# Chapter – 11
# Shares and Share Capital

## Sections covered in this Chapter –

| Sections | Old / New Act | Description |
|---|---|---|
| 2(84) | New Act | Definition of Shares |
| 2(88) | New Act | D2efinition of Sweat Equity Share |
| 43 | New Act | Kinds of share capital |
| 44 | New Act | Nature of shares or debentures |
| 45 | New Act | Numbering of shares |
| 47 | New Act | Voting rights |
| 49 | New Act | Calls on shares of same class to be made on uniform basis |
| 50 | New Act | Company to accept unpaid share capital, although not called up |
| 51 | New Act | Payment of dividend in proportion to amount paid-up |
| 52 | New Act | Application of premiums received on issue of shares |
| 53 | New Act | Prohibition on issue of shares at discount |
| 54 | New Act | Issue of sweat equity shares |
| 55 | New Act | Issue and redemption of preference shares |
| 60 | New Act | Publication of authorised, subscribed and paid-up capital |
| 61 | New Act | Power of limited company to alter its share capital |
| 62 | New Act | Further issue of share capital |
| 63 | New Act | Issue of bonus shares |
| 64 | New Act | Notice to be given to Registrar for alteration of share capital |
| 68 | New Act | Power of company to purchase its own securities |
| 69 | New Act | Transfer of certain sums to CRR Account |
| 70 | New Act | Prohibition for buy-back in certain circumstances |
| 100 – 105 | Old Act | Reduction in Capital |
| 106 – 107 | Old Act | Alteration in Right of Capital |
| 81 (4), (5) & (7) | Old Act | Central Government Conversion Debenture into Shares |

## Landmark Judgments covered in this chapter:

**Shree Gopal Paper Mills Ltd. Vs. CIT**

## 1. Introduction to Shares

| S.N. | Aspects | Description |
|---|---|---|
| a. | **Definition – Section 2(84)** | "Share" means a share in the share capital of a company and includes stock |
| b. | **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. |
| c. | **Numbering of Shares – Section 45** | Every share in a company having a share capital shall be distinguished by its distinctive number<br>**Provided** that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository. |
| d. | **Co's Act, 2013 Vs. Sales of Goods Act, 1930** | In India, a share is registered as 'goods'. Section 2(7) of the sale of goods act, 1930 defines 'goods' to mean any kind of movable property other than actionable claims and money includes stock and shares. However, section 82 of the companies Act, while recognizing share as movable property, suggests that they shall be transferable only in the manner provided by the Articles of Association of the company. |
| **Case Law** | | Shree Gopal Paper Mills Ltd. Vs. CIT, the learned judged observed that the share when it becomes associated with a member becomes a movable property. It is, however **not a movable property whose transfer is solely regulated by the sale of goods act.** Its transfer is also governed by the companies Act, and/or Articles of Association of the company. Each share again bears a distinguishing number. It is, however, not a tangible property for it is not the share certificate; it only consists of a bundle of rights and obligations. |

## 2. Publication of Authorised, Subscribed & Paid Up Capital

| | | |
|---|---|---|
| a. | **Disclosures Required – [Section 60 (1) of Co's Act, 2013]** | ✓ Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company<br>✓ Contains a statement of the amount of the authorised capital of the company,<br>✓ Such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement,<br>✓ In an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed & the amount paid-up. |
| b. | **Penalty in case default** | If any default is made in complying with the requirements of sub-section (1) –<br>☞ The company shall be liable to pay a penalty of ₹ 10,000 and<br>☞ Every officer of the company who is in default shall be liable to pay a penalty of ₹ 5,000, for each default. |

## 3. Classification of Share Capital

| | | |
|---|---|---|
| a. | **Authorised Capital** | "Authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. **[Section 2 (8) Co's Act, 2013]** |
| b. | **Issued Capital** | "Issued capital" means such capital as the company issues from time to time for subscription. **[Section 2 (50) Co's Act, 2013]** |
| c. | **Subscribed Capital** | "Subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company. **[Section 2 (86) Co's Act, 2013]** |
| d. | **Called Up Capital** | "Called-up capital" means such part of the capital, which has been called for payment. **[Section 2 (15) Co's Act, 2013]** |
| e. | **Paid Up Capital** | "Paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called. **[section 2 (64) co's act, 2013]** |

## 4. Kinds of Shares – Section 43

| | | |
|---|---|---|
| a. | **Restriction on Company limited by Share Capital – Section 43** | The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement shall be of two kind only namely –<br>(a) Equity share capital<br>✓ With voting rights; or<br>✓ With differential rights as to dividend, voting or otherwise in accordance with such as prescribes in Rule 4 of Shares Capital & Debenture, 2014.<br>(b) Preference share capital. |
| **Note** | The word 'otherwise' in the view of Ministry of Corporate Affairs may include, inter alia rights as to participating in **surplus in the events of winding up, mode of repayment, etc**. | |

## 5. Kind of Equity Share

| | |
|---|---|
| **Meaning of Equity Share Capital** | "Equity Share Capital", with reference to any company limited by shares, means all share capital which is not preference share capital.<br>**[1st Explanation to Proviso to Section 43 (b)]** |

# A. Equity Share with Differential Right – Section 43(a)

<table>
<tr><td>a.</td><td>General Understanding</td><td colspan="2">
✓ Commonly Known as DVR (Differential Voting Right)<br>
✓ An equity share with differential rights is like an ordinary equity share, but it provides fewer voting rights to the shareholder.<br>
✓ The difference in the voting rights can be achieved by reducing the degree of voting power.<br>
✓ Companies issue equity share with differential rights for prevention of a hostile takeover and dilution of voting rights.<br>
✓ It also helps strategic investors who do not want control, but are looking at a reasonably big investment in a company.</td></tr>
<tr><th colspan="4"><u>Procedure for Issuing Equity Share With DVR</u> –</th></tr>
<tr><th>S.N.</th><th>Procedures</th><th colspan="2">Details</th></tr>
<tr><td>1.</td><td>Check AOA</td><td colspan="2">Check whether the AOA of the company authorizes issue of equity shares with differential rights and if not, then amend the AOA of the company.</td></tr>
<tr><td>2.</td><td>Hold Board Meeting</td><td colspan="2">Hold the Board meeting to issue the notice of general meeting for issuance of equity share with differential rights along with the explanatory statement u/s 102 of the Act with the contents.</td></tr>
<tr><td rowspan="5">3.</td><td rowspan="5">Some Other Condition</td><td>a.</td><td>The shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time.</td></tr>
<tr><td>b.</td><td>The company has consistent track record of distributable profits for the last 3 years.</td></tr>
<tr><td>c.</td><td>The company has not defaulted in filing financial statements and annual returns for 3 financial years immediately preceding the financial year in which it is decided to issue such shares.</td></tr>
<tr><td>d.</td><td>The company has no subsisting default in the payment of a –<br>
• Declared Dividend or<br>
• Repayment of its matured deposits or<br>
• Redemption of its preference shares or debentures that have become due for redemption or<br>
• Interest on such deposits or debentures or payment of dividend</td></tr>
<tr><td>e.</td><td>The company has not defaulted in payment of the –<br>
• Dividend on preference shares or<br>
• Repayment of any term loan that has become repayable from a –<br>
  ☞ PFI or State level financial institution or scheduled Bank or Interest payable thereon or</td></tr>
</table>

<table>
<tr><td></td><td></td><td></td><td>• Dues with respect to statutory payments relating to its employees to any authority or<br>• Crediting the amount in IEPF to the Central Government</td></tr>
<tr><td></td><td></td><td>f.</td><td>The company has not been penalized by Court or Tribunal during the last 3 years of any offence under the –<br>☞ Reserve Bank of India Act, 1934,<br>☞ Securities and Exchange Board of India Act, 1992,<br>☞ Securities Contracts Regulation Act, 1956,<br>☞ Foreign Exchange Management Act, 1999 or<br>☞ Any other special Act, under which such companies being regulated by sectoral regulators.</td></tr>
<tr><td>4.</td><td>Intimate to concerned S.E.</td><td colspan="2">If the company is listed with any of the recognized stock exchange, then within Prescribe time of the closure of the aforesaid Board Meeting intimate to the concerned Stock Exchange about the decision taken at the Board Meeting</td></tr>
<tr><td>5.</td><td>Hold G.M.</td><td colspan="2">Pass the ordinary resolution in the general meeting</td></tr>
<tr><td>Note</td><td colspan="3">If the company is listed, then ensure it obtains the approval of its shareholders through postal ballot as per rule 22 of the Companies (Management and administration) Rules, 2014.</td></tr>
<tr><td>6.</td><td>Filing PAS 3</td><td colspan="2">Once the company makes any allotment, then its shall, within 30 days thereafter, file with the Registrar a return allotment in Form PAS-3, along with the fees as specified in the Co's( Registration Offices and Fees) Rules, 2014.</td></tr>
<tr><td>7.</td><td>Not to Convert Existing</td><td colspan="2">The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.</td></tr>
<tr><td>Note</td><td>In the Case of Listed Co.</td><td colspan="2">In case of listed company, forward 3 copies of the notice and a copy of the proceedings of the general meeting to the stock exchange.</td></tr>
<tr><td>9.</td><td>Issue of Share Certificate</td><td colspan="2">Complete all other proceedings for the issue of certificate of shares with differential voting rights making necessary entries in various registers. In case of a company whose shares are dematerialized form, inform the depositories about the same for credit to the respective accounts.</td></tr>
<tr><td>10.</td><td>Intimate to D.P.</td><td colspan="2">Intimate the details of allotment of shares to the Depository immediately on allotment of such shares.</td></tr>
<tr><td>11.</td><td>Register of Member</td><td colspan="2">Maintain the Register of Members under section 88 containing all the relevant particulars of the shares so issued along with details of the shareholders.</td></tr>
<tr><td colspan="2">Query</td><td colspan="2">Is it now practically possible to issue DVR by an Listed Company?</td></tr>
</table>

## B. Alteration of Rights of holders of Special Classes of Shares – Section 106 & 107 of Co's Act, 1956

| | | |
|---|---|---|
| 1. | **Alteration of Right – Section 106** | **Condition to Alter –**<br>(a) Alteration of rights of holders of special classes of shares.<br>(b) Where the share capital of a company is divided into different classes of shares,<br>(c) The rights attached to the shares of any class may be varied<br>(d) with the consent in writing of not less than 3/4th 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 –<br>• If provision with respect to such variation is contained in the memorandum or articles of the company, or<br>• In the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class. |
| 2. | **Right of Dissentient Shareholder – Section 107** | (a) If in pursuance of any provision such as is referred to in section 106, the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than 10% of issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Tribunal to have the variation cancelled and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.<br>(b) An application under this section shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.<br>(c) On any such application, the Tribunal. after hearing the applicant and any other persons who apply to the Tribunal to be heard and appear to the Tribunal to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation; and shall, if not so satisfied, confirm the variation.<br>(d) The decision of the Tribunal on any such application shall be final.<br>(e) The company shall, within 30 days after the service on the company of any order made on any such application, forward a copy of the order to the Registrar; and<br>(f) If default is made in complying with this provision, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to ₹ 500/-. |

## C. Issue of Share at Discount – Section 53

<table>
<tr><td>1.</td><td>Prohibition on Issue</td><td colspan="3">Section 53 of the Companies Act, 2013, prohibits a company to issue shares at discount except in the case of issue of sweat equity shares. Any shares issued by a Company at a discounted price shall be void.</td></tr>
<tr><td rowspan="4">2.</td><td rowspan="4">Penal Provision</td><td>Person Liable for Penalty</td><td colspan="2">Penalty</td></tr>
<tr><td>Company</td><td>Fine</td><td>From ₹ 1 lac upto ₹ 5 lacs</td></tr>
<tr><td rowspan="2">Every Officer in Default</td><td>Fine</td><td>From ₹ 1 lac upto ₹ 5 lacs</td></tr>
<tr><td>Punishment</td><td>6 months Imprisonment or both</td></tr>
</table>

## D. Issue of Sweat Equity Share – Section 54

<table>
<tr><td>1.</td><td>Definition – Section 2(88)</td><td colspan="2">Sweat Equity Shares means such equity shares issued by a company to its directors or employees at a discount or for consideration , other than cash, for their providing know – how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.</td></tr>
<tr><td>2.</td><td>Meaning of Employee – Explanation 1st to Rule 8(1)</td><td colspan="2">(a) A permanent employee of the company who has been working in India or outside India, for atleast the last 1 year; or<br>(b) A director of the company, whether a whole time director or not; or<br>(c) An employee or a director as defined in (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.</td></tr>
<tr><td>3.</td><td>Meaning of Value Addition – Explanation 2nd to Rule 8(1)</td><td colspan="2">Value additions means actual or anticipated economic benefits derived or to be derived by the company from an expert and/or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.</td></tr>
<tr><td>4.</td><td>Ranking Pari – Passu – Section 54 (2)</td><td colspan="2">The rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity shares and holders of such shares shall rank pari- passu with other equity shareholders.</td></tr>
<tr><td rowspan="2">5.</td><td rowspan="2">Ceiling Limit – Rule 8 (4)</td><td>1st Check Rider</td><td>The company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of ₹ 5 Crores, whichever is higher.</td></tr>
<tr><td>2nd Check Rider</td><td>Provided that the issuance of sweat equity shares in the Company shall not exceed 25% of the paid up equity capital of the Company at any time.</td></tr>
<tr><td>6.</td><td>Lock in Period – Rule 8(5)</td><td>Lock in Period</td><td>Sweat Equity Shares issued to directors or employees shall be locked in/non transferable for a period of 3 years from the date of allotment and</td></tr>
</table>

<table>
<tr><td></td><td></td><td>Display of Facts of Lock in</td><td colspan="2">The fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.</td></tr>
<tr><td>7.</td><td>Sweat Equity Shares to be the part of Managerial Remuneration – Rule 8 (10)</td><td colspan="3">The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely –<br>(a) The sweat equity shares are issued to any director or manager; and<br>(b) They are issued for consideration other than cash, which does not take the form of an asset, which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.</td></tr>
<tr><td>Note</td><td colspan="4">In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company, if the sweat equity shares are not issued pursuant to acquisition of an asset. [Rule 8 (11)]</td></tr>
<tr><td rowspan="7">8.</td><td colspan="4"><u>Condition for Issuance of Sweat Equity Shares</u> –<br>As per Section 54 (1) provides that, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely –</td></tr>
<tr><td>a.</td><td colspan="3">The issue is authorized by a special resolution passed by the company</td></tr>
<tr><td>Note</td><td>Validity of SR for Allotment</td><td colspan="2">The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing of the special resolution. [Rule 8(3)]</td></tr>
<tr><td>b.</td><td colspan="3">The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.</td></tr>
<tr><td>c.</td><td colspan="3">Not less than 1 year has, at the date of such issue, elapsed since the date on which the company had commenced business; and</td></tr>
<tr><td rowspan="2">d.</td><td>In the Case of Listed Co.</td><td colspan="2">Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf and</td></tr>
<tr><td>In the Case of Unlisted Co.</td><td colspan="2">If they are not so listed, the sweat equity shares are issued in accordance with such rules made under the Chapter IV of the Companies Act, 2013. (i.e. Rule No. 8)</td></tr>
<tr><td>9.</td><td colspan="4"><u>Procedure for Issue of Sweat Equity Shares</u> –</td></tr>
<tr><td colspan="2">Valuation of Sweat Equity Share & Intellectual Property – Rule 8 (6) & (7)</td><td>Valuation Report in the case of Sweat Equity Share</td><td colspan="2">The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation</td></tr>
</table>

<table>
<tr><td></td><td colspan="2">Valuation Report in the case of Intellectual Property</td><td>The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation</td></tr>
<tr><td>Holding BM</td><td colspan="3">Convene Board meeting to approve the notice of general meeting</td></tr>
<tr><td>Issue of Notice</td><td colspan="3">Issue notices in writing or through electronic mode, at least clear twenty one days before the date of meeting along with the explanatory statement as required u/s 102.</td></tr>
<tr><td rowspan="14">Contain of Explanatory Statement – Rule 8 (13)</td><td colspan="3">The explanatory statement to be annexed to notice and the resolution for approving the sweat equity shall inter alia contain the following information</td></tr>
<tr><td>a.</td><td colspan="2">The date of the Board meeting at which the proposal for issue of sweat equity shares was approved</td></tr>
<tr><td>b.</td><td colspan="2">The reasons or justification for the issue</td></tr>
<tr><td>c.</td><td colspan="2">The class of shares under which sweat equity shares are intended to be issued</td></tr>
<tr><td>d.</td><td colspan="2">The total number of shares to be issued as sweat equity</td></tr>
<tr><td>e.</td><td colspan="2">The class or classes of directors or employees to whom such equity shares are to be issued</td></tr>
<tr><td>f.</td><td colspan="2">The principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation</td></tr>
<tr><td>g.</td><td colspan="2">The time period of association of such person with the company</td></tr>
<tr><td>h.</td><td colspan="2">The names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel</td></tr>
<tr><td>i.</td><td colspan="2">The price at which the sweat equity shares are proposed to be issued</td></tr>
<tr><td>j.</td><td colspan="2">The consideration including consideration other than cash, if any to be received for the sweat equity</td></tr>
<tr><td>k.</td><td colspan="2">The ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with</td></tr>
<tr><td>l.</td><td colspan="2">A statement to the effect that the company shall conform to the applicable accounting standards; and</td></tr>
<tr><td>m.</td><td colspan="2">Diluted Earnings Per Share pursuant to the issue of sweat equity shares, calculated in accordance with the applicable accounting standards.</td></tr>
<tr><td>Valuation Report to be attached to Notice</td><td colspan="3">A copy of the valuation report shall be sent to the shareholders with the notice of the general meeting</td></tr>
<tr><td>Holding GM</td><td colspan="3">Hold the general meeting and pass the Special Resolution</td></tr>
<tr><td>Filing MGT – 14</td><td colspan="3">File the special resolution with the concerned ROC with explanatory statement in Form MGT. 14 along with the fees as provided in Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing of the S.R.</td></tr>
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| | |
|---|---|
| **In case of Listed Co.** | ✓ Forward three copies of the notice and a copy of the proceedings of the general meeting.<br>✓ Issue of the sweat equity shares shall be in accordance with SEBI (Issue of Sweat Equity) Regulations, 2002. |
| **Filing PAS – 3** | Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS – 3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. |
| **Maintaining Register in SH – 3 Rule 8(14)** | ✓ The company shall maintain a register of Sweat Equity Shares in SH – 3.<br>✓ The entries in the register shall be authenticated by the CS of the company or by any other person authorized by the board for the purpose.<br>✓ The Company shall Kept such Register at Register office or such other place where BOD decide. |
| **Issue of Share Certificate** | Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment. |
| **Intimation to DP** | Intimate the details of allotment of shares to the Depository immediately on allotment of such shares. |

## E. Issue of at Premium – Section 52

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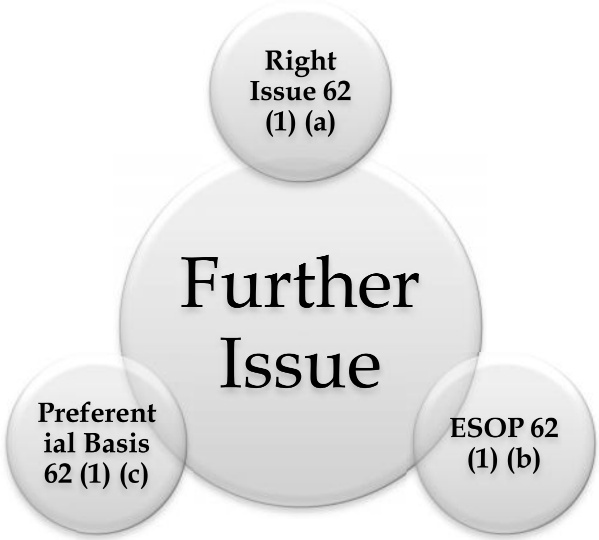
|---|---|---|---|
| 1. | **Transfer of Premium – Section 52 (1)** | (a) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called **"the securities premium account",** and<br>(b) The provisions of the Companies Act relating to the reduction of the share capital of a company shall, except as provided in section 52, apply as if the securities premium account were paid-up share capital of the company. | |
| 2. | **Application of Security Premium Account – Section 52 (2)** | **Payment of Bonus** | Towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares |
| | | **Writing off Preliminary Expense** | In writing off the preliminary expenses of the company |
| | | **Writing off Expense on issue of Share or Debenture** | In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company |
| | | **Payment of Premium on Redemption of Preference Share or Debenture** | In providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company |
| | | **Buy Back** | For the purchase of its own shares or other securities under section 68 |
| **Note** | If the company is a listed company then the company is required to comply with the provisions of SEBI (ICDR) Regulations, 2009. | | |

## F. Further Issue of Shares – Section 62




### (a) Right Issue of Shares – Section 61 (1) (a)

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|---|---|---|
| 1. | **Increase in Subscribe Share Capital Through Right Issue – Section 61(1)(a)** | **States that at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered –**<br>To persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—<br>(a) The offer shall be made by notice specifying the number of shares offered and<br>(b) Limiting a time not being less than 15 days and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;<br>(c) Unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in point (a) shall contain a statement of this right;<br>(d) After the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the Company. |
| **Note** | In case of listed companies, the conditions prescribed under Chapter IV of SEBI (ICDR) Regulations 2009. | |

<table>
<tr><th colspan="4">(b) <u>Employee Stock Option</u> –</th></tr>
<tr><td>1.</td><td>ESOP through SR</td><td colspan="2">As per Section 62(1) (b) of Companies Act 2013, the Company can offer shares through employee stock option to their employees through special resolution subject to the conditions specified under Rule 12</td></tr>
<tr><td rowspan="3">2.</td><td rowspan="3">Separate Resolution in certain Cases – Rule 12</td><td colspan="2">The approval of shareholders by way of separate resolution shall be obtained by the company in case of-</td></tr>
<tr><td>Case – 1</td><td>Grant of option to employees of subsidiary or holding company</td></tr>
<tr><td>Case – 2</td><td>Grant of option to identified employees, during any one year, which is 1% or More of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.</td></tr>
<tr><td>3.</td><td>Meaning of Employee – Rule 12</td><td colspan="2">For the purposes of clause (b) of sub-section (1) of section 62 and rule 12 –<br><u>"Employee" means</u> –<br>(a) A permanent employee of the company who has been working in India or outside India; or<br>(b) A director of the company, whether a whole time director or not but excluding an independent director; or<br>(c) an employee as defined in Point (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company<br><u>But does not include</u> –<br>(i) An employee who is a promoter or a person belonging to the promoter group; or<br>(ii) A director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.</td></tr>
<tr><td>4.</td><td colspan="3"><u>Procedure for Issue of ESOP</u> – <u>Rule 12</u></td></tr>
<tr><td>a.</td><td>Holding BM</td><td colspan="2">Convene a Board Meeting to approve the notice of the General meeting along with special resolution, explanatory statement etc., to be approved by the shareholders through special resolution.</td></tr>
<tr><td>b.</td><td>Disclosure in Explanatory Statement</td><td colspan="2">The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution.</td></tr>
<tr><td colspan="4">(a) The total number of stock options to be granted;<br>(b) Identification of classes of employees entitled to participate in the ESOS;<br>(c) The appraisal process for determining the eligibility of employees to the ESOS;<br>(d) The requirements of vesting and period of vesting;<br>(e) The maximum period within which the options shall be vested;</td></tr>
</table>

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

(g) The exercise period and process of exercise;

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

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

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

(k) The conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;

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

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

<table>
<tr><td>c.</td><td>Filing of MGT – 14</td><td colspan="2">Ensure that the special resolution is filled with ROC in MGT 14 within 30 days of passing the resolution</td></tr>
<tr><td>d.</td><td>Price of Option</td><td colspan="2">The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any</td></tr>
<tr><td>e.</td><td>Min. Period of Vesting</td><td colspan="2">There shall be a minimum period of 1 year between the grant of options and vesting of option</td></tr>
<tr><td>f.</td><td>Lock In Period</td><td colspan="2">The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option</td></tr>
<tr><td rowspan="3">g.</td><td rowspan="3">Amount Payable</td><td colspan="2">The amount, if any, payable by the employees, at the time of grant of option –</td></tr>
<tr><td>Forfeit</td><td>May be forfeited by the company if the option is not exercised by the employees within the exercise period; or</td></tr>
<tr><td>Refund</td><td>The amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.</td></tr>
<tr><td rowspan="5">h.</td><td rowspan="5">Option not to be Transfer or Pledged, etc</td><td>I</td><td>The option granted to employees shall not be transferable to any other person.</td></tr>
<tr><td>II</td><td>The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.</td></tr>
<tr><td>III</td><td>No person other than the employees to whom the option is granted shall be entitled to exercise the option.</td></tr>
<tr><td>Note</td><td>In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.</td></tr>
<tr><td>IV</td><td>In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.</td></tr>
</table>

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

**i. Disclosures in Board Report**

The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme –

| Options granted | Options vested | Options exercised | Options lapsed |
|---|---|---|---|
| The total number of shares arising as a result of exercise of option | Exercise price | Variation of terms of options | Money realized by exercise of options |

| Total number of options in force | Employee wise details of options granted to – | |
|---|---|---|
| | a. | KMP |
| | b. | Employee granted Option in any 1 year 5 % or More of Option Granted during that Year. |
| | c. | Grant of option to identified employees, during any 1 year, which is **1% or More of the issued capital** (excluding outstanding warrants and conversions) of the company at the time of grant of option. |

| | | |
|---|---|---|
| j. | **Maintaining Register in SH – 6 Rule 8(14)** | ✓ The company shall maintain a Register of ESOP in Form No. SH.6 and shall forthwith enter therein the particulars of option granted u/s 62(1)(b).<br>✓ The Register of ESOP shall be maintained at the registered office of the company or such other place as the Board may decide. |
| k. | **Filing PAS. 3** | Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS – 3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. |
| l. | **Issue of Share Certificate** | Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment. |
| m. | **Intimation to DP** | Intimate the details of allotment of shares to the Depository immediately on allotment of such shares. |
| **Note** | In case of listed companies, the conditions prescribed under SEBI (ICDR) Regulations 2009. | |

| | |
|---|---|
| **Query – 1** | Can Company Vary in the Terms of ESOP which are yet not Exercised? |
| **Response** | ☞ The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.<br>☞ The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation. |

| | |
|---|---|
| **Query – 2** | Dose Employees who have granted ESOP enjoys all the rights with a Ordinary Shareholder have? |
| **Response** | The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option |

## (c) Issue of Shares on Preferential Basis (Private Placement / Preferential Offer) –

<table>
<tr><td>1.</td><td>Preferential Allotment Through SR</td><td colspan="3">Section 62(1(C) of the Companies Act 2013 read with Rule 13 enables issue of shares to persons other than the existing shareholders/employees as specified in Section 62(1) (a) and Section 62(1) (b), provided if the same is approved by special resolution and subject to the conditions stated in the said Rule 13, such issue on preferential basis should also comply with conditions laid down in section 42 of the Act.</td></tr>
<tr><td>2.</td><td>Validity of SR for Allotment</td><td colspan="3">The allotment of securities on a preferential basis made pursuant to the special resolution shall be completed within a period of 12 months from the date of passing of the special resolution.</td></tr>
<tr><td>Note</td><td colspan="4">If the allotment of securities is not completed within 12 months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.</td></tr>
<tr><td rowspan="2">3.</td><td>In the Case of Listed Co.</td><td colspan="3">Where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf and</td></tr>
<tr><td>In the Case of Unlisted Co.</td><td colspan="3">If they are not so listed, the sweat equity shares are issued in accordance with such rules made under the Chapter IV of the Companies Act, 2013. (i.e. Rule No. 13)</td></tr>
<tr><td>4.</td><td colspan="4">Procedure for Issue Preferential Offer – Rule 13</td></tr>
<tr><td>a.</td><td>Authorised Through AOA</td><td colspan="3">☞ Check whether the issue is authorise by Articles.<br>☞ If not make necessary amendments to alter the articles of association, through special resolution passed at the shareholders' meeting.</td></tr>
<tr><td>b.</td><td>Fully Paid up Shares only</td><td colspan="3">The securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.</td></tr>
<tr><td>c.</td><td>Valuation Report</td><td>In Case of Share, etc</td><td>For Resultant of Convertible Securities</td><td>When convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered value</td></tr>
</table>

<table>
<tr><td rowspan="2"></td><td rowspan="2"></td><td></td><td>For Price of Share, etc</td><td>The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer</td></tr>
<tr><td>In Case of Consideration</td><td colspan="2">The shares or other securities are to be allotted for consideration other than cash shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation & the Valuation Report shall be submitted to Company.</td></tr>
<tr><td>d.</td><td>Hold BM</td><td colspan="3">Convene a Board Meeting to approve the notice of General Meeting and necessary special Resolution/s along with explanatory statements as required.</td></tr>
<tr><td>e.</td><td>Disclosure in Explanatory Statement</td><td colspan="3">The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act –</td></tr>
<tr><td colspan="5">1. The objects of the issue;<br>2. The total number of shares or other securities to be issued;<br>3. The price or price band at/within which the allotment is proposed;<br>4. Basis on which the price has been arrived at along with report of the registered valuer;<br>5. Relevant date with reference to which the price has been arrived at;<br>6. The class or classes of persons to whom the allotment is proposed to be made;<br>7. Intention of promoters, directors or key managerial personnel to subscribe to the offer; (viii) The proposed time within which the allotment shall be completed;<br>8. The names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;<br>9. The change in control, if any, in the company that would occur consequent to the preferential offer;<br>10. The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;<br>11. The justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.<br>12. The pre issue and post issue shareholding pattern of the company in the prescribed format</td></tr>
<tr><td>f.</td><td>Holding GM</td><td colspan="3">Hold the general meeting and pass the Special Resolution</td></tr>
<tr><td>g.</td><td>Filing MGT – 14</td><td colspan="3">File the special resolution with the concerned ROC with explanatory statement in Form MGT. 14 along with the fees as provided in Companies (Registration of Offices and Fees) Rules, 2014 within 30 days of passing of the S.R.</td></tr>
<tr><td rowspan="2">h.</td><td rowspan="2">Accounting of Non Cash Consideration</td><td colspan="2">Depreciable or Amortizable Asset</td><td>Where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards</td></tr>
<tr><td colspan="2">Non Depreciable or Amortizable Asset</td><td>It shall be expensed as provided in the accounting standards.</td></tr>
</table>

| | | |
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| i. | **Filing PAS – 3** | Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS – 3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. |
| j. | **Issue of Share Certificate** | Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment. |
| k. | **Intimation to DP** | Intimate the details of allotment of shares to the Depository immediately on allotment of such shares. |
| **Note** | In case of listed companies, the conditions prescribed under Chapter VII of SEBI (ICDR) Regulations 2009 are to be complied with. | |

## G. Issue of Bonus – Section 63

| | | |
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| a. | **Source – Section 63(1)** | (a) Its free reserves;<br>(b) The securities premium account; or<br>(c) The capital redemption reserve account. |
| **Note** | No issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. [Proviso sub section (1)] | |
| b. | **Conditions for Issue of Bonus – Section 63(2)** | **The following conditions must be satisfied before issuing bonus shares –**<br>(a) It is authorized by its articles;<br>(b) It has, on the recommendation of the Board, been authorized in the general meeting of the company;<br>(c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;<br>(d) It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;<br>(e) The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;<br>(f) It complies with such conditions as may be prescribed. |
| **Note** | In case of listed company, it has to comply with the provisions of chapter IX of SEBI (ICDR) Regulations, 2009. | |

| | |
|---|---|
| **Query – 1** | Can Company subsequently withdraw to the decision of Board announcing bonus? |
| **Response** | Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014 provides that the company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same. |
| **Query – 2** | Can Company issue bonus share in lieu of Bonus? |
| **Response** | As per Proviso to sun section (1) of Section 63, the bonus shares shall not be issued in lieu of dividend. |

## 6. Issue & Redemption of Preference Share Capital – Section 43 & 55

| | | |
|---|---|---|
| **1.** | **Meaning of Preference Share Capital** | According to 2nd Explanation to Proviso to section 43(b), "Preference Share Capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to:-<br>(a) Payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and<br>(b) Repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company |
| **2.** | **Prohibition on issue of Irredeemable Share – Section 55(1) & (2)** | (i) No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable.<br>(ii) However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding 20 years from the date of their issue subject to such conditions as may be prescribed. |
| **Note** | **In the case of Company having Infrastructural Projects** | (i) The company engaged in setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years,<br>(ii) Subject to the redemption of a minimum 10 percent of such preference shares per year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders. [Rule 10]<br>(iii) The term infrastructural projects means the infrastructural projects specified in schedule VI of the companies act 2013. |
| **3.** | **Procedure for Issue of Preference Share – Rule 9** | |
| **a.** | **Check AOA** | For issue of preference shares the articles of the company should authorize for it , if not then amendment in the articles of the company is required |
| **b.** | **Matter to be set out for Resolution** | The company issuing preference shares shall set out in the resolution the particulars in respect of the following matters relating to such shares namely – |

(a) The priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
(b) The participation in surplus fund;
(c) The participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
(d) The payment of dividend on cumulative or non-cumulative basis.
(e) The conversion of preference shares into equity shares.
(f) The voting rights;
(g) The redemption of preference shares

| | | |
|---|---|---|
| **c.** | **Issue of Notice** | Issue the notice of general meeting along with the explanatory statement |
| **d.** | **Pass SR & File MGT – 14** | Pass special resolution and file with the registrar Form MGT-14 along with the fee or the additional fee so specified in the Companies (Registration of offices and fees) Rules, 2014 within 30 days of passing the resolution |
| **e.** | **Filing of PAS – 3** | Within 30 days of allotment file with the registrar the Return of allotment in Form PAS-3 along with fee. |
| **f.** | **Updation of Register** | Update the register of members maintained under section 88 after issue of preference shares |
| **g.** | **Redemption on the Terms of Issue & Notice of Redemption** | ☞ The company may redeem the preference shares only on the terms on which they were issued or as varied after due approval of preference share holders.<br>☞ The preference shares may b redeemed as given below –<br>1. At a fixed time or happening of a particular event<br>2. Any time at the company's option<br>3. Any time at the shareholders option<br>☞ The notice of redemption of preference shares shall be filed by the company with the registrar in Form SH – 7 along with altered MOA with the fee as specified in Companies (Registration of offices and Fees), Rules 2014 within 30 days of redemption of preference shares. |
| **h.** | **Filing PAS – 3** | Once the allotment is made, the company shall within 30 days of allotment, file with the Registrar a return of allotment in Form PAS – 3, along with the fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. |
| **i.** | **Issue of Share Certificate** | Deliver the share certificates of allotted shares within a period of 2 months from the date of allotment. |
| **j.** | **Intimation to DP** | Intimate the details of allotment of shares to the Depository immediately on allotment of such shares. |

## 7. Reduction of Share Capital – Section 100 to 105

| | | |
|---|---|---|
| **a.** | **Modes of Reduction** | 1. By reducing or extinguishing the liability of members in respect of uncalled or unpaid capital<br>2. By paying off or returning paid up capital not wanted for the purposes of the company.<br>3. By paying off the paid up capital on the footing that it may be called up again.<br>4. By following a combination of any of the preceding methods.<br>5. By writing off or canceling the capital which has been lost or is unrepresented by the available assets. |

<table>
<tr><td>b.</td><td>Procedure</td><td>
✓ Articles Permit<br>
✓ S.R pass<br>
✓ Apply to Tribunal<br>
✓ Notice to creditors: should be given to every creditor<br>
✓ List: The Tribunal then settles a list of such creditor<br>
✓ Creditor does not consent: The Tribunal will order the co. to either pay his debt or provide any security.<br>
✓ Pass an order: If the Tribunal is satisfied, it will pass an order confirming the reduction<br>
✓ The Tribunal can order the Co. to add 'And reduced' after its name, for a fixed time.<br>
✓ File Order & Minutes with ROC for Registration till than no resolution will be effective.<br>
✓ Liability of members in respect of reduced share shall not be exceed –<br>
☞ The amount paid on shares or reduced amount if any and<br>
☞ The amount of shares as fixed by the minutes of reduction.
</td></tr>
<tr><td>c.</td><td>Penalty for concealing name of creditor, etc – Section 105</td><td>
<u>If any officer of the company</u> –<br>
(a) Knowingly conceals the name of any creditor entitled to object to the reduction ;<br>
(b) Knowingly misrepresents the nature or amount of the debt or claim of any creditor ; or<br>
(c) Abets or is privy to any such concealment or misrepresentation as aforesaid<br>
• He shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.
</td></tr>
</table>

## 8. Power of Central Government to Convert Debentures into Shares – Section 81 (4), (5) & (7)

<table>
<tr><td>1.</td><td>When</td><td>Where any debentures have been issued to, or loans have been obtained from, the Government by a company</td></tr>
<tr><td>2.</td><td>Why</td><td>The Central Govt. may, if in its opinion it is necessary in the public interest.</td></tr>
<tr><td>3.</td><td>Direction for Conversion</td><td>Central Govt. by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case.</td></tr>
<tr><td>Note</td><td colspan="2">Even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion.</td></tr>
<tr><td>4.</td><td>Terms & Condition of Conversion</td><td><u>CG shall consider following</u> –<br>(a) Financial position.<br>(b) Terms of issue of debentures/loans.</td></tr>
</table>

| | | |
|---|---|---|
| | | (c) Rate of interest payable.<br>(d) Capital of the Company.<br>(e) Loan liabilities of Company.<br>(f) Reserves of company.<br>(g) Profits of the previous 5 years.<br>(h) Current market price. |
| **5.** | **Terms & Conditions are not acceptable to Company** | ✓ If the terms and conditions of such conversion are not acceptable to the company, the company may, within 30 days from the date of communication to it of such order or within such further time as may be granted by the Tribunal, prefer an appeal to the Tribunal in regard to such terms and conditions and<br>✓ The decision of the Tribunal on such appeal and, subject only to such decision, the order of the Central Government under sub- section (4) shall be final and conclusive. |

## 9. Buy Back / Purchase of its own Shares – Section 68

| | | |
|---|---|---|
| **1.** | **Source of Funds** | On fulfilling conditions as provided in section 68(2), a Company possesses the right to purchase its own shares or other specific securities. The funds that can be utilized by the company for purchasing its own share should be out of<br>(a) Its free reserves<br>(b) The security premium account<br>(c) The proceeds of any shares or other specified securities.<br>According to Proviso of section 68(1), the buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the similar kind of shares or other specified securities. |
| **Note** | Employees' stock option or other securities as may be noticed by the central government from time to time may be included in specified securities. | |
| **2.** | **Source of Shares – Section 68(5)** | **The buy-back may be –**<br>(a) From the existing security holders on a proportionate basis or<br>(b) From the open market or<br>(c) By purchasing the securities issued to employees under stock option or sweat equity. |
| **3.** | **Declaration of Solvency – Section 68(6) Read with Rule 17(3)** | ☞ Before passing Resolution for making buy-back, file with the Registrar and the SEBI (in the case of Listed Company), a declaration of solvency.<br>☞ Signed by at least 2 directors of the company, 1 of whom shall be the MD, if any, in such form SH – 8 and<br>☞ Verified by an affidavit to the effect that the BOD of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of 1 year from the date of declaration adopted by the Board |

| | | |
|---|---|---|
| 4. | **Requirement to be complied before Buy Back – Section 68 (2) Read with Rule 17** | **A company cannot purchase its own shares or other securities unless they fulfill the following conditions – [Section 68 (2)]**<br>(a) There should be an authorization in the articles for the buy-back.<br>(b) A special resolution must be passed in the general meeting for authorizing the buy-back.<br>**Note –** No SR is required if Buy back is less than or 10% of Total Equity Share Capital +Free Reserve & authorised by BR at BM)<br>(c) The buy-back must be or less than 25% of the total paid up capital and free reserves of the company.<br>(d) In any financial year, the buy-back of equity shares shall not exceed 25% of the total paid up equity share in that Financial Year.<br>(e) The ratio of the debt owed by the company must not be more than twice the Paid up capital and free reserves after such buy-back.<br>**Note** – The central Government has the power to increase the ratio of the debt, than specified in the clause for the class or classes of companies.<br>**Note –** 'Free reserves' includes in it the reserves which as per latest audited balance sheet of the company are free for distribution as dividend ad it will also include in it the balance to the credit of the securities premium account.<br>(f) Buy-back must be done on the shares and securities which are fully paid up.<br>(g) No Buy Back shall take place within a period of 1 year from the closure of previous Buy back.<br>(h) The shares or other specified securities which are to be buy-back by the company must be listed on any recognized stock exchange in reference with the regulation made by SEBI in its behalf.<br>(i) The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH.8, along with the fee. [Rule 17 (2)] |
| 5. | **Matters to be included in Notice of SR** | The notice of the meeting at which the special resolution is proposed to be passed should include with it the statement stating – [Section 68 (3)]<br>1. A full and complete disclosure of all material facts<br>2. The reason behind the buy-back must be disclosed<br>3. The types of securities which are to be purchased under buy-back.<br>4. The amount to be involved under the buy-back.<br>5. And lastly the time within which the buy-back will be completed |
| 6. | **Dispatch of Letter of Offer** | The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 20 days from its filing with the Registrar of Companies. [Rule 17(4)] |

| | | |
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| **7.** | **Opening of Offer** | The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer. [Rule 17 (5)] |
| **8.** | **Excess Share offered by the Shareholder** | In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back. [Rule 17 (6)] |
| **9.** | **Verification of Offer** | The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer. [Rule 17 (7)] |
| **10.** | **Opening Separate Bank Account** | The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules. [Rule 17 (8)] |
| **11.** | **Time Limit of Payment – Rule 17 (9)** | **The company shall within 7 days of the time specified in sub-rule (7) -**<br>✓ Make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or<br>✓ Return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance |
| **12.** | **Time Limit for Completion of Buy Back** | Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board. [Section 68(4)] |

<table>
<tr>
<td>13.</td>
<td>Requirement to be complied after Buy Back</td>
<td colspan="2">Section 68 of the companies Act, 19565 deals with the requirement to be fulfilled after buy-back. They are as follows –<br>(a) According to section 68 (7) the securities which are bought back should be extinguished and physically destroyed within 7 days after the completion of buy-back.<br>(b) A company is not permitted to issue same kind of shares or securities which were brought back for a period of 6 months. However, the following are permitted – [Section 68 (8)]<br>1. Bonus shares<br>2. Sweat equity<br>3. Stock option to employees<br>4. Issue of securities of a different class than is other than one which was earlier bought back<br>5. Subsisting obligation such as conversion of warrants<br>6. Conversion of preference or debentures into equity shares<br>(c) A register in must be maintained by the company showing securities bought back, consideration paid for the buy-back, date of cancellation of securities, date of extinguishment and physical destruction of securities and other prescribed particulars [Section 68 (9)]<br>✓ Register is to be maintained in SH – 10<br>✓ Kept at Registered Office under the custody of CS of Company<br>✓ Entry in Register shall be authenticated by CS of Company<br>(d) After the buy-back is over, a return must be filed with the registrar of companies and SEBI, (in the case of company is listed) within 30 days giving details in SH – 11 + with Fee + annexed with Certificate in SH – 15 signed by 2 directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder. [Section 68(10)]</td>
</tr>
<tr>
<td rowspan="3">14.</td>
<td rowspan="3">Penal Provision for non Comply of Section 68 – Section 68 (11)</td>
<td colspan="2">Any default in complying with the provisions of section 68 or any regulation made by the Securities and Exchange Board for Buy Back than –</td>
</tr>
<tr>
<td>In the case of Company</td>
<td>Punishable with Fine of Minimum ₹ 1 lac & Maximum ₹ 3 lacs</td>
</tr>
<tr>
<td>In the case of Office in Default</td>
<td><u>Punishable with</u> –<br>• Imprisonment of 3 year or<br>• Fine of Minimum ₹ 1 lac & Maximum ₹ 3 lacs or<br>• Both</td>
</tr>
</table>

| | | |
|---|---|---|
| **15.** | **Other Requirement to be complied after Buy Back – Section 69 of Co's Act, 2013** | (a) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and<br>(b) Details of such transfer shall be disclosed in the balance sheet.<br>(c) **Utilisation of CRR –** The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. |
| **16.** | **Prohibition of Buy Back u/s 70(1) of Co's Act, 2013** | No company shall directly or indirectly purchase its own shares or other specified securities—<br>(a) Through any subsidiary company including its own subsidiary co's;<br>(b) Through any investment company or group of investment companies; or<br>(c) If a default, is made by the company, in –<br>✓ The repayment of deposits accepted or interest payment thereon,<br>✓ Redemption of debentures or preference shares or<br>✓ Payment of dividend to any shareholder, or<br>✓ Repayment of any term loan or interest payable thereon to any financial institution or banking company. |
| **Note** | The buy-back is not prohibited, if the default is remedied and a period of 3ee years has lapsed after such default ceased to subsist. [Proviso to Section 70 (1)] | |
| **f.** | **Prohibition of Buy Back in case of non – compliances u/s 70(2)** | No Company shall directly or indirectly, buy back its own shares or other specified securities if it has not complied with the provision of –<br>(a) Section 92 (Filling of Annual Return);<br>(b) Section 123 & 127 (Payment of dividend within 30 days); or<br>(c) Section 129 (Annual a/c to present True & Fair View) |

## 10. Alteration in Share Capital – Section 61

<table>
<tr><td>1.</td><td>Authorised by AOA</td><td>A limited company having a share capital may, if so authorised by its articles</td></tr>
<tr><td>2.</td><td>Alteration in MOA with respect to</td><td><u>Alteration</u> – A Company Limited by Shares may alter the Capital Clause of the MOA with regards to –
<table>
<tr><td>1.</td><td>Increase</td><td>Increase its authorised share capital by issue of new shares</td></tr>
<tr><td>2.</td><td>Consolidate</td><td>Consolidate existing shares into shares of larger amount than existing.</td></tr>
<tr><td>3.</td><td>Convert</td><td>Convert fully-paid shares into stock or vice versa</td></tr>
<tr><td>4.</td><td>Sub divide</td><td>Sub-divide its shares or any of them into shares of smaller amount than is fixed by memorandum such that the proportion between the amount paid and unpaid shall remain the same.</td></tr>
<tr><td>5.</td><td>Cancel</td><td>Cancel shares which have not been taken or agreed to be taken by any person and to that extent diminish the amount of its share capital.</td></tr>
</table></td></tr>
</table>

| | | |
|---|---|---|
| 3. | **Filing SH – 7**<br>**Section 64 (1) read with Rule 17 (15)** | **Where a company alters its share capital in any manner specified in –**<br>☞ Sub-section (1) of section 61, or<br>☞ An order is passed by the government increasing the authorized capital of the company in pursuance of sub-section (4) read with sub-section (6) of section 62 or<br>☞ A company redeems any redeemable preference shares.<br>Within 30 days of such alteration, increase or redemption notice shall be filed by the company with the Registrar in Form No. SH.7 + with the fee + Altered MOA. |
| 4. | **Penal Provision** | If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to ₹ 1000/- for each day during which such default continues, or ₹ 5 lacs, whichever is less. |

## 11. Voting Right of Shareholders – Section 47

| | |
|---|---|
| **Voting Right of Shareholders – Section 47** | (a) Equity shareholders have a right to vote on every resolution placed in the meeting and<br>(b) The voting rights shall be in proportion to the paid-up equity capital.<br>(c) As compared to this, the holders of preference shares can vote only on such resolution which directly affects the rights attached to the preference shares.<br>However, if the preference dividend is not paid fully for 2 or more years, the preference shareholders shall also get voting right on every resolution placed before the company. |

## 12. Uniform call on shame class of Shares – Section 49

Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.

| | |
|---|---|
| **Note** | For the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class. |

## 13. Acceptance of unpaid uncalled capital – Section 50

| | | |
|---|---|---|
| 1. | **Acceptance of uncalled capital** | A company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. |
| 2. | **Not entitled to any voting Right** | A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up. |

## 14. Payment of Dividend in Proportion to Amount Paid Up – Section 51

A company may, if so authorised by its articles, pay dividends in proportion to the amount paid- up on each share.

# 15. Restrictions on purchase by company or giving of loans by it for purchase of its shares – Section 67

**TO BE DISCUSSED IN CLASS**

## Some Problems

| Q.N. | Problems |
|---|---|
| **P.1** | Can a Public Limited Company reduce its Share Capital? If so, when and how? Also state the procedure it has to follow for doing so. |
| **P.2** | Explain the meaning of 'Sweat Equity Shares' and state the conditions a company has to fulfil for issuing such shares. |
| **P.3** | Whether a company can issue shares at premium? State the purposes for which the Share Premium account can be used under the provisions of the Companies Act, 2013. |
| **P.4** | ABC Company Limited at a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its Equity Share Capital. The articles of the Company empower the company for buy-back of shares. The company further decide that the payment for buy-back be made out of the proceed of the company's' earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of companies own shares be executed. Examine.<br>(a) Whether company's proposal is in order?<br>(b) Would your answer be still the same in case the company instead of 30% decides to buy-back only 20% of its Equity Share Capital? |
| **P.5** | After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is voilative of the provisions of the Companies Act, 2013 Comment. |
| **P.6** | The Directors of Vijay Electronics Ltd. allotted to themselves certain rights shares for which no application was made by certain shareholders as required by Section 61(1) of the Co's Act.<br>Discuss the validity of their action specially in view of the fact that market price of shares of the Company is 50% above par. |
| **P.7** | DJA Co. Ltd. is holding 40% of total equity shares in MR Co. Ltd. The Board of Directors of MR Co. Ltd. (incorporated on 1.1.2011) decided to raise the paid-up Equity Share Capital by issuing further shares and also decided not to offer any shares to DJA Co. Ltd. on the ground that it was already holding a high percentage of shares in MR Co. Ltd. Articles of Association of MR Co. Ltd. provides that the new shares be offered to the existing shareholders of the Co. On 1.3.2014 new shares were offered to all the shareholders excepting DJA Co. Ltd.<br>Referring to the provisions of the Companies Act, 2013 examine the validity of decision of Board of Directors of MR Co. Ltd. of not offering any further shares to DJA Co. Ltd. |
| **P.8** | A Public Company proposes to purchase its own shares. State the source of funds that can be utilised by the Company for purchasing its own shares and the requirements to be complied with by the Company under the Companies Act before and after the shares are so purchased. |
| **P.9** | Companies are not permitted to issue shares by way of donation. |

# Chapter – 12
# Share Certificate

## Sections covered in this Chapter -

| Sections | Old / New Act | Description |
|---|---|---|
| 46 | New Act | Share Certificate |
| 56 (4) | New Act | Time Period of Issue of Share Certificate |
| 56 (6) | New Act | Penal Provision of Non Compliance of Section 56 (4) |

## 1. Share Certificate

| S.N. | Aspects | Description |
|---|---|---|
| **Note** | Rule 5 is applicable where Certificate of Shares are not in Demat form. | |
| **1.** | **Prohibition of Issue of Share Certificate – Rule 5(1)** | Where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except –<br>(a) In accordance of a resolution passed by the Board; and<br>(b) On surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus share |
| **Note** | The letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit. | |
| **2.** | **Meaning – Section 46(1) & (5)** | **For Physical**: A certificate, issued under the common seal of the company, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.<br>**For Digital (Demat)**: Where a share is held in depository form, the record of the depository is the *prima facie* evidence of the interest of the beneficial owner |
| **3.** | **Seal & Sign – Rule 5(3)** | Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by –<br>(a) 2 directors duly authorized by the BOD of the company for the purpose or the committee of the Board, if so authorized by the Board; and<br>(b) The secretary or any person authorised by the Board for the purpose |
| **Note** | A director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp.<br>• Provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose. | |
| **3.** | **Form & Content – Rule 5(2)** | • Every certificate of share or shares shall be in Form No. SH.1 or as near thereto as possible and<br>• Shall specify the **name(s)** of the person(s) in whose favor the certificate is issued, the shares to which it **relates** and the **amount** paid-up thereon |
| **4.** | **Maintenance of Register – Rule 5 (4)** | The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue. |

| | | |
|---|---|---|
| 5. | **Maintenance of Blank Forms & Related Books & Dox – Rule 7(1)** | (a) All blank forms to be used for issue of share certificates shall be printed and<br>(b) The printing shall be done only on the authority of a Board resolution and<br>(c) The blank form shall be consecutively machine-numbered and<br>(d) The forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may authorise for the purpose; and<br>(e) The company secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board. |
| 7. | **Person Responsible for Maintenance – Rule 7 (2)** | For the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates following persons are responsible –<br>(a) The committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or<br>(b) Where the company has no company secretary, a Director specifically authorised by the Board for such purpose. |

| | | | |
|---|---|---|---|
| 8. | **Preservation of All books – Rule 7 (3)** | **All books referred to in sub-rule (2) shall be preserved in good order –** | |
| | | **In case of Undisputed case** | **Not less than 30 years** |
| | | **In the case of Disputed case** | **Permanently** |
| 9. | **Cancellation of surrendered certificate – Rule 7(3)** | **Stamping or Printing Cancel** | All certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters |
| | | **Expiry Period** | **3years** |
| | | **Destroy after** | May be destroyed after the expiry of 3 years from the date on which they are surrendered |
| | | **Authority to Destroy** | Under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf. |
| **Note** | Provided that nothing in this sub-rule shall apply to cancellation of the certificates of securities, u/s 6(2) of the Depositories Act, 1996, when such certificates are cancelled in accordance with sub-regulation (5) of regulation 54 of the SEBI (Depositories and Participants) Regulations, 1996, made u/s 30 of the SEBI Act, 1992 read with section 25 of the Depositories Act, 1996. | | |

## 2. Issue of Renewed or Duplicate Share Certificate

| | | | |
|---|---|---|---|
| 1. | **Condition for Issue Duplicate Share Certificate –** | **Section – 46(2)** | A duplicate certificate of shares may be issued, if such certificate —<br>(a) Is proved to have been lost or destroyed; or<br>(b) Has been defaced, mutilated or torn and is surrendered to the company. |

<table>
<tr><td></td><td>Section 46(2) Read with Rule 6(1)</td><td>Rule 6(1) (a)</td><td>The certificate of any share or shares shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company</td></tr>
<tr><td>2.</td><td>Fees for Issue – Rule 6(1)(a)</td><td colspan="2">The company may charge such fee as the Board thinks fit, not exceeding ₹ 50/- per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.</td></tr>
<tr><td>3.</td><td>Issue of Share Certificate in the case of Lost or Destroy – Rule 6(2)(a)</td><td colspan="2">The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, -<br>(a) Without the prior consent of the Board and<br>(b) Without payment of such fee as the Board thinks fit, not exceeding ₹ 50/- per certificate and<br>(c) On such reasonable terms, such as furnishing supporting evidence and indemnity and<br>(d) The payment of out-of-pocket expenses incurred by the company in investigating the evidence produced.</td></tr>
<tr><td rowspan="3">4.</td><td rowspan="3">Matter to be stated on Certificate – Rule 6(1)(b) & 6(2)(b)</td><td colspan="2">Where a certificate is issued in any of the circumstances specified in this rule, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that –</td></tr>
<tr><td>In the case of Lost or Destroy</td><td>(a) It is “duplicate issued in lieu of share certificate No...” and<br>(b) The word “duplicate” shall be stamped or printed prominently on the face of the share certificate</td></tr>
<tr><td>In any other case</td><td>(a) It is “Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation” and<br>(b) Also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government</td></tr>
<tr><td>4.</td><td>Maintenance of Register in SH – 2</td><td colspan="2">The particulars of every share certificate issued in accordance with sub-rules (1) and (2) shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in Form No.SH.2 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.</td></tr>
</table>

<table>
<tr><td rowspan="4">5.</td><td rowspan="4">Place, Preservation, Custody & Authentication of Register – Rule 6(3)(a), (b) & (c)</td><td>Place</td><td>The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept</td></tr>
<tr><td>Preservation</td><td>It shall be preserved permanently</td></tr>
<tr><td>Custody</td><td>Shall be kept in the custody of the CS of the company or any other person authorized by the Board for the purpose.</td></tr>
<tr><td>Authentication</td><td>All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate under the provisions of sub-rule (3) of rule 5.</td></tr>
</table>

| | |
|---|---|
| **Query – 1** | Can Company Issue a Duplicate Certificate without surrender of old certificate? |
| **Response – [Rule 6(1)(b)]** | A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to compliance with clause (a) of sub-rule (1) rule 5, sub-rule (2) of rule 5 and sub-rule (3) of rule 5 |

## 3. Time Limit for Issue of Share Certificate – Section 56 (4)

| | | |
|---|---|---|
| 1. | **In the Case of Physical Share [For more details refer Chapter – 14]** | Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—<br>(a) Within a period of 2 months from the date of incorporation, in the case of subscribers to the memorandum;<br>(b) Within a period of 2 months from the date of allotment, in the case of any allotment of any of its shares;<br>(c) Within a period of 1 month from the date of receipt by the company of the instrument of transfer u/s 56(1) or, as the case may be, of the intimation of transmission u/s 56(2), in the case of a transfer or transmission of securities; |
| 2. | **In the Case of Digital Demat** | Where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities. |

| | |
|---|---|
| **Query – 1** | In the case of Unlisted & Listed Company is there any time limit for issue of Duplicate Share Certificate? |
| **Response** | In case **unlisted companies**, the duplicate share certificates shall be issued within a period of 3 months and in case of **listed companies** such certificate shall be issued within 15 days, from the date of submission of complete documents with the company respectively. |

| 4. Penal Provision – Section 56 (4) | | |
|---|---|---|
| 1 | **For Section 46 – Section 46(5)** | (a) If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or ₹ 10 crores whichever is higher and<br>(b) Every officer of the company who is in default shall be liable for action under section 447. |
| **2.** | **For Section 56(4) – Section 56 (6)** | **Where any default is made in complying with the provisions of sub-sections (1) to (5),of Section 56 –**<br>(a) The company shall be punishable with fine which shall not be less than ₹ 25,000/- but which may extend to ₹ 10 lakh and<br>(b) Every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10,000/- but which may extend to ₹ 10 lakh. |

# Chapter – 13
# Debenture

## Sections covered in this Chapter -

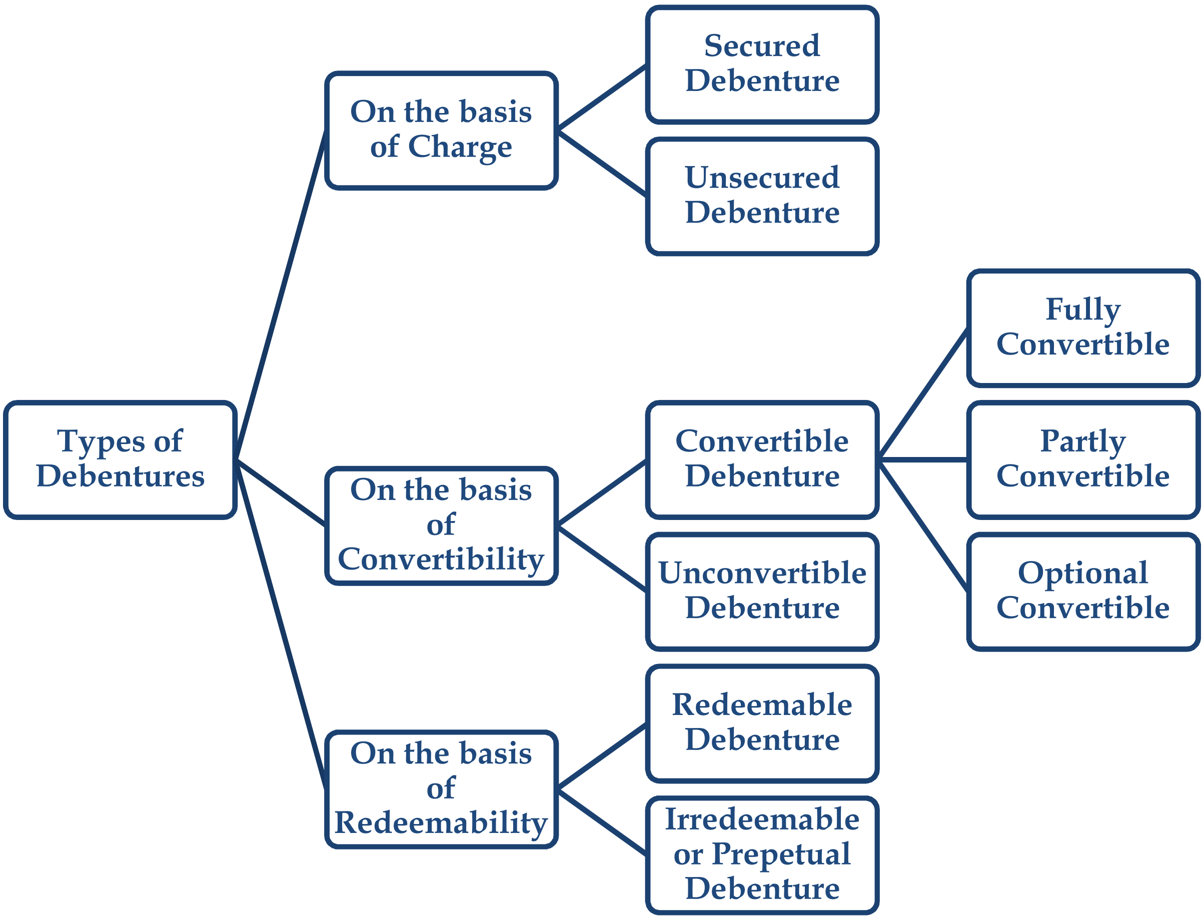
| Sections | Old / New Act | Description |
|---|---|---|
| 2(30) | New Act | Definition of Debenture |
| 71 | New Act | Debentures |
| 18 | S&D Rule, 2014 | Debentures |
| 117B (4) | Old Act | Right of Debenture Trustee to apply Central Govt. for some Remedial Action |
| 117C (4) | Old Act | Order of Tribunal for Payment of Matured Debt. |
| 117 C (5) | Old Act | Penalty for Non Compliance of Section 117C (4) |

# 1. Basic Concepts

| **S.N.** | **Aspects** | **Description** |
|---|---|---|
| **1.** | **Definition – Section 2(30)** | "Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not. |
| **2.** | **Features of Debentures** | **The usual features of a debenture are as follows –**<br>(a) A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.<br>(b) No company shall issue any debentures carrying any voting rights<br>(c) The certificate is an acknowledgement by the company of indebtedness to a holder.<br>(d) A debenture usually provides for the payment of a specified principal sum at a specified date.<br>(e) A debenture usually provides for payment of interest until the principal sum is paid back. But this again is not essential.<br>(f) A debenture generally contains a charge on the undertaking of the company, or on some class of its assets or on some part of its profits. |
| **3.** | **Debenture vs. Shares** | **Difference between Debenture & Shares –** |

| **S.N** | **Basis** | **Debenture** | **Shares** |
|---|---|---|---|
| **a.** | **Ownership** | Debentures holders are creditors. | Shareholders are the owner of the company |
| **b.** | **Part of capital** | Debenture constitutes a loan | Shares are a part of the capital of the company |
| **c.** | **Voting Right** | Debenture holders do not have voting right. | Shareholder generally enjoys the voting right. |
| **d.** | **Charge** | Debentures have a charge on the assets of the company | Shares do not carry any charge. |
| **e.** | **Interest or Dividend** | Interest on debenture is to be paid out even if there is no profit. | Dividend can be paid to shareholders only out of the profits of the company. |
| **f.** | **Rate of Int. or Dividend** | The rate of dividend is fixed in case of debentures. | On equity shares the dividend may vary from year to year. |
| **g.** | **Priority** | Debentures get priority over the shares. | In the event of liquidation of the company the shareholders are payable at the last. |

# 2. Types of Debentures




| | | | |
|---|---|---|---|
| **1.** | **Convertible & Non Convertible** | **Non Convertible** | Company may issue Non Convertible Debenture. These instruments retain the debt character and cannot be converted into equity shares |
| | | **Convertible – Section 17 (1)** | A company may issue debentures with an option to convert such debentures into shares, **either wholly or partly** at the time of redemption.<br>**Provided** that the issue of **debentures with an option to convert** such debentures into shares, wholly or partly, shall be approved by a **special resolution** passed at a general meeting |
| **2.** | **On the Basis Redeemability** | **Redeemable** | ✓ It refers to the debentures which will be redeemed at a fixed date or upon demand, or after notice, or under a system of periodical drawings.<br>✓ Debentures are generally redeemable and on redemption these can be reissued or cancelled. |
| | | **Perpetual** | ✓ A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture.<br>✓ The debenture holder cannot demand payment as long as the company is a going concern and does not make default in making payment of the interest. |
| | | **Note** | After the commencement of the companies act, 2013, now a company cannot issue perpetual or irredeemable debentures. |

<table>
<tr><td rowspan="11">3.</td><td rowspan="11">On the Basis of Charge</td><td colspan="2">Unsecured</td><td colspan="2">✓ Company may issue unsecured Debenture.<br>✓ They are also called as Naked Debenture.<br>✓ If the Issuer Company defaults on payment of the interest or principal amount, the investor has to be along with other unsecured creditors of the company</td></tr>
<tr><td colspan="2">Secured – Section 71 (3)</td><td colspan="2">Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed in Rule 18 (1) is to be followed –</td></tr>
<tr><td colspan="4">Companies (Share & Debentures) Rule, 2014 – Rule 18 (1)</td></tr>
<tr><td>S.N.</td><td>Conditions</td><td colspan="2">Details</td></tr>
<tr><td rowspan="2">1.</td><td rowspan="2">Time Period</td><td>Non Infra Company</td><td>Max. 10 years</td></tr>
<tr><td>Infra Company</td><td>May exceed 10 years but not more than 30 years</td></tr>
<tr><td rowspan="3">2.</td><td rowspan="3">Creation of Charge</td><td>On which asset</td><td>Issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a</td></tr>
<tr><td>In whose favour</td><td>The security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee</td></tr>
<tr><td>On what value</td><td>Value which is sufficient for the due repayment of the amount of debentures and interest thereof</td></tr>
<tr><td>3.</td><td>Appoint Debenture Trustee</td><td colspan="2">The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures</td></tr>
<tr><td>4.</td><td>Debenture Trust Deed Execution</td><td colspan="2">Not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holder in SH – 12</td></tr>
</table>

## 3. Provision for Debenture

<table>
<tr><td>1.</td><td>No Voting Right</td><td colspan="2">Cannot issue debentures carrying voting rights.[Section 71 (2)]</td></tr>
<tr><td rowspan="3">2.</td><td rowspan="3">Debenture Trust deed – Section 71(13)</td><td>Form</td><td>Prescribed by Central Government (SH – 12)</td></tr>
<tr><td>Time period.</td><td>As prescribed by Central Government.</td></tr>
<tr><td>Inspections & Copies</td><td>Debenture holders can inspect & obtain copies of Debenture Trust Deed in the manner as prescribed by Central Government.</td></tr>
</table>

| | | | |
|---|---|---|---|
| 3. | Debenture Trustees – Section 71 (5) & (6) & Section 117B (4) of Co's Act, 2014Read with Rules 18 (2 to 5) | **Mandatory Appointment** | The appointment of debenture trustees is compulsory only when the prospectus is issued to more than 500 persons for subscription of debentures |
| | | **When(Time)** | Appointed before the issue of prospectus. |
| | | **Consent of Trustee** | The person proposed to be appointed as DH shall given his/her consent to the Company & such fact must be stated on the face of prospectus |
| | | **Disqualified** | **A person cannot be appointed as debenture trustee, if he –**<br>(a) Beneficially **holds shares** in the company;<br>(b) Is a **Promoter, Director or KMP** or any **other Officer** or an **Employee** of the company or its Holding, Subsidiary or Associate company;<br>(c) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;<br>(d) Is **indebted to the company**, or its Subsidiary or its Holding or Associate company or a Subsidiary of such holding company; **(Debtor)**<br>(e) Has furnished **any guarantee** in respect of the principal debts secured by the debentures or interest thereon;<br>(f) Has **any pecuniary (i.e. in terms of Financial) relationship** with the company amounting to 2% or more of its gross turnover or total income or ₹ 50 Lakhs or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;<br>(g) Is **relative of any Promoter** or any person who is in the employment of the company as a **Director or KMP** |
| | | **Function** | (a) Protect interest of debenture holders.<br>(b) Creation of securities within stipulated time<br>(c) Redressal of grievances.<br>(d) Steps to remedy any breach of terms of trust deed<br>(e) Call a meeting of debenture holders **(Refer Meeting Chapter for details)** |
| | | **Objective** | **To ensure –**<br>(a) Assets are sufficient to discharge debentures.<br>(b) Prospectus does not contain any matter inconsistent with terms of debentures/trust deed<br>(c) Company does not commit breach of provision of trust deed. |
| | | **Right of DT to apply to C.G. – [Section 117B (4)]** | (a) **Grounds for application** – Assets of Co. are insufficient to discharge principal when it becomes due.<br>(b) **Powers of CG** – To impose restrictions on incurring of further liabilities as it thinks necessary. |

<table>
<tr><td rowspan="6">4.</td><td rowspan="6">Liability of Company to create security & DRR – Section 71 (4) & (8) & Read with Rule 18 (7)</td><td>Creation of DRR</td><td>It is mandatory to create DRR</td></tr>
<tr><td>Credit to DRR</td><td>DRR is created out of the profits of the company available for payment of dividend.</td></tr>
<tr><td>Use of DRR</td><td>Utilised only for redemption of debenture</td></tr>
<tr><td>Condition on Creation of DRR</td><td>The company shall create DRR in accordance with following conditions –
<table>
<tr><th>In the case of</th><th colspan="2">% of DRR (Quantum)</th></tr>
<tr><td rowspan="2">Public Offer – SEBI [Issuing & Listing of Debt Security] Regulation – 2008</td><td>By NBFC Registered with RBI</td><td rowspan="2">DRR will be 25% of the value of debentures issued through public issue.</td></tr>
<tr><td>Other Companies</td></tr>
<tr><td rowspan="2">Private Placement by Listed CO.</td><td>By Listed Co.</td><td rowspan="2">The DRR will be 25% of the value of debentures</td></tr>
<tr><td>By Unlisted Co.</td></tr>
<tr><td>Note</td><td colspan="2">In the case of AIFI Regulated by RBI/Banking Co's No DRR is required for both public as well as privately placed debentures.</td></tr>
</table></td></tr>
<tr><td>Invest/Deposit 15 % amount of Debenture Maturing on 31st March of Next Year (Liquid Fund)</td><td>Every company required to create DRR shall on or before the 30th day of April in each year, invest or deposit a sum which shall not be less than 15% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely –<br>(a) In deposits with any scheduled bank<br>(b) In unencumbered securities of the Central Government or of any State Government<br>(c) In unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882<br>(d) In unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882<br>(e) The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.</td></tr>
<tr><td>Note</td><td>In case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue.</td></tr>
</table>

<table>
<tr><td rowspan="3">5.</td><td rowspan="3">Payment of Debenture – Section 71 (8) Read with Section 117C (4) & (5) of Co's Act 1956</td><td>Terms of Payment</td><td>A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue</td></tr>
<tr><td>Result of Failure – Section 117C (4)</td><td>If Company failed to redeem debentures on maturity + Tribunal may on application after hearing direct by order co to redeem debentures forthwith by payment of Principle + Interest due thereon.</td></tr>
<tr><td>Non Compliance order of Tribunal – Section 117C (5)</td><td><u>Every Officer in default shall be punishable with</u> –<br>• <u>Imprisonment</u> – Upto 3 years<br>• <u>Fine</u> – Not less than ₹ 500/- for every day during which such default continues.</td></tr>
<tr><td rowspan="2">6.</td><td rowspan="2">Right to obtain copies & Inspect – Rule 8</td><td colspan="2"><u>A trust deed for shall be</u> –<br>✓ Open for inspection to any member or debenture holder of the company,<br>✓ In the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and</td></tr>
<tr><td colspan="2">A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within 7 days of the making thereof, on payment of fee.</td></tr>
<tr><td rowspan="2">7.</td><td rowspan="2">Liability of Debenture Trustees – Section 71 (7)</td><td>For Damage</td><td>Debenture trustee is guilty of breach of trust or fails to show care & diligence & Loss is caused to debenture holders. Than debentures trustee shall be liable for damages.</td></tr>
<tr><td>Exemption or Indemnity</td><td>Provisions providing exemption or indemnity to debenture trustee shall be void</td></tr>
<tr><td>Note</td><td colspan="3">Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than 3/4th in value of the total debentures at a meeting held for the purpose</td></tr>
</table>

## 4. Some Additional Points –

<table>
<tr><td>1.</td><td>General</td><td colspan="2">(a) Company can issue debentures only when it is authorized by the MOA & AOA.<br>(b) Debentures can be issued at discount by passing resolution.<br>(c) The company has to get debentures rating by CRISIA and CARC.<br>(d) Register of debenture holder is to be maintained.</td></tr>
<tr><td rowspan="2">2.</td><td rowspan="2">Terms of Issue of Debenture</td><td>Debenture with pari passu clause</td><td>Every debenture holder issued with pari passu clause shall be entitled to share the proceeds of the security realised, even though these debentures were issued at different points of time</td></tr>
<tr><td>Without pari passu clause</td><td>The debenture holder shall be entitled to share the proceeds of the security realised on FIFO basis (i.e. priority according to date of issue or according to serial no.)</td></tr>
</table>

<table>
<tr><td></td><td></td><td>Restriction on the powers of the company</td><td>Company is not entitled to issue a new series of debentures having Priority or Ranking Pari Passu over earlier series of debentures unless such right is expressly reserved under terms of earlier series of debentures.</td></tr>
<tr><td>3.</td><td>Summary SEBI Guidelines</td><td colspan="2"><u>SEBI guidelines of the protection of the interest of debenture holders are</u> –<br>(a) For protecting the interest of debenture holders, the trustee to the debenture issue shall be vested with the required power such as a right to appoint a nominee director on Board of the company is consultation with institutional debenture holder.<br>(b) For the proper utilization of the funds the institutional debenture holder should obtain a certificate from the company's auditor.<br>(c) Supervision of the trustee and the debenture redemption reserve and for the creation of security.<br>(d) Investment institution will look after the progress in respect of debentures for project finance, modification etc. Debentures raised for working capital funds will be monitored by the lead bank.<br>(e) Debenture issued by companies belonging to the groups for financing/replenishing funds or acquired share holding in other company will not be permitted.<br>(f) Along with the application the company has to file with SEBI, certificate from the bankers or the solicitors that the assets on which security is to be created are free from any charge, or no objection has been taken making second charge where assets are already encumbered.<br>(g) The security is to be created in 6 months or up to 12 months for any special reason. If it is failed to do so 2% per month interest is payable.<br>(h) A meeting of debenture holder is to be called if security is not created after 18 months and the reason for the delay is to be explained.</td></tr>
<tr><td rowspan="2">4.</td><td rowspan="2">Summary of Remedies available to DH</td><td>Where debenture are secured</td><td>(a) Suit against the company<br>(b) Petition to the court for winding up of the company<br>(c) Prove debts before liquidator<br>(d) Application to CG/Tribunal</td></tr>
<tr><td>Where debenture are not secured</td><td>(a) Application for foreclosure<br>(b) Appointment of receiver<br>(c) Claim as unsecured creditor</td></tr>
</table>

# Some Problems

| Q.N. | Problems |
|---|---|
| **P.1** | What is the difference between debenture and a loan? |
| **P.2** | What is debenture? What are the kinds of debentures? |
| **P.3** | What is a convertible debenture? What are the provisions of the Companies Act, 2013 regarding convertible debentures or loans? |
| **P.4** | Summaries the SEBI guidelines pertaining to the issue of Debentures. |
| **P.5** | Is it compulsory to maintain a Debenture Redemption Reserve Account? If yes, how? |
| **P.6** | Who is a debenture trustee? Why is it compulsory to appoint a trustee in connection with the issuance of debentures? What are the duties of a trustee? |
| **P.7** | Explain the meaning and significance of the 'Pari Passu' clause in a debenture. |
| **P.8** | What are the provisions of the companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? whether the following can be appointed as 'Debenture Trustees' –<br>(a) A shareholder who has no beneficial interest.<br>(b) A creditor whom the company owes ₹ 499 only.<br>(c) A person who has given a guarantee for repayment of amount of debenture issued by the Co. |

# Chapter – 14
# Transfer & Transmission of Shares

## Sections covered in this Chapter -

| Sections | Old / New Act | Description |
|---|---|---|
| 44 | New Act | Nature of shares or debentures |
| 56 | New Act | Transfer and transmission of securities |
| 57 | New Act | Punishment for personation of shareholder |
| 58 | New Act | Refusal of registration and appeal against refusal |
| 59 | New Act | Rectification of register of members |
| 72 | New Act | Power to Nominate |

## Landmark Judgments covered in this chapter:

1. **Prafull Kumar Rout v Orient Engg. Works (P) Ltd.**
2. **S Bhuvaneswari v. ACI (Agro Chemical Industries) Ltd.**

# 1. Basic Concepts

| S.N. | Aspects | Description | |
|---|---|---|---|
| 1. | **General Right** | Transferability of shares is an absolute right of the shareholder which cannot be denied even by the articles. | |
| 2. | **Nature of Share** | **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.<br>For Ex. – Guarantee Company may transfer membership interest, suspension of membership or assignment of interest etc. by making special provisions in the articles. |
| | | **Section 58 (2)** | Shares in a public company are freely transferable |
| | | **Section 58 (1) Read with 2 (68)** | A private company may impose reasonable restrictions on transferability of shares. |
| **Note** | Any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. **[Proviso to Section 58(2)]** | | |
| 3. | **Mode of Transfer ownership** | **Transfer** | Voluntary transfer of shares from one person to another |
| | | **Transmission** | Transfer of ownership of shares by operation of law. |

# 2. Provision for Transfer of Shares – Section 56

| | | |
|---|---|---|
| 1. | **Instrument of Transfer – Section 56(1)** | Transfer of securities or interest of a member shall not be registered except on complaining with following requirement –<br>☞ Production of **instrument of transfer**<br>☞ **Duly stamped**<br>☞ **Dated & Executed**<br>☞ Has been **delivered to the company** by the **transferor or the transferee** within a **period of 60 days** (irrespective of the nature of the company, whether listed or unlisted) from the date of execution<br>☞ Along with the **certificate** relating to the securities or if no such certificate is in existence, along with the **letter of allotment** of securities. |
| **Note** | **Rule 11 (1)** | An instrument of transfer of securities held in physical form shall be in Form No. SH. 4 |
| 2. | **In the case of Loss of Transfer Deed – Section 56(2)** | Where, on an application in writing made to the company bearing adequate stamp value for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the transfer deed signed by or on behalf of the transferor and by or on behalf of the transferee has been lost, the company may register the transfer **on such terms as to indemnify as the Board may think fit.** |

<table>
<tr><td rowspan="1">3.</td><td>Transfer of Partly Paid up Shares</td><td colspan="3">Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered unless a notice in Form SH-5 is issued to the transferee and transferee gives "No objection" to the transfer within 2 weeks from the receipt of the notice.<br>[Section 56 (3) Read With Rule 11 (3)]</td></tr>
<tr><td>Note</td><td colspan="4">The notice to the transferee shall be deemed to have been duly given if it is dispatched by prepaid registered post to the transferee at the address given in the instrument of transfer, and shall be deemed to have been duly delivered at the time at which it would have been delivered in the ordinary course of post.</td></tr>
<tr><td rowspan="6">4.</td><td rowspan="6">Time Limit for Registration of Transfer – Section 56 (4)</td><td colspan="3">Every company unless prohibited by any provisions of law or of any order of any court, Tribunal or other authority, shall deliver the certificates of all securities allotted, transferred or transmitted –</td></tr>
<tr><td>Company</td><td colspan="2">Time Limit</td></tr>
<tr><td rowspan="3">Unlisted</td><td>Share Certificate</td><td>Within a period of 2 months from the date of incorporation or from the date of allotment, as the case may be.</td></tr>
<tr><td>Transfer or Transmission</td><td>Within a period of 1 month from the date of receipt by the company of the instrument of transfer or the intimation of transmission</td></tr>
<tr><td>Debenture</td><td>Within a period of 6 months from the date of allotment.</td></tr>
<tr><td>Listed</td><td colspan="2">The listing agreement requires that the registration of transfers will be made within 15 days of receipt of the transfer deeds.</td></tr>
<tr><td>Note</td><td colspan="4">Where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.</td></tr>
<tr><td>5.</td><td>Transfer by Legal Representative</td><td colspan="3">The transfer of any security or other instrument of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of execution of the instrument of transfer. [Section 56(5)]</td></tr>
<tr><td rowspan="3">6.</td><td rowspan="3">Penal Provision</td><td colspan="3">Where a company registers transfer or transmission of security not in accordance with the provisions of section 56 (1) to (5) of the Act the following penal provision is provided in section 56 (6) –</td></tr>
<tr><td>Company</td><td colspan="2">Punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs.</td></tr>
<tr><td>Officer in Default</td><td colspan="2">Punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 lakh.</td></tr>
<tr><td>Note</td><td colspan="4">Without prejudice to any liability under the Depositories Act, 1996, where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447. [Section 56 (7)]</td></tr>
</table>

<table>
<tr><td rowspan="5">6.</td><td rowspan="5">Some Extra Points Regarding Transfer of Share</td><td rowspan="2">Valuation of Shares</td><td>Listed Company</td><td>The valuation will be determined on the basis of quotations available on the stock exchange on the date of execution of transfer deed or the consideration paid whichever is higher.</td></tr>
<tr><td>Unlisted Company</td><td>The price that the shares would fetch at the time of transfer of shares or consideration agreed, whichever is higher</td></tr>
<tr><td>Stamp Duty</td><td colspan="2">The share transfer stamps so affixed on a share transfer form are required to be cancelled either at the time of affixing them or at the time of execution of the deed by the transferee. The transferee must make sure that before lodgment of the transfer with the company, he must cancel the stamps by crossing them on their face.</td></tr>
<tr><td>Case Law</td><td colspan="2">It is not necessary that stamps be affixed before transfer deed is executed, they are to be affixed before delivery.<br>[Prafull Kumar Rout v Orient Engg. Works (P) Ltd.]</td></tr>
<tr><td>Exemption from the payment of stamp duty</td><td colspan="2">No duty shall be chargeable in respect of any instrument executed by or on behalf of or in favor of the Government in cases where but for this exemption, the Government would be liable to pay to pay the duty chargeable in respect of such instrument.</td></tr>
<tr><td>7.</td><td>Non Applicability of Section 56</td><td colspan="3">The instrument of transfer and the concerned formalities in section 56 do not apply to the transfer of securities held under the system of depositories.<br>[Section 56 (1)]</td></tr>
</table>

## 3. Refusal to Register Transfer & Appeal – Section 58

<table>
<tr><td>1.</td><td>General Power</td><td colspan="2">Nothing in section 56(1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.</td></tr>
<tr><td rowspan="5">2.</td><td rowspan="5">Refusal to Register Transfer & Transmission – Section 58(1)</td><td>Company</td><td>Private company Limited by Share.</td></tr>
<tr><td>Power of Refusal</td><td>By exercising any power of the company under its articles or otherwise,</td></tr>
<tr><td>For What</td><td>To register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company.</td></tr>
<tr><td>Intimation for Refusal</td><td>With 30 days from the date on which the instrument of transfer, or the intimation of such transmission was received to the company.</td></tr>
<tr><td>How to intimate</td><td>Send notice of the refusal & giving reasons for such refusal</td></tr>
</table>

| | | | | | |
|---|---|---|---|---|---|
| | | **Example** | Unless a transfer form is duly stamped when it was delivered to the company for registration of transfer, it could not say that mandatory requirement of section 56 is complied with and the company is justified to refuse the transfer. | | |
| | | **Intimation to Whom** | ✓ To the transferor and transferee or<br>✓ To the person giving intimation of such transmission | | |
| | | **Exception – Section 58(2)** | Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable.<br>Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. | | |
| | | **Remedy against Refusal in case of Pvt. Company – Section 58 (3)** | **To Whom** | Tribunal | |
| | | | **By Whom** | Transferee or,<br>Person giving intimation of transmission | |
| | | | **Time** | **Notice recd.** | 30 days from the date of receipt of the notice |
| | | | | **No Notice** | 60 days from the date on which the instrument of transfer or the intimation of transmission. |
| | | | **Order – Section 58 (5)** | ✓ After hearing the parties,<br>✓ May either dismiss the appeal, or by order –<br>(a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or<br>(b) Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved. | |
| | | **Remedy against Refusal in case of Public Company – Section 58 (4)** | **Reason for Appeal** | If a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company | |
| | | | **Time** | **Notice recd.** | 60 days from the date of receipt of the notice. |
| | | | | **No Notice** | 90 days from the date on which the instrument of transfer or the intimation of transmission. |
| | | | **Order** | Same as in the case of Private Company | |

| | | | |
|---|---|---|---|
| **3.** | **Penalty for Contravention of order of Tribunal – Section 58 (6)** | **Imprisonment** | Minimum 1 years upto Maximum 3 years & |
| | | **Fine** | Minimum ₹ 1 lacs upto Maximum ₹ 5 lacs |

## 4. Rectification of Register of Member – Section 59

| | | | |
|---|---|---|---|
| **1.** | **Reason for Rectification – Section 59(1)** | **If the name of any person is, without sufficient cause** –<br>✓ Entered in the register of members of a company, or<br>✓ After having been entered in the register, is omitted therefrom, or<br>✓ If a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member | |
| **2.** | **By Whom** | The person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed | |
| **3.** | **TO Whom** | ✓ To the Tribunal, or<br>✓ To a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register. | |
| **4.** | **Order of Tribunal – Section 59 (2)** | **The Tribunal may, after hearing the parties to the appeal by order, either** –<br>• Dismiss the appeal or<br>• Direct that the transfer or transmission shall be registered by the company within a period of 10 days of the receipt of the order or<br>• Direct rectification of the records of the depository or the register and<br>• In the latter case, direct the company to pay damages, if any, sustained by the party aggrieved. | |
| **Case Law** | In **S Bhuvaneswari v. ACI (Agro Chemical Industries) Ltd. (2004) (Mad HC DB),** it was held that CLB (now NCLT) cannot direct a member to transfer his shares. It can only direct company to register the transfer or transmission, direct rectification of registers and pay the damages, if any, sustained by aggrieved party. | | |
| **5.** | **Right of person is not prejudice – Section 59 (3)** | The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal. | |
| **6.** | **Application by Specified person to set the right the contravention and rectify – Section 59 (4)** | **By Whom** | ✓ Depository,<br>✓ Company,<br>✓ Depository Participant,<br>✓ Holder of the securities or<br>✓ Securities and Exchange Board |

| | | | | |
|---|---|---|---|---|
| | | **For What** | Where the transfer of securities is in contravention of any of the provisions of the –<br>✓ Securities Contracts (Regulation) Act, 1956,<br>✓ SEBI Act, 1992 or<br>✓ Companies Act 2013 or<br>✓ Any other law for the time being in force | |
| | | **To Whom** | To Tribunal | |
| | | **Order** | Tribunal direct any company or a depository to set right the contravention and rectify its register or records concerned. | |
| **7.** | **Penalty for Contravention of order of Tribunal – Section 59 (5)** | **Company** | Punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh. | |
| | | **Officer in Default** | **Imprisonment** | Upto 1 year |
| | | | **Fine** | Which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh. |
| | | | **Both** | Imprisonment + Fine |

## 5. Power to Nominate – Section 72

| | | | |
|---|---|---|---|
| **5.** | **Nomination of Member – Section 72 Read with Rule 19** | **Applicability** | ✓ To all the Company<br>✓ Nomination is optional |
| | | **By Whom** | Every Holder of Securities of Company |
| | | **Who can be nominee** | Individual + singly/jointly (minor provided name of guardian is mentioned in documentation form, who shall be entitled to shares until minor become an adult in Form SH. 14). |
| | | **Form** | Prescribed form [SH. 13] |
| | | **When** | At any time |
| | | **Entry in Register** | On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained u/s 88. |
| | | **Time Limit** | The request for nomination should be recorded by the Company within a period of 2 months from the date of receipt of the duly filled and signed nomination form. |
| | | **Modification** | Variation or Cancellation of nomination anytime in Form No. SH.14 |
| | | **Note** | The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company. |
| | | **Death of Member** | Shares vest in nominee + nomination valid overriding will/other law. |

<table>
<tr><td rowspan="3"></td><td rowspan="3"></td><td>Right of Nominee</td><td colspan="2">(a) <u>Right to become member</u> – Application writing + death certificate submitted to company<br>(b) <u>Right to transfer shares</u> – Transfer deed signed by nominee + Death certificate submitted to company<br>(c) <u>No Right to vote at any GM</u> – Nominee no right to vote in GM until he is registered as a member</td></tr>
<tr><td>Note</td><td colspan="2">All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder</td></tr>
<tr><td>Power of Board to Sent a Notice</td><td colspan="2">• The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within 90 days.<br>• The Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.</td></tr>
<tr><td colspan="5">6. <u>Some Miscellaneous</u></td></tr>
<tr><td>1</td><td>Certification of Transfer OR Splitting of shares or Partial Transfer of shares</td><td colspan="3">(a) <u>Need for certification</u> – Transfer part of shares in one share certificate Or intends to transfer shares in one share certificate to two or more than two person.<br>(b) <u>Submission of documents to company</u> – Transfer deed + Share certificate.<br>(c) <u>Certifications made by company</u> – Company retains share certificate+ certification on transfer deed + return share transfer decd (after certification) to member.<br>(d) <u>Certification to be prima facie evidence</u> – That S/H submitted share certificate to company + contained such number of shares specified (by certification) in transfer deed.</td></tr>
<tr><td rowspan="4">2.</td><td rowspan="4">Punishment for Personation of Shareholder – Section 57</td><td>Applicability</td><td colspan="2">If any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act.</td></tr>
<tr><td>Result of Personation</td><td colspan="2">And thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner,</td></tr>
<tr><td rowspan="2">Punishment</td><td>Imprisonment</td><td>From 1 year upto 3 years</td></tr>
<tr><td>Fine</td><td>Which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh.</td></tr>
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<table>
<tr><td rowspan="3">2.</td><td rowspan="3">Forged Transfer</td><td>Meaning</td><td colspan="2">Transfer of shares on basis of Transfer deed on which transferor's signatures are forged</td></tr>
<tr><td>Transfer of Void ab inito</td><td colspan="2">A forged transfer is a nullity (i.e., without any legal effect).</td></tr>
<tr><td>Right of Parties</td><td colspan="2">If forged transfer registered than transferee does not become owner + original owner continues to be shareholder. If co. has registered transferee as S/H on basis of forged transfer –<br>(a) Original owner can compel co. to restore his name in ROM<br>(b) Company may cancel share certificate issued to transferee<br>(c) If transferee has already, transferred shares to an innocent purchaser –<br>✓ Company can refuse to register new purchaser<br>✓ New purchaser shall have right to claim damages<br>✓ Company right to recover damages from person who lodged forged transfer deed.</td></tr>
<tr><td rowspan="6">3.</td><td rowspan="6">Blank Transfer</td><td>Meaning</td><td colspan="2">Sign of transferor + not contain particulars of transferee</td></tr>
<tr><td>Procedure</td><td colspan="2">Transferor delivers to buyers share certificate+ blank share transfer deed.</td></tr>
<tr><td rowspan="2">Effect</td><td>Option 1</td><td><u>The buyer may become owner of such shares</u> –<br>(a) Buyer does not become owner on receipt of above + gets implied authority to complete transfer deed.<br>(b) Owner only when completes blanks blank transfer deed + delivers share certificate + filled transfer deed to company.</td></tr>
<tr><td>Option 2</td><td><u>The buyer may transfer such shares</u> –<br>Buyer does not intend to become owner but he can transfer by delivering share certificate + blank transfer deed to a new buyer</td></tr>
<tr><td>Who is Transferee</td><td colspan="2">last holder of blank transfer deed who complete the deed & Until some buyer is registered, transferor continue to be owner</td></tr>
<tr><td>Validity</td><td colspan="2">Blank transfer deed valid only for such period as is prescribed u/s 56.</td></tr>
</table>

# Some Problems

| Q.N. | Problems |
|---|---|
| **P.1** | A Company refuses to register transfer of shares made by X to Y. The Company does not even send a notice of refusal to X or Y within the prescribed period. Has the aggrieved party any right(s) against the Company for such a refusal? Advice. |
| **P.2** | Instrument of transfer is not required to be executed in case of transmission |
| **P.3** | Before registering transfer of partly paid up shares the Company is required to give a registered notice to the transferor |
| **P.4** | 'A' buys 200 shares in a company from 'B' on the faith of a share certificate issued by the company. 'A' tender to company a transfer to himself from 'B' duly executed together with B's share certificate. The company discovers that the certificate in the name of 'B' has been fraudulently obtained and refuses to register the transfer. Is 'A' entitled to get the registration of the transfer? |
| **P.5** | X and Y each held half the issued capital of the company. The Articles provided "the directors may, at any time, in their absolute and uncontrolled discretion refuse to register any transfer of shares".<br>X died and his executor applied to have his shares registered in his name. Y, who is director, refuses under the above mentioned provision of Articles. Can the Court come to the rescue of X's executor? |
| **P.6** | State the powers of the Board of directors to refuse registration? |
| **P.7** | An agreement for transfer of certain shares was entered into and the transferee was registered as a member without transfer deed being executed. Is the registration of the transfer valid? |
| **P.8** | What is difference between Transfer & Transmission? |

| S.N. | Transfer | Transmission |
|---|---|---|
| **1.** | | |
| **2.** | | |
| **3.** | | |
| **4.** | | |
| **5.** | | |