CAPITAL

- The Proportion of the Capital which each member is entitled is a share
- Capital is used in the following senses
  - Nominal or authorised or registered capital
    - Authorised in the Memorandum as the maximum amount a company can raise by issuing shares
    - It is taken for the computation of stamp duty
  - Issued Capital
    - Capital issued from time to time by the company for subscription
  - Subscribed Capital
    - Capital which is for the time being subscribed by members of the company
  - Called up Capital
    - Amount called up on shares issued

SHARE

- Share means a share in the share capital of a company and includes stock
- It represents the proportion of the interest of shareholder interest
- Shareholders are not part owners of the undertaking in the eyes of law
- Kinds of Share Capital
  - Equity Share Capital
    - With Voting rights, or
    - With differential rights as to dividend, voting or otherwise
  - Preference Share Capital
- Equity Share Capital- Share Capital which is not Preference Share Capital
- Preference Share Capital:-Part of the issued share capital which carries or would carry a preferential right with respect to:-
  - Payment of Dividend and
  - Repayment of Capital
- Conditions for issue of equity shares with differential rights
  - Articles of Association authorise such issue
  - Issue is authorised by shareholders by passing Ordinary Resolution in a General Meeting
  - Shares with differential rights not to exceed 26% of the Post issue paid up equity share capital
  - Company has consistent track record of distributable profits for the last three years
  - Company has not defaulted in filing financial statements and annual returns for the 3 preceeding financial years
  - Company has not defaulted in paying declared dividends or repayment of matured deposits or redemption of preference shares or debentures
  - Company has not defaulted in the payment of dividend on preference shares or repayment of term loan from Public Financial Institution

  - Company has not been penalized for offence under Reserve Bank of India Act 1934. SEBI Act 1992, Securities Contract Regulation Act 1956, Foreign Exchange Management Act 1999 or any special act
- Conditions for Issue of Preference Shares
  - Issue authorised by passing special resolution in General meeting
  - Company has no subsisting default in redemption of Preference Shares issued earlier

Variation of Shareholders Rights

- Variation to be authorised by Articles of Association
- Memorandum and Articles are silent then:-
  - Consent of the holders holding not less than three-fourth of issued shares to be obtained OR sanction through special resolution in General Meeting
  - Variation could be curtailment of right as well as enhancement of rights- for both cases the procedure has to be complied
  - Quorum for the meeting-Private Company -2 members and Public Company- 5 Members
- Minority Shareholders
  - Not less than 10% in aggregate- not consented to the resolution –Apply to court to have the variation cancelled
  - Application to be made within 21 days of passing such resolution
  - Where application made-the variation not to have effect unless the confirmation from court is received
  - Court order to be filed with ROC

Voting Rights of a Member

- Voting right of an equity shareholder in proportion to the share in the paid up equity share capital of the company
- Voting Right of a Preferential Shareholder- only for the resolutions which affect the rights attached to the preference shares
- Proportion of the voting rights of Equity shareholders and Preference shareholders same as paid up capital of shares bear to the total paid up capital on those shares
- If Preference shares dividend is outstanding for 2 years or more, those shareholders shall have a right to vote on all resolutions placed before the company

Further Issue of Capital (Right Shares or Pre-Emptive Right)

- A company having share capital proposes to increase the subscribed capital by issue of further shares, such shares shall be offered first to the existing shareholders- conditions are:-
  - Offer to be made by notice specifying the number of shares offered and time for offer, minimum 15 days and maximum 30 days
  - Also provide right to renounce the shares to shareholders unless Articles provide otherwise

    - On expiry of period or receipt of decline of offer from the shareholder, the company shall dispose of the shares in the best interest of the company
- These shares can be issued to employees under ESOP subject to special resolution and other conditions
- Offer to be made to other persons- by passing special resolution
- Companies(Share Capital and Debenture) Amendment Rules 2014, Issue of shares on Preferential Basis, Price of shares shall not be less than price determined on the basis of the valuation report of a Registered Valuer
- Notice to be send three days before the opening of the issue
- Section not apply when the share capital is increased as a result of conversion of Debentures issued or loan raised by company, if the option is attached to it and the same is approved by it and special resolution is passed
- If Government feels necessary in public interest , it can order conversion of debentures issued or loan obtained from Government to be converted into shares of the company on the reasonable terms and conditions
    - Terms imposed by Government not favourable to Company- apply to Tribunal within 60 days \
    - Government will consider the financial position of the company while determining the terms and conditions of conversion
    - Memorandum shall stand increased on such conversion

<u>Conversion of Shares into Stock</u>

- Stock is aggregate of fully paid shares
- It represents part of the capital of the company which is fully paid
- A Company Limited by shares if authorised by articles – pass special resolution in General Meeting
- Notice with the registrar
    - A company alters its share capital
    - Order by the Central Government Under Section 62 (Conversion of debt from Government)
    - Redeem Preference Shares,
      the company to file a notice with the Registrar within 30 days of such alteration or redemption , along with an altered memorandum
- Punishment: Company and Officer- Fine –Rs 1,000 Per day or Rs. 5 Lakh, whichever is less

<u>Alteration of Share Capital</u>

- Company may alter the share capital if
    - Authorised by Articles, alter its memorandum in the General Meeting to
        - Increase the authorised capital
        - Consolidate shares into shares of larger amount (if there is change in voting percentage, then the approval of Tribunal necessary)
        - Convert all or fully paid up shares into stock and reconvert into shares

    - Subdivide the shares into smaller amount than as fixed in the memorandum
    - Cancel shares , which at date of passing resolution has not been taken or agreed to be taken
  - Cancellation of shares not deemed to be a reduction of share capital

Reduction of Share Capital

- Company may by special resolution and confirmation of the court, reduce the share capital by
  - Reducing the liability of the members in respect of capital not fully paid up
  - Writing off or cancelling any paid up share capital
  - Paying off any paid up share capital in excess of requirements of the company
- Reduction may take place
  - Reducing the value of shares to absorb the accumulated losses
  - Extinction of unpaid liability on shares
  - Paying off paid up share capital

Reduction of Share Capital Vs. Dimunition of Share Capital

- Reduction of Share Capital to be authorised by the Articles of Association
- Dimunition is the cancellation of that part of the share capital not subscribed
- Both differ in the following aspects
  - Reduction is reduction in the issued capital, Dimunition in respect of authorised capital
  - Dimunition by ordinary resolution if authorised by articles while reduction only through special resolution
  - Dimunition requires no court confirmation while reduction requires court confirmation
  - In case of Reduction company to add the words "and reduced " to its name, in Dimunition the same is not required
  - Dimunition, notice only to be given to registrar within 30 days, while the reduction, there is a detailed procedure prescribed

Issue of shares at a discount

- Company cannot issue shares at a discount
  - Exception:- Issue of Sweat equity shares

Issue of Sweat Equity Shares

- Equity Shares issued by the Company to its directors or employees for a consideration other than for cash
  - For Providing know how or making available rights in the nature of intellectual property rights or Value additions
- Company other than a listed company to pass special resolution in General Meeting
- The Term Employee includes

    - Permanent Employee of the company
    - Director of the Company
    - Employee or Director of Holding or Subsidiary Company
- Value addition means actual or anticipated economic benefits
- Conditions for issue of sweat equity
    - Special Resolution passed with no of shares, current market price, consideration if any, class of employees specified
    - Not less than one year elapsed since commencement of business
    - Listed Companies- to Comply with SEBI guidelines

Issue of Securities at a Premium

- Company shall transfer the amount received by it as Securities Premium to the Securities Premium account-it shall also state the means in which the amount shall be applied
- Application of Securities Premium account
    - Issue of Bonus Shares
    - Writing off Prelimnary Expenses of the Company
    - Writing off Expenses of Commission Paid or Discount allowed on issue of shares or debentures
    - Providing for the Premium Payable on redemption of Preference Shares or Debentures
    - Buy Back of Securities

Share Certificate

- It is a document issued by the company showing that person named therein is the owner of shares specified
- It is issued under the common seal of the company
- Duplicate share certificate to be issued
    - Proven that the original has been lost or destroyed
    - Defaced, mutilated or torn and is surrendered to the company
- Shares held in depository form, the record of the depository is the evidence of the interest of the beneficial owner
- Intend to defraud a duplicate share certificate issued then penalty to company
    - Fine- Not less than 5 times face value of shares, which may extend to 10 times face value of shares OR
    - Rs. 10 crores whichever is higher

Calls on Shares

- Any calls for further share capital made on class of shares-calls shall be made on a uniform basis on all shares under the class
- The Company Shall accept from any member, whole or part of the amount remaining unpaid on any shares held by him, even if no part has been called up (Calls in advance)

- Power to make calls on the Board. It cannot be delegated to any director or officer
- Provisions with respect to calls in advance
  - Shareholder is not entitled to voting rights w.r.t advance unless the same becomes payable
  - Shareholders liability to company is extinguished
  - The Shareholder is entitled to claim interest on amount of the call to the extent payable in Articles
  - Amount received as advance –not refundable
  - In the event of winding up- shareholder ranks after creditors and to be paid before the other shareholders are paid
  - Power to receive the payment of calls in advance- exercise in the General Meeting of the Company

Transfer of Securities

- Transfer of Security-Voluntary conveyance of rights and duties of a member
- Shares in a company transferable- unless restrictions in articles
- Company not to effect transfer-unless proper instrument of transfer is in form and with details prescribed is delivered to the company-within 60 days from execution. By transferor or transferee
- Company may register on indemnity the transfer- in case the instrument is lost or destroyed
- Power to transfer –not effected on receipt of intimation of transmission of right to securities by operation of law
- Application for transfer of shares partly paid by transferor alone- not to be registered by company unless transferor and transferee gives the consent
- Company delivering the certificate –Time
  - For Subscribers to memorandum- 2 months from the date of incorporation
  - Allotment of shares- 2 months from the date of allotment
  - Transfer or transmission- one month of receipt of company of instrument of transfer or the intimation of transmission
  - Allotment of debentures- 6 months from allotment
- Securities are dealt with a depository- Company to intimate the details of allotment of security to the depository on allotment
- Transfer by a legal representative- even if legal representative is not a valid holder- shall be valid
- Default in compliance- 25,000 to Rs. 5 Lakhs for the company and for the officer Rs. 10,000 to Rs. 1,00,000
- Depository or Depository transfers fraudulently- liable under Section 447

Nomination facility in respect of shares

- Every holder of shares, nominate in a prescribed manner, any person to whom securities shall vest, in the event of the person's death

- Joint holders also to nominate the person , any person to whom all the rights in securities shall vest, in the event of death of all joint holders
- Nominee shall be holder of the security in the event of death
- Appointing a minor as nominee will also be valid

Refusal to Register Transfer and Appeal against Refusal

- Private Company refuses to register the transfer of shares- company to send the notice of refusal to the transferor and transferee within 30 days from the date of intimation of instrument of the transmission
- Public Company-freely transferable
- Transferee to appeal to the Tribunal-30 days from receipt of notice, if not received within 60 days, then within 90 days of delivery of instrument
- Tribunal after hearing shall
  - Direct transfer to be registered by the company and company to comply with directions within 10 days of receipt of order or
  - Direct rectification of register and also direct the company to pay the damages
- Contravention of Tribunal Order- Imprisonment –not less than one year extend to 3 years and fine 1 lakh- 5 lakh

Rectification of register of members on transfer of securities

- Name of a person is without sufficient cause
  - Entered, or omitted after entry, default in entering register for
  - Person having become a member or ceased to be a member, then
  - Aggrieved person or company shall apply to Tribunal
- Tribunal shall after hearing to parties, dismiss the appeal or direct the transfer or transmission shall be registered within 10 days
- Transfer in contravention of the SEBI Act, Securities Contract Regulation Act, Tribunal on application , direct a company to set right the contravention and rectify the register
- Default in complying with the conditions- Company Rs.1 Lakh to Rs. 5 Lakh and officer- imprisonment – extend to 1 year and fine Rs. 1-3 Lakhs

Blank Transfer

- Instrument of transfer signed by the transferee in which the name of the transferee and the date of transfer are not filled

Forged Transfer

- A forged transfer is a nullity. It does not give the transferee any right to the shares
- If company acts on a forged transfer and removes the name of the real owner, then the company is bound to restore the name of the real owner on the Register of Members

Transmission of Shares

- Transfer of shares takes place under the operation of law
- Either on death of the registered shareholder or on being adjudged as insolvent
- On death, the shares vest in the executors or the administrators
- Distinction between transfer and transmission- former is the effect of deliberate act whereas the latter is the result of operation of law

Forfeiture and Surrender of Shares

- Forfeiture is the remedy for non- payment of calls or instalments in respect of shares
- Power to be exercised by company-only if articles provide
- Forfeiture of shares for any purpose other than for non-payment of calls, stipulated in the Articles shall be void

Bonus Shares

- Bonus shares shall be issued out of
    - Free reserves
    - Securities Premium Account
    - Capital Redemption Reserve Account
- Other Provisions
    - Authorise by Articles
    - Authorised in General Meeting
    - Not defaulted in repayment of deposits or debt securities and interest
    - Not defaulted in payment of statutory dues
    - Partly paid up shares are fully paid up
    - Complies with other prescribed conditions
    - No bonus share issue in lieu of dividend

DEBENTURES

- A document drawn on the common seal of the company, binding the company to pay a sum of money at fixed time with interest –at a fixed rate
- Manner of issue of debentures
    - Option to convert into shares- pass special resolution in General Meeting in this regard
    - Not issue debentures with voting rights
    - Secured Debenture issue to comply with the Companies (Share Capital and Debentures) Amendment Rules, 2014
        - Secured debentures to be issued – maximum redemption period is 10 years from the date of issue
        - Following Companies to issue the secured debentures beyond 10 years but maximum 30 years
            - Companies engaged in setting up Infrastructure Projects
            - Infrastructure Finance Companies
            - Infrastructure Debt Fund non- Banking Financial Companies

        - Such issue to be secured by creation of charge on the properties or assets of the company
        - Company to appoint debenture trustees before prospectus issue and at maximum 60 days after the allotment of debentures- execute debenture trust deed
        - Security for debenture to be created in favour of debenture trustee on
            - Specific Movable property or specific immovable property
    - Company to create a Debenture Redemption Reserve Account
        - This is to be created out of profits of the company
        - DRR to be created in accordance with conditions
            - No DRR to be created by All India Financial Institutions (AIFI) regulated by the Reserve Bank of India
            - NBFC registered with RBI and Housing Finance Companies- value of DRR to be 25% of the value of debentures issued
            - Other Companies-Value of DRR to be 25% of the value of debentures issued
        - Company required to create DRR to invest or deposit, on or before 30th April,a sum not less than 15% of the amount of debentures maturing during the the year ending on 31st March next year in specified methods – which include deposits with Scheduled Bank or unencumbered securities and the deposit so maintained shall not be used for any purpose other than the redemption of debentures
        - In case of Partly Convertible Debentures- DRR to be created in respect of non- convertible portion
        - Amount Credited to DRR-only use for the redemption of debentures
    - Offer to more than 500 persons for the subscription of debentures- the company has to appoint a debenture trustee
    - Debenture trustee to protect the interest of debenture holders
    - Company to pay the interest and redeem debentures in accordance with terms and conditions of issue
    - Debenture trustee comes to a conclusion that the assets are insufficient to meet the principal amount -shall apply to the Tribunal
    - Company fails to redeem the debentures on the maturity or pay interest- the Tribunal may order company on application by holders to redeem the same or pay interest
    - Default in compliance- Imprisonment- 3 Years Fine 2 Lakhs-5 Lakhs
- Fixed and Floating Charge
    - Fixed charge is specific charge to cover the specific property like land, building
    - Floating charge is a charge which is not a specific charge on any property of the company
- Debentures with voting rights are not permissible
- Difference between shares and debentures:-

Debentures	Shares
Debenture constitute a loan	Shares are part of the Capital
Debenture holders are creditors	Shareholders are Owners
Debenture holders do not have a voting right	Shareholders have a voting right
Interest on debentures to be paid even if there are no profits	Dividend on shares only out of profits
Debentures- constitute charge on the assets of the company	Shares-do not carry any charge
Rate of Interest is fixed	Equity dividend varies from year to year

<u>Registration of a Charge</u>

- Charge- Defined as the interest or lien created on the property or assets of the company
- Provisions relating to the registration of charge
  - Duty of the company to register the charges on its tangible or intangible property, situated in or outside India
    - Particulars of charge to be intimated to ROC
    - Within 30 days of creation, can be extended to 300 days on application- discretion of the Registrar on being satisfied of the reasonableness
      - Delay application to be accompanied by declaration-that belated filing not to affect the rights of the intervening creditors- this is to be signed by the secretary or director
    - A certificate of Registration will be issued by the registrar
    - No Charge is to be taken into account by a liquidator or registrar unless
      - It is duly registered and
      - A certificate of Registration is given by the registrar
  - If the company fails to register the charges within 30 days - the person in whose favour charge was created could register the charges.
    - The person has to apply to the ROC along with the instrument created and Registrar shall within 14 days of such application intimate the company
    - Person entitled to recover filing fees from the company
  - Provisions for Registration of Charge shall apply when
    - Company acquires a property subject to a charge
    - Modification in terms and conditions of any charge
      - ROC shall issue a certificate of modification of charge
  - Person acquiring a property subject to charge registered- will be deemed to have notice of the same

- Registrar to keep a register of charges for each company for the charges created –open for inspection for any member on payment of fees
- Company to intimate the payment or satisfaction, in full of the charge-within 30 days of payment of such charge or satisfaction
  - Registrar will send a notice to holder of charge- why payment or satisfaction of charge not to be recorded as intimated….No reply received then the registrar shall order Memorandum of satisfaction to be entered in Register of Charges
- In the absence of any information from the company- the Registrar shall on evidence given to his satisfaction
  - Enter in Register of Charges- Memorandum of Satisfaction – that property has been released or discharged
  - Registrar also to inform the affected parties of such change
- If a person/ company obtains the order for appointment of receiver/ person/director to manage the property subject to a charge – person/company shall within 30 days of order- notice to ROC with copy of order
- Company to keep register of charges in its registered office –copy of instrument of charges also to be kept
  - Rules related to Companies Register of Charges
    - Company to keep at Register of Charges- particulars of all charges Registered with the Registrar
    - Entries in the same-to be made post the creation, modification or satisfaction of the charge
    - Entries in the Register to be authenticated by the director or secretary
    - Register of Charges to be preserved permanently – Instrument of Charge to be kept for 8 years from date of satisfaction of charge
- Inspection of the Register of Charges and Instrument of Charges
  - Any Member and Creditor- Without Payment of Fees
  - Any other person- on payment of Prescribed Fees
- Punishment for contravention
  - Company- Rs.1 Lakh to Rs. 10 Lakh
  - Officer –Imprisonment- 6 months and Fine 25,000- 1 Lakh
- Central Government may rectify the Register of Charges if
  - Omission to file with registrar of any charges- created by company or property subject by charge acquired by a company
  - Omission to register any charge within the time
  - Omission or misstatement with respect to such charge
  - On other just and equitable grounds
- Delay beyond 300 days in registering the charges- the ROC shall not register unless the delay is condoned by the central government

Sections yet to be notified

Variation of Shareholders Right

- Variation by obtaining written consent of the holders of 3/4th of the issued shares of the said class of the shareholders
    - If the variation affects another class of shareholders also consent of 3/4th of them shall also be needed
- Holders of not less than 10% of the issued shares –have not consented-then apply to tribunal to have the variation cancelled –such application made-variation not to have effect unless confirmed by tribunal –application to tribunal to be given within 21 days of passing such resolution
- Within 30 days of the order of the tribunal company file a copy of the order with ROC
- Punishment –Company Rs. 25,000 to Rs. 5 Lakhs and Officer- Imprisonment- extend to 6 months or fine 25,000 to Rs. 5 Lakhs

Reduction of Share Capital

- Subject to confirmation of Tribunal and by passing special resolution
    - Company extinguish or reduce the liability on shares
        - Cancel paid up share capital
        - Pay off capital in excess of requirement
    - No Reduction- if company in arrears for the re-payment of deposits accepted
- Issue of notice by Tribunal to Central Government , Registrar, SEBI and Creditors and consider their representations within 3 months from date of receipt of notice
- Tribunal satisfied-debt or claim of the creditor has been discharged or determined or has been secured or consent is obtained, make an order confirming the reduction of share capital
- Order of Tribunal shall be published by the company
- Order of Tribunal to be delivered to the Registrar-with details of Share Capital, No of shares to which it is to be divided and the amount of each share
- These Provisions not apply to Buy-Back of Shares of a company