm that the statements contained in the above paragraphs are true to the best of my/our knowledge, information and belief and that nothing material has been concealed from being disclosed.

Deponents

Solemnly declared and affirm on identification at..... on this ...... day of 2007.

1. ....

2. ....

Before the Executive Magistrate or Notary Public.

(To be executed on a non-judicial stamp of such value as prescribed in the Stamp Rules of the State where it is executed)

Appendix 10

Another Specimen of Indemnity

(To be obtained from the transferee for transferring duplicate certificates issued in the name of the registered holder without producing the Transfer Deed)

……………...........................

……………...........................

(Name and address of the Co./its STA)

Whereas:

l. I/We/Mr./Mrs./Ms................ Mr./Mrs./Ms.............. residing at.............had purchased ……….. equity shares of your company as detailed hereunder:

Name of the Shareholder & Folio No. No. of shares Certificate No Distinctive No.

Whereas the above certificate(s) which were accompanied along with the Transfer Deeds(s) executed by the registered holder/were lost/mislaid in transit,

Now this Deed of Indemnity witnesseth as under:

The Board of directors/Committee of directors of the Company at my/our request have agreed to issue duplicate certificate in the name of the registered holder for the securities listed above, which were purchased by me/us.

In consideration of the Board of directors of the Company agreeing to register the above securities in my/our favour, I/we hereby agree to indemnify the Company, its successors, its agents and assignee that we and our heirs, executors and administrators respectively, will at all times and from time to time save, defend and keep harmless and indemnify the company, its successors, assignees and the directors thereof and their respective heirs, executives, administrator each of their estates and effects from and against all actions, causes, suits proceeding and accounts, claims and demands whatsoever on account of the said securities being transferred in my/our name or otherwise in connection with entitlements, rights or otherwise to be issued or allotted on the said securities including entitlements for dividend/interest accrued or to accrue on the said securities against any person or persons whomsoever or sums of money incurred or arising thereof in relation to the said securities.

Dated: This...... day of........ 20.........

Witness: (Name and address) Signature of the Applicant(s)

1. Name and address

Witness: (Name and address) ……………......…..

2. ………………........

Appendix 11

Specimen of Notice of loss of Share Certificates

ABC Limited

Regd. Office: 132, Mahavir Nagar, Indore (M.P.)

NOTICE is hereby given that the following Share Certificates issued by the Company are stated to have been lost or misplaced or stolen and the registered holder thereof has applied to the Company for the issued of Duplicate Share Certificates.

Share Certificate No.	*No. of Shares*	*Distinctive Nos.*	*Name of the registered Share holder*

The public is hereby warned against purchasing or dealing in anyway with the above Share Certificates. Any person(s) who has any claims in respect of the said Share Certificates should lodge such claims with the Company at its registered office at the address given above within 15 days of publication of this notice, after which no claim will be entertained and the Company will proceed to issue duplicate Share Certificates.

For ABC Ltd.

Place: Indore Abha Jaiswal

Date: Company Secretary

Appendix 12

The Companies (Issue of Share Certificates) Rules, 1960

[*GSR No. 333 dated 15-3-1960*]

In exercise of the powers conferred by clause (b) *of sub-section* (*1*) *of section 642 of the Companies Act, 1956* (*1 of 1956*), *and in supersession of the Companies* (*Issue of Share Certificates*) *Rules, 1959, published with the notification of the Government of India in the Ministry of Commerce and Industry* (*Department of Company Law Administration) No. GSR 798, dated the 30th June, 1959, the Central Government hereby makes the following rules, namely*:

1. Short title.—These rules may be called the Companies (Issue of Share Certificates) Rules, 1960.

2. Effect of rules.—These rules shall have effect notwithstanding anything to the contrary contained in the articles of association of a company.

3. Definitions.—In these rules, unless the context otherwise requires:

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "Board" means the Board of directors of a company or a Committee thereof consisting of not less than three directors where the total number of directors exceeds six and not less than two directors where the total number does not exceed six:

Provided that, to the extent that the composition of the Board of directors permits of it, at least half of the number of members of the Committee shall consist of directors other than a managing or whole-time director; and

(*c*) "Seal" means the common seal of a company.

4. Issue of share certificate.—(1) When a company issues any capital, no certificate of any share or shares in the company shall be issued except:

(*i*) in pursuance of a resolution passed by the Board; and

(*ii*) on surrender to the company of its letter of allotment or of its fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to evidence and indemnity and the payment of out of pocket expenses incurred by the company in investigating evidence, as the Board thinks fit.

(2) No certificate of any share or shares shall be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, torn or old, decrepit, worn-out, or where the cages in the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company:

Provided that the company may charge such fee, if any, not exceeding Rs. 2 per certificate issued on splitting or consolidation of share certificates or in replacement of share certificates that are defaced or torn, as the Board thinks fit.

(3) No duplicate share certificate shall be issued in lieu of those that are lost or destroyed, without the prior consent of the Board or without payment of such fees, if any, not exceeding Rs. 2, and on such reasonable terms, if any, as to evidence and indemnity and the payment of out of pocket expenses incurred by the company in investigating evidence, as the Board thinks fit.

(4) The companies listed with OTC Exchange of India, a company registered under section 25 of the Companies Act, 1956, may issue a jumbo share certificate in favour of Custodian and issue counter receipts to every allottee with respect to their holding.

Explanation.—For purposes of sub-rule (4), "Custodian" means an entity carrying on post trade activities such as, settlement of purchases and sales, information reporting, safe keeping of securities and/or participating in any clearing system for and on behalf of the client to effect deliveries of the securities.

5. Form of certificate.—(1) Every certificate shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid-up thereon.

(2) When any certificate is issued in any of the circumstances specified in rule 4, sub-rule (2), it shall state on the face of it and against the stub or counterfoil to the effect that it is "Issued in lieu of share certificate No. ...... sub-divided/replaced/on consolidation of shares".

(3) When any certificate is issued in any of the circumstances specified in rule 4, sub-rule (3), it shall state on the face of it and against the stub or counterfoil to the effect that it is a "duplicate issued in lieu of share certificate No. ......". Further, the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate.

6. Sealing and signing of certificate.—Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of (*i*) two directors or persons acting on behalf of the directors under a duly registered power of attorney; and (*ii*) the secretary or some other person appointed by the Board for the purpose. The two directors or their attorneys and the secretary or other person shall sign the share certificate:

Provided that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing or whole-time director.

Explanation.—For the purpose of this rule, a director may sign a share certificate by affixing his signature thereon by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, but not by means of a rubber stamp, provided that the director shall be responsible for the safe custody of such machine, equipment or other material used for the purpose.

7. Records of certificates issued.—(1) Particulars of every share certificate issued in accordance with rule 4, sub-rule (1), shall be entered in the Register of members maintained in the form set out in the Appendix annexed hereto or in a form as near thereto as circumstances admit, against the name(s) of person(s) to whom it has been issued, indicating the date of issue.

(2) Particulars of every share certificate issued in accordance with rule 4, sub-rules (2) and (3), shall be entered in a Register of Renewed and Duplicate Certificates indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of members by suitable cross-references in the "Remarks" column.

(3) All entries made in the Register of members or the Register of Renewed and Duplicate Certificates shall be authenticated by the secretary or such other person as may be appointed by the Board for purposes of sealing and signing the share certificate under the provisions of rule 6.

8. Printing of forms.—All blank forms to be used for issue of share certificates, shall be printed and the printing shall be done only on the authority of a resolution of the Board. The blank forms shall be consecutively machine-numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may appoint for the purpose; and the secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.

9. Custody of books and documents.—The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates except the blank forms of share certificates referred to in rule 8, namely:—

(*a*) [* * *]

(*b*) [* * *]

(*c*) [* * *]

(*d*) where the company has a managing director, the managing director; and

(*e*) where the company has no managing director, every director of the company.

(2) All books referred to in sub-rule (1) shall be preserved in good order permanently, and all certificates surrendered to a company shall immediately be defaced by the word "cancelled" being stamped or punched in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf:

Provided that nothing in this sub-rule shall apply to cancellation of the certificates of security, under sub-section (2) of section 6 of the Depositories Act, 1996 (22 of 1996), when such certificates are cancelled in accordance with sub-regulation (5) of regulation 54 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, made under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 25 of the Depositories Act, 1996 (22 of 1996).

Appendix 13

Specimen of Board Resolutions

I. For printing of share certificates

RESOLVED THAT design/dormat of the share certificate as submitted to this meeting and initialed by the chairman for the purpose of identification, be and is hereby approved and that the blocks, engravings, facsimiles and hues relating to the same be kept under the custody of Ms. Abha Jaiswal, the Company Secretary of the Company.

RESOLVED FURTHER THAT the consent of the Board be and is hereby accorded for printing of 3000 (Three Thousand) share certificates and that the blank share certificate be kept under the custody of Ms. Abha Jaiswal, the Company Secretary, who shall render an account of the same at every Board meeting.

RESOLVED FURTHER THAT Common Seal of the Company be affixed in the Share certificates in presence of Shri M.K. Mittal, the Managing Director who shall sign the same in token thereof.

RESOLVED FURTHER THAT Ms. Abha Jaiswal, the Company Secretary, be and is hereby authorised to obtain the approval of Stock Exchange(s) for the format of the share certificate and comply with all other formalities in this regard.

II. For issue of duplicate share certificates

RESOLVED THAT whereas the company has received from Shri MKM request for the issue of a duplicate share certificate in lieu of the original certificate, as having been lost and an indemnity bond been executed in favour of the company, a duplicate share certificate for 2000 shares of Rs 10 each numbered 2001 to 4000 (both inclusive) be issued to the said applicant under the common seal of the company in accordance with the Companies (Issue of Share Certificate) Rules, 1960, under the signature of any two directors of the Company and the Company Secretary of the company.

III. For splitting of share certificates

The Chairman appraised that the company has received a request for splitting of share certificate from Shri Tarun Choudhary for 84 shares.

The Board considered and after detailed discussion passed the following resolution unanimously:

RESOLVED THAT the consent of the Board of directors of the company be and is hereby accorded for splitting the original certificate no. 19 for 84 shares as follows:

New Certificate No.	*Distinctive No.*	*No. of Shares*
22	1791-1795	5
23	1796-1800	5
24	1801-1805	5
25	1806-1874	69

FURTHER RESOLVED THAT the original certificate no. 19 be and is hereby cancelled on split of shares.

FURTHER RESOLVED THAT Shri Atul Agrawal and Shri Tarun Choudhary, the Directors of the Company be and is hereby authorised to issue the fresh share certificates in lieu of the original one and the Common Seal of the Company be affixed in presence of the above said directors of the Company.

Chapter 2

Debentures

Synopsis

Appendix 3	Specimen of Public notice regarding record date for payment of half-yearly interest on Debentures	

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	117	Restrictions on issue of debentures with voting rights.	
2.	117A	Debenture Trust Deed.	
3.	117B	Appointment and duties of debenture trustees.	
4.	117C	Creation of Debenture Redemption Reserve.	
5.	118	Right to obtain copy of the trust deed.	
6.	118	Liability of Trustees for debentureholders.	

1. Meaning of debentures

Section 2(12) of the Companies Act defines the term "debenture" which includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

In a simple meaning, a debenture means a document, which either creates a debt or acknowledges it, any document which fulfills either of these conditions is a debenture. It may be defined as a certificate of debt or loan given under the common seal of the company evidencing that the company undertakes to pay specified amount with interest.

Debentures are not part of share capital, it is a loan capital and company is liable to pay interest thereon whether there are profits or not. Debentures may be secured by way of creating charge on the assets of the company or by way of mortgage of company's property.

2. Basic characteristics of debentures

Debenture as a method of raising loan capital is an equally important part of project financing along with share capital. Following are some of the salient features of debentures:—

(*i*) It is a document containing an acknowledgement of indebtedness.

(*ii*) Debentures are issued in form of certificates.

(*iii*) Debenture may be secured or unsecured. Debentures need not necessarily create a charge on the company's assets. Section 2(12) provides that debenture may or may not constitute a charge on the assets of the company.

(*iv*) Debentures are generally issued under the common seal of the company.

(*v*) Debentureholders do not have any right to vote at any meeting of the company. In terms of provisions of section 117 of the Act, no company shall, after the commencement of this Act, issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of particular classes of business.

(*vi*) Debentures may be convertible or non-convertible.

(*vii*) Debentures may or may not be one of a series.

(*viii*) Debentures carry interest at a fixed rate.

3. Form of debentures

The forms of 'debenture' are:

(*i*) simple acknowledgement of debt under seal;

(*ii*) acknowledgement of debt and charging of the property of the company with repayment; and

(*iii*) acknowledgement of debt charging the property with repayment and further restricting the company from giving any prior charge

4. Types of debentures

Debentures may be classified into various categories according to the securities, option, negotiability, etc attached with them in terms of their issue. These are as follows:—

4.1. Classification on the basis of security

There are following types of debentures on the basis of security:—

(*a*) *Secured debentures*.—Debentures issued by a company may be secured by way of creating charge on the assets of the company. Debentures may be secured by way of mortgage of company's properties.

The secured debentureholders have greater protection. Holders of secured debentures remain convinced about the payment of interest and payment of principal in the event of redemption.

(*b*) *Unsecured debentures*.—These debentures are also known as naked debentures. These debentures are not secured by way of charge on the company's assets. Interest rate payable on unsecured debentures is generally higher than that which is payable on secured debentures. In the case of unsecured debentures the company must ensure compliance with the provisions of the Companies (Acceptance of Deposits) Rules, 1975 since the unsecured debentures are treated as 'deposits' for the purposes of Companies (Acceptance of Deposits) Rules, 1975.

Rule 2(*b*)(*x*) of the Companies (Acceptance of Deposit) Rules, 1975 provides that amount raised by the issue of bonds or debentures secured by the mortgage of any immovable property of the company or with an option to convert them into shares of the company, does not constitute a deposit under section 58A. The Department of Company Affairs has clarified *vide* Circular No. 4/12/8-11CL-X, dated 10-3-1980 that in case of unsecured debentures with an option to convert a part of them into shares only the convertible portion of the debenture is exempt in terms of the provisions of rule 2(*b*)(*x*).

4.2. Classification on the basis of negotiability

Debentures issued by a company may be negotiable or non-negotiable. There are following two types of debentures:—

(*a*) *Bearer debentures*.—These debentures are payable to bearer of the debentures and transferable by mere delivery. These debentures are also known as unregistered debentures.

(*b*) *Registered debentures*.—These debentures are not transferable by mere delivery of debenture certificates and shall be transferred as per the provisions of the Companies Act, by executing transfer deeds and the transfer registered by the company. Registered debentures are not negotiable instruments. A registered holder of a debenture means a person whose name appears both in the debenture certificate and in the register of debentureholders. Principal and interest amount, when due in respect of these debentures are payable to the registered holders thereof only.

4.3. Classification on the basis of redemption or payment

It may be classified in the following categories:—

(*a*) *Redeemable debentures*.—Redeemable debentures are those debentures which will be paid after a pre-fixed time.

(*b*) *Irredeemable debentures*.—These debentures are also called and known as perpetual debentures. Section 120 deals with perpetual debentures. It reads as under:

A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that thereby, the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

4.4. Classification on the basis of convertibility

These debentures are issued by a company on the basis of option provided to them for conversion of debenture in the equity shares of the company after a certain period. It may be classified in the following categories:—

(*a*) *Fully convertible debentures* (*FCDs*).—These debentures are converted into equity shares of the company on the expiry of a specified period.

(*b*) *Partly convertible debentures* (*PCDs*).—Partly convertible debentures are divided into two portions, *viz*., convertible and non-convertible portion. The convertible portion is converted into equity shares of the company at the expiry of specified period. The non-convertible portion is redeemed at the expiry of the specified period in terms of there issue.

(*c*) *Non-convertible debentures* (*NCDs*).—Non-convertible debentures do not have any option to convert the same into equity shares and are redeemed at the expiry of specified period(s).

5. Issuance of debentures with warrant option

A company may issue the convertible debentures, whether fully convertible or partly convertible with detachable warrant. The warrant gives a right to the holder to get equity shares mentioned in the warrant after the expiry of a certain period at a price not exceeding the price fixed in the warrant.

6. Issue of debentures at a discount

There is no prohibition to issue debentures at a discount unlike the restrictions contained in section 79 of the Companies Act, 1956 for the issue of shares at a discount. But where the debentures are convertible into equity shares, the conversion shall be at par or above the nominal value of the equity shares unless the provisions of section 79 are complied with.

7. Powers to pay commission

Pursuant to section 76 of the Companies Act, it is permissible to pay commission at a rate not exceeding 2.5% of the price at which the debentures are proposed to be issued provided the payment of commission is authorized by the Articles of Association. No commission shall be paid on debentures which are not offered to the public.

Further, it is also provided in section 76 that in the case of issue of debentures to the public, the amount or rate percent of the commission and the number of debentures which persons have agreed on commission to subscribe absolutely or conditionally shall be disclosed in the prospectus. Copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.

8. Interest on debentures

Interest rate in respect of debentures is freely determinable by the issuer company. Even zero rate of interest debentures can be issued. Companies may pay interest on debentures at a rate which seems to be reasonable to them. The interest may be paid quarterly, half-yearly or on any other terms of its issue. Interest payable on debentures is debited to profit and loss account for arriving at taxable profits under the Income-tax Act, 1961.

9. Prohibition on issuance of debentures carrying voting rights

Section 117 provides that no company shall issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of particular class of business.

10. Debentures v Deposits Rules

In terms of rule 2(*b*)(*x*) of the Companies (Acceptance of Deposits) Rules, 1975, any amount raised from the public by the issue of bonds or debentures secured by mortgage of any immovable property of a company or any amount raised by the issue of fully convertible debentures (FCDs) or partly convertible debentures (PCDs), the non-convertible portion being secured as above, will not come under the purview of the said rules provided the value of the debentures or bonds does not exceed the market value of the property and assets charged. But any amount raised by issue of unsecured debentures or debentures secured by other assets will be treated as deposit and governed by the said rules.

11. Debentures v NBFC Acceptance of Deposits (RBI) Directions, 1998

According to the above directions, the amount raised by issue of debentures secured either by immovable property or by other assets of the borrowing company will not come under the above directions as well as issue of FCDs and PCDs. In the above cases the value of debentures or bonds shall not exceed the market value of the immovable property/assets.

12. Listing of debentures u/s 73

A listed company, which proposes to issue debentures to the public, shall make the debentures enlisted in a recognised Stock Exchange. It shall, before issuing the prospectus for such issue, make the application to the Stock Exchange concerned and the permission must be obtained before the expiry of ten weeks from the date of the closing of the subscription. It is not a condition that only a listed company can make a public issue of debentures. According to SEBI Guidelines it is possible to make an initial offer of debentures to the public subject to the conditions specified.

13. Issue of PCDs or FCDs requires other approvals

Where a company proposes to issue PCDs or FCDs, such a proposal requires the prior approvals of the shareholders by special resolution and of the Central Government pursuant to the provisions in Section 81(3)(*b*).

14. Public Companies (Term of Issue of Debentures and Raising of Loans with Option to convert such Debentures or Loans into Shares) Rules, 1997

Pursuant to the above Rules, the approval of the Central Government for conversion of debentures and loans into equity shares in terms of clause (*a*) of the proviso under section 81(3)(*b*) of the Companies Act, 1956 will not be necessary if the terms of conversion are as follows:

(*a*) The debentures are issued or loans are raised either through private subscription or issue of a prospectus to the public;

(*b*) A public financial institution or scheduled bank either underwrites the above issue or subscribes to the issue of debentures, either wholly or in part or sanctions the whole or part of the loan; and

(*c*) The right of conversion may be at par or at a premium not exceeding 25% of the nominal value of the shares.

Issue of convertible debentures within the above Rules will, therefore, require only the approval of shareholders by special resolution before the issue is made and the approval of the Board in terms of section 292.

14.1. Issues of PCDs/FCDs or Convertible Loans where Government approval and approval of Shareholders is necessary

On the basis of the Rules quoted above, where a company proposes to offer convertible debentures to the public in which no all-India public financial institution participates in any way, such issues will need the approval of the Central Government and the approval of the company in general meeting will be necessary by special resolution. Similarly, where it is proposed to raise loans convertible into equity from an institution other than a public financial institution, such a proposal also need the prior approval referred to above. Further where the equity shares are proposed to be issued on conversion of debentures or bonds or loans at a rate exceeding 25% of the face value of the shares, whether underwritten or not or subscribed by a public financial institution or not, the approvals of the Central Government and the company in general meeting by special resolution will be necessary. Issue of PCDs and FCDs in certain circumstances may be in accordance with SEBI Preferential Allotment Regulation.

14.2. Government approval when not needed

Some are of the view that when, in terms of the issue of convertible debentures, a company holds unconditional right to convert the debentures into equity shares as per the conditions of issue and the debentureholders have no option but to accept the conversion, no approval of the Central Government will arise in such a case as there is no option for the shareholders to convert but a special resolution of members is necessary before the issue is made under the proviso of section 81(3)(*b*). But in a listed company according to SEBI Guidelines option should be given to shareholders to exercise or not to exercise conversion option.

14.3. Total exemption to convert debentures or loans into shares in respect of institutions

Pursuant to the proviso (*b*) of section 81(3)(*b*), issues of convertible debentures to and raising of loans partly convertible into shares from the following institutions are exempt from the prior approval of members by special resolution, but the prior approval of the Central Government would appear to be necessary.[1]

(*i*) The Industrial Finance Corporation of India, established under the Industrial Finance Corporation Act, 1948;

(*ii*) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(*iii*) The Unit Trust of India, established under the Unit Trust of India Act, 1963;

(*iv*) The Industrial Development Bank of India, established under the Industrial Development Bank of India Act, 1964;

(*v*) The Industrial Credit and Investment Corporation Limited, a company registered under the Companies Act, 1913;

(*vi*) The Industrial Reconstruction Corporation of India, established under the Industrial Reconstruction Bank of India Act, 1984;

(*vii*) The General Insurance Corporation of India, established under the General Insurance Business (Nationalisation) Act, 1972;

(*viii*) The National Insurance Company Limited, formed and registered under Companies Act, 1956;

(*ix*) The New India Assurance Company Limited, formed and registered under the Companies Act, 1956;

(*x*) The Oriental Fire and General Insurance Company Limited, formed and registered under the Companies Act, 1956;

(*xi*) The United Fire and General Insurance Company Limited, formed and registered under the Companies Act, 1956;

(*xii*) Risk Capital & Technology Finance Corporation Limited;

(*xiii*) Tourism Finance Corporation of India Ltd.;

(*xiv*) Shipping Credits & Investment Company of India Ltd.;

(*xv*) Technology Development & Information Company of India Ltd.

15. Secured debentures shall be issued with the trust deed

The issue of debentures is generally secured by a debenture trust deed by which the property forming the security is charged by way of mortgage to the trustees. The trust deed provides the terms and conditions on which the charge is held and may be enforced. The debenture trust deed shall be executed within six months of the closure of the issue.

Execution of debenture trust deed brings a plethora of benefits both for the debentureholders and the company.

Sections 117A, 117B and 117C of the Companies Act, 1956 relating to Debenture Trust Deed are reproduced as below:—

15.1. Debenture trust deed

Section 117A of the Act deals with Debenture Trust Deed. The provisions are as under:—

— a trust deed for securing any issue of debentures shall be in such form and shall be executed within such period as may be prescribed;

— a copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed;

1 Notification No. SO 2577, dated 30-07-1977 as amended by Notification SO 1328, dated 8-5-1978, SO 2902, dated 9-10-1987, SO 239(E), dated 20-03-1990, SO 6(E) dated 3-01-1990, SO 1033(E), dated 12-12-1989 and SO 269(E), dated 26-04-1993.

— if a copy of the trust deed is not made available for inspection or is not given to any member or debentureholder, the company and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues.

Pursuant to Reg. 14 of the SEBI Debenture Trustee Regulations, the Debenture Trust shall ensure that the Trust Deed contains the matters specified in the Schedule IV to the said Regulations. In this connection it may be noted that the Central Government is expected to make Rules containing a model Trust Deed.

Where the requirements set out in a debenture trust deed were basically for the company's benefit and administrative convenience, the company would be entitled to waive the requirement imposed for its benefit.

15.2. Appointment, functions and duties of debenture trustee

Section 117B of the Act deals with the terms of appointment and duties of the debenture trustee which may be discussed as under:—

(*a*) *Compulsory appointment of debenture trustees*.—No company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless the company has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed:

Provided that no person shall be appointed as a debenture trustee, if he—

(*i*) beneficially holds shares in the company;

(*ii*) is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;

(*iii*) has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(*b*) *Functions of debenture trustees*.—Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(*c*) *Duties of debenture trustees*.—In particular, and without prejudice to the generality of the foregoing functions a debenture trustee may take such other steps as he may deem fit—

(*i*) to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times;

(*ii*) to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed;

(*iii*) to ensure that the company does not commit any breach of covenants and provisions of the trust deed;

(*iv*) to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures;

(*v*) to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

Section 117B(4) provides that where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as that Tribunal thinks necessary in the interests of holders of the debentures.

15.3. Liability of company to create security and debenture redemption reserve

Section 117C of the Act, 1956 deals with 'liability of company to create security and debenture redemption reserve' which has been provided as under:—

(*a*) *Creation of debenture redemption reserve*.—Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(*b*) *Utilisation of reserve*.—The amounts credited to the debenture, redemption reserve shall not be utilised by the company except for the purpose aforesaid.

The Department of Company affairs has clarified *vide* General Circular No. 9/2002 No. 6/3/2001-CL.V, dated 18-4-2002 that one of the measures that the Central Government took to protect the interests of small investors in Companies Act was to insert section 117C in the Companies (Amendment) Act, 2000 which contemplates the creation of security and liquidity to ensure timely repayment by companies on redemption of debentures and thereby afford protection to the debentureholders.

Section 117C requires every company to create a Debenture Redemption Reserve (DRR) to which 'adequate amounts' shall be credited out of its 'profits' every year until such debentures are redeemed, and shall utilise the same exclusively for redemption of a particular set or series of debentures only. Thus, the quantum of DRR to be created before the redemption liability actually arises in normal circumstances should be 'adequate' to pay the value of debentures *plus* accrued interest (if not already paid), till the debentures are redeemed and cancelled. Since the section requires that the amount to be credited as DRR will be carved out of profits of the company only, there is no obligation on the part of the company to create DRR if there is no profit for the particular year.

The Department of Company Affairs (DCA) has received a number of representations from Public Financial Institutions, Non-Banking Financial Companies, Professionals, FICCI, CII, Chambers, etc. seeking clarifications in this regard.

The matter was considered keeping in view the purpose of the introduction of section 117C and the genuine problems likely to be caused to the NBFCs, All India Financial Institutions (AIFIs) and banks that deal in financial products and would find it difficult to create DRR after transferring 20% of the profits to Reserve Fund out of the divisible profits as already required by RBI norms.

After taking into consideration the RBI directions/regulation on prudential norms applicable to banking companies, AIFIs and NBFCs, and the SEBI (Disclosure and Investor Protection) Guidelines, 2000, the Government hereby clarifies on adequate DRR and other related matters as under:—

(*i*) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other FIs within the meaning of section 4A, DRR will be as applicable to NBFCs registered with RBI.

(*ii*) For NBFCs registered with the RBI under section 45-IA of the RBI (Amendment) Act, 1997, 'the adequacy' of DRR will be 50% of the value of debentures issued through public issue as per present SEBI (Disclosure and Investor Protection) Guidelines, 2000 and no DRR is required in the case of privately placed debentures.

(*iii*) For manufacturing and infrastructure companies, the adequacy of DRR will be 50% of the value of debentures issued through public issue and 25% for privately placed debentures.

(*iv*) Section 117C will apply to debentures issued and pending to be redeemed and as such DRR is required to be created for debentures issued prior to 13-12-2000 and pending redemption subject to clarifications issued herein.

(*v*) Section 117C will apply to non-convertible portion of debentures issued whether they are fully or partly convertible.

15.4. Debenture Redemption Reserve (DRR) - Clarification[1]

(*a*) In continuation to this Department's General Circular No. 9/2002, dated 18-4-2002, it is clarified that for Housing Finance Companies registered with the National Housing Bank under Housing Finance Companies (NHB) Directions, 2001, "the adequacy" of Debenture Redemption Reserve (DRR) will be 50% of the value of debentures issued through public issues and no DRR is required in the case of privately placed debentures.

(*b*) *Payment of interest in case of failure to redeem*.—The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(*c*) *Power of Tribunal in case of failure to redeem*.—Where a company fails to redeem the debentures on the date of maturity, the Tribunal may, on the application of any or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(*d*) *Penalty for default*.—If default is made in complying with the order of the Tribunal under sub-section (4), every officer of the company who is in a default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.

16. Power to re-issue redeemed debentures

Section 121 contains elaborate provisions concerning power to re-issue redeemed debentures in certain cases. Accordingly, where a company has redeemed any debentures previously issued then:—

(*a*) unless any provision to the contrary, whether express or implied, is contained in the articles, or in the conditions of issue, or in any contract entered into by the company; or

(*b*) unless the company has by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled;

the company shall have and shall be deemed always to have had, the right to keep the debentures alive for the purposes of re-issue; and in exercising such a right, the company shall have, and shall be deemed always to have had, power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place.

Upon such re-issuance of the debentures, the person entitled to the same shall have, and shall always be deemed to have had the same rights and priorities as if the debentures had never been redeemed.

Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. For the purpose of stamp duty, re-issue of debentures shall be treated as a fresh issue.

Debentures already redeemed can be reissued only if a Board resolution is passed in that regard. Upon re-issue of debentures, the date of redemption of debentures does not get extended *i.e.* it remains same as per the terms of original issue.

The advantage of keeping debentures alive is that the preliminaries preceding the issue of the debentures need not be complied with again and the re-issue can be made without delay. In that the company is not required to file documents for satisfaction of the charge and to file documents for registration of fresh mortgage which has to be created.

Part I of Schedule VI requires that the balance sheet of the company should state the particulars of redeemed debentures which the company has power to re-issue.

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1 Circular No. 6/3/2001-CL. V, dated 16th January, 2003.

17. Right of debentureholders to obtain copies of and inspection of trust deed

Section 118 gives a debentureholder right to obtain a copy of the trust deed. The section reads as under:—

(1) A copy of any trust deed for securing any issue of debentures shall be forwarded to the holder of any such debentures or any member of the company, at his request and within seven days of the making thereof, on payment—

   (*a*) in the case of a printed trust deed, of such sum as may be prescribed; and

   (*b*) in the case of a trust deed which has not been printed, of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied.

(2) If a copy is refused, or is not forwarded within the time specified in sub-section (1), the company, and every officer of the company who is in default, shall be punishable for each offence, with fine which may extend to five hundred rupees and with a further fine which may extend to two hundred rupees for every day during which the offence continues.

(3) The Tribunal may also, by order, direct that the copy required shall forthwith be sent to the person requiring it.

(4) The trust deed referred to in sub-section (1) shall also be open to inspection by any member or debentureholder of the company in the same manner, to the same extent, and on payment of the same fees, as if it were the register of members of the company.

18. Right of debentureholders to obtain copies of annual accounts

Any debentureholder of a company shall, on demand, be entitled to be furnished free of cost, with a copy of the last annual accounts and directors' reports of the company. [Section 219]

19. Specific performance of contract to subscribe for debentures

Section 122 provides that a contract with a company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

20. Creation of security and stamp duty

According to Article 27 of Schedule 1 to the Indian Stamp Act, 1899 debentures issued by an incorporated company or other body corporate in terms of a registered mortgage deed, duly stamped in respect of the full amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, its property to trustees for the benefit of the debentureholders is exempt from the stamp duty payable on 'debenture'. Where a mortgage is created by a registered mortgage deed, no further stamp duty will be payable on 'debenture' under Article 27.

As provided in Article 27 of the Indian Stamp Act, debenture requires impressed stamp and the stamp is payable on a graduated scale.

21. Liability of debenture trustees

Section 119 provides that any provisions contained in a trust deeds securing an issue of debentures, or in any contract with the holders of debenture secured by a trust deed shall be void so for as it would have effect of exempting a trustee from liability for breach of trust, where he fails to show the degree of care and diligence required by him as trustee. A release from liability can be given only when a majority of not less than three-fourth in value of the debenture holders present in person or by proxy agree at a meeting summoned for the purpose, and the voting must relate to specific acts or omission or to a trustee who is dead or has ceased to act. Therefore, a general provision for exempting trustees from liability should be prohibited but that enabling clauses as distinct from indemnity clauses, should be permitted.

For a valid release of trustee from liability not only a majority of three-fourths in value of the debentureholders should agree but also the release must relate to specific acts or omission and not be a provision for general release. [Section 119(2)(*b*)]

22. Registration of charges, debentures series and stamp duty, etc.

As per section 125(4) of the Companies Act, 1956, registration *inter alia* of a charge for the purpose of securing any issue of debentures is mandatory. Debentures creating a charge on immovable property must also be registered under Indian Registration Act; a registration under Companies Act is not enough.

Section 128 of the Companies Act, 1956 stipulates that where a company issues a series of debentures which is secured by a charge, the benefit of which will be available to all debentureholders *pari passu*, the company shall file prescribed particulars in e-Form 10 electronically with the Registrar of Companies for registration of charge under section 125(4). It is required to submit the following particulars with the Registrar of Companies:—

(*i*) The total amount secured by the whole series.

(*ii*) The dates of the resolutions authorising the issue of the series and the date of the covering deed, if any, by which the security is created or defined.

(*iii*) A general description of the property charged; and

(*iv*) The names of the trustees, if any, for the debentureholders.

The aforesaid particulars shall be filed within thirty days after the execution of the deed containing the charge or, if there is no such deed, after the execution of any debentures of the series.

Further, with the aforesaid particulars, there shall be submitted to the Registrar of Companies, the deed containing the charge, or a copy of the deed verified in the prescribed manner, or if there is no such deed, one of the debentures of the series.

The following points are important in these respects:—

(*a*) any omission to file prescribed particulars with the concerned Registrar of Companies shall not affect the validity of the debentures issued by a company;

(*b*) debentures may itself contain a charge or give a reference as to any other instrument in this regard;

(*c*) the requisite particulars as stated in (*i*) to (*iv*) above are required to be filed in prescribed Form 10 within a period of thirty days after the execution of trust deed containing the charge, or if there is no such deed, after the execution of any debentures of the series;

(*d*) the e-Form 10 shall be filed, in triplicate and a copy of instrument creating the charge duly verified as per rule 6, shall be attached thereto alongwith payment of fee;

(*e*) the e-Form 8 shall be signed both on behalf the company as well as the chargeholder;

(*f*) in respect of debentures creating a charge on immovable property, a registration under the Companies Act will not suffice but debentures must also be registered under the Indian Registration Act.

23. Endorsement of certificate of registration on debentures, etc.

Section 133 requires that the company shall cause a copy of every certificate of registration given under section 132, to be endorsed on every debenture or certificate of debenture stock which is issued by a company and the payment of which is secured by the charge so registered with the Registrar of Companies.

If any person knowingly delivers, or willfully authorises or permits the delivery of any debenture or certificate of debenture stock which is required to be endorsed with a copy of a certificate of registration, as stated above, without being so endorsed upon it, shall be punishable with fine which may extend to ten thousand rupees.

A debenture holder can sue the company for recovery of amounts payable to him as holder of the debenture certificate because the debenture certificate usually contains a covenant directly between the company and the debentureholder that the company will pay the said amount and interest thereon to the debentureholder. [*Narotamdas Trikamdas Toprani* v *Bombay Dyeing & Mfg. Co. Ltd*. (1990) 68 Comp Cas 300 (Bom)].

24. Extension in time for issue of debenture certificates

Where a company is not in a position to complete creation of security and issue the debenture certificates within three months of allotment, the Central Government may, on an application from the company, grant extension of time upto a further nine months for issue of the certificates. The debenture certificates will be stamped according to the stamp duty applicable in the state where the debenture certificates are issued.

25. Stamp duty need not be paid if no debenture instrument is issued

In case of *Greaves Cotton & Co. Ltd.* v *State of Maharashtra* (2005) 65 CLA 226 (Bom), it was held that the State is entitled to impose stamp only on the instrument and not on the transaction. There is no law, which compels the company to issue debenture certificate before converting it into the equity share. There is no mandatory provision in the companies Act mandating a company to issue a debenture certificate before conversion of the same into an equity share.

26. Procedure to be followed for roll over of debentures

1. All the debentures issued by the company shall necessarily be redeemed as per the terms of issue.
2. If company finds redemption difficult, it can roll over non-convertible debentures/non-convertible portion of convertible debentures, in accordance with SEBI Guidelines. [Refer SEBI Guidelines for Disclosure and Investors' Protection on a separate section given in CD with the Book].
3. For considering the proposal of roll over of debentures a meeting of the Board of directors shall be convened.
4. Convene a general meeting of debenture holders for considering and approving the proposal of roll over of debentures by way of special resolution.
5. Obtain a fresh credit rating within six months preceding the date of redemption and it should be communicated to all the debenture holders.
6. Prepare a letter of option for rollover of debentures.
7. The letter of option shall be forwarded to every debenture holder separately.
8. The company can roll over debentures of those debenture holders who have given their positive written consent for roll over.
9. Debentures held by those debenture holders who do not give their positive consent for the roll over cannot be rolled over.
10. If the trust deed executed earlier is not on continuation basis till the redemption, then execute a fresh trust deed.
11. The company shall redeem all those debentures in respect of which it has not receive positive written consent for roll over and payment for redemption shall be made within one month since the date of redemption.

27. Secondary market for Corporate Debt Securities

SEBI has observed that companies have been issuing debt securities on private placement basis and in order to provide greater transparency to such issues and to protect the interest of investors in such securities, it has decided that the issuer companies shall be required to comply with post-issue conditions. These are contained in two circulars issued by SEBI dated 30-9-2003[1] and 22-12-2003[2] (for details refer Separate section of CD attached with the Book).

Appendix 1

Specimen of Resolutions

I. For Conversion of Bearer Debentures

RESOLVED THAT this meeting of the debentureholders secured by the trust deed dated ...., as modified by supplemental trust deeds dated .... and the ...., hereby sanctions and approves of the following modifications of the rights of the holders of the said debentures and of the provisions of the said trust deed:

(*a*) That the said debentures of Rs. 10 lakhs be converted into Registered debentures;

1 MRD/SE/AT/CIR-36/2003/30/09, dated 30-9-2003.
2 MRD/SE/AT/46/2003, dated 22-12-2003.

(*b*) That the time for payment of the principal moneys secured by the said trust deed be extended to the ..... and the said debentures shall have effect as if that date for payment was originally fixed thereby;

(*c*) That the rate of interest on the principal moneys secured by the said debentures as from the ...... be ....% p.a. (subject to tax);

(*d*) That the trustees be and are hereby authorised to concur with the company in executing a supplemental trust deed for effectuating the above and other purposes in the form of the draft submitted to the meeting and for the purpose of identification initialled by the Chairman thereof with such variation or addition (if any) as may be deemed requisite or expedient and as may be approved by the Trustees.

II. For reissue of Redeemed Debentures

RESOLVED THAT pursuant to the provisions contained in the Article ….. of the Articles of Association of the Company and subject to the terms and conditions contained in the Debenture Trust Deed and provisions of section 121 of the Companies Act, 1956, the 10% Secured Debentures of Rs. 10 each be re-issued to the applicants for such debentures, a list whereof was produced before this meeting and initialed by the Chairman, on the same terms and conditions under which they were originally issued except that the rate of interest shall be 11% and that the said debentures be secured by renewal of the trust deed as per clause ….. of the Debenture Trust Deed.

III. For extension of period of redemption of Non-convertible Debentures

RESOLVED THAT subject to such statutory and necessary approvals as may be required consent be and it is hereby accorded to the Board of Directors of the Company to extend the period of redemption of 1,21,324 15% Secured Non-convertible Debentures of Rs. 100 each ("the Debentures") issued by the Company and held by Unit Trust of India, Life Insurance Corporation of India, General Insurance Corporation of India, the New India Assurance Company Limited, the Oriental Fire & General Insurance Company Limited and United India Insurance Company Limited ("the said Institutional Debentureholders") out of the total of 1,50,000 Debentures so that the said 1,21,324 Debentures of Rs. 100 each aggregating Rs. 1,21,32,400 shall be redeemed on December 27, 2006 and that the rate of interest, the amount of premium and/or fees and other payments to be made thereupon to the said institutional Debentureholders and other terms and conditions (financial or otherwise) on which the period of redemption be extended, shall be such as may be agreed to between the said Institutional Debentureholders and the Board of Directors of the Company, and that Bank of India, the Trustees for the Debentures be and they are hereby authorised to act on this resolution and to enter into such supplementary and other deeds, documents or writings and to take such steps as they may in consultation with the Company, deem to be necessary or expedient to give effect to this resolution;

RESOLVED FURTHER THAT the terms and conditions of the Deed of Hypothecation and Articles of Agreement both dated .... entered into between Bank of India and the Company shall be read, construed and applied together with and as amended or modified by this resolution.

Explanatory Statement

The company had issued in the year .... 1,50,000 15% Secured Redeemable Non-convertible Rights Debentures of Rs. 100 each for cash at par aggregating Rs. 1,50,00,000. The company executed Articles of Agreement and Deed of Hypothecation both dated ..... with Bank of India, the Trustees for the Debentureholders.

According to the terms of issue, the principal amount together with a premium of 5% thereon was to be redeemed on .....

The Institutional Debentureholders *viz*. Unit Trust of India, Life Insurance Corporation of India, the General Insurance Corporation of India, the New India Assurance Company Limited, the Oriental Fire & General Insurance Company Limited and the United India Insurance Company Limited (hereinafter referred to as "the said Institutional Debentureholders") hold 1,21,324 of the said 1,50,000 Debentures. It has been proposed and the said Institutional Debentureholders have agreed to extend the payment of redemption amount to them from the due date of redemption by a period of two years. The above extension of redemption would include payment of interest at 15% together with such payment of premium, fees and/or other payments as may be agreed to by the said Institutional Debentureholders and the Company. The payment of redemption amount to Debentureholders other than the said Institutional Debentureholders has been made as per the terms of the issue.

The Board of Directors consider that it is in the interest of the Company to extend the time for redemption of debentures to the said Institutional Debentureholders and accordingly, recommend the resolution for approval.

Appendix 2

Specimen of Public notice regarding Redemption of Debentures

ABC Limited

Regd. Office: 132, Mahavir Nagar, Indore (M.P.)

NOTICE is given for the General information of the holders of ...% Debentures (II Series) under the Cumulative Interest Scheme, whose names stand registered in the books of the Company as on the Record Date, *viz* ...... that the third and final installment of redemption of the said debentures at Rs...... per Debenture, together with pro rata accumulated interest at Rs. ... per Debenture, will be due and payable on ..... and that while the interest will be posted by the Company to all the registered holders on the due date, redemption amount of debentures will be paid only against the Debenture Certificates which are to be surrendered to the Company. Duly discharged by the holders thereof. Notice of redemption has also been sent to the registered address of the Debenture holders individually.

For ABC Ltd.
Abha Jaiswal
Company Secretary

Place: Indore
Date:

Appendix 3

Specimen of Public notice regarding record date for payment of half-yearly interest on Debentures

ABC Limited

Regd. Office: 132, Mahavir Nagar, Indore (MP)

NOTICE is hereby given to the Debenture holders of the Company that …...... day of …...., 2006 has been fixed as the Record Date for the purpose of payment of interest on 2,00,000 Secured Redeemable Non-Cumulative Debentures of Rs. 10 each due for payment on ..………

The Debenture holders whose names appear on the Register of Debenture holders on the said record date will be entitled to receive the interest.

In case your interest payable for the year is more than Rs. 2500 and also total income including the interest is not liable to tax, to avoid Tax Deduction at Source, you may file the Tax Exemption Certificate or declaration in Form No. 15F in duplicate, duly completed in all respects so as to reach us before...……..

Debenture holders are requested to inform immediately any change in the address, not communicated so far.

Those Debenture holders who have not yet paid the allotment money are requested to remit the same immediately, to avoid forfeiture of their Debentures. The Cheque/DD should be drawn in favour of ABC Limited payable at Indore.

By the order of Board
For ABC Ltd.
Abha Jaiswal
Company Secretary

Place: Indore
Date: