Chapter 1.4
SHARE CAPITAL AND DEBENTURES

- The provisions relating to share capital and debentures are contained in Chapter IV of Companies Act 2013. This chapter contains 30 sections (Section 43 to Section 72).
- The rules relating to this chapter are contained in **Companies (Share Capital and Debentures) Rules 2014.** All the rules mentioned in this chapter relate to Companies (Share Capital and Debentures) Rules 2014 only.
- As per Rule 3, the provisions of Companies (Share Capital and Debentures) Rules 2014, apply to—
  - all unlisted companies;
  - all private companies; and
  - listed companies [so far as they do not contradict or conflict with any other regulations framed in this regard by SEBI]

❖ Introduction

- In relation to a company limited by shares, the capital is divided into a number of shares of a fixed amount. **For Example** – ABC Ltd. has share capital of 10000 shares of ₹ 10 each. It means that the total share capital of ABC Ltd. is ₹ 100000, divided into 10000 shares having face value of ₹ 10 each.
- Contribution of persons to common stock of the company forms the capital of the company.
- As per section 2(84), "share" means a share in the share capital of the company and includes stock.
- Share is the proportion of the total capital of the company to which each member is entitled. It is the interest of a person in the company which is measured in terms of money.

Various terms used in relation to share capital

Authorised Capital	➢ It is also known as nominal capital or registered capital. ➢ **Section 2(8)** *"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.* ➢ It is the sum stated in the memorandum as the capital of the company with which it has been registered. Stamp duty is paid on this amount. ➢ This amount is fixed on the basis of amount that will be needed by the company as fixed capital, working capital and reserve capital. ➢ A company is not allowed to raise capital in excess of this amount. If it needs to raise more capital, it has to first amend the capital clause of the memorandum. ➢ **Example** – Lets suppose Authorised share capital of M/s XYZ Ltd. is 10000 equity shares of ₹ 10 each . Thus, authorised capital is ₹ 100000/-
Issued Capital	➢ **Section 2(50)** *"Issued capital" means such capital as the company issues from time to time for subscription.* ➢ Issued capital is that portion of the authorised capital which has been issued by

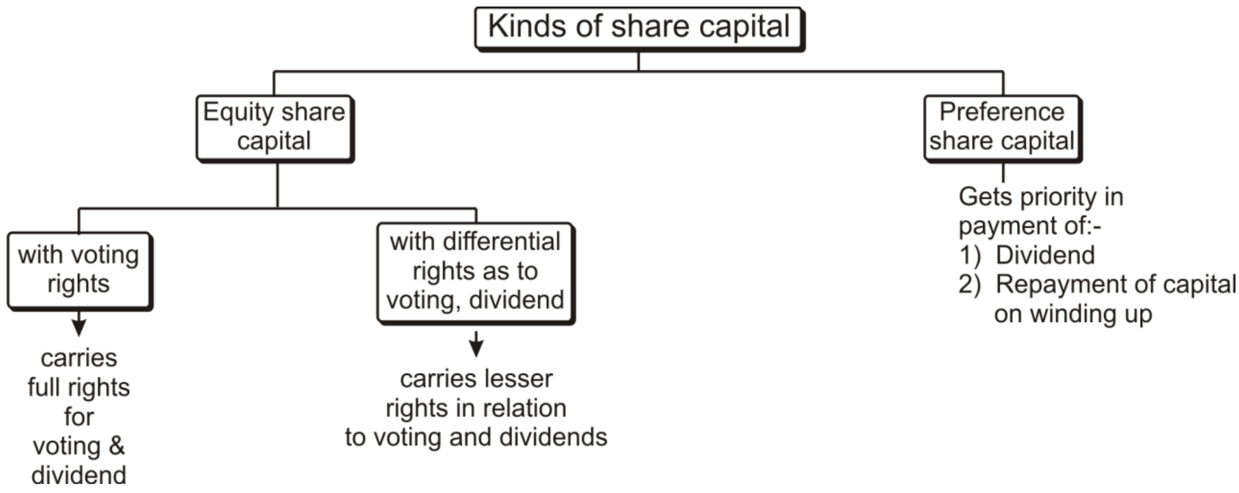
	the company for subscription. ➢ Such shares may be issued not only for cash, but may also be issued for consideration other than cash. ➢ **Example** – Out of the above 10000 authorised shares, the company issues 8000 shares (face value ₹ 10) for subscription.Thus issued capital is 80000/-
Subscribed capital	➢ **Section 2(86)** *"Subscribed capital" means such part of the capital which is for the time being subscribed by the members of the company.* ➢ The shares issued by the company may not be taken up entirely by the public. Some portion of the issue may remain unsubscribed. ➢ Face value of that portion of the issued capital, which is subscribed by the members, is known as subscribed capital. ➢ **Example** – Out of the above 8000 issued shares, 7000 shares are subscribed. Thus, subscribed capital of the company is ₹ 70000/-.
Called up capital	➢ A company may not call for the entire amount of face value of shares at one go. ➢ Face value amount (say ₹ 10) of shares is generally called up in parts. Say ₹ 2 on application, ₹ 3 on allotment, ₹ 2.5 on first call and balance ₹ 2.5 on second call. ➢ Hence, called up capital is that portion of the subscribed capital, which has been called up by the company for payment. ➢ **Example** – out of above subscribed 7000 shares of ₹ 10 each, only ₹ 2 on application and ₹ 3 on allotment has been called up. Thus called up capital will be ₹ 35000/-
Paid up Capital	➢ It may happen that some of the members donot pay the calls made by company. ➢ Paid up capital is that portion of called up capital, which has actually been paid by the members to the company. ➢ **Example-** Suppose, when the allotment money of ₹ 3 was called up, only persons holding 6000 shares paid it. Thus, paid up capital is ₹ 32000/- (₹ 14000 received on application and ₹ 18000 received on allotment). ₹ 3000 shall be treated as calls in arrear.

❖ Kinds of Share Capital [Section 43] & [Rule 4]

There are two kinds of share capital of a company limited by shares --

Non application of Section 43 to private companies	➢ The provisions of section 43 do not apply to private companies [provided memorandum or articles of association of such private company so provides].
Equity share capital	➢ Equity shareholders are the real owners of the company. When the company prospers, they gain the most. When the company suffers losses, they loose the most. Maximum risk is borne by equity shareholders. ➢ In case of liquidation, the claim of equity shareholders is paid in the end. All other claimants get priority over the claim of equity shareholders. ➢ Equity shareholders cannot claim dividend as a matter of right. Generally, dividend is paid to them only when there surplus profits. ➢ Equity share capital is repaid only when the company buys back its share or there is a scheme of reduction of share capital or when the company goes into liquidation. ➢ Equity shares can be issued with following rights –

<table>
<tr><td rowspan="2"></td><td>With voting rights</td><td>➢ Such equity shares have full voting rights. They are entitled to vote any resolution placed before the company.
➢ Their voting right is in proportion to their share in the paid up capital of the company.</td></tr>
<tr><td>With differential rights</td><td>➢ These shares have differential rights as to dividend, voting.
➢ In such shares, the rights related to voting & dividend is not similar to the normal equity shares. These shareholders have lesser (or Nil) voting rights.
➢ These shares are issued when the management wants further capital without diluting their control in the management of the company.
➢ These shares are listed separately on stock exchanges and are generally traded at a lower price, in comparison to the normal equity shares of the company.
➢ Those people who donot take part in general meetings of the company and who are not interested in dividend, invest in these shares. Such people are generally interested in capital appreciation only.</td></tr>
<tr><td>Preference Share Capital</td><td colspan="2">➢ In relation to a company limited by shares, preference share capital refers to that part of the issued share capital which carries a preferential right in relation to –
• payment of dividend (either fixed amount or an amount calculated at a fixed rate) and
• repayment, in the case of winding up or repayment of capital, of the amount of the share capital paid up (or deemed to be paid up).
➢ Preference shares may or may not get a preferential right as to payment of premium (fixed amount or amount on a fixed scale).
➢ Even if the shares have following features, they will still be treated as preference shares –
• after the fixed dividend is paid to the preference shareholder, such shareholders are also entitled to share (fully or to a limited extent) the balance profits with equity shareholders.
• in case of winding up, after the capital of preference shareholders is fully paid and thereafter the capital of equity shareholders is also fully paid, the preference shareholders are entitled to share (fully or to a limited extent) the surplus with equity shareholders.
Preference shares of a company may or may not have above two features. Even if they have above two features, they will still be treated as preference shares.</td></tr>
</table>



Conditions to fulfill, before issuing equity shares with differential rights [Rule 4]	➢ For issuing equity shares with differential rights, a company must comply with following conditions – • The articles of association authorise the issue of shares with differential rights as to dividend, voting or otherwise. • The issue of shares is authorised by an ordinary resolution passed at a general meeting. But when the equity shares of a company are listed on a stock exchange, the issue of equity shares with differential rights is to be approved by shareholders through postal ballot. • Equity shares with differential rights cannot be more than twenty-six percent of the total post issue equity share capital (including equity shares with differential rights). • The company has consistent track record of distributable profits for the last three years. Such profits may not have been distributed but must have been earned by the company. • The company should not have defaulted in filing the financial statements and annual returns in the preceding three financial years. • The company should not have subsisting default in – ▪ payment of a declared dividend, or ▪ repayment of matured deposits, or ▪ redemption of preference shares, or ▪ redemption of debentures, or ▪ payment of interest on deposits or debentures or ▪ payment of dividend. • The company has not defaulted in – ▪ payment of dividend on preference shares, or ▪ repayment of any term loan (from a public financial institution or State level financial institution or scheduled Bank), or ▪ repayment of interest on such term loan, or ▪ payment of statutory dues relating to employees, to any authority, or ▪ crediting the amount in Investor Education and Protection Fund to the Central Government. **[However, after five years from the end of the financial year in which such default is made good, the company may issue equity**

	shares with differential rights] • The company has not been penalized by Court or Tribunal during the last three financial years for any offence under SEBI Act 1992, RBI Act 1934, Securities Contracts Regulation Act 1956, Foreign Exchange Management Act 1999, or any other special Act, under which such companies being regulated by sectoral regulators.
No conversion allowed	➢ Conversion of existing equity shares (with voting rights) into equity shares with differential voting rights is not allowed. ➢ Similarly, conversion of already issued equity shares with differential voting rights into equity shares (with voting rights) is also not allowed.
Equity shares with differential rights carry all other rights.	➢ Except the differential right with which such shares have been issued, all other rights (like bonus share, rights shares etc.) are enjoyed equally by its shareholders along with normal equity shareholders. ➢ It is only in relation to voting rights and dividend rights that the shareholders of equity shares with differential rights suffer. ➢ However, a holder of equity shares with differential rights is entitled to bonus/rights shares with same differential rights as that of shares already held by him.
Register of members to contain details of such shares	➢ Where shares with differential voting rights have been issued by a company, the register of members shall contain details of such shares along with details of shareholders.

Difference between equity shares and preference shares

Basis of Difference	**Equity Shares**	**Preference Shares**
Priority in paying dividend	Equity shareholders are paid dividend after dividend to preference shareholders is paid	Preference shareholders get priority in payment of dividend, in comparison to equity shareholders.
Rate of Dividend	There is no fixed rate of dividend for equity shareholders. It depends on profits earned by the company and expansion plans of the company.	Preference shareholders get dividend at a fixed rate, which is predetermined.
Cumulative dividends	If dividend is not paid in a year, it does not accumulate to be paid in next year.	Dividend is cumulative and if it is not paid in any year, it accumulates till it is paid for all the pending years.
Priority for repayment of capital on winding up	Incase of winding up, capital of equity shareholders are paid in the end.	Preference shareholders get priority in repayment of capital on winding up, in comparison to equity shareholders.
Voting Rights	An equity shareholder can vote on all matters affecting the company.	Preference shareholders can vote only on – • matters affecting their rights as preference shareholder • resolution for winding up • matter of repayment or reduction of equity or preference share capital.

		If the dividends of preference shareholders has not been paid continuously for two years or more, they can vote on any resolution placed before the company.
Bonus/ rights shares	The company may issue bonus shares or rights shares to existing equity shareholders.	Preference shareholders never get any bonus shares or rights shares.
Redeemable or irredeemable	Equity shares are not redeemable	Preference shares are redeemable within a period of twenty years.
Quantum of voting rights	Voting rights of an equity shareholder is in proportion to his share in total equity share capital of the company.	Voting rights of a preference shareholder is in proportion to his share in total preference share capital of the company.

❖ Nature of Shares and Debentures [Section 44]

➢ Shares, debentures or other interest of any member in a company shall be –
- movable property, and
- transferable in the manner provided by the articles of the company.

❖ Numbering of shares [Section 45]

➢ Every share of a company shall distinguished by its distinctive number.
➢ However, in cases where shares are held with a depository in dematerialized form, no such distinctive number is required.

❖ Certificate of shares [Section 46] & [Rule 5 & 6]

Prerequisites for issue of share certificate [Rule 5]	➢ Share certificate can be issued after – • a Board resolution to this effect is passed and • letter of allotment or fractional coupons of requisite value are surrendered to the company [except in cases where shares are issued against letters of acceptance or of renunciation, or in cases of issue of bonus shares].
Contents of Share certificate	➢ Share certificate shall be issued in **Form SH.1** (or as near thereto as possible). It contains – • name(s) of the shareholder(s) • distinctive number • number of shares • nominal value of each share • amount paid up per share
Register of Members	➢ A register of members is required to be maintained in accordance with provisions of section 88, containing following details— • particulars of every share certificate issued; • name(s) of person(s) to whom it has been issued; • date of issue.
Evidence of	➢ A share certificate is, *prima facie*, evidence of title of the person to such

<table>
<tr><td>title</td><td colspan="2">shares.
➢ Share certificate is issued under common seal of the company (if any) and contains the details of shares held by the person.</td></tr>
<tr><td rowspan="3">Persons required to sign share certificates [other than OPC]</td><td>Where the company has appointed a company secretary</td><td>• a director; and
• the company secretary</td></tr>
<tr><td>Where no company secretary has been appointed by company</td><td>• two directors</td></tr>
<tr><td colspan="2">➢ If the company has a common seal, then it shall be affixed in presence of persons required to sign the certificate.</td></tr>
<tr><td>Persons required to sign share certificates [for an OPC]</td><td colspan="2">• a director; and
• the company secretary or any other person authorized by the Board for the purpose.</td></tr>
<tr><td rowspan="3">Sometimes signature of a director is deemed</td><td colspan="2">➢ A director shall be deemed to have signed the share certificate if—
• his signature is printed thereon as a facsimile signature; or
• he has digitally signed the certificates.</td></tr>
<tr><td>Means of printing a facsimile signature</td><td>• machine, equipment or
• other mechanical means such as engraving in metal or lithography (but not by means of rubber stamp).</td></tr>
<tr><td>Responsibility of director</td><td>Director is 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.</td></tr>
<tr><td>When duplicate certificates are issued</td><td colspan="2">➢ A duplicate certificate can be issued when –
• it is proved that the original certificate has been lost, or
• the original certificate is torn, defaced or mutilated and such certificate is surrendered to the company.</td></tr>
<tr><td rowspan="3">Cases of issue of renewed certificate (in replacement of old certificate) [Rule 6]</td><td colspan="2">➢ In the following cases, a renewed certificate is issued on surrender of old certificate –
• when shares are sub divided, or
• when shares are consolidated, or
• when share certificate gets defaced, mutilated or torn or old, decrepit, worn out; or
• when pages on the reverse for recording transfer of share gets used up.</td></tr>
<tr><td>Fees</td><td>Company can charge fees (as decided by Board), not exceeding ₹ 50/- per certificate issued under above-mentioned circumstances (except when renewed certificate is issued when pages on reverse gets used up).</td></tr>
<tr><td>Statements to be mentioned</td><td>If renewed certificates are issued in abovementioned circumstances, then following two facts shall be mentioned on the face of renewed certificate and also in the Register maintained for the purpose-</td></tr>
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<table>
<tr><td rowspan="2"></td><td></td><td>“Issued in lieu of share certificate No……. subdivided/replaced/ on consolidation” AND
“no fees shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government”</td></tr>
<tr><td>When surrender of old certificate is not required</td><td>Existing certificates can be replaced by company with new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution, without requiring old certificates to be surrendered, provided following conditions are fulfilled—
• a resolution is passed by the Board;
• new certificate is in Form SH.1 and contains specified particulars;
• The requirements in relation to affixing company seal and in relation to signing of certificates (as discussed earlier), is complied with.</td></tr>
<tr><td rowspan="2">Cases of issue of duplicate certificate (when original is lost or destroyed)</td><td colspan="2">➢ Duplicate share certificate can be issued in lieu of lost or destroyed certificate, only when following conditions are complied –
• prior consent of Board is to be obtained
• fees for duplicate certificate, as determined by Board, is to be paid. Such fee cannot be more than ₹ 50 per certificate.
• other terms and conditions imposed by the Board are complied. Such conditions may be in relation to furnishing supporting evidence, furnishing indemnity etc.</td></tr>
<tr><td>Statements to be mentioned</td><td>It shall be stated prominently on the face of duplicate share certificate and be recorded in the Register maintained for the purpose, that it is “duplicate issued in lieu of share certificate No…….” and the word “Duplicate” shall be stamped or printed prominently on the face of share certificate.</td></tr>
<tr><td rowspan="2">Time limit for issuing duplicate certificate</td><td>In case of unlisted companies</td><td>Within three months of submission of completed documents with the company</td></tr>
<tr><td>In case of listed Companies</td><td>Within 45 days of submission of completed documents with the company.</td></tr>
<tr><td rowspan="4">Register of renewed or duplicate Share certificate</td><td colspan="2">➢ The particulars of renewed certificates or duplicate certificates issued by the company shall be recorded in the ‘Register of renewed and duplicate share certificates’ maintained in Form SH.2.
➢ In the said register, against the name 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.
➢ Necessary changes in register of members shall also be made by making suitable cross references in the “Remarks” column.</td></tr>
<tr><td>Place where such register to be kept</td><td>• the registered office of the company; or
• such other place where the Register of Members is kept.</td></tr>
<tr><td>Period of preservation</td><td>This register shall be preserved permanently.</td></tr>
<tr><td>In whose custody the register is to be</td><td>• the company secretary of the company; or
• any other person authorized by the Board for the</td></tr>
</table>

<table>
<tr><td rowspan="2"></td><td>kept</td><td>purpose</td></tr>
<tr><td>Who shall Authenticate the entries made in the register</td><td>• the company secretary of the company; or
• such other person as may be authorized by the Board for the purpose of sealing and signing the share certificates.</td></tr>
<tr><td>Shares held in demat form</td><td colspan="2">➢ When shares are held in demat form, no share certificates are issued.
➢ In such cases, record of the depository is, prima facie, evidence of interest of the beneficial owner.</td></tr>
<tr><td rowspan="3">Punishment for issue of duplicate certificate with intent to defraud.</td><td colspan="2">➢ Where a company issues duplicate share certificates with an intent to defraud, it shall be punishable as under –</td></tr>
<tr><td>Company</td><td>Minimum Fine – Five times the face value of shares involved in the issue of duplicate certificates.
Maximum Fine – Ten times the face value of shares involver or ₹ 10 Crores, whichever is higher.</td></tr>
<tr><td>Officer in default</td><td>Action under Section 447.</td></tr>
</table>

Maintenance of Share Certificate Forms and related books and documents [Rule 7]

<table>
<tr><td rowspan="3">Blank forms of share certificates</td><td colspan="3">➢ Following requirements shall be fulfilled in relation to blank share certificate forms—
•it shall be printed;
•printing shall be done only on the authority of a resolution of the Board;
•it shall be consecutively machine-numbered.</td></tr>
<tr><td rowspan="2">Custody</td><td colspan="2">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 authorize for the purpose.</td></tr>
<tr><td colspan="2">The secretary or the other person referred above is responsible for rendering an account of the blank share certificate forms to the Board.</td></tr>
<tr><td>Responsibility for maintenance of books and documents relating to issue of share certificates</td><td colspan="3">➢ For 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 shall be responsible—
•the committee of the Board (if so authorized by the Board); or
•the company secretary (where the company has a company secretary); or
•a Director specifically authorized by the Board for such purpose (where the company has no company secretary).</td></tr>
<tr><td rowspan="3">Period of preservation of books</td><td colspan="3">➢ All the abovementioned books shall be preserved as under—</td></tr>
<tr><td>In case of disputed cases</td><td colspan="2">Permanently</td></tr>
<tr><td>In other cases</td><td colspan="2">Not less than 30 years</td></tr>
<tr><td rowspan="4">Disposal of certificates surrendered to company</td><td>Action to be taken immediately</td><td colspan="2">The certificates should be defaced by stamping or printing the word “CANCELLED” in bold letters</td></tr>
<tr><td rowspan="3">Action that can be taken after 3 years</td><td colspan="2">After expiry of 3 years (from the date on which they are surrendered), such certificates can be destroyed.</td></tr>
<tr><td>Authority required for destruction</td><td>Authority of a resolution of the Board</td></tr>
<tr><td>In whose presence</td><td>In presence of a person duly appointed by the Board for this purpose.</td></tr>
</table>

Relevant Rules

Rule 4	Equity shares with differential rights

Rule 5	Certificates of shares (where shares are not in Demat form)
Rule 6	Issue of renewed or duplicate share certificate
Rule 7	Maintenance of Share Certificate Forms and related books and documents

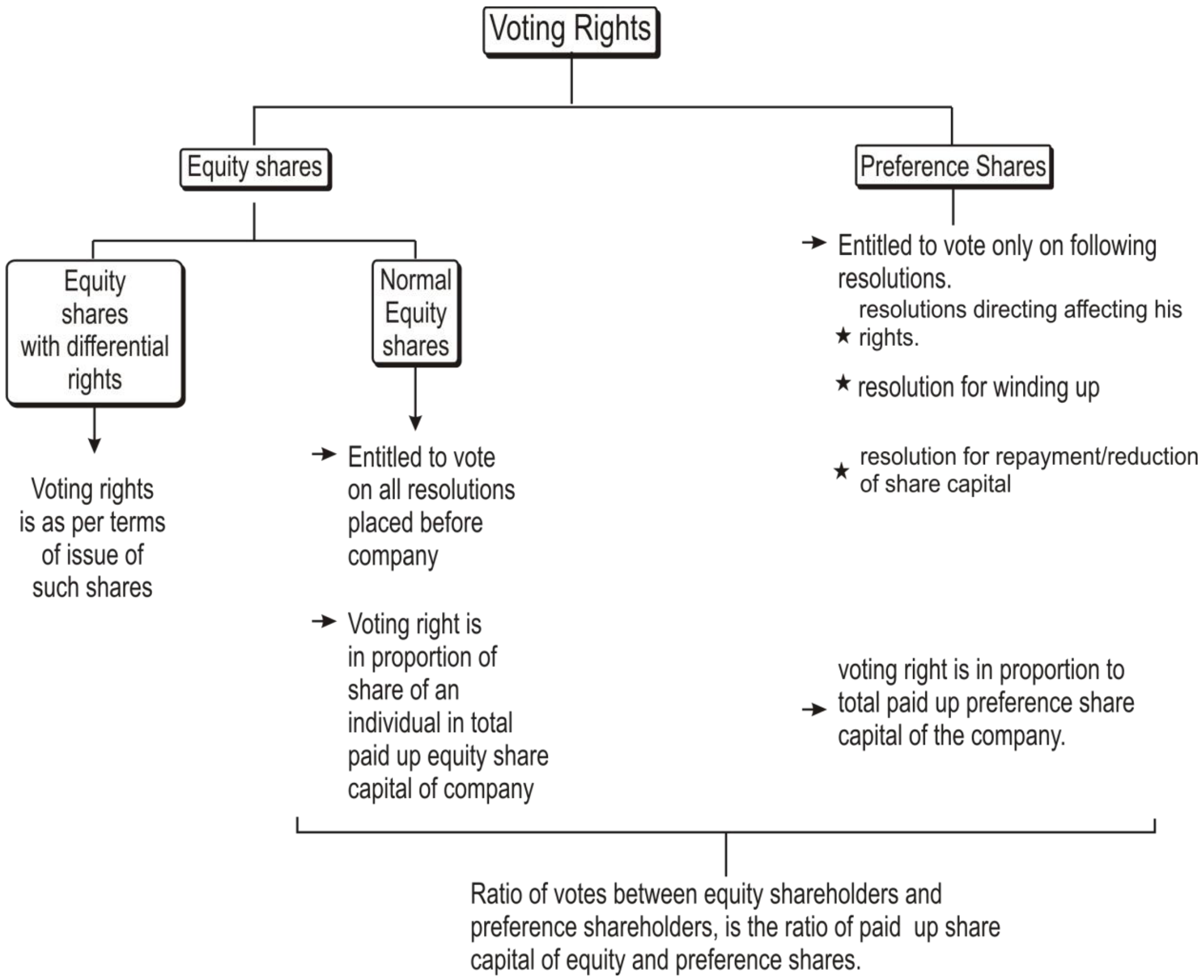
Relevant Form

SH.1	Share Certificate
SH.2	Register of renewed and duplicate share certificates.

❖ Voting Rights [Section 47]

Voting rights of equity shareholders	➢ In a company limited by shares, every member of the company who holds equity shares of the company has a right to vote on every resolution placed before the company.
Quantum of votes which an equity shareholder can poll	➢ The voting right of a shareholder is in proportion to his share in the total paid up equity share capital of the company. ➢ **Example** – Paid up capital of M/s ABC Ltd. is as under – 10000 Equity shares of ₹ 10 each (₹ 7 Paid up) ---- ₹ 70000 30000 Equity shares of ₹ 1 each (fully paid up) ----- ₹ 30000 Total paid up capital ₹ 100000 Now, Mr. A holds 500 shares of ₹ 10 face value (₹ 7 paid up) and also holds 500 shares of ₹ 1 each. So, the paid up value of shares held by Mr. A is ₹ 4000 i.e. (500X7)+(500X1) As Mr. holds 4% share in the total paid up share capital of the company, he is entitled to cast 4% of the total votes of the company.
Voting rights of equity shareholders with differential rights	➢ Equity shares with differential voting rights carry voting rights as per terms of issue of such shares.
Voting rights of a shareholder who pays uncalled capital.	➢ A shareholder may pay the amount that has not been called up by the company. ➢ **Example** – Suppose in previous example, Mr. A paid the ₹ 3 which was uncalled on the 500 shares of ₹ 10 each held by him. Thus, he paid ₹ 1500 to the company even though such amount was not due for payment, as the company had not called the balance amount. However, Mr. A will not get any voting rights in respect of ₹ 1500 paid by him.
On which resolutions a preference shareholder is entitled to vote	➢ A preference shareholder is not allowed to vote on all the resolutions placed before the company. ➢ A preference shareholder of a company limited by shares, is allowed to vote only on following resolutions – • a resolution which directly affects the rights attached to his preference shares; • a resolution for winding up of the company; • a resolution for repayment or reduction of the equity or preference share capital;

Exceptional case when preference shareholders get the right to vote on all resolutions	➢ When dividend on a particular class of preference shares is pending for two years or more, then such class of preference shareholders get the right to vote on all resolution placed before the company. ➢ **Example -** ABC Ltd. has paid up capital as under :-- 10000 Equity shares of ₹ 10 each ₹ 100000 5000 13% preference shares of ₹ 10 each ₹ 50000 10000 15% preference shares of ₹ 10 each ₹ <u>100000</u> Total Paid up share capital ₹ 250000 All the shares are fully paid up. Dividend on 13% preference shares is pending for payment for last two years. Dividend on 15% preference shares have been paid up-to-date. Here, shareholders of 13% preference shares will get the right to vote on all resolution placed before the company. Shareholders of 15% preference shares will not get such right.
Proportion of voting rights between equity shareholders and preference shareholders	➢ Where on a resolution both equity and preference shareholders are entitled to vote, ratio of votes between equity and preference shareholders is the ratio of paid up share capital of equity and preference shares. ➢ **Example** – In above example percentage of equity share capital is 40% (i.e. 100000 out of 250000). Hence, equity shareholders are entitled to cast 40% of total votes. Preference shareholders are entitled to cast the balance 60% votes.
Quantum of voting right of a preference shareholder	➢ A preference shareholder's voting right depends upon his share in the total paid up preference share capital. ➢ Example – In above example, lets suppose Mr. X holds 750 13% preference shares of ₹ 10 each. Thus, he has paid ₹ 7500 out of total preference share capital of ₹ 150000/-. Therefore, he gets 5% of the voting rights of all the preference shareholders. As compared to total share capital of ₹ 250000/-, he holds 3% of total share capital (equity + preference). Therefore, his vote will carry 3% weightage in a poll where both equity and preference shareholders are entitled to vote.
Section 47 does not apply in case of private company	➢ In case of private company, section 47 does not apply if memorandum and articles of the company so provide.
Nidhi Company	➢ In case of Nidhi company, no member is allowed to exercise voting rights on poll in excess of five present of total voting rights of equity shareholders.



$$\frac{\text{Quantum of votes of equity shareholders}}{\text{Quantum of votes of preference shareholders}} = \frac{\text{Paid up equity share capital}}{\text{Paid up preference share capital}}$$

Note: where dividend of preference shareholders has not been paid for two or more years, the preference shareholders get the right to vote on all resolutions placed before the company.

❖ Variation of shareholders’ rights [Section 48]

➢ A company may issue shares of different class. For example – • equity shares of face value ₹ 10 each • equity shares of face value ₹ 1 each • 13% preference share of face value ₹ 10 each • 15% preference share of face value ₹ 10 each ➢ At times, it may want to vary the rights of a particular class of share only.

Procedure for varying the rights of a particular class of share	➢ Whenever the rights of a particular class of shareholders is to be varied, it can be done in two ways- • either consent of atleast three fourth of the shareholders of issued shares of that class is obtained in writing, or • a special resolution is passed at a separate meeting of shareholders of issued capital of that class.

<table>
<tr><td>Conditions for allowing such variation</td><td>➢ A variation in the rights of a particular class of assets can be allowed only if –
there is a provision in the memorandum or articles of the company for such variation, or
where there is no such provision in the memorandum or articles, atleast such variation should not have been prohibited by terms of issue of such class of shares.</td></tr>
<tr><td>What if variation in rights of one class of shareholder affects the rights of other class of shareholders.</td><td>➢ Incase the variation in rights of one class of shareholders affects the rights of other class of shareholders, then the consent of atleast three fourth of the other class shareholders should also be obtained.</td></tr>
<tr><td>What rights are available to dissenting shareholders</td><td>➢ Where 10% or more of the shareholders of the class whose rights are being varied—
do not agree to such variation, or
did not vote in favour of special resolution,
they can apply to Tribunal to get the variation cancelled.
➢ In this case, variation shall have effect only after it is confirmed by Tribunal.
➢ If atleast 10% of the dissenting shareholders do not come together, they will not be entitled to apply to Tribunal for cancellation of the variation.
➢ Such application to Tribunal is to be made within 21 days of passing of the special resolution or obtaining the consent of shareholders.
➢ Such application can be made by one or more representatives of the dissenting shareholders, who have been appointed in writing for this purpose.</td></tr>
<tr><td>Decision of Tribunal is final</td><td>➢ Where the matter of variation of rights of a particular class of shareholders is referred to Tribunal, the decision given by Tribunal shall be final and binding on the shareholders.</td></tr>
<tr><td>Copy of decision of the tribunal to be filed with Registrar</td><td>➢ A copy of the decision of the Tribunal shall be filed with the Registrar within 30 days of the date of the order.</td></tr>
<tr><td>Punishment for default in compliance of provisions of this section</td><td>➢ Where there is a default in compliance of provisions of this section, following punishment shall be levied –
<table>
<tr><td>Company</td><td colspan="2">Fine of ₹ 25000 to ₹ 500000</td></tr>
<tr><td rowspan="5">Defaulting Officer</td><td>Imprisonment</td><td>upto six months</td></tr>
<tr><td>OR</td><td></td></tr>
<tr><td>Fine</td><td>₹ 25000 to ₹ 500000</td></tr>
<tr><td>OR</td><td></td></tr>
<tr><td>BOTH</td><td></td></tr>
</table></td></tr>
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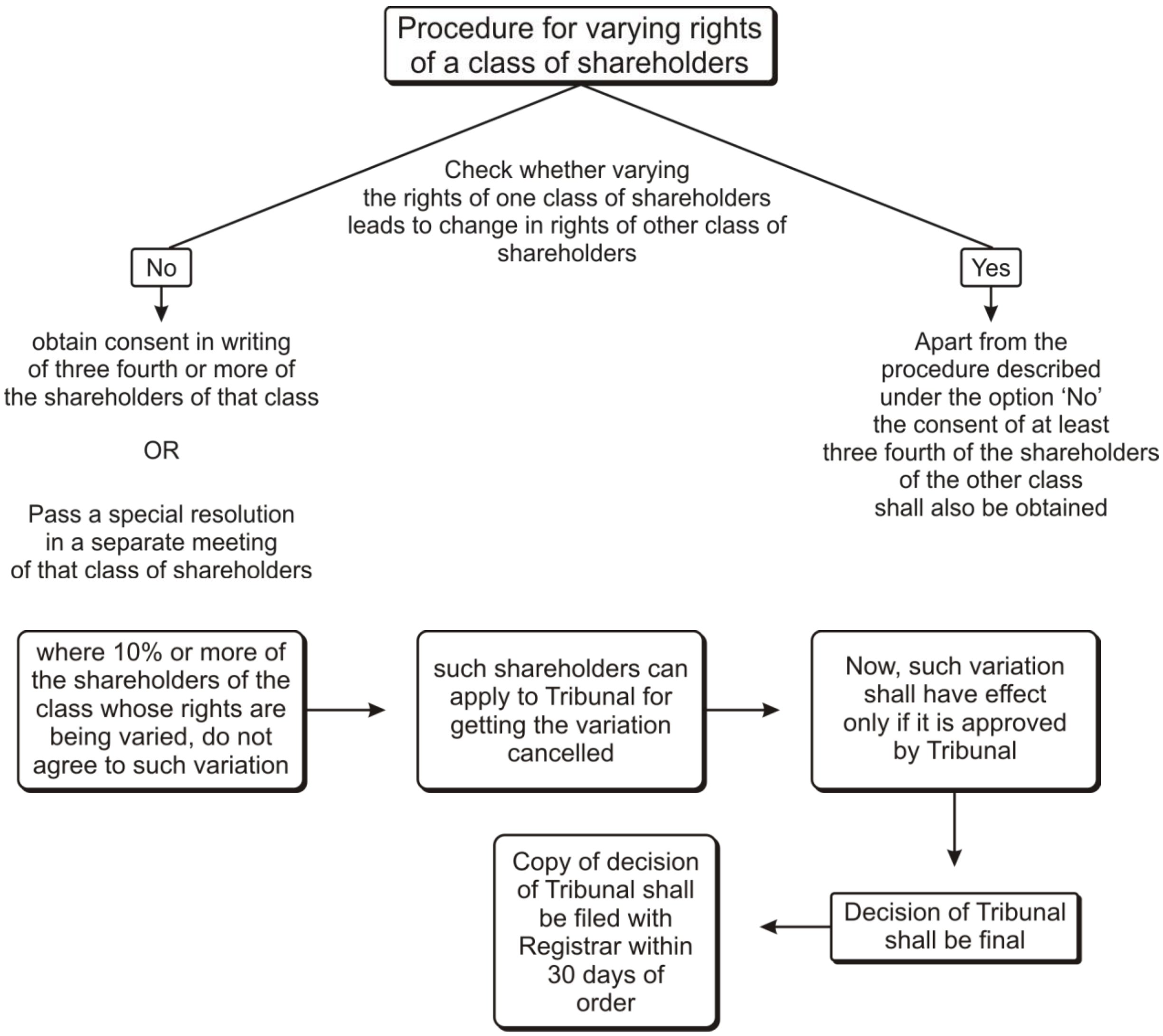


❖ Calls on shares of same class to be made on uniform basis [Section 49]

- Where a call for further share capital is made to a class of shares, it should be made uniformly to all the shares of that class.
- **Example** – A company had issued 10000 equity shares of face value ₹ 10 each. On these shares ₹ 6 is paid up. The company makes a call of paying ₹ 2 on each share. This call should be made uniformly to all the holders of 10000 such equity shares. Company cannot make call of different amount from different shareholders.
- Suppose a company has following share capital –
  10000 Equity shares of face value ₹ 10 each (₹ 7 paid up)
  5000 Equity shares of face value ₹ 10 each (₹ 5 paid up)
  Although both the above shares fall in the same class because both are equity shares of face value ₹ 10, but for the purpose of this section, they will be treated as to be falling in different class. Hence, the company is permitted to call different amounts from the shareholders of above two categories.

❖ Company to accept unpaid share capital, although not called up [Section 50]

- A company may accept from its shareholders, the whole or part of the amount remaining unpaid on the shares held by him, even though the company has called up no part of that amount.

- **Example** – A company had issued 10000 equity shares of face value ₹ 10 each. ₹ 6 is paid up. Mr. A who holds 500 shares wants to pay the balance ₹ 4, even though it has not been called up. Section 50 allows Mr. A to pay the balance ₹ 4 (or even a part of balance amount).
- Such permission is given only if the articles of the company allow such advance payment.
- However, Mr. A will not get any voting rights in relation to ₹ 2000 that he paid in advance, until the company calls up such amount.

❖ Payment of dividend in proportion to amount paid up [Section 51]

- A company can pay dividend in proportion to the amount paid up on each share.
- **Example** – A company has following issued capital

10000 equity shares of face value Rs 10 each (₹ 6 paid up)	₹ 60000
40000 equity shares of ₹ 1 each (fully paid up)	₹ 40000

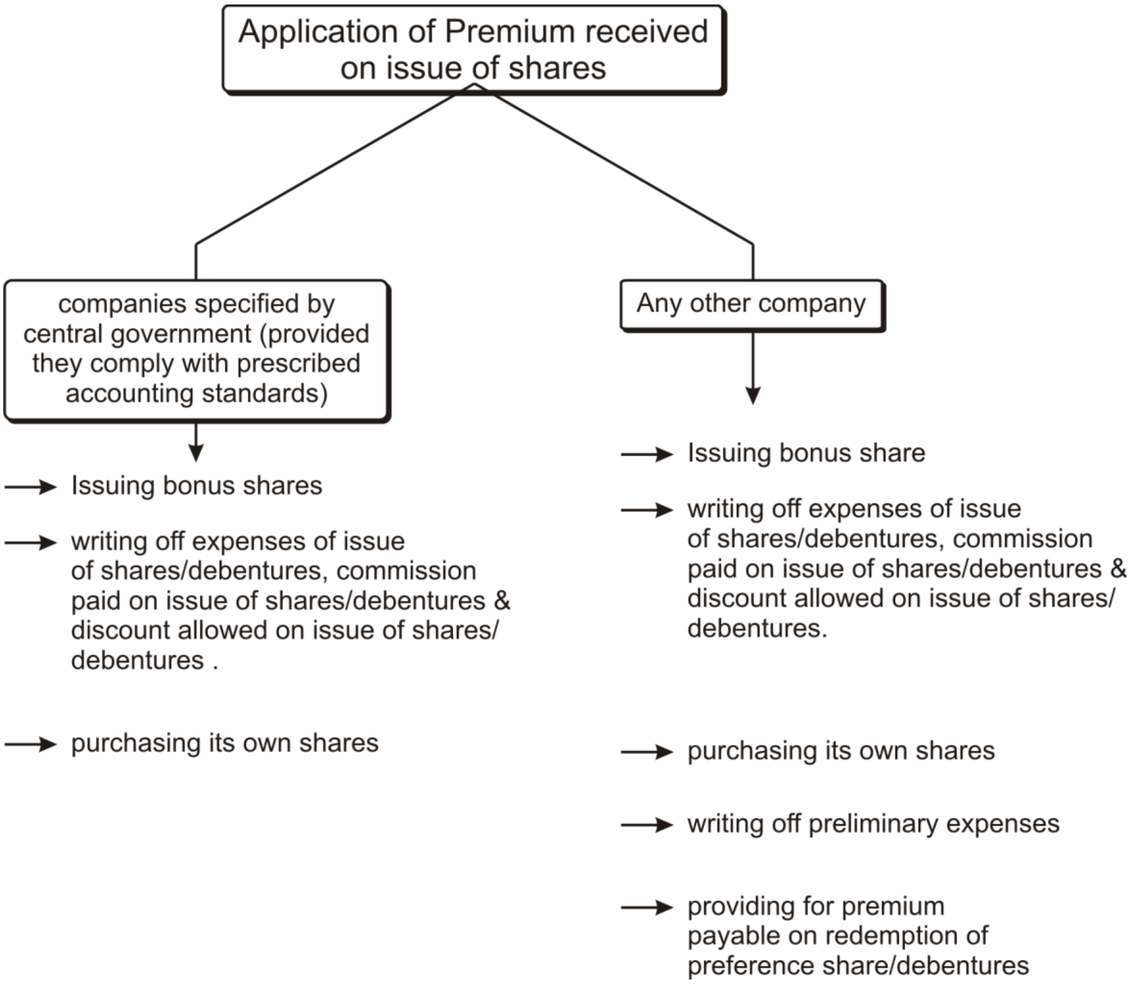
Company declares dividend of 10%. Mr. A holds 500 shares of face value ₹ 10 and 2500 shares of face value ₹ 1. Hence, he has paid ₹ 3000 on shares of face value ₹ 10 and ₹ 2500 on shares of face value ₹ 1. Total amount paid by him is ₹ 5500. Therefore, he shall be entitled to dividend of ₹ 550 (i.e. 10% of 5500).

❖ Application of premiums received on issue of shares [Section 52]

- A company is entitled to sell its shares at premium i.e. at a rate which is higher than face value.
- **For Example** – Equity shares of face value ₹ 10 are issued at ₹ 15. Here, ₹ 5 shall be premium.
- Shares can be issued at premium for cash or for consideration other than cash.
- When the value of asset acquired in exchange of shares is higher than the face value of shares, such shares are treated to be issued at premium.
- The amount (or value) received as premium on issue of shares should be credited to "Securities premium account". "Securities Premium account" shall be treated as paid up share capital of the company and provisions relating to reduction of share capital shall apply accordingly on share premium account.

Application of premium received on issue of shares **[For non specified companies]**	➢ Securities premium account may be applied by the company – • for issue of bonus shares to members of the company; • for writing off preliminary expenses of the company; • for writing off – ▪ expenses of any issue of shares or debentures, or ▪ commission paid on issue of shares or debentures, or ▪ discount allowed on issue of shares or debentures. • for providing for the premium payable on redemption of any redeemable preference shares or of any debentures of the company; • for purchase of its own shares or securities. ➢ The balance of securities premium account cannot be utilized for any purpose other than those mentioned above.
Application of premium received on issue of	➢ Certain class of companies which are prescribed by the central government and who follow the prescribed accounting standards, are allowed to use the balance in securities premium account for following purposes only – • for issue of bonus shares to members of the company; • for writing off –

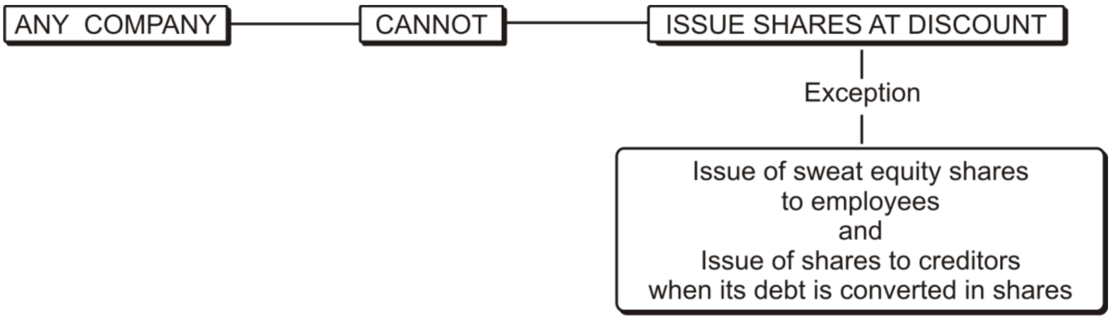
shares **[For specified companies]**	▪ expenses of any issue of shares or debentures, or ▪ commission paid on issue of shares or debentures, or ▪ discount allowed on issue of shares or debentures. • for purchase of its own shares or securities.



❖ Prohibition on issue of shares at discount [Section 53]

Issuing shares at discount is prohibited	➢ No company is allowed to issue shares at discount. ➢ If a company issues shares for an amount less that the face value of shares, it shall be void.
Exception to above rule	➢ In case sweat equity shares are issued to Directors or employees, it can be issued at discount. ➢ A company may also issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any— - statutory resolution plan or - debt restructuring scheme in accordance with any guidelines or directions or regulations specified by RBI under the RBI Act 1934 or the Banking (Regulation) Act 1949.

<table>
<tr><td rowspan="3">Punishment for contravention of this section</td><td colspan="3">➢ The punishment for contravening this section is as under :--</td></tr>
<tr><td rowspan="2">Company and every officer in default</td><td>Fine</td><td>Upto an amount equal to the amount raised through the issue of shares at a discount or ₹ 5,00,000/-, whichever is lower</td></tr>
<tr><td colspan="2">In addition to above, the company shall also be liable to refund all monies received with interest at the rate of twelve percent per annum from the date of issue of such shares to the persons to whom such shares have been issued.</td></tr>
</table>

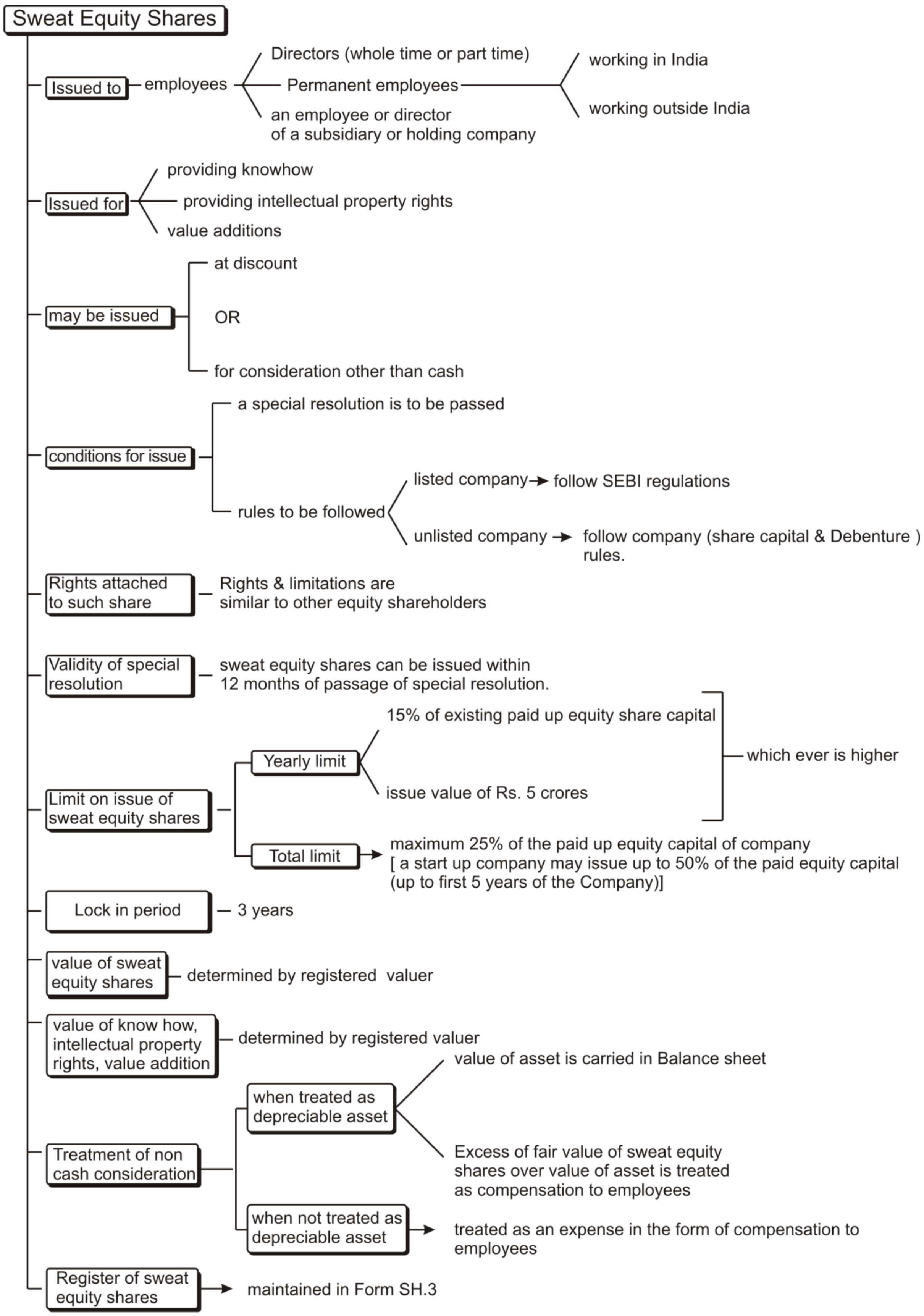


❖ Issue of Sweat Equity Shares [Section 54] & [Rule 8]

<table>
<tr><td>Meaning</td><td>➢ Section 2(88)
“sweat equity shares” means such equity shares as are issued by a company to its
• directors, or
• employees
at a discount or for consideration other than cash, for
• providing their knowhow, or
• making available rights in the nature of intellectual property rights , or
• value additions, by whatever name called.
➢ From the above definition, it is clear that sweat equity shares are issued to directors and employees only.
➢ They are either issued at a discount or for consideration other than cash. Such consideration could be like know how provided by such person to the company or some intellectual property rights given by such person to the company or any value additions.
➢ Sweat equity shares can be issued only of a class already issued.</td></tr>
<tr><td>Conditions for issuance of sweat equity shares</td><td>➢ For issuance of sweat equity shares following conditions are to be fulfilled –
• a special resolution should be passed by the company permitting such issue;
• such resolution shall specify –
▪ the number of shares,
▪ the current market price,
▪ consideration, if any
▪ class of directors or employees to whom such shares are to be issued.
• In case of listed equity shares – SEBI regulations are to be followed.
• In case of unlisted equity shares – Rules prescribed by Companies (Share capital and Debentures) Rules 2014, are to be complied with.</td></tr>
</table>

<table>
<tr><td>Rights, limitations, restrictions and provisions of sweat equity shares</td><td colspan="2">➢ The rights, limitations, restrictions and provisions of sweat equity shares shall be similar to that of the equity shares already issued.
➢ Shareholders of sweat equity shares shall be treated at par with shareholders of other equity shares.</td></tr>
<tr><td>Meaning of “employee”</td><td colspan="2">➢ “Employee” means –
• a permanent employee of the company who has been working in India or outside India; or
• a director of the company, whether whole time or not; or
• an employee or director of a subsidiary or holding company</td></tr>
<tr><td>Meaning of “value additions”</td><td colspan="2">➢ “Value addition” refers to a case where an employee provides some
• know how or
• intellectual property rights
to the company and such company derives (at present or in future)
• economic benefits (actual or anticipated) and
• neither any consideration is paid to such employee,
• nor any consideration is included in the normal remuneration of the employee.
➢ Sweat equity shares are issued to the abovementioned employee for his above mentioned contribution to the company.</td></tr>
<tr><td>Validity of special resolution</td><td colspan="2">➢ The special resolution which authorizes the issue of sweat equity shares, shall remain valid for a period of 12 months from the date of passage of special resolution.
➢ Thereafter, a fresh special resolution would be required for making any allotment of sweat equity shares.</td></tr>
<tr><td rowspan="2">Limit on issue of sweat equity shares</td><td>Yearly Limit</td><td>➢ In an year, a company can issue sweat equity shares for –
• 15% of existing paid up equity share capital, or
• issue value of ₹ 5 Crores,
whichever is higher.</td></tr>
<tr><td>Total Limit</td><td>➢ During the lifetime of the company, the sweat equity shares cannot be more than 25% of the paid up equity capital of the company.</td></tr>
<tr><td>Lock in period of sweat equity shares</td><td colspan="2">➢ The sweat equity shares issued to the directors or employees of the company hall not be transferable for a period of three years from the date of allotment.
➢ On the share certificate, following shall be clearly mentioned –
• the fact that the shares are under lock in, and
• the period of such lock in.</td></tr>
<tr><td>Value of sweat equity shares</td><td colspan="2">➢ The value of sweat equity share shall be determined by a registered valuer and such valuer shall give justification of the value determined by him.</td></tr>
<tr><td>Value of know how etc. provided to the company</td><td colspan="2">➢ The value of intellectual property rights, know how, value addition, is determined by registered valuer.
➢ Such valuer should give his report to Board of Directors along with justification of such valuation.</td></tr>
<tr><td>Gist of both valuation reports</td><td colspan="2">➢ A gist of both valuation reports should also be sent to the shareholders along with the notice of the general meeting.</td></tr>
<tr><td>Treatment of non cash</td><td colspan="2">➢ Where sweat equity shares are issued for non cash consideration, the value of such non cash consideration shall be as under –</td></tr>
</table>

consideration	• 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. • where the non cash consideration does not take the form of a depreciable or amortizable asset, it shall be expensed as provided in accounting standard.
Sweat equity shares issued not in pursuance of acquisition of an asset	➢ Where sweat equity shares are issued not in pursuance of acquisition of an asset, the fair value (as determined by registered valuer) of sweat equity shares shall be treated as a form of compensation to the employee or director.
Sweat equity shares issued pursuant to acquisition of an asset	➢ When sweat equity shares are issued pursuant to acquisition of an asset – • the value of asset (as determined by valuer) shall be carried in Balance Sheet as per accounting standard; • the excess of fair value of sweat equity shares over value of asset acquired shall be treated as compensation to employees. ➢ Value of sweat equity shares *minus* value of asset acquired = Compensation to employees and directors.
Register of sweat equity shares	➢ The company shall maintain a register of sweat equity shares in **Form No. SH.3** and shall enter details of sweat equity shares issued by the company.

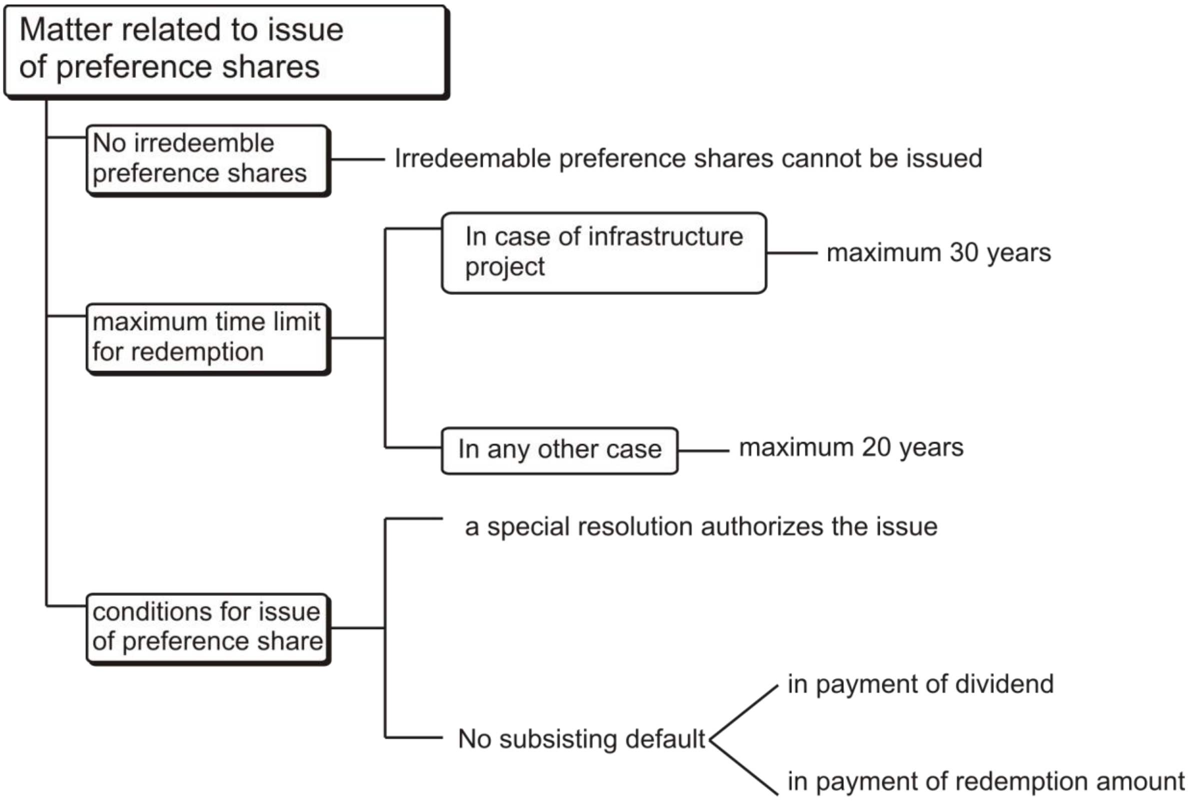


❖ Issue and redemption of preference shares [Section 55] & [Rule 9]

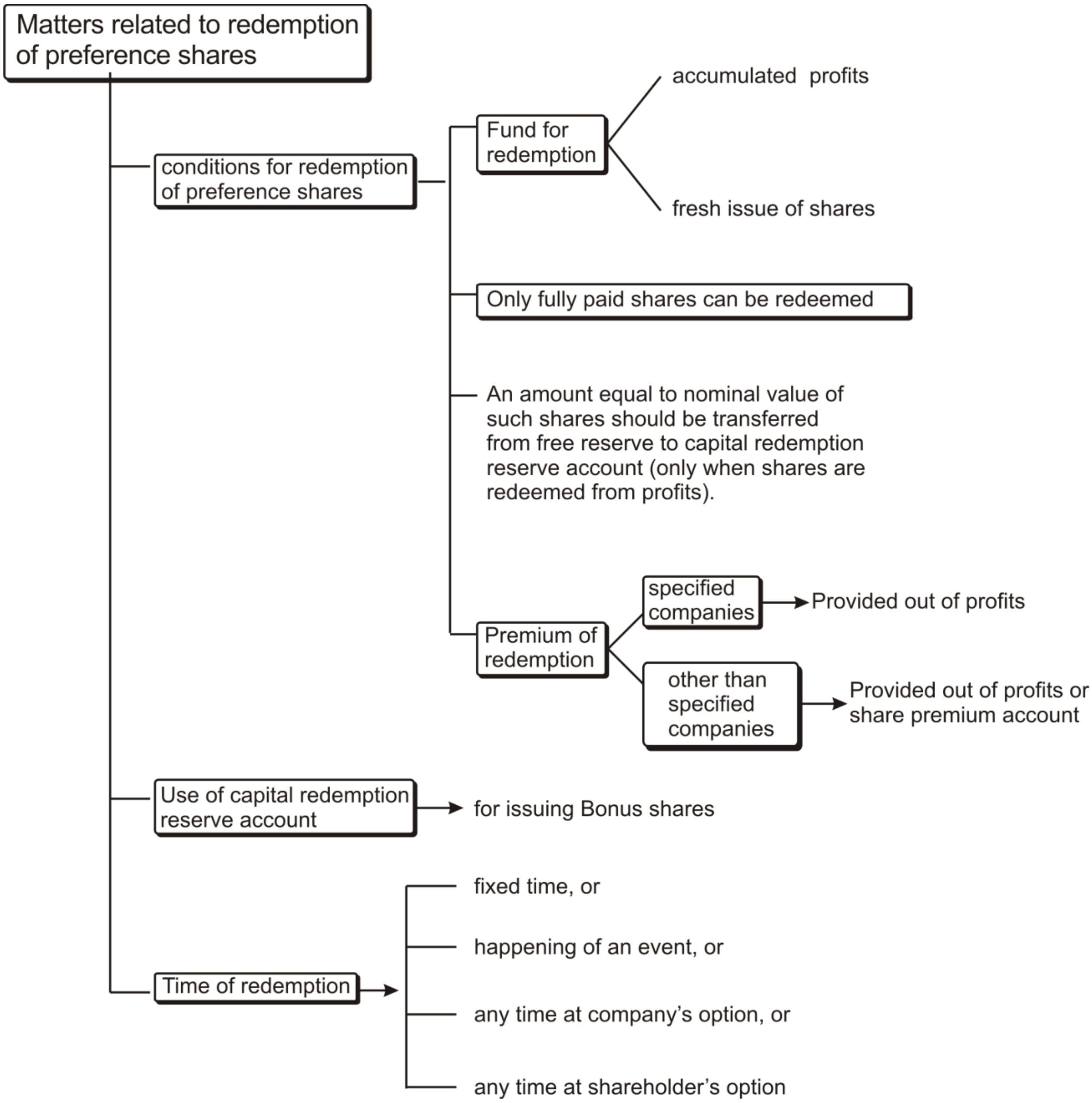
Irredeemable preference share are not allowed		➢ After the commencement of Companies Act 2013, no company is allowed to issue irredeemable preference shares.
Maximum time limit for redemption of preference shares		➢ Maximum time limit allowed for redemption of preference shares is 20 years. ➢ No company can issue preference shares which have a redemption period of more than 20 years.
Exception in case of infrastructure projects **[Rule 10]**		➢ There is an exception in case of preference shares are issued by a company for infrastructure projects. ➢ In such case, the company can issue preference shares having redemption after 20 years but not exceeding 30 years. ➢ But in such cases, minimum 10% of such preference shares should be redeemed every year from twenty first year onwards or earlier, on proportionate basis, at the option of preference shareholders.
Conditions for issue of preference shares		➢ A company which is authorized by its articles, can issue preference shares provided following conditions are fulfilled – • a special resolution authorizing such issue, is passed in the general meeting of the company. • at the time of issue of preference shares, the company had no subsisting default in payment of dividend on preference share or redemption of preference shares.
Conditions for redemption of preference shares	***Funds for redemption***	➢ Preference shares can be redeemed only– • out of accumulated profits which would have been available for distribution as dividends or • proceeds of fresh issue of shares made for the purpose of such redemption.
	Only fully paid	➢ Preference shares can be redeemed only if they are fully paid.
	Capital Redemption Reserve Account	➢ Where preference shares are redeemed out of profits of the company, an amount equal to nominal value of shares shall be transferred from free reserve account to a reserve called 'Capital Redemption Reserve Account'. The provisions of this Act, relating to reduction of share capital, shall apply as if capital redemption reserve account were share capital of the company.
	Premium on redemption for specified companies	➢ In case of prescribed class of companies, the premium, if any, payable on redemption shall be provided for, out of profits of the company, before the shares are redeemed. ➢ However, if the preference shares were issued on or before commencement of Companies Act 2013, securities premium account can also be utilized for redemption.
	Premium on redemption for non specified companies	➢ In case of any other company which has not been specified by the central government, the premium payable on redemption of preference share shall be provided out of – •profits of the company, or •share premium account, before such shares are redeemed.

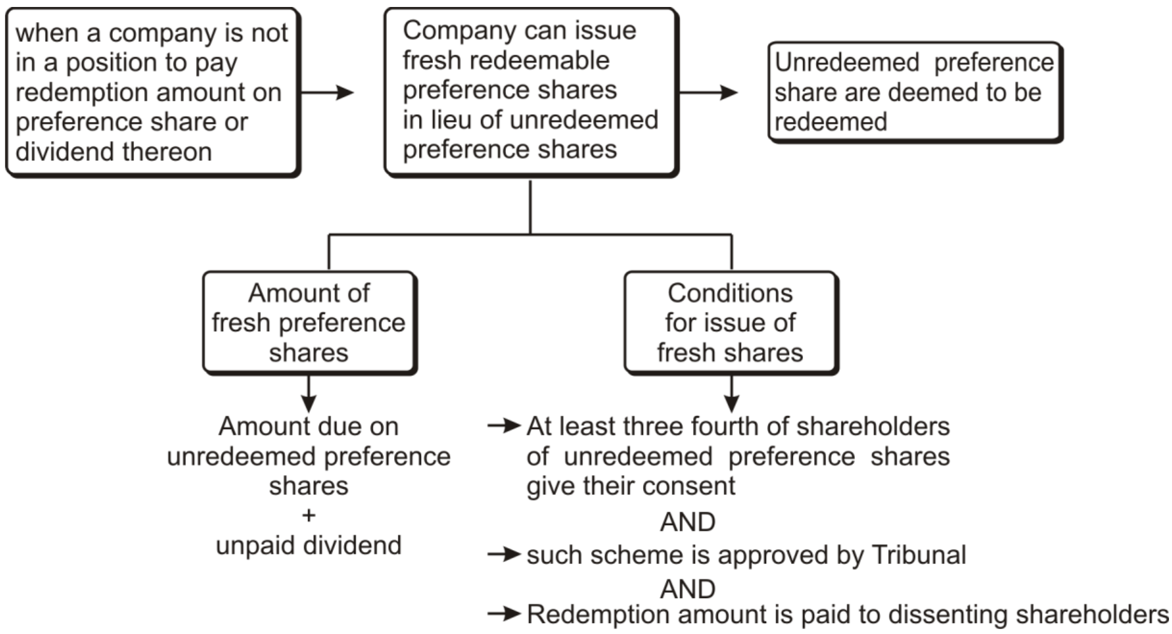
What is the option where a company is not in a position to redeem its preference shares or pay dividend.	➢ In case a company is not in a position to redeem its preference shares, as per terms of issue or pay dividend (if any) thereon, it can issue fresh redeemable preference share in lieu of unredeemed preference shares. ➢ New preference shares will be issued for the amount due on unredeemed preference share, along with unpaid dividend. ➢ New preference shares can be issued only if following conditions are satisfied – • atleast three fourth of the shareholders of unredeemed preference shares should give their consent and • on a petition made to the Tribunal, such scheme is approved by Tribunal. ➢ When new preference shares are issued, the unredeemed preference shares are deemed to be redeemed. ➢ However, the company shall pay the redemption amount to the shareholders who have not consented to the issue of further redeemable preference shares.
Use of capital redemption reserve account	➢ The capital redemption reserve account can be used for issuing unissued shares of the company, as fully paid bonus shares, to the members of the company.
Miscellaneous provisions	➢ Register of members shall contain particulars of preference shares. ➢ Where the preference shares are proposed to be listed on a recognized stock exchange, the issue shall be made in accordance with SEBI regulations.
Time of redemption of preference shares	➢ Preference shares are redeemed on the terms on which they were issued. Under Section 48, the terms can be varied on approval of preference shareholders. If it is so varied, it will be redeemed on varied terms. ➢ Preference shares can be redeemed – • at a fixed time or on the happening of a particular event; • any time at the company's option; or • any time at the shareholder's option.

<u>SPACE FOR NOTES</u>



<u>SPACE FOR NOTES</u>


Matters related to redemption of preference shares
conditions for redemption of preference shares
Fund for redemption
accumulated profits
fresh issue of shares
Only fully paid shares can be redeemed
An amount equal to nominal value of such shares should be transferred from free reserve to capital redemption reserve account (only when shares are redeemed from profits).
Premium of redemption
specified companies
Provided out of profits
other than specified companies
Provided out of profits or share premium account
Use of capital redemption reserve account
for issuing Bonus shares
Time of redemption
fixed time, or
happening of an event, or
any time at company's option, or
any time at shareholder's option



❖ Transfer and Transmission of Securities [Section 56] & [Rule 11]

Transfer of securities is allowed only on execution of instrument of transfer	➢ Section 56 deals with transfer of – • securities, in case of companies having share capital • interest of a member, in case of companies not having share capital. ➢ The formalities for transfer of above assets are as under – • an instrument of transfer **(in Form SH.4)** is executed by (or on behalf of transferor and transferee) • such instrument is duly stamped and dated • name, address and occupation (if any) of the transferee is specified. • such instrument, along with certificate, is delivered (by transferor or transferee) to the company within 60 days of execution. • where no certificate exists, the letter of allotment is to be delivered in its place. ➢ Where the certificate has been lost, the company may transfer the securities if conditions of indemnity imposed by Board are complied. ➢ These provisions shall also apply to interests of shareholders (in case of company not having share capital.
Exception in case where both parties have demat account	➢ Where both the parties (transferor and transferee) hold beneficial interest in the records of a depository, above formalities are not to be complied with.
Exception in case of transmission of securities	➢ None of the above formalities are to be complied when shares are transmitted by operation of law. ➢ Transmission refers to change in ownership due to succession, inheritance, bankruptcy, devolution by death, marriage etc. ➢ In such cases, the company can record the transmission of securities in the name of the person to whom such securities have been transmitted.

<table>
<tr><td rowspan="2">Exception in case of a Government company</td><td>In respect of securities held by nominees of Government</td><td>The abovementioned formalities relating to transfer of securities, does not apply to a Government company in respect of securities held by nominees of the Government.</td></tr>
<tr><td>In respect of bonds issued by a Government company</td><td>▪ There is no requirement of any instrument of transfer and, thus, stamping and execution by transferor and transferee is also not required.
▪ The transferee has to give an intimation (specifying his name, address and occupation) along with the certificate relating to the bond (or letter of allotment of bond).</td></tr>
<tr><td>Transfer of partly paid shares</td><td colspan="2">➢ In case,
• the transferor submits the documents for transfer, and
• it involves transfer of partly paid shares,
the company should give a notice to the transferee (in Form SH.5).
➢ If in response to such notice, the transferee gives his no objection within two weeks of receipt of notice, the company shall transfer the securities.</td></tr>
<tr><td rowspan="5">Time limit for delivery of the certificates</td><td colspan="2">➢ Except in case where it is prohibited by any provision of law or by any order of Court, Tribunal or any authority, the company shall deliver the certificates of securities within following time limit --</td></tr>
<tr><td>Subscribers of memorandum</td><td>Within two months from date of incorporation.</td></tr>
<tr><td>Allotment of shares</td><td>➢ Within two months from the date of allotment
➢ Where shares are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately.</td></tr>
<tr><td>Transfer or transmission</td><td>Within one month from the date of receipt of receipt of instrument of transfer (or intimation of transmission).</td></tr>
<tr><td>Allotment of debentures</td><td>Within a period of six months from the date of allotment of debentures.</td></tr>
<tr><td>Transfer by legal representatives</td><td colspan="2">➢ Securities or other interests held by a deceased person can be transferred by his legal representatives and such transfer shall be valid as if the legal representative was the holder of securities at the time of execution of instrument of transfer.</td></tr>
<tr><td rowspan="3">Punishment for default in compliance of above provisions</td><td colspan="2">➢ If any default is made in compliance of above provisions, the punishment shall be as under –</td></tr>
<tr><td>Company</td><td>Fine of ₹ 25000 to ₹ 500000</td></tr>
<tr><td>Defaulting officer</td><td>Fine of ₹ 10000 to ₹ 100000</td></tr>
<tr><td>Fraud by depository or depository participant</td><td colspan="2">➢ Where any depository or depository participant transfers the shares, with an intention to defraud a person, it shall be liable under section 447.</td></tr>
</table>

❖ Punishment for personation of shareholder [Section 57]

➢ If any person deceitfully personates as an owner of any • security (in case of company having share capital) or

• interest in a company or • share warrant or coupon and thereby • obtains any of above assets or • attempts to obtain any of above assets or • receives any money due to its true owner or • attempts to receive any money due to its true owner, he shall be punishable with • imprisonment for a period of one year to three years, AND • fine of ₹ 100000 to ₹ 500000.

❖ Refusal of registration and appeal against refusal [Section 58]

Refusal to register transfer or transmission by private company	➢ In pursuance of any power of a private company (limited by shares) under its articles or otherwise, it may refuse to register transfer or transmission of •securities, or •interest of a member in the company. ➢ Where a private company refuses to register transfer or transmission of shares (or interest in company), the company shall, within 30 days (from receiving the instrument of transfer or intimation of transmission), send notice to transferor and transferee (or the person giving intimation of transmission) giving reasons of refusal.
Securities or other interest of a public company	➢ Securities or other interest of a public company shall be freely transferable, subject to contract/arrangement. ➢ No public company can refuse to register transfer or transmission of securities, without sufficient cause.
Appeal to Tribunal against refusal	➢ The transferee may appeal to Tribunal against the refusal, within - • 30days of receipt of notice as above, or • 60 days from the date on which instrument of transfer (or intimation of transmission) was delivered to the company.
Appeal when a public company refuses without sufficient cause	➢ Where a public company without sufficient cause refuses to register the transfer of securities within 30 days, the transferee may appeal to Tribunal within – • 60 days of receipt of such refusal, or • 90 days of delivery of instrument of transfer (or intimation of transmission), where no such refusal has been received.
Order of Tribunal	➢ Where an appeal has been filed, the Tribunal may – •dismiss the appeal, or •direct that the transfer or transmission be registered within 10 days of receipt of order of Tribunal, or •direct rectification of register and also direct the company to pay damages sustained by aggrieved party.
Penalty on person who contravenes order of Tribunal	➢ A person who contravenes the order of Tribunal shall be punishable as under – • Imprisonment for a term of one year to three years **AND** • Fine of ₹ 100000 to ₹ 500000.

❖ Rectification of register of members [Section 59]

Instances where application to Tribunal can be made for rectification of register	➢ Where • the name of a person is entered in the register of members, without sufficient cause, or • after having been entered in the register, name is omitted therefrom, without sufficient cause, or • default is made in entering the name in the register the fact of any person, or • unnecessary delay takes place in entering the name in the register, the **aggrieved person or any member of the company or the company** may appeal in the prescribed form to • Tribunal, or • Competent Court outside India (for foreign members or debenture holders residing abroad), for rectification of the register.
Order by Tribunal in above case	➢ The Tribunal may by order – • dismiss the appeal, or • direct the company to register the transfer or transmission within 10 days of receipt of order, or • direct rectification of records of the depository or register. ➢ The Tribunal may also direct the company to pay damages to the aggrieved party where register of the company was ordered to be rectified.
Such holders of securities are entitled to transfer the securities	➢ The holder of such securities is fully entitled to transfer the securities to some other person. ➢ The transferee is entitled to voting rights, unless voting rights have been suspended by an order of the Tribunal.
Transfer of securities in contravention of any law	➢ Securities are transferred in contravention of any of the provisions of Securities Contracts (Regulation) Act 1956, SEBI Act 1992, Companies Act 2013, or any other law for the time being in force. ➢ An application to Tribunal is made by depository, company, depository participant, the holder of the securities or SEBI. ➢ On above application, the Tribunal can direct any company or depository to set right the contravention and rectify its register or record concerned.
Punishment for default in compliance of orders of Tribunal	➢ If the orders of the Tribunal are not complied, following punishments shall be levied – ***Company*** – Fine of ₹ 100000 to ₹ 500000 ***Defaulting officer*** – **Imprisonment** upto one year **OR** **Fine** ₹ 100000 to ₹ 300000 **OR BOTH**

❖ Publication of authorised, subscribed and paid up capital [Section 60]

Publication of subscribed capital and paid up capital along with authorised capital	➢ If the authorised capital of the company is printed on any notice, advertisement, official publication, business letter, bill head, or letter paper, then the subscribed and paid up capital of the company should also be printed on that document, in an equally prominent position and in equally conspicuous characters.
Penalty for	➢ For default in compliance of above provisions, following penalty shall be levied

default	–	
	Company	₹ 10000 for each default
	Defaulting officer	₹ 5000 for each default

❖ Power of limited company to alter its share capital [Section 61]

Ways of altering the share capital	➢ A limited company having share capital can alter its memorandum (provided it is so authorised by articles) in its general meeting, in following ways–	
	Increase authorised capital	Authorised capital can be increased by an amount that the company considers appropriate.
	Divided into shares of larger amount	The company can consolidate all or any of its share capital into shares of a larger amount than its existing shares. Example – 10000 shares of face value can be converted into 1000 equity shares of face value ₹ 100. Where consolidation and division results into change in voting rights, it shall take effect only after approval of Tribunal.
	Convert shares into stock and back to shares	The company can convert any or all of its shares into stock and reconvert the stock into shares of any denomination.
	Sub divide the shares	Company can subdivide its shares (any or all) into shares of smaller denomination. Example – Shares of face value ₹ 10 can be converted into shares of face value Re 1. However, it is to be ensured that the proportion of amount paid and unpaid of reduced shares shall be the same as that of the shares that were so converted. In the given example if ₹ 7 was paid up on the ₹ 10 face value shares, then Re. 0.70 should be paid up on Re 1 face value shares.
	Cancel shares	Where some shares of the company have not been taken (or agreed to be taken) by any person (issued but unsubscribed), the company can cancel them. It will result in diminution of the share capital of the company by the amount of shares so cancelled. Such cancellations should not be deemed to be reduction of share capital.

Meaning of Stock

- **Section 2(84)**
  Share means a share in the share capital of a company and includes stock
- Stock is consolidation of fully paid shares. It is divisible into fractions of any amount.
- When the shares are converted by the company into stock, the shareholder is known as stock holder. Stockholder is entitled to dividends, just like shareholder.
- The investment and entitlement of the shareholder remains same, but his interest in the company is described differently.
- **Example** – 1000 shares of ₹ 10 each may be converted into stock of ₹ 10000.

➢ Important points related to stock –

- Stock cannot be issued directly. Only conversion of shares into stock is allowed.
- Only fully paid shares can be converted into stock

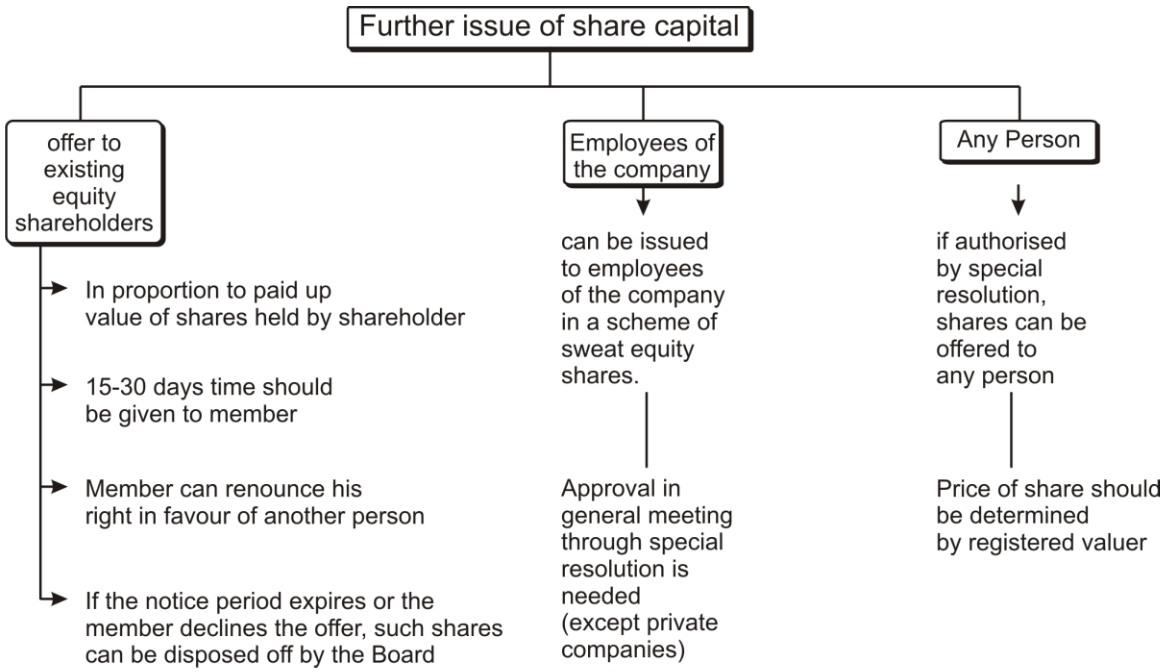
Distinction between share and stock

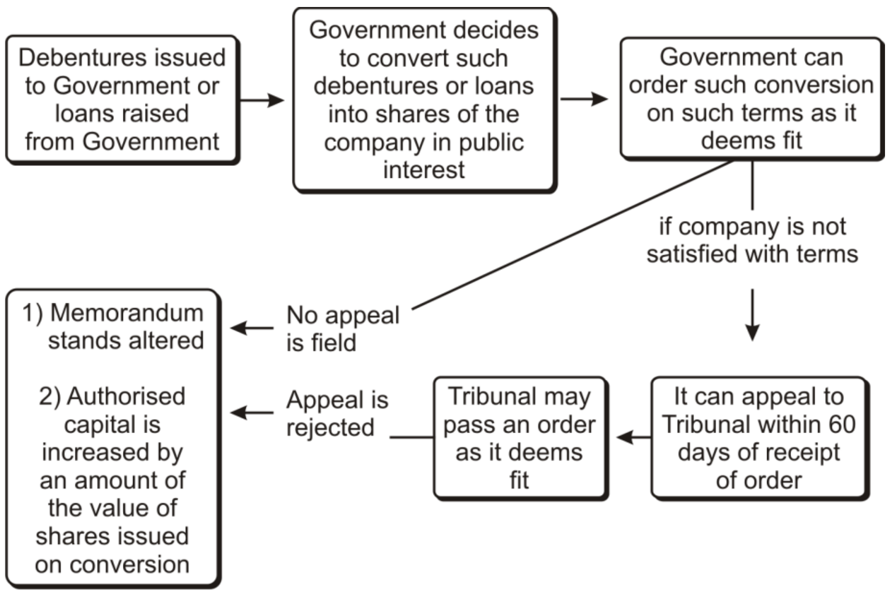
SN	Basis of difference	Share	Stock
1	**Direct issue**	Shares are issued directly by the company.	Stock cannot be issued directly by the company. Only conversion of shares into stock is allowed.
2	**Fully paid**	Shares may or may not be fully paid	Stock is always fully paid.
3	**Nominal value**	Shares have a nominal value	Stock does not have a nominal value
4	**Denomination**	Shares are of equal denomination	Stock is of different denomination
5	**Splitting**	Share cannot be split into fraction	Stock can be split into any amount required.

❖ Further issue of share capital [Section 62]

<table>
<tr><td rowspan="4">To whom further shares should be offered by an existing company (having share capital)</td><td colspan="2">➢ An existing company (having share capital) can increase its subscribed capital by issue of further shares. Such shares shall be offered to following persons –</td></tr>
<tr><td>Existing equity shareholders</td><td>➢ Fresh equity shares can be offered to persons who hold equity shares of the company on date of offer.
➢ When shares are issued to existing shareholders, it is called the rights issue.
➢ Such offer should be made in proportion, as nearly as circumstances admit, to the paid up value of the shares held by such person.
➢ A letter of offer should be sent to such person, containing following conditions –
• Notice of such offer should specify the number of shares offered and it should give a time period of 15-30 days from the date of offer within which the offer, if not accepted, shall be deemed to have been declined. In case of a private company, if ninety percent of the members have given their consent in writing, a period lesser than 15 days can also apply.
• Such shareholder shall have a right to renounce the right in favour of any other person. However, the articles can contain provisions for disallowance of such right.
• Where the specified period of notice expires or such person declines the offer, the Board of directors may dispose of the shares in such manner which is not dis-advantageous to the shareholders or company.</td></tr>
<tr><td>Employees of company</td><td>➢ Fresh shares can be offered to employees of the company (subject to special resolution) under a scheme of sweat equity shares.
➢ In case of private company, an ordinary resolution shall be sufficient.</td></tr>
<tr><td>Any person</td><td>➢ Fresh shares can be offered to any person , if authorized by special resolution. Such shares can be offered for cash or for a consideration other than cash, if the price of such shares is</td></tr>
</table>

	determined by the valuation report of a registered valuer.
Mode and time limit for sending notice	➢ Above notice shall be sent by registered post, speed post or electronic mode or courier or any other mode having proof of delivery, to all the existing shareholders. ➢ Such notice shall be sent atleast three days before opening of the issue. ➢ In case of a private company, if ninety percent of the members have given their consent in writing, a period lesser than 3 days can also apply.
Exception in case of Conversion of debentures or loan into shares	➢ None of the formalities mentioned above are to be complied with, where the debentures issued earlier or loans raised by the company are converted into equity shares. ➢ Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or raising of the loan by a special resolution passed by the company in general meeting.
Conversion of debentures issued to government or loans raised from government, into shares	➢ Where • debenture have been issued to Government or loans have been raised from Government and • Government considers it necessary in the public interest to convert such debentures or loan (or any part thereof) into shares, • the Government can order for conversion of such debenture or loan into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case. ➢ Such conversion can be ordered by the Government even when there was no such provision in the terms of issue of debentures or terms of raising loan.
Appeal to Tribunal if terms of conversion is not acceptable	➢ Where the Government orders for conversion as above, and the terms of conversion is not acceptable to the company, it can appeal to Tribunal within 60 days of receipt of such order. ➢ Tribunal shall hear the company and the government and pass such order as it deems fit.
Factors to be considered by government for fixing terms and conditions	➢ In determining the terms and conditions of abovementioned conversion, the government shall take into account following factors – • financial position of the company, • terms of issue of debentures or loan, • rate of interest payable on such debentures or loan, • such other matter which the government may consider necessary.
Conversion by Government leads to increase in authorized capital	➢ Where the Government has ordered such conversion and the company – • has not preferred an appeal in the Tribunal, or • the appeal has been dismissed by the Tribunal, and such conversion leads to increase in authorized capital of the company, • the memorandum shall stand altered and • the authorized capital shall stand increased by the amount of value of shares which such debentures or loans or part thereof has been converted into.
Not applicable on Nidhi Companies	➢ The provisions of Section 62 does not apply on Nidhi companies.





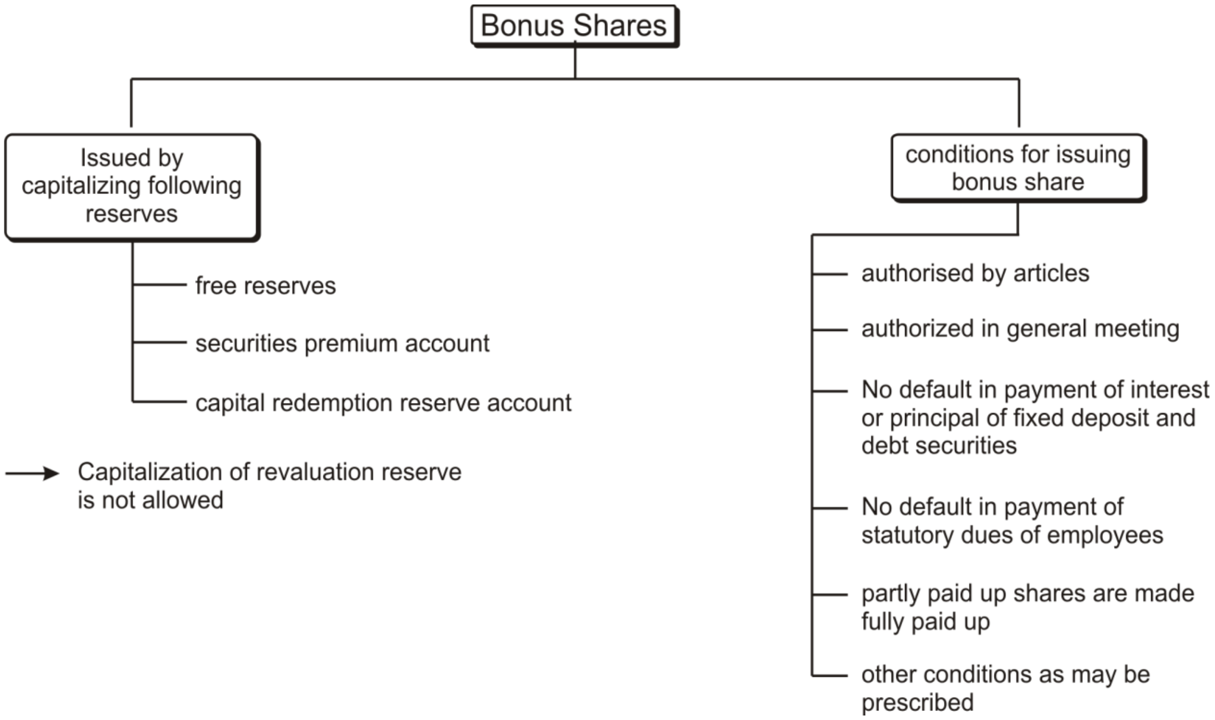
❖ Issue of Bonus shares [Section 63]

- ➢ Bonus shares refer to capitalization of profits of the company by issuing fully paid shares to the members of the company, free of cost.
- ➢ Such shares are given to members in proportion of their holding.
- ➢ Paid-up share capital of the company increases with the issue of bonus shares.

Reserves to be used for issuing bonus shares	➢ A company can issue fully paid bonus shares to its members, by utilising- • its free reserves, or • the securities premium account, or • the capital redemption reserve account. ➢ Reserves created by revaluation of assets cannot be utilised for issuing bonus shares.
Conditions	➢ A company can issue bonus shares by capitalizing its profits and reserves, only

for issuing bonus shares	if – • it is authorised by its articles; • on the recommendation of the board, it has been authorised in the general meeting; • it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; • it has not defaulted in payment of statutory dues of employees, such as, contribution to provident fund, gratuity and bonus; • partly paid up shares are made fully paid up; • it complies with such conditions as may be prescribed. ➢ The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.**[Rule14]**
No bonus share in lieu of dividend	➢ Bonus shares cannot be issued in lieu of dividend.

SPACE FOR NOTES

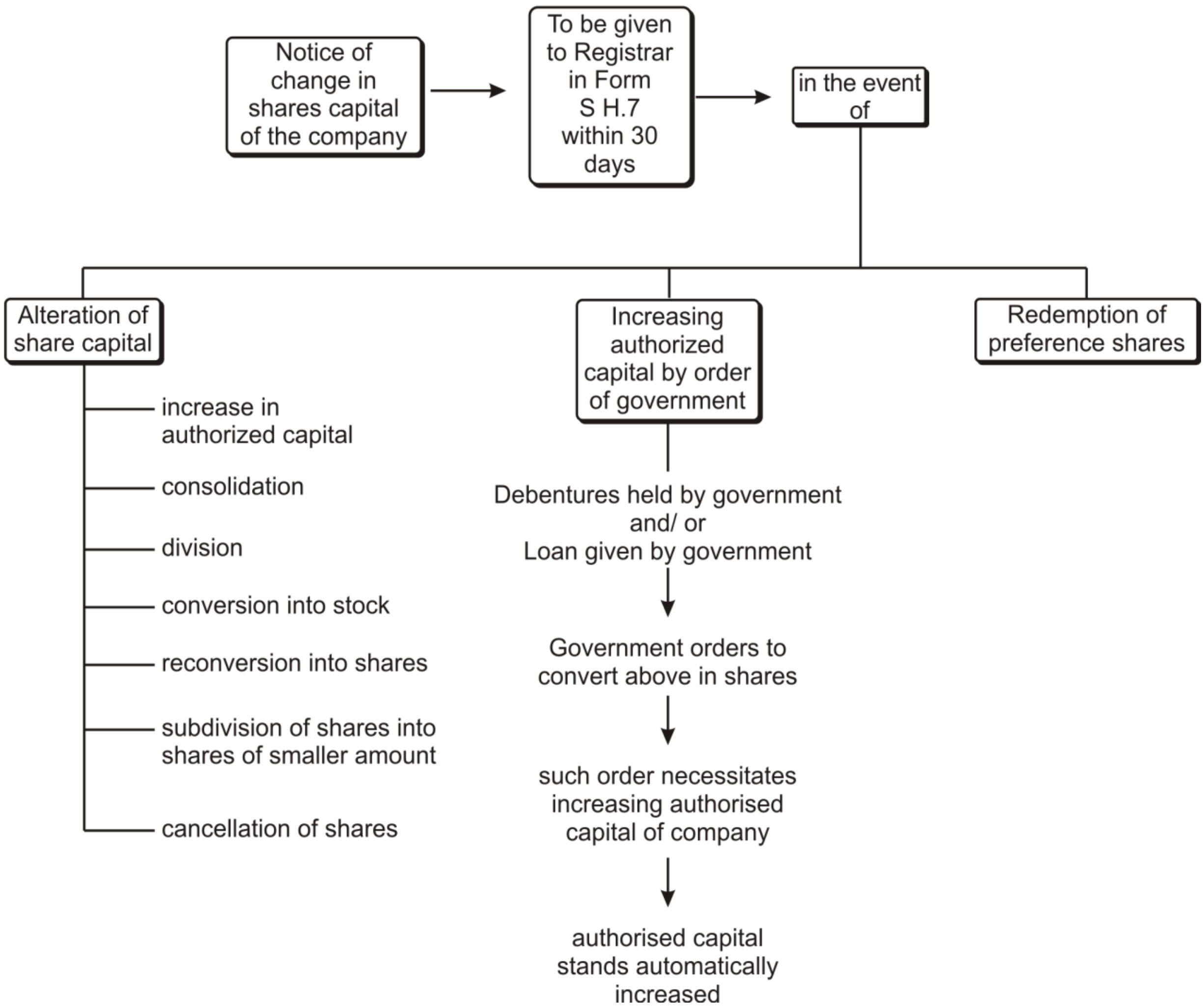


❖Notice to Registrar for alteration of share capital [Section 64] & [Rule 15]

When notice of change in share capital is to be given to Registrar	➢ Notice to Registrar is to be given in following three cases –	
	Alteration of share capital	The share capital of the company is altered in any one of the ways specified in Section 61(1), i.e. increase of authorised capital, consolidation, division, conversion into stock, reconversion into shares, sub division of shares into shares of

		smaller amount, cancellation of shares.
	Increasing authorised capital by order of government	Section 62(4) prescribes that the Government can convert its holding of debentures (or loan granted to company by Government) into shares of the company. As per section 62(6), if such conversion requires change in authorised capital of the company, it shall stand so altered. In this case, notice to Registrar should be given.
	Redemption of preference shares	Where a company redeems any redeemable preference share, notice should be given to Registrar.
Form of Notice	➢ Above notice should be given to Registrar in **Form SH.7** along with altered memorandum, within 30 days of such change.	
Punishment for default	➢ Punishment for default in sending the above notice to Registrar shall be as under :--	
	Company and every officer in default	Penalty of ₹ 1000 for each day during which such default continues, or ₹ 5,00,000/- , whichever is less.

Notice to Registrar for change of share capital



❖ Unlimited Company to provide for reserve share capital on conversion into limited company [Section 65]

<table>
<tr><td rowspan="5">Ways of providing for reserve share capital</td><td colspan="2">➢ An unlimited company, having share capital, may by resolution for registration as a limited company, do either or both of the following things –</td></tr>
<tr><td>Increase nominal amount of share capital</td><td>➢ Such company may increase the nominal value of each share, thereby increasing the nominal value of total share capital of the company.
➢ Such increased nominal amount of shares shall not be capable of being called up except in the event of winding up of the company.
➢ Example – Lets suppose a company had issued shares of ₹ 10 face value. It may increase the face value of these shares to ₹ 25 and specify that the increased amount of ₹ 15 shall not be called up, except in the event of winding up of the company.</td></tr>
<tr><td>OR</td><td></td></tr>
<tr><td>Impose restriction on calling uncalled share capital</td><td>➢ Where the shares are not fully paid up, the company may specify that a portion of the uncalled capital shall not be capable of being called up, except in the event of winding up of the company.
➢ Example – Lets suppose a company had issued shares of the face value of ₹ 10 each. But only ₹ 6 has been paid up on these shares. Company may specify that the balance ₹ 4 (or a lower amount) shall not be called up, except in the event of winding up of the company.</td></tr>
<tr><td>OR BOTH</td><td></td></tr>
</table>

❖ Reduction of Share Capital [Section 66]

➢ **Section 66(1)**

Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may –

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid up; or

(b) either with or without extinguishing or reducing liability on any of its share,

(i) cancel any paid up share capital which is lost or is unrepresented by available assets; or

(ii)pay off any paid up share capital which is in excess of the wants of the company,

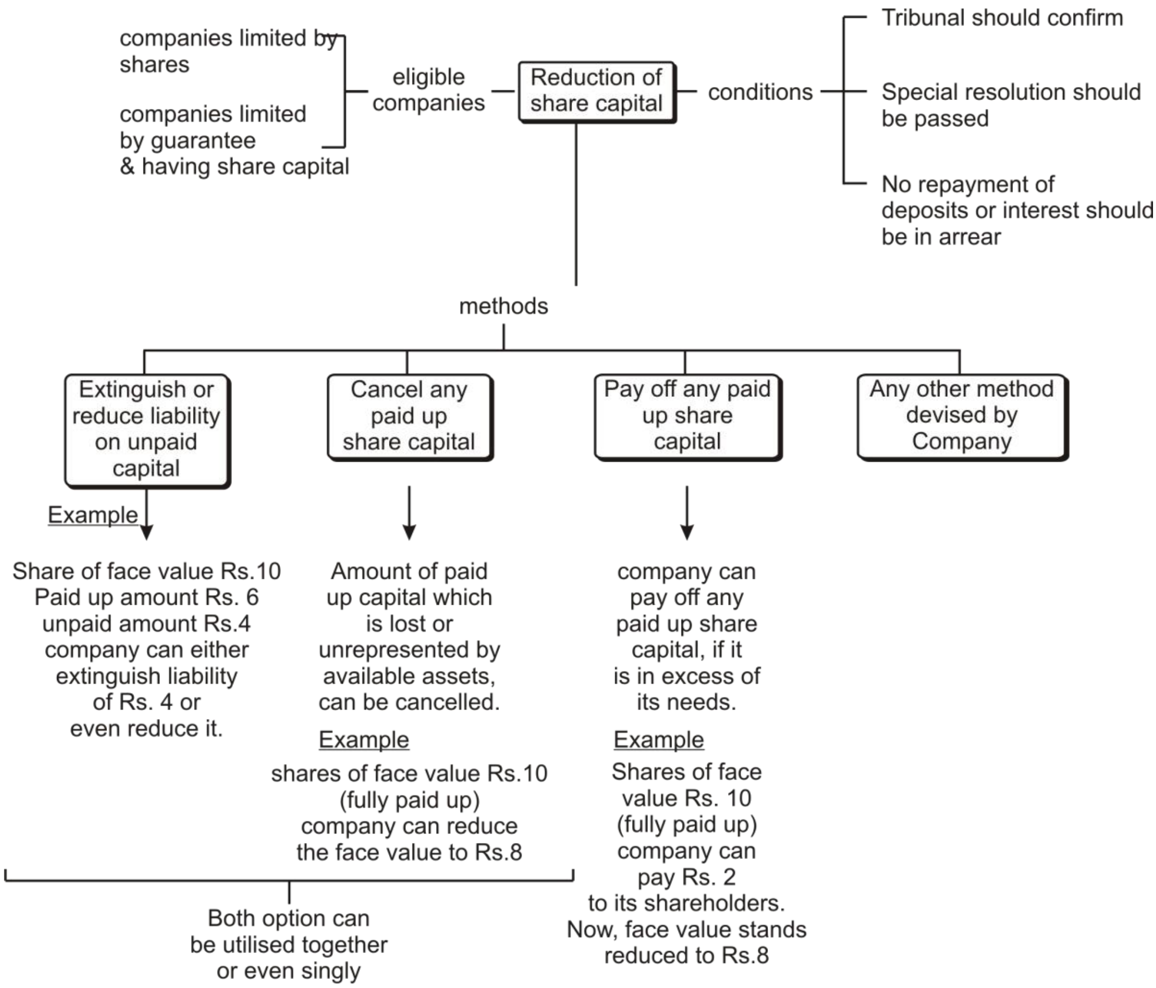
alter its memorandum by reducing the amount of its share capital and of its share accordingly.

Provided that *no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.*

<table>
<tr><td>Which companies are eligible for reduction of share capital</td><td colspan="2">➢ Following companies can reduce their share capital :--
• companies limited by shares,
• companies limited by guarantee and having share capital</td></tr>
<tr><td>Conditions for reduction of share capital</td><td colspan="2">➢ Share capital can be reduced only if following conditions are fulfilled –
• Tribunal should confirm such reduction on an application by the company.
• Special resolution should be passed in general meeting.
• No repayment of any deposits (or interest thereon) accepted by the company should be in arrears.</td></tr>
<tr><td rowspan="4">Methods of reducing share capital</td><td colspan="2">➢ Company may reduce the share capital in any manner. In particular, it may use following ways of reducing the share capital –</td></tr>
<tr><td>Extinguish or reduce liability on unpaid capital</td><td>➢ If the shares of the company are not fully paid up, the company can extinguish the liability of unpaid amount.
➢ Example – A company had issued shares of ₹ 10 face value. ₹ 6 is paid up. The company may reduce the face value of its share to ₹ 6 and extinguish the liability of ₹ 4.
➢ Instead of fully extinguishing the liability of share, the company can also reduce the liability on unpaid amount on its shares. In above example, the company can reduce the face value to ₹9. Now, the liability on share remains of ₹ 3 only and the liability of ₹ 1 is extinguished.
➢ It is not compulsory that the company should reduce the liability on all its shares. The company can also choose to reduce the liability on some of its shares.</td></tr>
<tr><td>Cancel any paid up share capital</td><td>➢ The company can also cancel paid up share capital which is lost or is unrepresented by available assets.
➢ Example – A company had issue shares of ₹ 10 face value, fully paid up. The balance sheet shows that after paying outside liabilities, only ₹ 8 will be available for shareholders, if all the available assets are sold. The company can cancel the face value of its shares by ₹ 2 and then the face value shall be ₹ 8.
➢ This activity can be done either with or without extinguishment or reduction of liability, as discussed in previous option.</td></tr>
<tr><td>Pay off any paid up share capital</td><td>➢ When the company is having surplus funds which is in excess of its wants, it can choose to pay off any paid up share capital.
➢ Example – In above example the company, instead of cancelling the value, the company could choose to pay ₹ 2 to its shareholders, thereby reducing the value to ₹ 8.
➢ This activity can be done either with or without extinguishment or reduction of liability on unpaid amount on shares, as discussed in earlier option.</td></tr>
<tr><td>Alteration of memorandum</td><td colspan="2">➢ Where the share capital is reduced as above, the company should alter its memorandum, wherein the figures of share capital and value of shares shall be changed.</td></tr>
<tr><td>Tribunal to send notices to specified authorities regarding proposed</td><td colspan="2">➢ When an application is submitted by a company to Tribunal for reduction of capital, the Tribunal shall give a notice to –
• Central Government,
• Registrar,
• SEBI (only in case of listed companies) and
• Creditors of the company
➢ The Tribunal shall take into consideration, any representation made by above</td></tr>
</table>

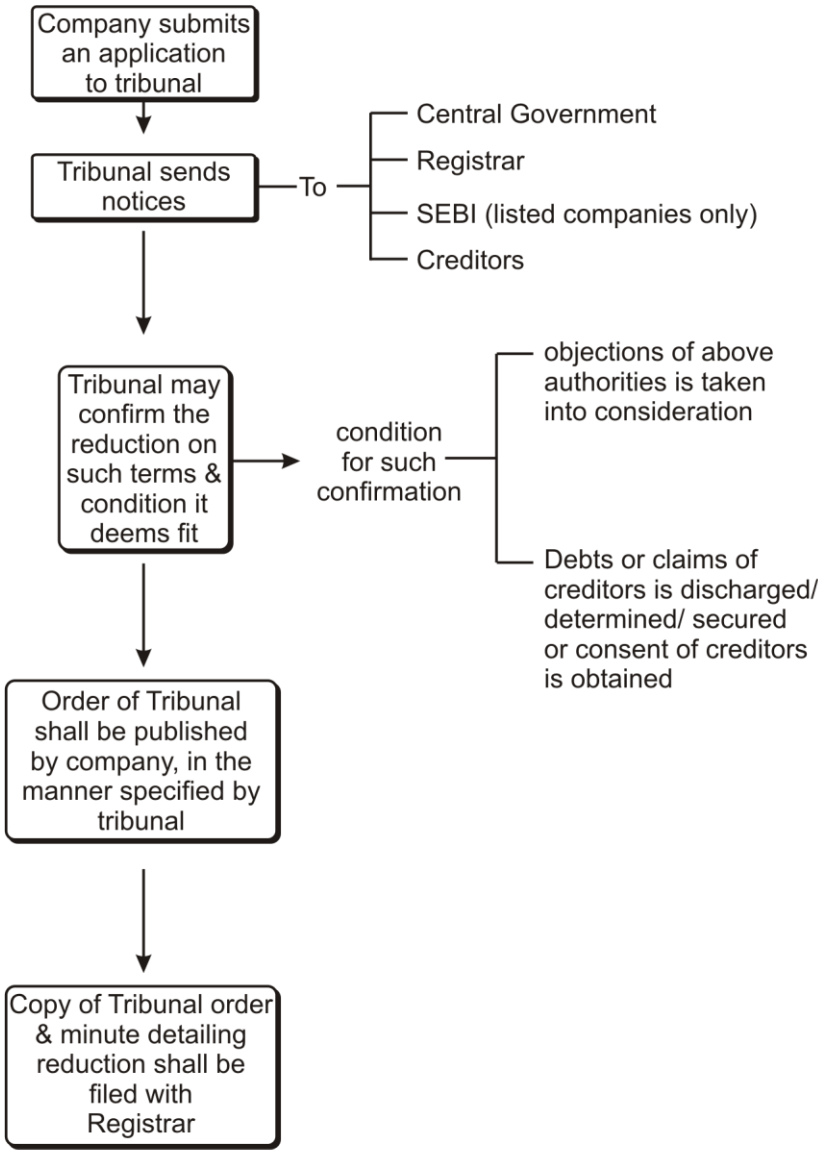
reduction of capital	authorities/creditors, within 3 months from the date of receipt of notice. ➢ Where no representation has been received from above authorities/creditors within the said period, it shall be presumed that they have no objection.
Tribunal may confirm the reduction of share capital on terms and conditions	➢ Where the Tribunal is satisfied that the debt or claim of every creditor– • has been discharged, or • has been determined, or • has been secured, or • his consent has been obtained it may make an order confirming the reduction of share capital. ➢ Tribunal can impose such terms and conditions as it deems fit. ➢ Such order is issued by Tribunal only when the company's auditor certifies in writing, that the accounting treatment proposed by the company for such reduction, is in conformity with accounting standards issued under section 133.
Publication of Tribunal's order	➢ Above order of the Tribunal should be published by the company, in a manner directed by the Tribunal.
Copy of order and minute to be submitted to Registrar	➢ The company shall submit a certified copy of the order of the Tribunal to the Registrar. ➢ The company shall also submit minute approved by Tribunal to the Registrar. Such minute shall contain – • the amount of share capital; (Example -₹ 1000000) • the number of shares into which it is to be divided; (Example- 100000 shares) • the amount of each share; (Example -₹ 10) and • the amount, if any, on the date of registration deemed to be paid up on each share (Example -₹ 7); ➢ The Registrar shall register above documents and issue a certificate. ➢ **'Minute'** refers to a document detailing the reduction.
Above provisions do not apply to buy back	➢ The above provisions do not apply to buy back by a company of its own securities under section 68.
Liability of past or present members	➢ The maximum liability of a past or present member shall be the difference of the two figures mentioned hereunder – • the amount of share as fixed by order of reduction *minus* • the amount paid on shares (or reduced amount which is deemed to be paid on shares) ➢ **Example** – A company had issued shares of ₹ 10 face value. ₹ 6 was paid up. By an order of Tribunal, the face value of shares was reduced to ₹ 9. Here, the amount fixed by order is ₹ 9 and amount paid on shares is ₹ 6. Hence, shareholder is liable for pay maximum ₹ 3 (i.e. 9-6). ➢ **Example** – A company had issued shares of ₹10 (fully paid up). The face value was reduced to ₹ 8 by order of Tribunal. Here, the amount fixed by order is ₹ 8 and the reduced amount which is deemed to be paid on shares is ₹ 8. Hence, shareholder is not liable to pay anything (i.e. 8-8).
What happens when the name of a creditor is not entered on the list of creditors	➢ Where the name of a creditor who is entitled to object to the reduction of capital, is not entered in the list of creditors due to – • his ignorance of the proceedings for reduction, or • his ignorance about the nature and effect of proceedings of reduction on his debt or claim, and after such reduction, the company commits default in respect of his debt

<table>
<tr><td></td><td>or claim, then--
every person, who was a member of the company (on the date of registration of reduction by Registrar) shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately preceding the said date; and
if the company is wound up, the Tribunal may, on the application of any such creditor and the proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
➢ In short, where a creditor’s name could not be included in the list of creditors due his ignorance of any sort (thus he could not get the opportunity to object), the members of the company shall be liable for the debt due to such creditor, if the company is unable to pay the debt.
➢ However, the rights of contributories among themselves are not affected.</td></tr>
<tr><td>Liability of a defaulting officer for specified misdeeds</td><td>➢ If an officer of the company –
knowingly conceals the name of a creditor entitled to object to the reduction;
knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
encourages (or supports) or is privy to any such concealment or misrepresentation as aforesaid,
he shall be liable under section 447.</td></tr>
<tr><td>Punishment on company for failing to publish Tribunal’s order</td><td>➢ The orders of the Tribunal confirming the reduction of share capital has to be published as per direction of Tribunal.
➢ If the company fails to publish as above, it shall pay fine as under –
Minimum – ₹ 500000/-
Maximum – ₹ 2500000/-</td></tr>
</table>



companies limited by shares
companies limited by guarantee & having share capital
eligible companies
Reduction of share capital
conditions
Tribunal should confirm
Special resolution should be passed
No repayment of deposits or interest should be in arrear
methods
Extinguish or reduce liability on unpaid capital
Cancel any paid up share capital
Pay off any paid up share capital
Any other method devised by Company
Example
Share of face value Rs.10 Paid up amount Rs. 6 unpaid amount Rs.4 company can either extinguish liability of Rs. 4 or even reduce it.
Amount of paid up capital which is lost or unrepresented by available assets, can be cancelled.
Example
shares of face value Rs.10 (fully paid up) company can reduce the face value to Rs.8
company can pay off any paid up share capital, if it is in excess of its needs.
Example
Shares of face value Rs. 10 (fully paid up) company can pay Rs. 2 to its shareholders. Now, face value stands reduced to Rs.8
Both option can be utilised together or even singly

Procedure for reduction of share capital



Difference between alteration of share capital and reduction of share capital

SN	Basis of difference	Alteration of share capital (Section 61)	Reduction of share capital (Section 66)
1	**Type of resolution**	Ordinary resolution is required	Special resolution is required
2	**Confirmation by Tribunal**	Confirmation by Tribunal is not required	Confirmation by Tribunal is required.
3	**Manner of alteration / reduction**	• Increasing authorised capital • Consolidating and dividing in shares of larger denomination • Converting fully paid shares into stock and vice versa. • Sub dividing shares into shares of smaller denomination. • Cancelling shares that have not	• Extinguish or reduce liability on capital not paid up. • Cancelling any paid up capital, which is not represented by available assets. • Paying off any paid up share capital, which is in excess of need of the company.

		been taken up by anybody.	

Diminution of share capital

➢ As per Section 61(1)(e) of the Companies Act 2013, diminution of share capital refers to cancellation of the unsubscribed part of the issued capital. The company through ordinary resolution can cancel the capital which was issued for subscription by the public but which remained unsubscribed. ➢ In following cases diminution of share capital is not treated as reduction of share capital – • Company cancels shares issued but not subscribed by any person; • Company redeems its preference shares; • Company forfeits shares for non payment of calls and such forfeiture leads to reduction of capital; • Company buys back its own shares under section 68. • When share capital reduction is effected in pursuance of the order of the Tribunal sanctioning any compromise or arrangement under section 230.

❖ Restriction on purchase by company or giving of loans by it for purchase of its shares [Section 67]

Own shares can be bought by a company only if share capital is reduced	➢ A company limited by shares or a company limited by guarantee and having a share capital can buy its own share only if it leads to reduction of share capital. ➢ The provisions of Companies Act 2013 relating to reduction of share capital should be followed when a company buys it own share. ➢ It means a company cannot buy its own share for investment purpose.	
	In case of Nidhi companies	The above provisions donot apply in case of Nidhi Companies, provided— -shares are purchased by the company from a member on his ceasing to be a depositor or borrower; and -it is not treated as reduction of capital under section 66 of Companies Act 2013.
Public company cannot give loans for purchase of its shares	➢ A public company cannot give – • whether directly or indirectly, or • whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, • a purchase or • subscription made or to be made, by any person of or for any shares in the company or in its holding company.	
Exceptions to the rule that loan cannot be given by company for purchase of its shares	➢ In the following cases, giving of loans for purchase etc. of shares shall be allowed – • A banking company can lend in the ordinary course of business; • A company may provide for money in accordance with any scheme approved by the company through special resolution, for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if such purchase or subscription is for shares held by trustees for	

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<tr><td></td><td colspan="3">the benefit of employees or such shares held by the employees of the company.
• A company can give loans to its employees (other than directors and key managerial personnel) for purchasing or subscribing to fully paid shares of the company or its holding company. Such shares should be held by the employees by way of beneficial ownership. Such loan cannot be more than six months salary or wages of the concerned employee.</td></tr>
<tr><td rowspan="5">Penalty for contravention</td><td colspan="3">➢ The penalty for contravention of this section shall be as under –</td></tr>
<tr><td>Company</td><td colspan="2">Fine of ₹100000 to ₹ 2500000.</td></tr>
<tr><td rowspan="3">Defaulting officer</td><td>Imprisonment</td><td>Upto three years</td></tr>
<tr><td>AND</td><td></td></tr>
<tr><td>Fine</td><td>₹ 100000 to ₹ 2500000</td></tr>
<tr><td>Section 67 is not applicable to certain private companies</td><td colspan="3">➢ The provisions of section 67 donot apply to a private company—
(a) in whose share capital no other body corporate has invested any money;
(b) if the borrowings of such a company from banks or financial institutions or any other corporate is less than twice its paid up share capital or fifty crore rupees, whichever is lower; and
(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.</td></tr>
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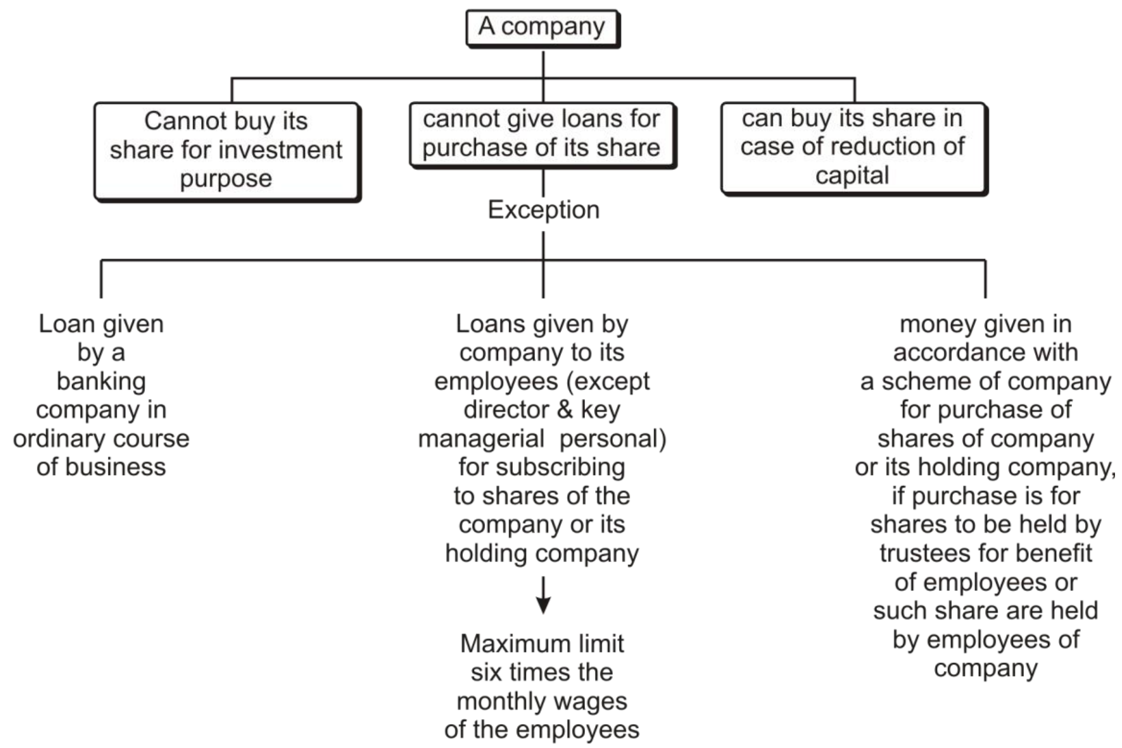
Restriction on purchase by company or giving of loans by it for purchase of its shares



Provision of Money by Company for Purchase of its own shares by employees or by trustees for the benefit of employees [Rule 16]

Provision of money for purchase of its own shares	➢ A company can make a provision of money for purchase of (or subscription for) shares in the company or its holding company, only if • such purchase/subscription is done by the employees of the company or by trustees for the benefit of employees of the company AND • following conditions are complied— - the scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing speial resolution in the general meeting; - such purchase of shares are made only through a recognized stock exchange in case the shares of the company listed and not by way of private offers or arrangements; - where shares of a company are not llisted on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a registered valuer; - the value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed five percent of the aggregate of paid up capital and free reserves of the company.
Who cannot be appointed as trustee	➢ Following persons cannot be appointed as trustee to hold such shares— • director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or • beneficial holder of ten percent or more of the paid up share capital of the company.

❖ Power of company to purchase its own securities [Section 68] & [Rule 17]

Meaning of buy back	➢ When a company purchases its own shares or other specified securities (like employees' stock option etc.), it is known as buy back of securities by the company.
Advantages of buy back	• It is an alternative route of reduction of share capital without requiring approval of Tribunal. • Earning per share is increased. • Return on capital improves and net worth also enhances. • Consolidation of stake in the company can also be done. • Surplus cash is returned to shareholders • Balance equity is served more effectively. • Take over bids can be prevented.
Funds which can be utilised for buy back	➢ A company can buy back its securities out of – • its free reserves; • the securities premium account, or • the proceeds of the issue of any shares or other specified securities. ➢ However, the buy back from the proceeds of an earlier issue of same kind of shares or same kind of other specified securities, is not allowed. **Example -** proceeds of an earlier issue of equity shares cannot be used for buy back of equity shares. The proceeds of an earlier issue of preference share can be used to buy back equity shares.

<table>
<tr><td></td><td colspan="2">➢ Free reserves are those reserves, which are available for distribution as dividend. Example – General reserve, Profit & Loss a/c (credit balance), Dividend equalization reserve, investment fluctuation reserve etc.
➢ A company can utilize balance available in one or more of above accounts for buy back of its shares.</td></tr>
<tr><td>Conditions for buy back</td><td colspan="2">➢ A company can buy back its shares or other specified securities, only if –
• it is authorised by its articles and
• a special resolution is passed at the general meeting authorising the buy back.
• the ratio between debts owed by the company (secured + unsecured) and the post buy back paid up capital (along with free reserves) is not more than 2. However, the central government is empowered to prescribe a higher ratio for a class or classes of companies.
• all the shares or other specified securities for buy back are fully paid-up.
• in respect of listed securities, SEBI regulations for buy back should be complied with.
• in case of private companies and unlisted public companies, the rules given in Companies (Share and Debentures) Rules 2014, regarding buy back, shall be complied with.
➢ Next buy back offer can be made only after completion of one year from the date of closure of preceding offer of buy back.</td></tr>
<tr><td>Exemption from special resolution at general meeting</td><td colspan="2">➢ If following conditions are fulfilled, the buy back can be done even without getting a special resolution passed at the general meeting –
• the buy back is of 10% or less of the total paid up equity capital and free reserves, and
• the Board authorises such buy back by means of a resolution passed at Board meeting.</td></tr>
<tr><td rowspan="2">Quantum of buy back allowed</td><td colspan="2">➢ Limit has been imposed on amount of securities that can be bought back. The limits are as under --</td></tr>
<tr><td>When buy back is authorized by special resolution in the general meeting</td><td>➢ Shareholders can authorize maximum 25% of paid up share capital (equity + preference) and free reserves.
➢ However, in the case of buy back of equity shares, in a financial year, maximum 25% of equity share capital is allowed to be bought back by the company.
➢ Example – The capital structure of a company is as under –
100000 equity shares of ₹ 10 each , fully paid up
50000 equity shares of ₹ 10 each, ₹ 5 paid up
30000 preference share of ₹ 10 each, fully paid up
Free Reserves ₹ 800000
Total paid up share capital & free reserves = ₹ 2350000
Shareholders can authorize maximum buy back of 25 % of total paid up share capital plus reserves = ₹ 587500
But in case of equity shares maximum yearly limit is 25 % of paid up equity share capital i.e. ₹ 25% of 1250000, which is ₹ 312500. So the company is allowed to buy back equity shares for ₹ 312500 only.</td></tr>
</table>

<table>
<tr>
<td></td>
<td>When buy back is authorized by Board’s resolution.</td>
<td>➢ Board can authorize buy back of maximum 10% of paid up share capital (equity + preference) and free reserves.
➢ However, in case of buy back of equity shares, in a financial year, maximum 25% of equity share capital is allowed to be bought back by the company.
➢ Example – in the above case –
Board can authorize buy back of 10% of paid up share capital and free reserves, i.e. ₹ 235000.
And in case of equity shares maximum yearly limit is 25% of paid up equity share capital i.e. ₹ 25% of 1250000, which is ₹ 312500. So the company is allowed to buy back equity shares for ₹ 235000 only.</td>
</tr>
<tr>
<td>Explanatory statement to the notice of meeting</td>
<td colspan="2">➢ The notice of the meeting where special resolution is proposed to be passed, shall contain an explanatory statement stating –
• a full and complete disclosure of all material facts,
• the necessity for the buy back,
• the class of shares or securities intended to be purchased under the buy back,
• the amount to be invested under the buy back,
• the time limit for completion of buy back.</td>
</tr>
<tr>
<td>Time limit for completion of buy back</td>
<td colspan="2">➢ Every buy back shall be completed within a period of one year from the date of passing of the special resolution or Board resolution, as the case may be.</td>
</tr>
<tr>
<td>Method of buy back of shares and other specified securities</td>
<td colspan="2">➢ A company can buy back its shares and other specified securities –
• from the existing shareholders or security holders on proportionate basis;
• from the open market;
• by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.</td>
</tr>
<tr>
<td>Letter of offer and declaration of solvency to be filed</td>
<td colspan="2">➢ When a special resolution or Board resolution is passed for buy back of shares or specified securities, the company shall file with –
• the Registrar (in case of all companies) and
• SEBI (in case of listed companies only)
a letter of offer in Form SH.8, along with a declaration of solvency in Form SH.9.
➢ Both the above forms should be signed by atleast two directors, including the Managing Director, if any.
➢ An affidavit stating following facts should also be attached with Form SH.9 –
• Board of Directors of the company has made a full enquiry into the affairs of the company,
• they have formed an opinion that it is capable of meeting its liabilities and
• it will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.</td>
</tr>
<tr>
<td>Miscellaneous provisions related to buy back</td>
<td colspan="2">➢ The above letter of offer should be dispatched to shareholders or security holders within 20 days from the date of its filing with Registrar.
➢ The offer for buyback should remain open for 15 to 30 days from date of dispatch of letter of offer. However, if all members of the company agree, then the offer for buy-back may remain open for a period less than 15 days.
➢ If the number of shares offered by shareholders is more that the total shares to be</td>
</tr>
</table>

	bought back by the company, the acceptance per shareholder shall be on proportionate basis. ➢ The verification of the offers received shall be completed within 15 days from date of closure of offer. ➢ If no communication of rejection is sent within 21 days from the date of closure of offer, it shall be deemed that the offer of shareholder / security holder has been accepted by company. ➢ Immediately after closure of the offer, a separate bank account shall be opened by the company and a sum which is due and payable on bought back shares, shall be deposited therein. ➢ The company shall not withdraw the offer once it has announced the offer to its shareholders. ➢ The company shall not utilize the money borrowed from banks or financial institutions for the purpose of buying back its shares.
Payment of bought back shares / return of shares certificates, if rejected	➢ After completion of 15 days (from date of closure of offer) time period of verification, the company shall take one of the following actions within next 7 days • either make payment in cash to shareholders or security holders, OR • return the share certificates or security certificates when offer has been rejected by company. Certificates can be returned in full or part, in case of full and part acceptance respectively.
Physical destruction of securities	➢ Within seven days from the last date of completion of buy back, the shares or securities so bought back should be extinguished or physically destroyed.
No further issue of same kind of shares or securities	➢ Where a company completes the buy back of shares or securities, it will not be allowed to issue further shares or securities of the same kind within a period of six months from the date of completion of buy back. ➢ It means if equity shares (of any class) have been bought back, no further issue of equity shares (of any class) shall be allowed for six months. ➢ However, further issue by following modes is allowed even within six months – • issue of bonus shares, • conversion of warrants into shares, • stock option schemes, • issue of sweat equity shares, • conversion of preference shares into equity shares, • conversion of debentures into shares. ➢ No issue of shares shall be made during the period between the date of passing of special resolution and date of closure of the offer. Even issue of bonus shares is not allowed. But conversion of convertible instruments into shares is allowed.
Register of securities bought back	➢ Where a company buys back its shares or other specified securities, it shall maintain a register in **Form No. SH.10**. This register shall contain following details – • details of last holder of share or security like name, quantity, folio etc. • the consideration paid for the shares or securities bought back, • the date of cancellation of shares or securities, • date of extinguishing or physically destroying the shares or securities.
Return	➢ After the completion of buy back, the company shall file a return, within 30 days

<table>
<tr><td>containing buy back details to be filed by the company</td><td colspan="3">of such completion, in Form SH.11 with the –
• Registrar (in case of all companies),
• SEBI (only in case of listed companies)
➢ Along with return, as above, a certificate in Form SH.15, certifying that the buy back has been made in compliance of provisions of Companies Act 2013 and rules made thereunder.</td></tr>
<tr><td rowspan="6">Punishment for non compliance of provisions related to buy back</td><td colspan="3">➢ In case the provisions related to buy are not complied, the punishment shall be as under –</td></tr>
<tr><td>Company</td><td colspan="2">Fine from ₹ 100000/- to ₹ 300000/-</td></tr>
<tr><td rowspan="4">Defaulting officer</td><td>Imprisonment</td><td>Upto three years</td></tr>
<tr><td>OR</td><td></td></tr>
<tr><td>Fine</td><td>₹ 100000/- to ₹ 300000/-</td></tr>
<tr><td>OR BOTH</td><td></td></tr>
</table>

SPACE FOR NOTES

Matters related to buy back of shares or other specified securities

Funds which can be utilised for buy back

I) Free Reserves
ii) Share premium a/c
iii) Proceeds of issue of share or other specified securities

EXCEPT

Proceeds of an earlier issue of same kind of share or same kind of specified security

Conditions for allowing buy back

I) It is authorised by articles

ii) A special resolution is passed in general meeting.

iii) $\frac{\text{Debts (secured +unsecured)}}{\text{Paid up capital with free reserves}} \leq 2$

iv) all the shares & other specified securities are fully paid

v) SEBI regulation are followed, in case of listed companies

vi) Prescribed rules are followed, in case of private & unlisted public companies.

Time limit for completion of buy back

one year from date of passing of special resolution or Board resolution

exempted if

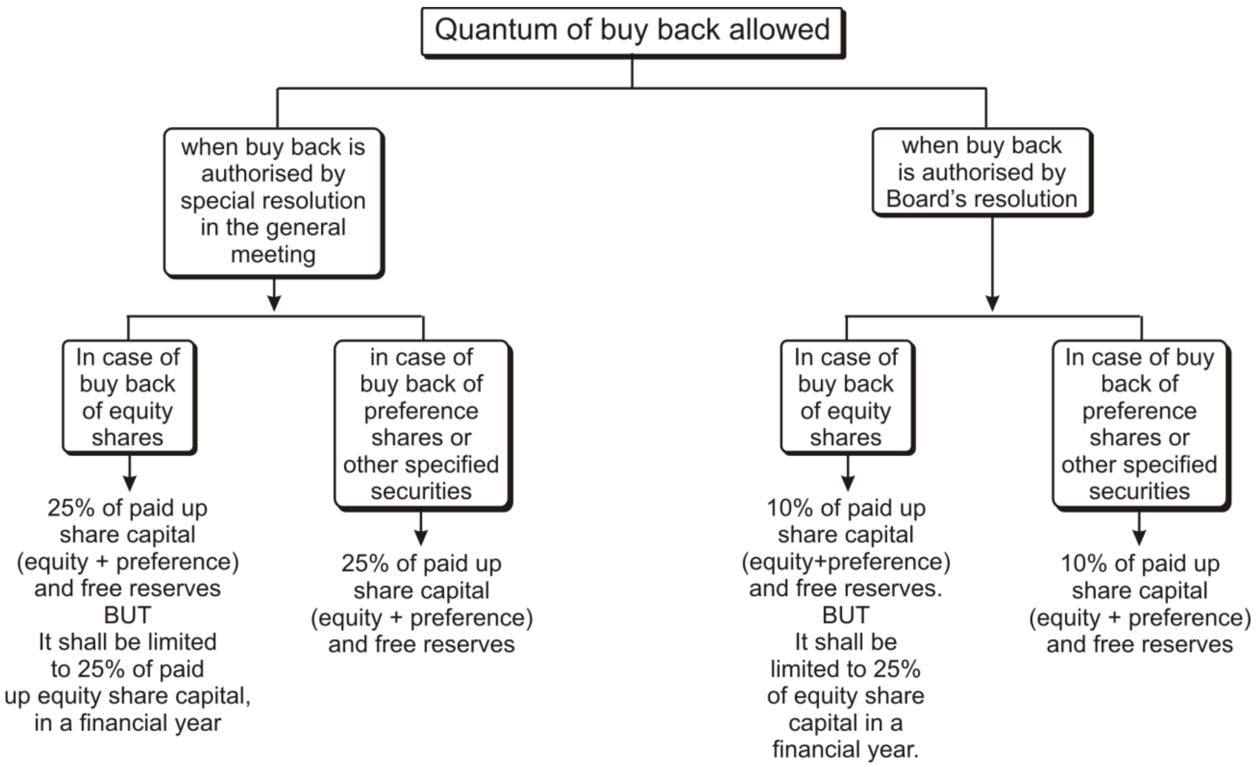
- buy back is 10% or less of paid up capital and free reserves
- Board authorises such buy back by resolution

When next buyback is allowed

After one year from the date of closure of preceding offer

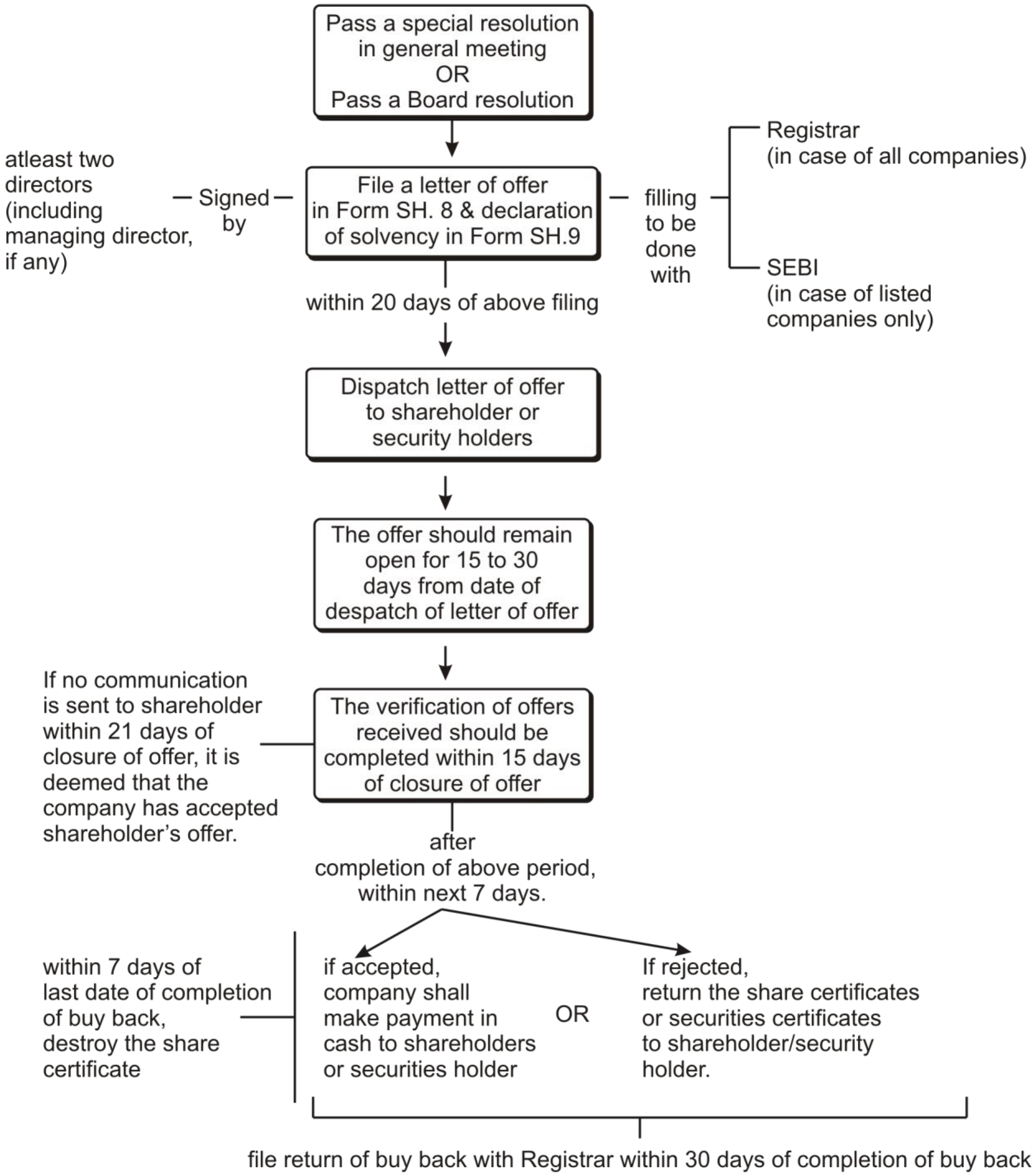
method of buy back of shares & other specified securities

- from existing shareholders or security holders
- from open market
- purchasing securities issued to employees pursuant to a scheme of stock option or sweat equity



SPACE FOR NOTES

Procedure of buy back of shares & other specified securities



❖ Transfer of certain sums to capital redemption reserve account [Section 69]

Certain amount to be transferred to capital redemption reserve account	➢ Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to nominal value shares so purchased shall be transferred to capital redemption reserve account. ➢ Where such shares are purchased out of proceeds of the issue of shares, no such transfer shall be required.
Use of capital	➢ The balance in capital redemption reserve account can be used by the

redemption reserve account	company for issuing the unissued shares of the company as fully paid bonus shares to members of the company.

❖ Prohibition for buy back in certain circumstances [Section 70]

- A company cannot purchase its own shares or other specified securities –
  - through any subsidiary company including its own subsidiary company;
  - through any investment company or group of investment company; or
  - if any default is made by the company in –
    - repayment of deposits;
    - payment of interest on deposits;
    - redemption of debentures;
    - redemption of preference shares;
    - payment of dividend to any shareholder;
    - repayment of any term loan to any financial institution or banking company;
    - payment of interest on above term loan.
- Prohibition on buy back will be lifted after three years from the date on which such default is remedied.
- A company shall be allowed to buy back its own shares or other specified securities only if complies with the provisions of section 92, section, 123, section 127 and section 129.

Section 92	Annual Returns
Section 123	Declaration of Dividend
Section 127	Punishment for failure to distribute dividend
Section 129	Financial Statements

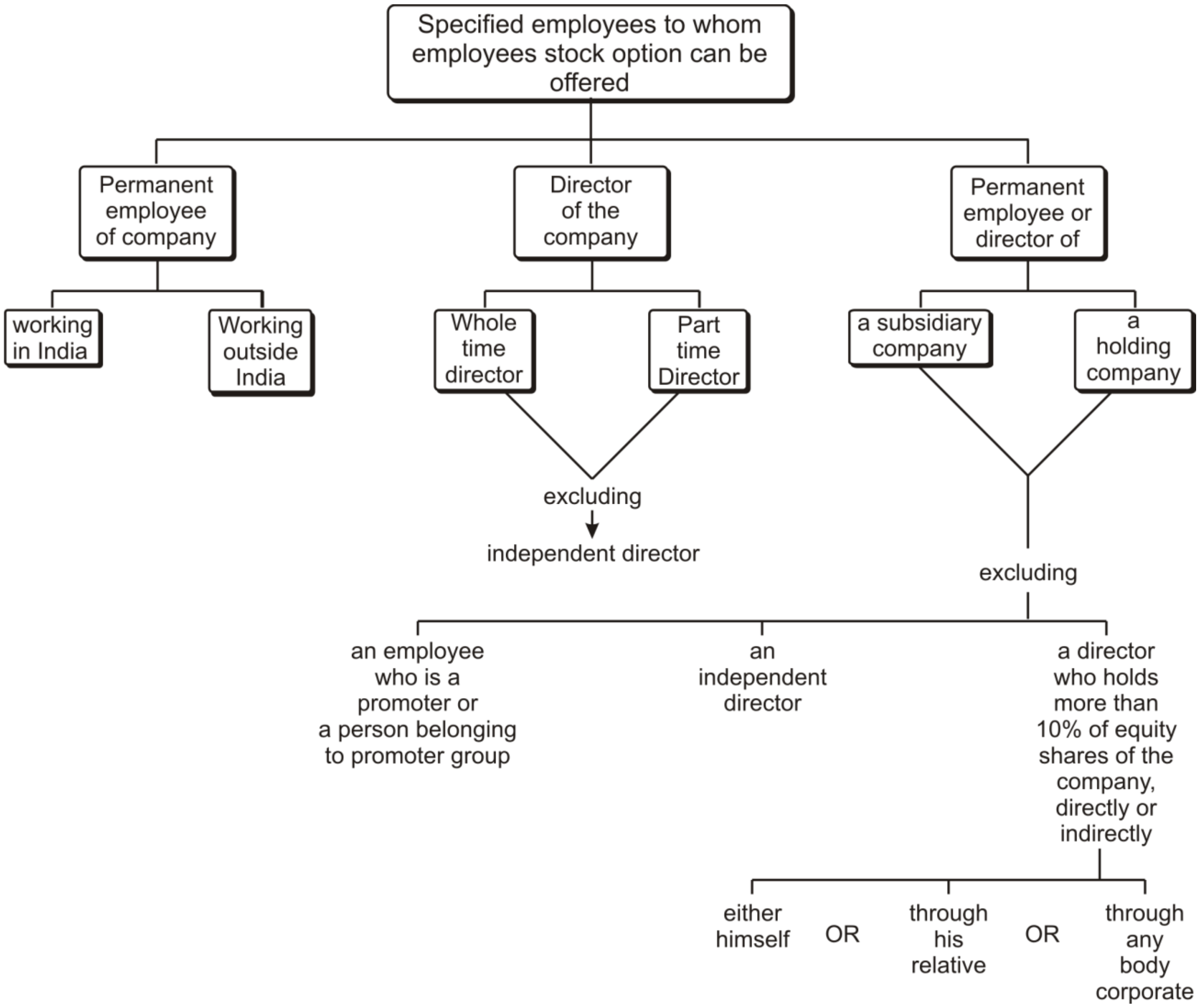
❖ Issue of employee stock options [Section 62(1)(b)] & [Rule 12]

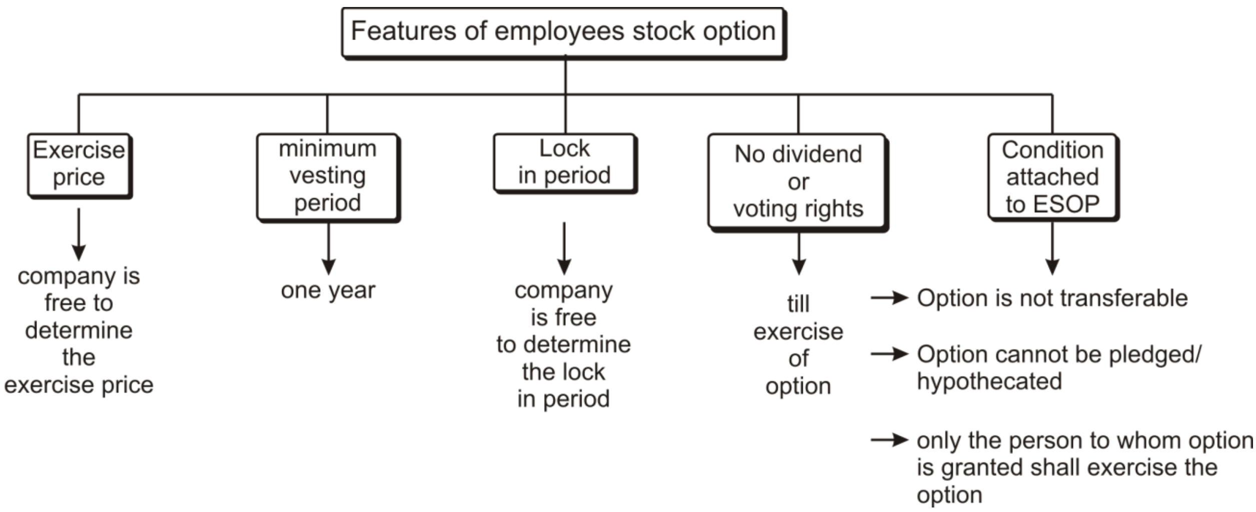
- **Section 2(37)**
  "employees' stock option" *means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre determined price"*
- Section 62(1)(b) provides that a company can issue further shares to its employees under a scheme of employees' stock option, subject to special resolution passed by the company and also subject to such conditions as may be prescribed.
- **Example** – ABC Ltd. grants employee stock option to its permanent employees to purchase the company's shares @ ₹ 100 after one year. Her, the period of one year is vesting period and ₹ 100 is exercise price.

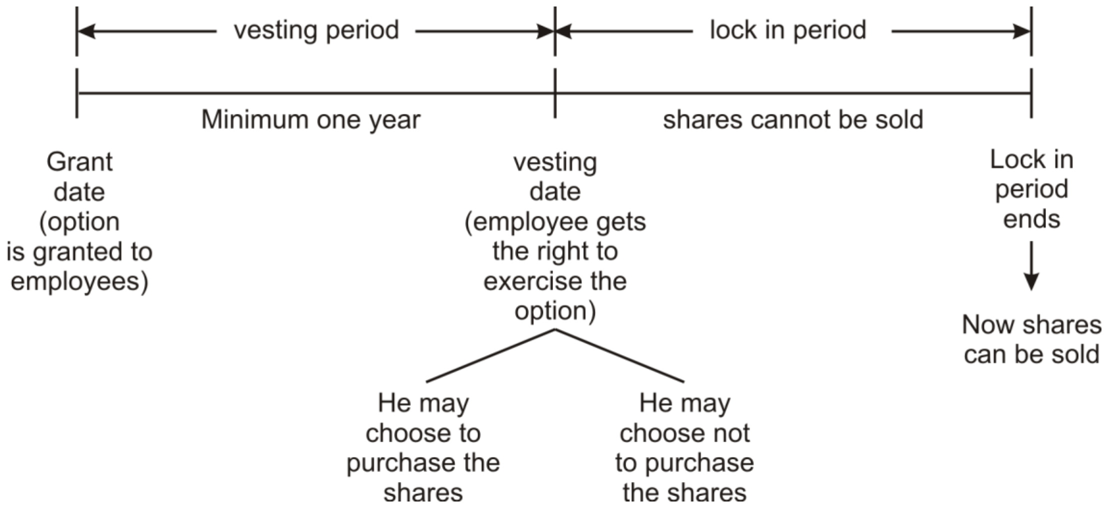
Meaning	Employees' stock option refers to a scheme wherein an option is given to specified employees to subscribe for the shares of the company – • at a future date and • at a predetermined price.
Special resolution is compulsory	➢ Employees' stock option has to be compulsorily approved by a special resolution of the company.
Who are the specified	➢ Employees' stock option can be offered to following employees – (a) a permanent employee of the company who has been working in India

employees	or outside India, or (b) a director of the company, whether a whole time director or not but excluding an independent director; or (c) an employee as defined in clause (a) or (b) • of a subsidiary, in India or outside India, or • of a holding company of the company, or but does not include – • an employee who is a promoter or a person belonging to the promoter group; or • a director who – ▪ either himself, or ▪ through his relative, or ▪ through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.
Determination of exercise price	➢ The companies which grant option to its employees, are free to determine the exercise price of its securities, in conformity with its accounting policies, if any.
Separate resolution in some cases	➢ The approval of shareholders by way of separate resolution shall be obtained by the company in case of – • grant of option to employees of subsidiary or holding company, or • grant of option to identified employees, during any one year, equal to or exceeding one percent of the issue capital (excluding outstanding warrants and conversion) of the company at the time of grant of option.
Varying the terms of ESOP	➢ The company may vary the terms of its Employees' Stock Option Scheme, which has not yet been exercised by its employees, provided – • a special resolution is passed by the company, and • such variation should not be prejudicial to the interest of the employee.
Minimum vesting period	➢ Vesting period refers to the period for which the option must be held by the employee, before exercising his option. ➢ This period aims at retaining talented employees in the company. ➢ The minimum vesting period shall be one year (between grant of option and vesting of option). ➢ Suppose an employee of a company was granted employee stock option. Before exercise of the option, the company merges or amalgamates with another company. Now, if the merged company or amalgamated company grants him stock option in lieu of the stock option that he had in the merging or amalgamating company, the vesting period shall be reduced by the amount of period that such employee held the option in merging or amalgamating company.
Lock in period	➢ Lock in period refers to such period for which the shares purchased by the employee under employee stock option, cannot be sold. ➢ Company is free to specify its lock in period.
No dividend or voting rights	➢ Till the time shares are issued in exercise of option, the employee shall not be eligible to – • receive dividends, or • vote in any meeting.

<table>
<tr><td>Forfeiture/refund of amount paid by employees</td><td colspan="3">➢ The amount, if any, payable by the employees, at the time of grant of option –
• may be forfeited by the company if the option is not exercised by the employee within the exercise period, or
• may be refunded to employees, if the option are not vested due to non fulfillment of conditions relating to vesting of option as per Employees Stock Option Scheme.</td></tr>
<tr><td>Conditions attached with Employee stock option</td><td colspan="3">➢ Following conditions are attached with employee stock option –
• such option shall not be transferable to any other person;
• such option shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner;
• only the person to whom the option is granted, shall be entitled to exercise the option.</td></tr>
<tr><td rowspan="4">Death/ permanent incapacity/ retirement of employee</td><td>Death of employee</td><td colspan="2">In the event of death of employee while in employment, all the options granted to him shall vest in the legal heirs or nominees of the deceased employee.</td></tr>
<tr><td>Permanent incapacity of employee</td><td colspan="2">If the employee suffers from 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>
<tr><td rowspan="2">Resignation / termination</td><td>Options not vested</td><td>In the event of resignation / termination of the employee, the options that are not vested in the employee, shall expire.</td></tr>
<tr><td>Options already vested</td><td>Before the date of resignation/ termination, the options that are already vested in the employee can be exercised by the employee within the period specified in this behalf.</td></tr>
<tr><td>Register on Employee stock option</td><td colspan="3">➢ The company shall maintain a register of employee stock option in Form SH.6.
➢ In such register the particulars of options granted under Section 62(1)(b) shall be entered.</td></tr>
<tr><td>Employee stock option by listed companies</td><td colspan="3">➢ Where the shares of the company are listed on a recognized stock exchange, the Employee Stock option scheme shall be issued, in accordance with the regulations made by SEBI in this behalf.</td></tr>
</table>


Specified employees to whom employees stock option can be offered
Permanent employee of company
working in India
Working outside India
Director of the company
Whole time director
Part time Director
excluding
independent director
Permanent employee or director of
a subsidiary company
a holding company
excluding
an employee who is a promoter or a person belonging to promoter group
an independent director
a director who holds more than 10% of equity shares of the company, directly or indirectly
either himself
OR
through his relative
OR
through any body corporate


Features of employees stock option
Exercise price
company is free to determine the exercise price
minimum vesting period
one year
Lock in period
company is free to determine the lock in period
No dividend or voting rights
till exercise of option
Condition attached to ESOP
Option is not transferable
Option cannot be pledged/ hypothecated
only the person to whom option is granted shall exercise the option



❖ Issue of shares on preferential basis [Rule 13]

- **Section 62(1)(c)** entitles a company to issue its shares to persons other than its current shareholders and employees of the company. For this, two conditions are to be fulfilled –
  - a special resolution is passed in the general meeting, to this effect, and
  - the price of such shares is determined by the valuation report of a registered valuer (except in case of preferential offer by a listed company), subject to such conditions as may be prescribed.
- Such shares can be issued –
  - for cash, or
  - for consideration other than cash.
- Such shares can be issued in any manner whatsoever including by way of a preferential offer.
- A preferential offer has to comply with the provisions of Section 42 (relating to private placement).

Meaning of preferential offer	➢ Preferential offer means an issue of shares or other securities by a company to – • any select person, or • any select group of persons. ➢ Preferential offer does not include shares or other securities offered through a – • Public issue, • Rights issue • Employee stock option scheme • Employee stock purchase scheme • Issue of sweat equity shares • Issue of bonus shares • Issue of depository receipts.
Meaning of 'shares or other securities'	➢ 'Shares or other securities' refers to – • equity shares, • fully convertible debentures, • partly convertible debentures, • any other security which would be convertible into or exchanged with equity shares at a later date.
Compliances	➢ For making a preferential offer, a company listed in a recognized stock exchange

by a listed company	shall comply with the provisions of – • The Companies Act 2013 and • Regulations made by SEBI in this behalf
Compliances by an unlisted company	➢ For making a preferential offer, an unlisted company shall comply with the provisions of – • The Companies Act 2013 and • Rules made under Companies (Share Capital and Debentures) Rules 2014
Conditions for preferential offer [unlisted companies]	➢ An unlisted company shall comply with following requirements for making a preferential offer – • issue should be authorized by articles of association; • issue should be authorized by a special resolution of the members; • the allotment of such securities shall be completed within 12 months from the date of passing of the special resolution; • if the allotment of securities is not completed within 12 months from the date of special resolution, then a fresh special resolution shall be passed for completing the allotment process. • the price of shares or 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. • where 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 pursuant to conversion shall be determined— - either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or - at the time, which shall not be earlier than 30 days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than 60 days of the date when the holder of convertible security becomes entitled to apply for shares. [Company has to take a decision on above two options at the time of offer of convertible security itself and make such disclosure] • where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification of valuation. • The non cash consideration shall be treated as under – ▪ if the non cash consideration takes the form of a depreciable or amortizable asset, it shall be taken to balance sheet. ▪ If not, then it shall be expensed.
Price of shares or other securities	➢ The price of shares or other securities to be issued on preferential basis cannot be less than the price determined on the basis of valuation report of a registered valuer.

Relevant Rules

Rule 7	Maintenance of share certificate forms and related books and documents
Rule 8	Issue of sweat equity shares

Rule 9	Issue and redemption of preference shares
Rule 10	Issue and redemption of preference shares by company in infrastructural projects
Rule 11	Instrument of transfer
Rule 12	Issue of employee stock option
Rul1 13	Issue of shares on preferential basis
Rule 14	Issue of bonus shares
Rule 15	Notice to Registrar for alteration of share capital
Rule 16	Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees
Rule 17	Buy back of shares or other securities

Relevant Forms

SH.3	Register of sweat equity shares
SH.4	Securities transfer form
SH.5	Notice for transfer of partly paid securities
SH.6	Register of Employee stock option
SH.7	Notice to registrar of any alteration of share capital
SH.8	Letter of offer
SH.9	Declaration of solvency
SH.10	Register of shares or other securities bought back
SH.11	Return in respect of buy back of securities
SH.15	Certificate of compliance in respect of buy back of securities

❖ Debentures [Section 71] & [Rule 18]

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.*
Meaning	➢ Debentures are instruments through which a company raises debt for funding its activities. ➢ It is an instrument acknowledging the debt of the company and issued under the seal of the company. ➢ Such debts carry a fixed rate of interest, which is to be paid irrespective of the fact whether the company earns profit or not. ➢ Debenture binds the company to repay the money at a fixed time also to pay the interest at the scheduled time. ➢ Debentures are usually secured upon the company's property.. ➢ Debentures include debenture stock and bonds.
Convertible debentures	➢ A company may issue debentures with an option to convert such debentures into shares. ➢ At the time of redemption, such conversion may be made – • either wholly, or • partly. ➢ Convertible debentures can be issued only if a special resolution is passed at the general meeting.
Voting rights	➢ Debentures donot carry any voting rights.

<table>
<tr><td>on debentures</td><td colspan="2">➢ Hence, no company can issue debentures with voting rights.</td></tr>
<tr><td rowspan="2">Conditions upon which secured debentures can be issued</td><td colspan="2">➢ Secured debentures can be issued by the company only if following conditions are satisfied :--
• Maximum redemption period can be 10 years.
• Debentures should be secured by creation of charge on the properties or assets of the company (or its subsidiaries or its holding company or its associate companies). Such properties should be of a value which is sufficient for repayment of the amount of debentures and also the interest.
• Debenture trustee should be appointed before the issue prospectus or letter of offer for subscription of its debentures.
• Within three months of closure of issue of the issue or offer, a debenture trust deed (in Form SH.12) should be executed (in favour of debenture trustee) for protecting the interest of debenture holders.
• Charge / mortgage shall be created in favour of debenture trustee on-
▪ any specific movable property of the company (or its holding company or subsidiaries or associate companies or otherwise) [in case of NBFC, charge/mortgage may be created on any movable property], or
▪ any specific immovable property wherever situated or any interest therein.</td></tr>
<tr><td>Exception from creation of charge</td><td>• in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge does not apply.
• In case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage may also be created on the properties or assets of the holding company.</td></tr>
<tr><td>Which companies can issue debentures with redemption period of more than 10 years</td><td colspan="2">➢ The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years—
(i) Companies engaged in setting up of infrastructure projects;
(ii) Infrastructure Finance Companies;
(iii) Infrastructure Debt Fund Non-Banking Financial Companies;
(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by National Housing Bank or by any other statutory authorityto issue debentures for a period exceeding 10 years.</td></tr>
<tr><td>Inspection of trust deed and obtaining copies thereof</td><td colspan="2">➢ The trust deed shall be open for inspection to any member or debenture holder for inspection. The manner, extent, fees shall be similar to register of members of the company.
➢ A copy of 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>Creation of debenture redemption</td><td colspan="2">➢ For redemption of debentures, a debenture redemption reserve account shall be created out of profits of the company available for distribution as dividends.
➢ The balance in debenture redemption reserve account shall not be utilized for</td></tr>
</table>

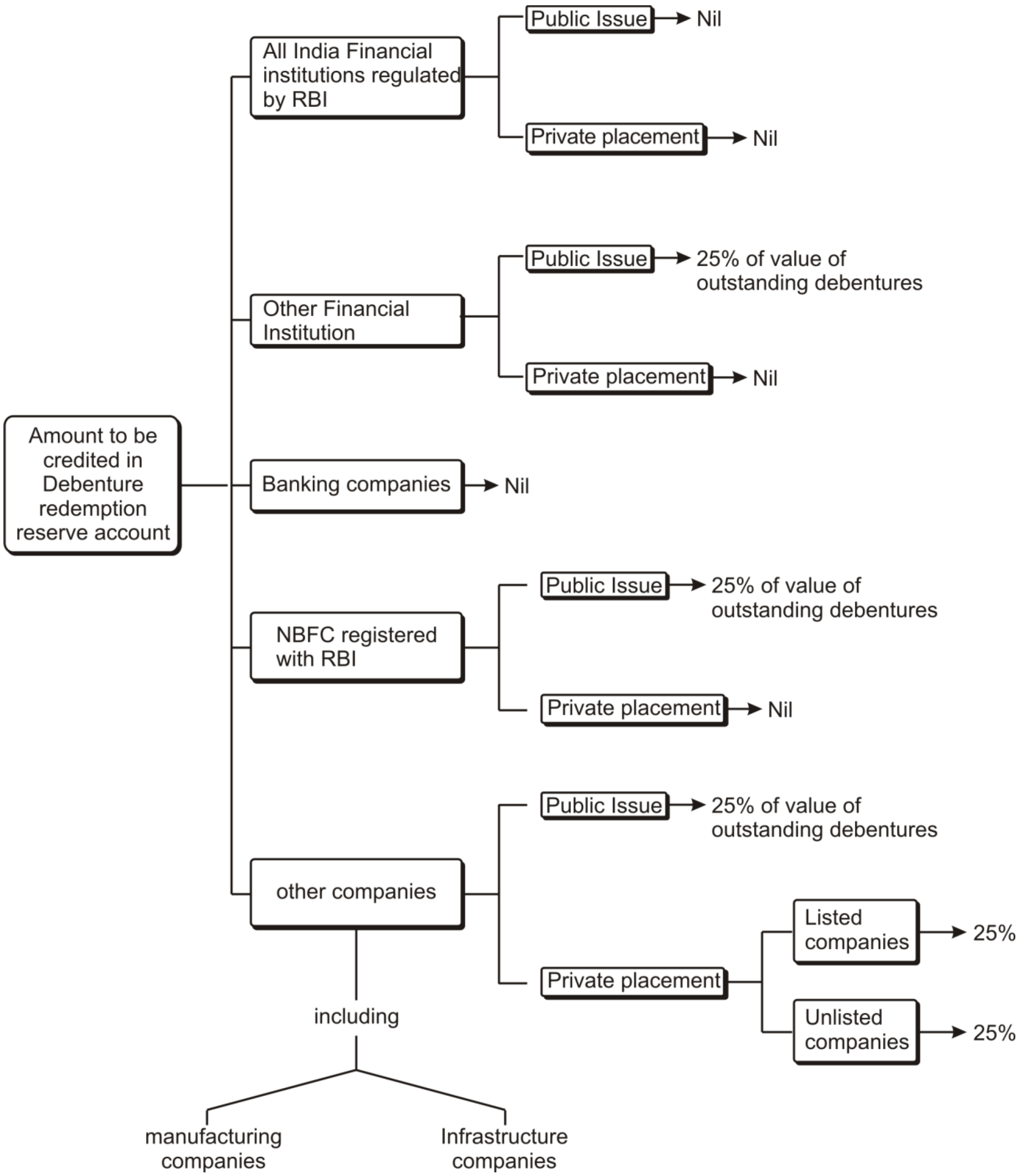
<table>
<tr><td>reserve account</td><td colspan="3">any purpose other than redemption of debentures.</td></tr>
<tr><td rowspan="11">Amount to be credited in debenture redemption reserve account</td><td colspan="3">➢ In case of partly convertible debentures, DRR shall be created in respect of non convertible portion of the debenture.
➢ The amount to be credited to debenture redemption reserve account shall be as under --</td></tr>
<tr><td>All India Financial Institutions regulated by RBI</td><td colspan="2">➢ No DRR is required to be maintained (both in case of public and privately placed debentures).</td></tr>
<tr><td rowspan="2">Other Financial Institution</td><td>Debentures issued through public issue</td><td>DRR shall be 25% of value of debentures</td></tr>
<tr><td>Debentures issued through private placement</td><td>No DRR</td></tr>
<tr><td>Banking Companies</td><td colspan="2">➢ No DRR is required to be maintained (both in case of public and privately placed debentures).</td></tr>
<tr><td rowspan="2">NBFCs registered with RBI and housing finance companies registered with National housing bank</td><td>Debentures issued through public issue</td><td>DRR shall be 25% of value of outstanding debentures</td></tr>
<tr><td>Debentures issued through private placement</td><td>No DRR</td></tr>
<tr><td rowspan="3">Other Companies (including manufacturing and infrastructure companies)</td><td>Debentures issued through public issue</td><td>DRR shall be 25% of value of outstanding debentures</td></tr>
<tr><td>Debentures issued through private placement by listed companies</td><td>DRR shall be 25% of value of outstanding debentures</td></tr>
<tr><td>Debentures issued through private placement by unlisted companies</td><td>DRR shall be 25% of value of outstanding debentures</td></tr>
<tr><td colspan="3">➢ If a company decides to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified above.</td></tr>
<tr><td>Investment of specified amount in specified securities</td><td colspan="3">➢ Every company, which is required to create DRR shall on or before 30th 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 31st March next year. Such investment / deposit shall be made in –
• deposits with a scheduled bank, free of any charge or lien;
• unencumbered securities of Central Government or state Government;
• in unencumbered securities mentioned in Section 20(a) to 20(d) and 20(ee) of Indian Trusts Act 1882;
• in unencumbered bonds issued by any other company which is notified under section 20(f) of Indian Trusts Act 1882;
➢ 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>
</table>

	➢ The amount remaining invested or deposited, shall not at any time fall below 15% of the amount of debentures maturing during the year ending on 31st March of that year.
Appointment of debenture trustee	➢ A company must appoint one or more debenture trustees, before issuing a prospectus or making an offer or invitation to subscribe to debentures to -- • public, or • members of the company (if in excess of 500)
Conditions for appointment of debenture trustee	➢ Letter of offer to subscribe to debentures and all other notices sent to debenture holders shall contain the name of debenture trustees. ➢ Written consent of the debenture trustees shall be obtained before their appointment. ➢ Following persons shall not be appointed as debenture trustee— • beneficiary holder of shares of the company; • promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company; • a person who is beneficially entitled to moneys which are to be paid by the company; • a person who is indebted to the company or its subsidiary or its holding or associate company or a subsidiary of such holding company; • a person who has furnished any guarantee in respect of principal debts secured by the debentures or interest thereon; • a person who has a pecuniary relationship with the company amounting to -- ▪ 2% or more of its gross turnover or total income, or ▪ ₹ 50,00,000/- or such higher amount as may be prescribed, whichever is lower, during ▪ two immediately preceding financial years, or ▪ during current financial year. • a person who is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.
Debenture trustees should protect interest of debenture holders	➢ It is the duty of debenture trustees to protect the interest of debenture holders and redress their grievances. ➢ Duty of every debenture trustee shall be as under – • He should satisfy himself that that the letter of offer does not contain any matter which is inconsistent with the terms of issue of debentures or with the trust deed. • He should satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders. • He should call for periodical status or performance report from the company. • He should promptly communicate to the debenture holders any defaults with regard to payment of interest or redemption of debentures and also the action taken by the trustee therefor. • He should appoint a nominee director on the Board of the company in the event of – ▪ two consecutive defaults in payment of interest to debenture holders; or ▪ default in creation of security for debenture; or ▪ default in redemption of debentures.

	• He should ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach. • He should inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed. • He should ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve. • He should ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders. • He should do such acts as are necessary in the event the security becomes enforceable. • He should call for reports on the utilization of funds raised by the issue of debentures. • He should take steps to convene the meeting of the holders of debentures as and when such meeting is required to be held. • He should ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures. • He should perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.
Liability of debenture trustee	➢ Any provision contained • in a trust deed for securing the issue of debentures, or • in any contract with the debenture holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.
Exemption from above liability	➢ Debenture holders holding atleast three fourth in value of total debentures, can provide any exemption from above liability, in a meeting of held for this purpose.
Company to pay interest & redemption amount	➢ The company should pay interest on debentures and also redeem the debentures, as per terms and conditions of issue of such debentures.
Insufficiency of assets for redemption of debentures	➢ If at any time debenture trustees come to a conclusion that the assets of the company- • are insufficient, or • are likely to become insufficient, to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition with the Tribunal. ➢ The Tribunal shall hear the company and any other person interested in the matter and thereafter it may, by an order impose restrictions on the incurring of any liability on the company, in the interest of debenture holders.
Consequences	➢ When a company fails to

<table>
<tr><td>of failure of company in redeeming the debentures or paying the interest</td><td>
• redeem its debentures on maturity date, or
• pay interest on due date,
an application can be made to the Tribunal by following persons –
• any or all of debenture holders, or
• debenture trustee.
After hearing the concerned parties, the Tribunal may by order, direct the company to redeem the debentures forthwith on payment of principal and interest due thereon.</td></tr>
<tr><td>Punishment for default in compliance of order of Tribunal</td><td>
➢ When there is a default in compliance of any of the above two orders of the Tribunal, the punishment shall be as under –
<table>
<tr><td rowspan="4">Defaulting officer</td><td>Imprisonment</td><td>Upto three years</td></tr>
<tr><td>OR</td><td></td></tr>
<tr><td>Fine</td><td>₹ 200000/- to ₹ 500000/-</td></tr>
<tr><td>OR BOTH</td><td></td></tr>
</table></td></tr>
<tr><td>Specific performance of contract</td><td>➢ A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.</td></tr>
<tr><td>Meeting of debenture holders</td><td>➢ Debenture trustee shall convene meeting of all debenture holders on –
• when a requisition in writing of debenture holders holding minimum one tenth of the outstanding debentures;
• happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affect the interest of debenture holders.</td></tr>
<tr><td>Rule 18 does not apply in certain cases</td><td>➢ Provisions of Rule 18 does not apply to—
• any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by RBI;
• rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated Sept 29 2015 of the RBI;
• any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme 1993 or regulations or directions issued by the RBI [However, if the Scheme or regulations or directions so provide, then provisions of Rule 18 will apply].</td></tr>
</table>

- Debentures
  - Convertibility
    - convertible into shares
      - Fully convertible
      - Partly convertible
    - Not convertible into shares
  - Voting rights → No voting rights
  - Maximum redemption period
    - 30 years
      - companies engaged in setting up infrastructure projects
      - infrastructure finance companies
      - infrastructure Debt Fund, non banking financial companies
      - companies permitted by Central Govt./RBI/ NHB/ statutory authority
    - 10 years - all other companies
  - Security of secured debentures → Charge to be created on properties of the company. It should be sufficient to repay the debentures with interest
    - specific movable property
    - specific immovable property
    - change in favour of debenture trustee
  - Debenture Trust deed
    - To be executed within three months of closure of the issue or offer
    - To be executed in Form SH.12
  - Debenture redemption reserve → DDR to be created out of profits available for distribution as dividend
  - Investment of specified amount in specified securities
    - on the before 30th April each year
    - Invest 15% of debentures maturity during the year ending on 31st March next year.
  - Debenture trustee
    - Debenture trustee must be appointed before offering the debentures to public for subscription
    - Appointment of Debenture trustee is subject to certain conditions.
    - Debenture trustee should protect interest of debenture holders.



Fixed and Floating charges

➢ Debentures may be secured by a fixed charge or floating charge or a combination of both	
Fixed Charges	➢ A fixed charge is a charge on any specific property of the company, like land, building etc. ➢ The company remains in possession of such property and is also entitled to use it. ➢ However, any dealing in such property shall be subject to rights created by the charge.
Floating	➢ A floating charge is not a charge on any specific property of the company.

charges	Rather, it is an equitable charge. ➢ The company can deal with all the assets in the ordinary course of business, even though there is a floating charge on the assets. ➢ Floating charge is a charge on company's assets, present and future, that class being one which, in the ordinary course of business is changing from time to time. ➢ The floating charge remains dormant until – • the company ceases to be a going concern, or • the person in whose favour charge is created, intervenes. ➢ The right of the person in whose favour charge is created, can be suspended by agreement. If there is no such agreement, that person gets the right after a default is committed by the company. ➢ Floating charge crystallizes i.e. becomes fixed, in the event of – • company failing to pay interest or redemption amount on debentures; • a receiver having been appointed for debenture holders; • company being wound up.

Difference between shares and debentures

SN	Basis of difference	Shares	Debentures
1	**Capital /loan**	Shares constitute capital of the company	Debentures constitute loan
2	**Owners/ creditors**	Shareholders are owners of the company	Debenture holders are creditors of the company
3	**Dividend / interest**	Dividends are paid only when the company earns profits	Interest is paid even if no profits have been earned by the company.
4	**Voting rights**	Shareholders are entitled on resolutions placed before the company	Debenture holders are not entitled to vote.
5	**Charge on assets**	Shares do not carry any charge on the assets of the company	Debentures, generally, carry a charge on the assets of the company.
6	**Priority**	Dividend is paid after interest	Payment of interest gets priority over payment of dividend.
7	**Rate of dividend/ interest**	Rate of dividend varies from year to year	Interest is paid at a fixed rate.

❖ Power to nominate [Section 72] & [Rule 19]

Nomination by security holders	➢ A security holder is entitled to nominate a person to whom his security shall vest in the event of his death. ➢ Such nomination can be made at any time, but should be made in the prescribed manner. ➢ In case of joint holders of security, nomination can be made by both of them in favour of a person who shall be entitled to the securities, in the event of death of all the joint holders.

Manner of nomination	➢ Nomination shall be made in **Form SH.13**. (both in case of single owner or joint owner of securities) ➢ The company shall make an entry of such nomination in the relevant register of security holders. ➢ Request for nomination should be recorded within a period of two months from the date of receipt of nomination form.
Rights of nominee in the event of death of security holder	➢ In the event of death of security holder or death of all joint holders, the nominee becomes entitled to all the rights in the securities. The nominee gets the option to– • either register himself as the holder of securities, or • to transfer the securities, as the deceased holder could have done. ➢ If the nominee chooses to be registered as holder of securities himself, he shall send to the company a notice to the company stating he so elects and such notice shall be accompanied by death certificate of the deceased share or debenture holder(s). ➢ If such nominee chooses to be registered as a security holder, he gets all the rights that his previous holder enjoyed. Example – dividend, interest, bonus etc.
Cancellation of nomination	➢ A holder of security can – • cancel the nomination, or • vary the nomination by nominating someone else. ➢ Such cancellation / variation should be done in **Form SH.14**. ➢ The cancellation / variation takes effect from the date on which notice of such variation / cancellation is received by the company.
Minor nominee	➢ Where the nominee is a minor, the holder of security shall appoint a person (in Form SH.13), who shall be entitled to securities, in the event of death of the nominee during his minority.

Relevant rules

Rule18	Debentures
Rule19	Nomination by security holders

Relevant Forms

SH.12	Debenture trust deed
SH.13	Nomination Form
SH.14	Cancellation or variation of nomination

CORPORATE AND OTHER LAWS

[For CA (Intermediate) – New Syllabus]

By

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Laws Covered :--

1. The Companies Act 2013 [Section 1 to 148]
2. The Indian Contract Act 1872 [Section 123 onwards]
3. The Negotiable Instruments Act 1881
4. The General Clauses Act 1897
5. Interpretation of Statutes.

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