METHODS OF ISSUING SECURITIES UNDER COMPANIES ACT 2013

Mr. S. Dhanapal, CS
Member of HCC

Introduction

Companies Act 2013 has streamlined the process of issuance of securities and has laid out clear procedure and requirements to be complied with in case of each type of issue. It has plugged various loopholes and the doubts prevailing in the methods of issuing securities and has brought the much needed clarity on the issue. In the present write up, we have given a general idea about the various methods of issuance of securities under the Companies Act, 2013 and the meaning of each of them.

Definition of Security [Section 2(81)]

- "Securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.
- As per clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, "Securities" include—
- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- derivative;
- units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- security receipt as defined in clause (zg) of section 2 of the Securitisation & Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002;

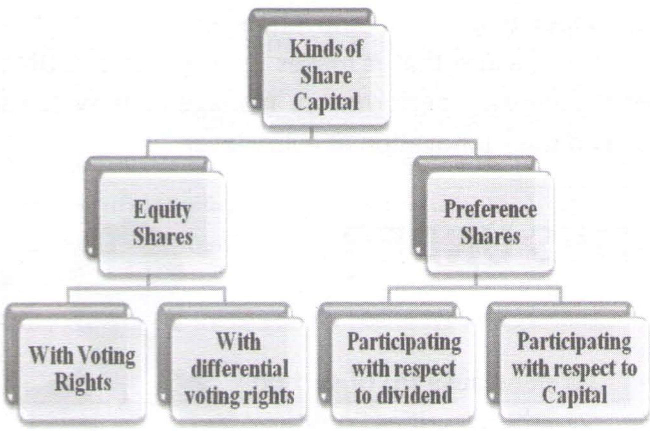
- units or any other such instrument issued to the investors under any mutual fund scheme;
- Government securities;
- such other instruments as may be declared by the Central Government to be securities; and
- rights or interest in securities;

Definition of Share [Section 2(84)]

"share" means a share in the share capital of a company and includes stock;

Kinds of Share Capital (Section 43)

As per Section 43, Share Capital in case of company limited by shares can be of following types:



1. Equity Share Capital - equity share capital, with reference to any company limited by shares, means all share capital which is not preference share capital.

   Equity Share Capital can be further sub-divided into

   - Equity Shares with Voting Rights, and
   - Equity Shares with Differential Voting Rights as to dividend, voting or otherwise.

2. Preference Share Capital - preference share capital, with reference to any company limited by shares, means that part of the issued share capital of the company which carries a preferential right with respect to payment of dividend and repayment of capital.

   Preference Share Capital may also have following rights:

   - In respect of dividends, in addition to the preferential rights to dividend, a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right to dividend.
   - In respect of capital, in addition to the preferential right to the repayment of capital on winding up, a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Nature of Shares (Section 44)

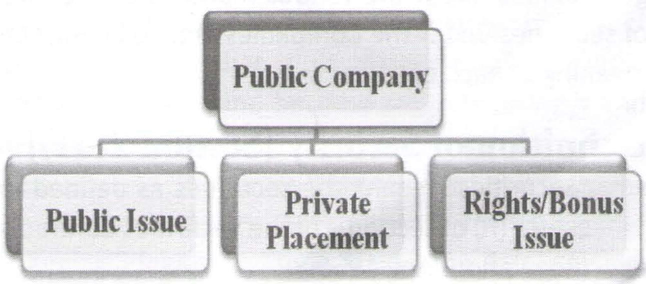
The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Numbering of Shares (Section 45)

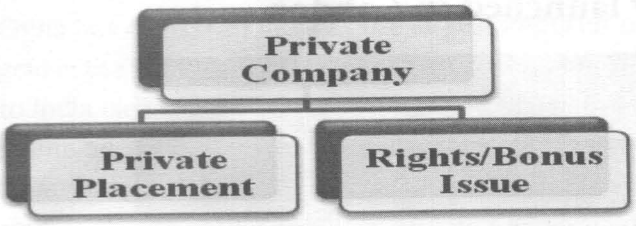
Every share in a company having a share capital shall be distinguished by its distinctive number except shares which are held in DEMAT form.

METHODS OF ISSUING SECURITIES

A public company may issue securities in any of the following manners (Section 23):



A private company may issue securities in any of the following manners (Section 23):



The meaning of various methods of issuance of shares by public and private companies is given below

- Public Offer
- Private Placement
- Rights Issue
- Bonus Issue
- Sweat Equity
- Employee Stock Options
- Preferential offer/Issue of shares on preferential basis

Public Offer – An issue of shares made by a public company to the public at large by means of a prospectus is referred to as public offer. A public offer may be in form of Initial Public Offer (IPO), further public offer or an offer for sale of securities to the public by an existing shareholder, through issue of prospectus. Provisions regarding public offer are covered under Chapter III, Part I of the Companies Act, 2013.

Private Placement – Any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in Section 42. Provisions regarding Private Placement are covered under Chapter III, Part II of the Companies Act, 2013.

If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the 200 persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

Rights Issue – Rights issue refers to a further issue of share capital made by a company having share capital to its existing equity share holders in proportion to their existing share holding by sending a letter of offer and by complying with the provisions contained in Section 62 of the Act read with relevant rules made there under.

Bonus Issue – A further issue of shares made by a company having share capital to its existing share holders without receipt of any consideration from the shareholders for issuance of the such shares. Issue of bonus shares is covered under Section 63 of the Act read with relevant rules made there under.

Sweat Equity Shares - "sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. Provisions relating to issue of sweat equity shares are covered under Section 54 of the Act read with relevant rules made there under.

Employees Stock Options – An offer of shares to be employees of the company in compliance with provision of Section 62 of the Act read with relevant rules made there under.

Preferential Offer - 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities. Provisions relating to issue on shares on preferential basis are contained in Section 62 of the Act read with relevant rules made there under.