



# SHARE CAPITAL AND DEBENTURES



## LEARNING OUTCOMES

At the end of this chapter, you will be able to :

- Know the Kinds of share capital
- Explain the basic requirements for issue of share certificates, Voting rights & Variation of shareholders' rights
- Explain calls on unpaid shares
- Know about application of securities premium
- Identify prohibition on issue at discount, Sweat Equity shares & Issue and redemption of Preference Shares
- Know about the Transfer and transmission of securities, refusal and appeal thereof
- Identify Authorised, subscribed and paid up capital
- Explain the concept related to the alteration of share capital and notice to Registrar thereof
- Know about the concept related to Further issue of share capital, Issue of bonus shares, Reduction of share capital, buy back of shares and restrictions thereon
- Know about Issue of debentures, Capital Redemption Reserve, Debenture Redemption Reserve & Nomination provisions
- Identify the Punishments and penalties for various offences including impersonation.

CHAPTER OVERVIEW 

## Share capital and debentures (Section 43-72)

Concepts related to shares (Section 43-70)

Concepts related to debentures (Section 71)

Power to nominate (Section 72)



## 1. INTRODUCTION

Shares and debentures are financial instruments for raising funds for the company. Under the Companies Act, 2013, these are jointly referred to as "Securities".

Generally, shares depict ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lender's interest in the company with limited risks and returns.

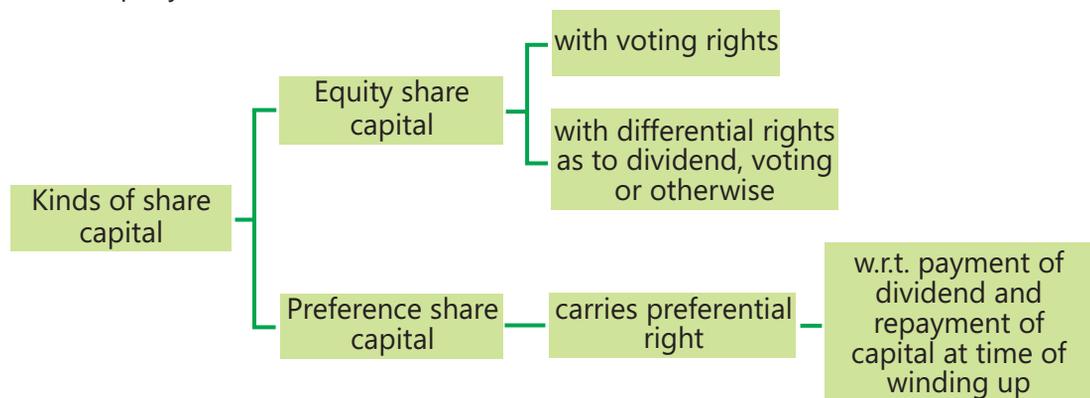
Both these financial instruments are presented on the liabilities side of the issuer company and on the assets side of the investor or lender respectively.

Legal provisions related to these instruments are covered in Chapter IV of the Companies Act, 2013 (comprising sections 43 to 72) and the *Companies (Share Capital & Debentures) Rules, 2014* as amended from time to time along with endorsement in the company formation documents or approved by suitable company forum, wherever necessary.



## 2. SHARE CAPITAL-TYPES [SECTION 43]

Section 2(84) of the Companies Act, 2013 defines share as a share in the share capital of a company and includes stock.



According to <sup>1</sup>section 43, broadly, there are two kinds of share capital of a company limited by shares :

- Equity share capital
- Preference share capital.

The Act defines **preference share capital** as instruments which have preferential right to dividend payment (absolute/fixed or ad-valorem / %) and preferential repayment during winding up of the company. These shareholders could also participate in equity pool post the preferential entitlements.

Shares which are not preference shares are termed as **equity shares**.

Equity shares are further classified as plain vanilla (same voting rights) or Differential equity shares (with differences w.r.t. dividend or voting rights or otherwise)

In Indian listed companies, there are two companies which have issued differential voting rights shares (DVRs) :

- Tata Motors
- Future Retail

Empirically, aforesaid DVRs (no voting rights) are traded at lower valuations vis-à-vis their counterparts with voting rights, other things being equal.

Rule 4 of the *Companies (Share capital and Debenture) Rules, 2014* states about equity shares with differential rights.

**Conditions for the issue of equity shares with differential rights :** No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely :

- (a) the articles of association of the company authorizes the issue of shares with differential rights;
- (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders :

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot ;

<sup>1</sup> In case of private company—Section 43 shall not apply where memorandum or articles of association of the private company so provides—*Notification dated 5<sup>th</sup> June, 2015*.

In case of Specified IFSC Public Company—Section 43 Shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it. - *Notification Date 4<sup>th</sup> January, 2017*

- (c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the company having consistent track record of distributable profits for the last three years;
- (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- (f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- (g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;  
"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."
- (h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

**Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights :** Further Rule 4(3) specifies that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

**Rights to the holders of the equity shares with differential rights :** Rule 4 (5) states that the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

**Particulars of shares to be maintained in the register of members :** Rule 4 (6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.



### 3. BASIC REQUIREMENTS [SECTION 45 AND SECTION 46]

Physical entitlement to a particular portion of share capital is *prima facie* evidenced by way of a share certificate which has to be

- Distinctively numbered; &
- To be issued under common seal of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

In case required, duplicate could be issued post necessary compliances and investigations.

The aforesaid requirements are not there in case of dematerialised shares or shares held in electronic form with any depository. In that case records of the depository will be treated as *prima facie* evidence of the right involved.

**Demat**—Now-a-days most of the listed shares are held in electronic format. Even banks and financial institutions now insist for demat of securities for charge creation to facility corroboration with central registry for loans and mortgages. Physical securities are mostly limited to private limited companies and closely held companies.

At present there are two depositories in India: NSDL and CDSL with various depository participants (DPs) linked to them. Dematerialised securities are held by investors in their respective accounts with the DP. The DP keeps a track of transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all these procedures.

An intelligent reader would observe that the share certificate issues by a company could be in a way compared to currency notes issued by the Central Bank. Therefore, strict penal provisions are there against fraudulent activities. In such cases, the wrong-doer company is punishable with monetary penalty of five to ten times of the face value of shares involved or rupees Ten Crores whichever is higher.

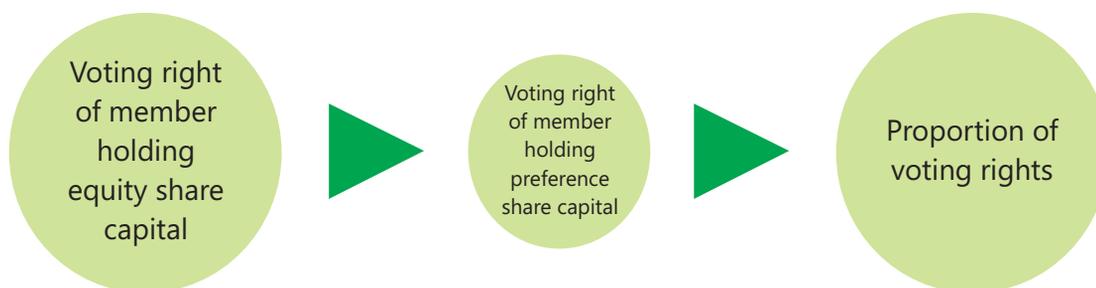
Besides, every officer in default is liable to imprisonment ranging from six months to ten years alongwith monetary penalty of three times the fraud (Section 447)

**Example :** 'A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. In this case company is right to refuse to do the transfer of the shares in the name of the transferee B without any liability as a forged transfer is a nullity in law and does not give the transferee concerned any title to the shares. Whereas A incurs a criminal liability under the Indian Penal Code punishable both by imprisonment and also being liable to compensate both the Company and B for losses suffered by them.



## 4. RIGHTS AND VARIATION OF RIGHTS [SECTION 47 AND SECTION 48]

### <sup>2</sup>Voting Rights [Section 47]



Section 47 governs the voting rights of members. Accordingly section provides :

**(i) Voting right of member holding equity share capital :** Every member of a company limited by shares who is holding equity share capital, shall have a right to vote on every resolution placed before the company; and<sup>3</sup> his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

**(ii) Voting right of member holding preference share capital :** Every member of a company limited by shares who is holding any preference share capital shall, in respect of such capital, have—

- a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares, and
- any resolution for the winding up of the company, or
- for the repayment or reduction of its equity or preference share capital and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

**(iii) Proportion of voting rights :** The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

2 In case of private company-Section 47 shall not apply where memorandum or articles of association of the private company so provides.-*Notification dated 5<sup>th</sup> june, 2015.*

In case of Specified IFSC Public Company-Shall not apply to a Specified IFSC public company, where memorandum of association or articles of association of such company provides for it.-*Notification Date 4<sup>th</sup> January, 2017.*

3 In case of Nidhi company -clause (b) of Sub-section (1) of Section 47 shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders. - *Notification dated 5<sup>th</sup> june, 2015.*

Where the dividend in respect of a class of preference shares has not been paid for a period of two years or more, then such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

On analysis of above provision, in case of equity shares other than equity shares with differential voting rights, each shareholder is entitled to vote on any resolution placed before the company i.e., in the annual general meeting (AGM) or Extra-ordinary general meeting (EGM) of the members of the company. The voting right shall be proportionate to the paid up capital of the class of shares involved.

In a meeting of preference shareholders, preference voting rights are proportionate to one's preference share investment to total nominal preference share capital in the company.

For other shareholder's meeting, preference shareholder could vote only on the below resolutions placed before the members where the resolution in question :

- directly affects the rights as preference shareholder
- involves the winding up of the company
- involves repayment or reduction of equity or preference share capital.

In aforesaid cases voting rights to be computed on the basis of joint proportion of equity and preference share capital.

In a nutshell, voting rights for securities are not based on the principles of adult / universal franchise i.e. one person one vote but these are based on the class of shares and on the monetary value of investments at face value.

Private company could be more innovative in terms of voting rights if permitted by their Memorandum of Association or Article of Association.

### Variations of shareholders' rights [Section 48]

Where share capital of a company is divided into different classes of shares, it may sometimes be necessary for it to amend the rights attached to one or more classes of shares. The Companies Act states the following laws on the variations of shareholders' right :

**(1) Variation in rights of shareholders with consent :** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

**Provided** that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

- (2) **No consent for variation** : Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal :

**Provided** that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

- (3) **Binding decision of tribunal** : The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
- (4) **Filing copy of order with the Registrar** : The Company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.
- (5) **Default in compliance with the provision** : Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both."



## 5. CALLS AND INCIDENTAL MATTERS [SECTION 49 TO SECTION 51]

Calls are made by the company on security holders to pay the amount called up in respect of partly paid up securities.

As per **Section 49**, these calls have to uniformly made and there should be no differentiation for a given class of security holders. The provision is not applicable in case where different amounts are paid for a same class for security.

As per **Section 50**, if authorised by the articles, a company can keep advance subscription or call money received in advance. However, there would be no voting right on that advance amount till the amount is duly called for and adjusted.

The company could pay proportionate dividends in proportion to amount paid on each share, if authorised by the articles (**Section 51**).

In other words, advance payment will never lead to increased voting rights but delayed payment of call money could be the reason of decreased voting rights.

**Example :** "Moonstar Ltd" is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by "Moonstar Ltd.". In the given case Mr. A, has deposited in advance the remaining amount due on his shares without any calls made by 'Moonstar Ltd'. So, 'Moonstar Ltd' was authorized to accept the unpaid calls by its articles. Hence, this is a valid transaction.



## 6. ISSUE OF SHARES AT PREMIUM OR DISCOUNT [SECTION 52 TO SECTION 55]

When a security of a given face value is issued at price higher than its face value, the issue is called as issue at premium and the differential amount as premium.

Where the issue price is lower to the face value, the issue is regarded at discount and the differential known as discount.

There could be several reason for issue at premium or discount. Predominant among these are :

- To capture the play of market forces between the issuer and investor at the time of issue;
- To give effect to the fair value of underlying business or rights linked to the securities;
- To minimise payment of stamp duty / ROC fee during incorporation of the company which is based on the authorised capital of the company

There are precautionary provisions covered in **section 52 and 53** for both these scenarios (premium or discount) respectively to safeguard the issuer company and its stakeholders.

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

Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a securities premium account and the provisions of this Act relating to reduction of share capital (which are very stringent) of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

**Application of securities premium account :** The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

**Who may apply the securities premium account :** The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

### **Prohibition on issue of shares at discount [Section 53]**

A company cannot issue shares in disregard of Section 53 of the Companies Act, 2013. According to section 53, a company shall not issue shares at a discount, except in the case of an issue of sweat equity shares given under section 54 of the Companies Act, 2013.

Any share issued by a company at a discounted price shall be void. Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

It is clear for the reading of section 52 and 53 that these restrictions are only on issue of shares, it could be equity or preference but not on any debt related products like bonds or debentures whose pricing is more governed by YTM (yield to maturity) considerations.

### **Issue of Sweat equity shares [Section 54]**

Sweat equity is issued to keep the employees of a company motivated by making them partner in growth of the company.

As per **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 know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

As per **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 54 of the Companies Act, 2013 provides the conditions where a company may issue sweat equity shares of a class of shares already issued.

**Conditions :** A company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (a) the issue is **authorised by a special resolution** passed by the company;
- (b) the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (c) **not less than one year has**, at the date of such issue, **elapsed** since the date on which the company had commenced business; and <sup>4</sup>
- (d) where the equity shares of the company are **listed on a recognised stock** exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders

As per the Rule 8 of the *Companies (Share and Debentures) Rules, 2014*,

**A company other than a listed company**, which is not required to comply with the Securities and Exchange Board of India Regulations on sweat equity, shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called, unless the issue is authorised by a special resolution passed by the company in general meeting.

<sup>4</sup> In case of Specified IFSC Public Company-Clause (c) of Sub-section (1) of section 54 shall not apply.-*Notification Date 4<sup>th</sup> January, 2017*

In case of Specified IFSC Private Company - Clause (c) of sub section (1) of section 54 shall not apply.-*Notification Date 4<sup>th</sup> January, 2017*.

“Employee” means-(a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or

(b) a director of the company, whether a whole time director or not; or

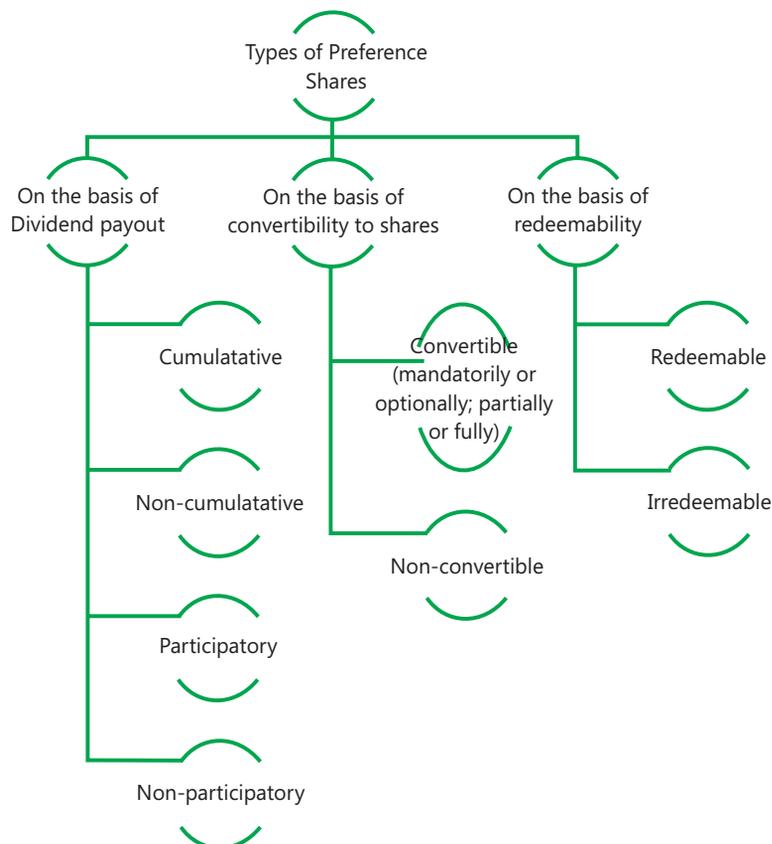
(c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

Whereas the expression ‘Value additions’ means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

### Example :

250 Equity shares offered by the company at a discount of 50% on current market price, subject to the condition that the vesting will happen on completion of minimum one year in service or achieving a particular milestone and the right being exercisable by the employee/s during a fixed duration post vesting.

### Preference shares - Issue and redemption [Section 55]



According to **Section 55** :

- **Company to issue redeemable preference shares** : No company limited by shares shall issue any preference shares which are irredeemable;
- **Period for redeem of preference shares** : A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as prescribed under Rule 9 of the *Companies (Share Capital and Debentures) Rules, 2014*.  
**Exceptions** : A company may issue preference shares for a period exceeding twenty years (but not exceeding thirty years) for infrastructure projects (specified in schedule VI), subject to the redemption of 10 % of shares beginning 21<sup>st</sup> year at the option of such preferential shareholders;
- **Shares to be redeemed out of the profits only** : No such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of such redemption;
- **Redeemed shares to be fully paid** : no such shares shall be redeemed unless they are fully paid;
- **Proposed shares to be redeemed shall be transferred to the CRR account** : Where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve( CRR) Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company; and
- **Class of companies whose financial statement complies with Accounting standards** : In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed: Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

In a case not meeting above criteria, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

- **In case of unredeemed preference shares :** Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—
  - with the consent of the holders of three-fourths in value of such preference shares, and
  - with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed :

Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares. For the removal of doubts, it is hereby declared that the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.
- **Paying of un-issued shares to members :** The capital redemption reserve account may, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.



## 7. TRANSFER AND TRANSMISSION OF SECURITIES AND THE ALLIED PROVISIONS [SECTION 56 TO SECTION 59]

Section 44 states that the shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

Section 56 of the Companies Act, 2013 deals with the transfer and transmission of securities or interest of a member in the company.

**<sup>5</sup>Requirement for registering the transfer of securities :** According to the law, a company shall not register a transfer of securities of the company, or the

<sup>5</sup> In case of Government company , in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond :

Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.

interest of a member in the company in the case of a company having no share capital, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee (except where the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository), specifying the name, address and occupation, if any, of the transferee, has been delivered to the company by the transferor or the transferee within a period of 60 days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

**Instrument of transfer lost/ not delivered :** Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

**Power of company to register :** Power of company to register shall not be effected by above provision (given under sub- section 1) on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

**Transmission of securities on an application of transferor alone :** Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

**<sup>6</sup>Company delivering the certificate :** Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

Different conditions	Period of the delivering the certificates
In the case of subscribers to the memorandum;	Within 2 months from the date of incorporation
In the case of any allotment of any of its shares	Within a period of two months from the date of allotment

<sup>6</sup> In Case of a Specified IFSC public company, it shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days." - *Notification Dated 4<sup>th</sup> January, 2017*

Whereas in case of Specified IFSC Private Company - a Specified IFSC private company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days."- *Notification Dated 4<sup>th</sup> January, 2017*

In the case of a transfer or transmission of securities	Within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission
In the case of any allotment of debenture	Within a period of six months from the date of allotment

Provided that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

**Transfer of security of the deceased :** The transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

**Default in compliance of the provisions :** Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine varying from 25,000 rupees to 5 lakh rupees and every officer of the company who is in default shall be punishable with fine with the minimum of 10 thousand rupees extending to 1 one lakh rupees.

**Liability of depository :** Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447 of the Companies Act, 2013 with the liability mentioned under the Depositories Act, 1996.

### **Punishment for personation of shareholder [Section 57]**

If any person deceitfully personates as—

- an owner of any security or interest in a company, or
- of any share warrant or coupon issued in pursuance of this Act, and
- thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or
- receives or attempts to receive any money due to any such owner,

Such person shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

### **Refusal of registration and appeal against refusal [Section 58]**

Section 58 of the Companies Act, 2013, deals with process of the company to be followed by on refusal to register the transfer of securities.

**(i) If a private company limited by shares refuses, to register the transfer of,**

**or the transmission of the right to any securities or interest of a member in the company,** then the company shall send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, was delivered to the company.

The securities or other interest of any member **in a public company are freely transferable**, subject to the contract/arrangement.

**(ii) The transferee may appeal to the Tribunal against the refusal** within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.

**(iii) If a public company without sufficient cause refuses to register the transfer of securities** within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

**(iv) The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—**

- (a) **direct that the transfer or transmission shall be registered by the company** and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) **direct rectification of the register** and also direct the company to pay damages, if any, sustained by any party aggrieved.

**(v) If a person contravenes the order of the Tribunal** he shall be punishable with imprisonment for a term not less than one year but may extend to three years and with fine not less than one lakh rupees which may extend to five lakh rupees.

### **Rectification of register of member [Section 59]**

Section 59 of the Companies Act, 2013 provides the procedure for the rectification of register of members after the transfer of securities. The provision states that—

**(i) Remedy to the aggrieved for not carrying the changes in the register of members :**

If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, omitted there from, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or **the company may appeal in such form as may be prescribed, to the Tribunal**, or to a competent court outside India, specified by

the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

(ii) **Order of the Tribunal** : The Tribunal may, after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

(iii) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

(iv) **Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992** or this Act or any other law for the time being in force, there the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

(v) **Default in complying with the order** : If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.



## 8. PUBLICATION OF AUTHORISED, SUBSCRIBED AND PAID-UP CAPITAL [SECTION 60]

According to 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.

Section 2(64) defines "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

Whereas section 2(86) "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company;

Where any notice, advertisement or other official publication, or any business letter, bill head or letter paper of a company-

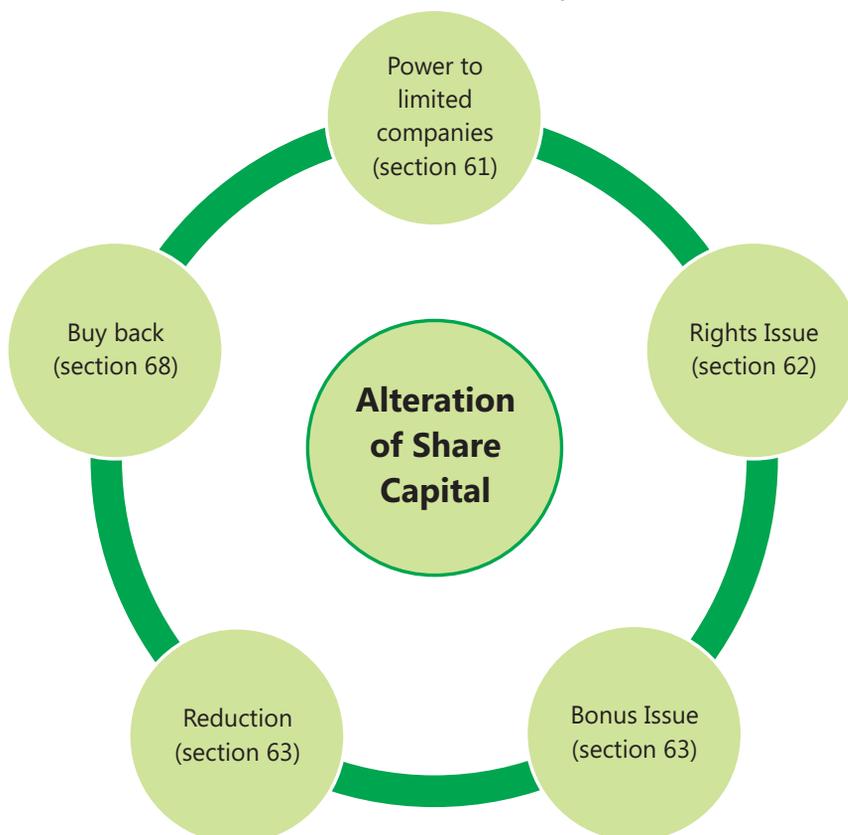
- contains a statement of the amount of the authorised capital of the company, such notice, advertisement or other official publication, or such letter, bill head or letter paper shall also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid-up.

**In default :** If any default is made in complying with the above requirements, the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.



## 9. ALTERATION IN SHARE CAPITAL [SECTIONS 61-68]

Section 2(8) defines **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. Whereas Section 2(15) states that **called-up capital** means such part of the capital, which has been called for payment.



### Alteration of share capital [Section 61]

According to section 61 of the Companies Act, 2013 a limited company having a share capital may alter its capital part of the memorandum.

(1) According to the provision, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—

- (a) **increase its authorised share capital** by such amount as it thinks expedient;<sup>7</sup>
- (b) **consolidate and divide** all or any of its share capital into shares of a larger amount than its existing shares, however no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.<sup>8</sup>

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

- (c) **convert all or any of its fully paid-up shares into stock**, and reconvert that stock into fully paid-up shares of any denomination;
- (d) **sub-divide its shares**, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
- (e) **cancel shares** which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

The cancellation of shares shall not be deemed to be a reduction of share capital.

Within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given

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<sup>7</sup> In case of Specified IFSC Public Company - In clause (a) of sub-section (1), the following proviso shall be inserted, namely:-

"Provided that notwithstanding anything contained in sub-clause (i), in case of a Specified IFSC public company, the periods lesser than those specified in the said sub-clause shall apply if ninety per cent. of the members have given their consent in writing or in electronic mode.". - *Notification Date 4<sup>th</sup> January, 2017*

<sup>8</sup> In case of Specified IFSC Public Company - Clause (b) of Sub- section (1) of section 62 for the words "special resolution" read as "ordinary resolution". - *Notification Date 4<sup>th</sup> January, 2017*

to the Registrar in the prescribed form along with an altered memorandum [**Section 64 of the Companies Act, 2013**].

**Further issue of share capital – Rights Issue; Preferential Allotment [Section 62]<sup>9</sup>**

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders. It is a non-dilutive pro rata way to raise capital.

**Example :** 1:8 rights issue means an existing investor can buy one extra share for every eight shares already held by him/her. Usually the price at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock to encourage subscription.

A public company may issue securities through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder as per section 23(1)(c) of the Companies Act, 2013.

A private company may issue securities by way of rights issue or bonus issue in accordance with the provisions of this Act as per the section 23(2)(a).

As per the section 62 of the Companies Act, 2013-(1) where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—

(a) **to persons who**, at the date of the offer, **are holders of equity shares** of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(i) **the offer shall be made by notice** specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

In case of private company- where ninety percent, of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the above said sub- clause or sub-section (2), shall apply.

(ii) **unless the articles of the company otherwise provide**, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

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<sup>9</sup> In case of Nidhi company - Section 62 shall not apply - *Notification dated 5<sup>th</sup> June, 2015.*

- (iii) **after the expiry of the time specified in the notice** aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company;
- (b) **to employees under a scheme of employees' stock option**, subject to special resolution passed by company and subject to the conditions as may be prescribed; or<sup>10</sup>
- (c) **to any persons, if it is authorised by a special resolution**, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as prescribed under the Rule 13 of the *Companies (Share capital and Debentures) Rules, 2014*.

This clause authorises company to issue shares to persons other than its existing shareholders and to employees under ESOP. However, the process to issue those shares is provided under section 42 of the Act (Private placement).

**(2)** The notice of offer of shares shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.<sup>11</sup>

**(3) Exception :** This section shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

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 the raising of loan by a special resolution passed by the company in general meeting.

**(4) Conversion of debentures/loan into shares :** Where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

**10.** In case of private company for the words "special resolution", the words "ordinary resolution" shall be substituted - *Vide Notification dated 5<sup>th</sup> June, 2015*.

**11.** This proviso is applicable only to a private company inserted *Vide Notification dated 5<sup>th</sup> June, 2015*.

**(5) Term of conversion not acceptable to the company :** Where the terms and conditions of such conversion are not acceptable to the company, it may, within 60 days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

**(6) Points to be taken into consideration for the term of conversion :** In determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

**(7) When memorandum of company stand altered and increases authorized share capital :** Where the Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, then the memorandum of company shall, by such order having the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

**Example :** A listed company at Bombay Stock Exchange, intends to offer its new shares to non-members. All the existing members of the company were against the same pointing on the validity of the same. Here in the given case, section 62 (1) (a) (iii), (b) and (c) further shares in a company limited by shares may be issued to non -members under certain circumstances. In compliance with the provision, offer of new shares to non-members is valid.

### Issue of bonus shares [Section 63]

Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid shares free of any cost to them.

**Example :** 1:3 bonus issue means an existing shareholder will get one extra free share for every three shares already held by him/her.

This section 63 of the Companies Act, 2013 deals with the condition and the manner of issue of fully paid-up bonus shares by a company to its members.

(1) Section 63 says that a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

- (2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares unless—
- (a) it is authorised by its articles;
  - (b) it has on the recommendation of the Board, been authorised in the general meeting of the company;
  - (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
  - (d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
  - (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
  - (f) it complies with such conditions as may be prescribed.
- (3) The bonus shares shall not be issued in lieu of dividend.

It can only be done if the articles of the company contain provisions in regard thereto. It means that profits which otherwise are available for distribution among the members, are not divided among them in cash, but the shareholders are allotted further shares (bonus shares). Capital profits, shares premium and capital redemption reserve account can also be used for the purpose of issuing fully paid bonus shares.

According to the proviso to Section 123(5) of the Companies Act, 2013, it is permissible for a company to capitalise its profits or reserves for the purpose of issuing fully paid up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same [Rule 14 of the *Companies (Share capital and debenture) Rules, 2014*]

### **Notice to be given to Registrar for Alteration of Share Capital [Section 64]**

Where—

- a company alters its share capital in any manner specified in section 61 (1) ,
- an order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or
- a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

In default : If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may

extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

### **Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company [Section 65]**

An unlimited company having a share capital may, by a resolution for registration as a limited company under this Act, do either or both of the following things, namely—

- (a) **increase the nominal amount of its share capital** by increasing the nominal amount of each of its shares, subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up;
- (b) **provide that a specified portion of its uncalled share capital shall not be capable of being called up** except in the event and for the purposes of the company being wound up.

### **Reduction of share capital [Section 66]**

Accumulated business losses, assets of reduced or doubtful value or having paid up capital in excess of wants of the company could lead to the need of reducing share capital.

Section 66 along with the *NCLT (Procedure for reduction of share capital of company) Rules, 2016* deals with the reduction of share capital.

**(1) Reduction of share capital by special resolution :** 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 shares,—
  - (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 shares accordingly :

**No reduction shall be made :** Section further Provides 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.

**(2) Issue of Notice from the Tribunal :** The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government, Registrar

and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice :

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

- (3) Order of tribunal :** The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit :

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

- (4) Publishing of order of confirmation of tribunal :** The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.
- (5) Delivery of certified copy of order to the registrar :** The company shall deliver a certified copy of the order of the Tribunal under subsection (3) and of a minute approved by the Tribunal showing—
- the amount of share capital;
  - the number of shares into which it is to be divided;
  - the amount of each share; and
  - the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.
- (6)** Nothing in this section shall apply to buy-back of its own securities by a company under section 68.
- (7) No liability of member :** A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.
- (8) In case where creditor is entitled to object :** Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with

respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim-

- (a) every person, who was a member of the company on the date of the registration of the order for reduction by the 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 before the said date; and
  - (b) if the company is wound up, the Tribunal may, on the application of any such creditor and 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.
- (9)** Nothing in sub-section (8) shall affect the rights of the contributories among themselves.
- (10) Liability of officer :** If any officer of the company—
- (a) knowingly conceals the name of any creditor entitled to object to the reduction;
  - (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
  - (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.
- (11) In case of failure to publish the order of confirmation of the reduction of shares :** If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

**<sup>12</sup>Restriction on purchase by company or giving of loans by it for purchase of its**

<sup>12</sup> Section 67 shall not 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 body 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. - *Notification dated 5<sup>th</sup> June, 2015.*

In case of Specified IFSC Public Company this section Shall not apply to a Specified IFSC public company—

- (a) in whose share capital no other body corporate has invested any money;
- (b) if the borrowings of such company from banks or financial institutions or any body corporate is less than twice of 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. - *Notification Date 4<sup>th</sup> January, 2017*

**shares [Section 67]**

A fundamental principle of Company Law was that a Company cannot buy its own shares. This is laid by Section 67 of the Companies Act, 2013.

<sup>13</sup>**Section 67(1)** lays down that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

**(2)** No public company shall give, whether directly or indirectly and 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 :** There are, however, certain exceptions where the company may provide the financial assistance, namely :

- (a) the lending of money by a banking company in the ordinary course of its business;
- (b) the provision is made by a company for lending of money in accordance with any scheme approved by company through special resolution with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
- (c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

However, disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed. [Section 67].

- (d) nothing in Section 67 shall affect the right of a company to redeem any preference shares issued under this Act or under any previous Companies law.
- (5)** If a company contravenes the provisions of this section, it shall be punishable with

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<sup>13</sup> In case of Nidhi company - Sub-section (1) of Section 67 shall not apply , when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under section 66 of the Companies Act, 2013. - *Notification dated 5<sup>th</sup> june, 2015.*

fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

### **Buy back of securities [Sections 68- 70]**

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors.

**Example :** Tata Consultancy Services (TCS), has recently announced India's biggest buyback offer till date. The software major plans to buy back up to 5.61 crore equity shares at ₹ 2,850 per share. The buyback is being made through the tender offer route, which means the existing shareholders can tender their shares through the stock exchange. The buyback offer price of ₹ 2,850 represents a 13.7% premium to ₹ 2,506.50, the closing price on February 20 when the announcement was made.

Section 68 to Section 70 contains provisions for buy back of securities by the issuer company.

### **Power of company to purchase its own securities [Section 68]**

Section 68 of the Companies Act, 2013 provides the power of a company to purchase its own securities subject to certain conditions .

**(1) Sources of funds for buy-back of shares :** A company can purchase its own shares or other specified securities. The purchase should be out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities [Section 68(1)].

"Specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

**(2) Conditions for buy-back :** The company shall not purchase its own shares or other specified securities unless:

- (a) the buy-back is authorised by its articles;
- (b) a special resolution authorising the buy-back is passed in general meeting of the company; (except where— (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

- (c) the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company;  
 Provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
- (d) the ratio of the aggregate debts( secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves;  
 Provided that the Central Government may prescribe a higher ratio of the debt to capital and free reserves for a class or classes of companies;  
 The expression "free reserves" for the purposes of this section, includes securities premium account.
- (e) all the shares or other specified securities for buy-back are fully paid-up;
- (f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by SEBI in this behalf;
- (g) the buy-back in respect of shares or other specified securities other than those specified in Clause (f) is in accordance with rules as may be prescribed. [Sections 68(2)]

Provided that no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.

**(3) Procedure before buy-back :** The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating -

- (a) a full and complete disclosure of all the material facts;  
 (b) the necessity for the buy-back;  
 (c) the class of shares or securities intended to be purchased under the buy back;  
 (d) the amount to be invested under the buy-back; and  
 (e) the time limit for completion of buy-back.[Sections 68(3)]

**(4) Time limit for completion of buy-back :** Every buy-back shall be completed within twelve months from the date of passing the special resolution or a resolution passed by the Board at general meeting authorising the buy-back.[Sections 68(4)]

**(5) Buy-Back from Whom? :** The buy-back under Sub-section (1) may be—

- (a) from the existing share holders or security holders on a proportionate basis; or  
 (b) from the open market; or  
 (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity. [Sections 68(5)]

**(6) Declaration of Solvency :** Where a company has passed a special resolution under clause (b) of Sub-section (2) or the Board has passed a resolution under the first proviso

to clause (b) of Sub Section (2) to buy-back its own shares or other securities under this section, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board of India a declaration of solvency in the form as may be prescribed and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board, and signed by at least two directors of the company, one of whom shall be the managing director, if any;

**Provided** that no declaration of solvency shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. [Sections 68(6)]

**(7) Extinguishment of Securities :** Where a company buys-back its own securities or other specified securities, it shall extinguish and physically destroy the shares or securities so bought-back within seven days of the last date of completion of buy-back. [Sections 68(7)]

**(8) Cooling Period :** Where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares (including allotment of further shares under clause (a) of Sub-section (1) of Section 62 or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares. [Sections 68(8)]

**(9) Register of Buy Back :** Where a company buys-back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought-back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed. [Sections 68(9)]

**(10) Filing of Buy-back Return :** A company shall, after completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed :

**Provided** that no return shall be filed with the Securities and Exchange Board of India by a company whose shares are not listed on any recognised stock exchange. [Sections 68(10)]

**(11) Penalty for Default :** If a company makes default in complying with the provisions of this section or any regulations made by SEBI under clause (f) of Sub-section (2), the

company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. [Sections 68(11)]

### **Transfer of certain sums to Capital Redemption Reserve account [Section 69]**

Where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

### **Prohibition for buy-back in certain circumstances [Section 70]**

This section of the Companies Act, 2013 prohibits the company for buy back in the certain circumstances.

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-

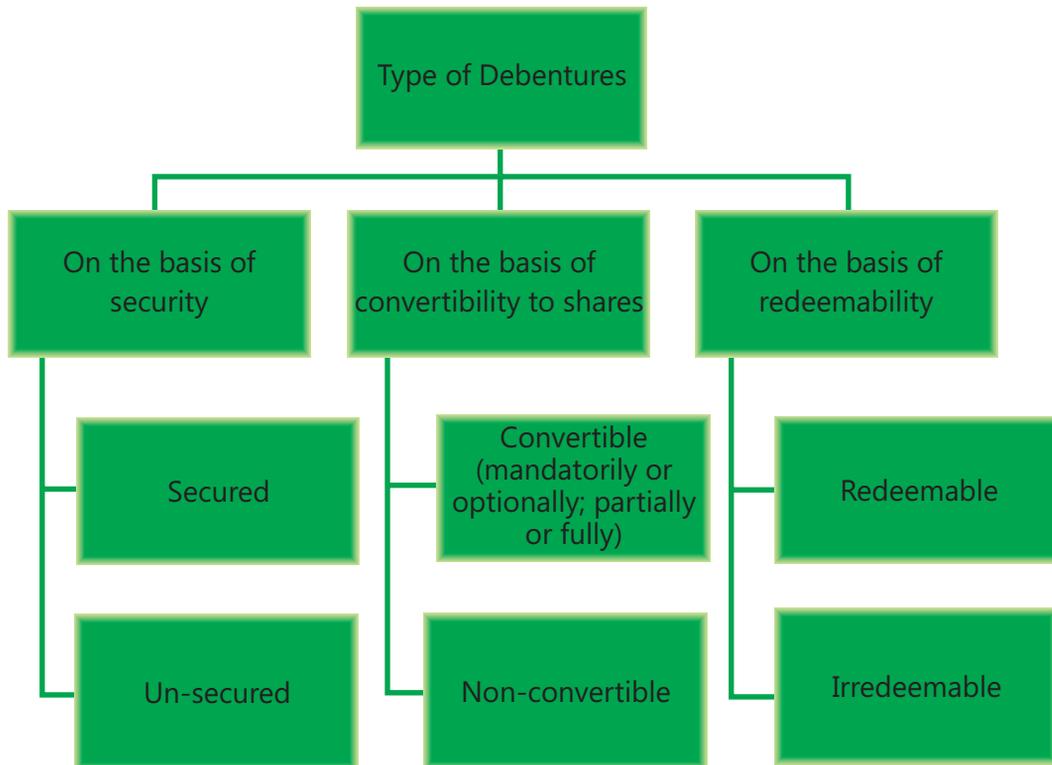
- (a) through any subsidiary company including its own subsidiary companies; or
- (b) through any investment company or group of investment companies; or
- (c) if a default, is made by the company, in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institutions or banking company;

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, there such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

### **Debentures [Sections 71]**

As per 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.



Section 71 of the Companies Act, 2013 provides the manner in which a company may issue debentures. According to the provision—

**(1) Issue of debentures with an option to convert :** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption :

Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

**(2)** No company shall issue any debentures carrying any voting rights.

**(3) Issue of secured debentures :** Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed in Rule 18 of the *Companies (Share Capital and Debentures) Rules, 2014*.

**(4) Creation of debenture redemption reserve (DRR) account :** Where debentures are issued by a company under this section, the company shall create a **debenture redemption reserve account** out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

**(5) Limitation on the issue of prospectus/ offer / invitation to the public :** No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

**(6) Debenture trustee to protect the interest of debenture holders :** A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.

**(7) 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:

Provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.

**(8) To pay interest and redeem the debentures :** A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

**(9) Filing of petition before the Tribunal by the debenture trustee :** Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.

**(10) On failure to redeem the debentures/ to pay interest on the debentures :** Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

**(11) Default in compliance of order of the Tribunal :** If any default is made in complying with the order of the Tribunal under this section, every officer of the

company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

**(12) Specific performance of the contract :** 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.

**(13) Procedure to be prescribed by the Central Government :** The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.



## 10. POWER TO NOMINATE [SECTION 72]

Nomination is a facility whereby a holder of any financial asset (bank a/c, FD, securities etc.) could nominate the name of person who would be entitled to that financial asset in case of his or her death. Generally, such nomination overrides any will. It is a very logical thing to do to avoid legal, procedural tangles related to transmission at a later stage for the near and dear ones.

As per Section 72 of the Companies Act, 2013-

(1) every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

(2) Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

(3) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(4) Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.



## SUMMARY

- There are broadly two kinds of long term capital to run a business viz., owners' capital and lender's capital. Working capital is the short term capital which is excess of current assets over current liabilities
- Each type of capital is denominated by different securities with applicable rights which could be varied by following due course of law
- Most of the requirements to be in accordance with the AOA or MOA or with the decisions of the members' body which are subject to the requirements of the Companies Act.
- There are mandated provisions related to premium and discount at the time of issue or redemption
- ESOP (Employee Stock Option Plan) is governed by Sec. 54 on Sweat equity
- Transmission is different from transfer of securities since the former is effected by law
- Power to alter share capital is envisaged under Sec. 61
- Companies could issue right shares in accordance with Sec. 62
- Bonus shares could be issued in accordance with sec. 63
- A company is restricted to purchase or give loans for purchase of its shares (other than under buy back provisions)
- Capital Redemption Reserve A/c is created to meet the funds requirements for redemption of preference shares and to earmark funds for future use in the prescribed manner.
- Debenture Redemption Reserve A/c is created to ring fence funds requirement for redemption of Debentures

 **TEST YOUR KNOWLEDGE****Multiple Choice Question**

- The subscribed capital of a company is :
  - never more than the issued capital
  - never less than the issued capital
  - always equal to the issued capital
  - prescribed percentage of the issued capital
- A company may convert all or any of its fully paid up shares into stock :
  - by passing a special resolution
  - by passing a ordinary resolution
  - with the approval of the Tribunal
  - All of the above
- Part of the capital for which application have been received from the public and shares allotted to them :
  - Nominal capital
  - Issued capital
  - Subscribed capital
  - Called up capital
- Shares which are issued by a company to its directors or employees at a discount or for a consideration :
  - Equity Shares
  - Preference Shares
  - Sweat Equity Shares
  - Redeemable preference shares

**Answer to MCQs**

1. (a)	2. (b)	3. (c)	4. (c)
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**Question and Answer****Question 1**

*VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2007) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd, on the ground that it was already holding a high percentage of the total number of shares already issued, in SV Company Ltd. The Articles of Association of SV Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1, 2007 new shares were offered*

*to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Limited of not offering any further shares to VRS Company Limited.*

### Answer

The legal issues in the presented problem in the question is covered under Section 62 (1) of the Companies Act, 2013.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

As per facts of the case, the articles of SV company Ltd. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS company Ltd., which held its controlling shares. It was held that SV company Ltd. had no legal authority under the Companies Act to do so.

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violative of the provisions of Section 62 (1) (a) as also substantiated by the ruling in the above referred case.

### Question 2

*The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered and the procedure to be followed for the said alteration.*

### Answer

**Alteration of Capital [Section 61 (1) read with section 13 of the Companies Act, 2013]:** Under section 61 (1) a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting as under :

- (i) it may increase its authorized share capital by such amount as it thinks expedient;
- (ii) it may consolidate and divide all or any of its share capital of a larger amount than its existing shares
- (iii) convert all or any of its paid up shares into stock and reconvert that stock into fully paid shares of any denomination

- (iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
- (v) cancel those shares which, at the time of passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64 where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

Section 13 provides for the procedure to be followed for alteration of the Memorandum, as under :

- a. A special resolution must be passed to effect the alteration. For this purpose a Board Meeting must be held to convene a general meeting of the members and all legal provisions in this behalf followed including the circulation of a detailed explanatory note on the proposed change along with the notice for the general meeting;
- b. The company must file with the Registrar the special resolution passed by the company to effect an alteration in the capital clause of the Memorandum;
- c. No alteration to the Memorandum will have effect unless it has been registered with the Registrar as above.

### Question 3

*Ramesh, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?*

### Answer

**Jurisdiction of Court, now Tribunal, the Companies Act, 2013 :** According to Section 56 (4) of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further under section 56 (6) Where any default is made in complying with the provisions of sub-sections (1) to (5) of section 56 (which deals with transfer and transmission of shares), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the

company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees

The jurisdiction binding on the company is that of the state in which the registered office of the company is situated. Hence, in the given case the Delhi court is not competent to take action in the matter.

#### Question 4

*Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.*

#### Answer

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary", specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. Similarly any transfer made by Y (to Z) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received .

In the above case, 'therefore, X has the right against the company to get the shares recorded in his name. However, neither Y nor Z' have any rights against the company even though they are bona fide purchasers.

However, since X seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Y and Z.

#### Question 5

*A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X. or Mr. Y respectively within the*

*prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.*

### Answer

**Refusal of registration and appeal against refusal :** The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Mr. X can make an appeal before the tribunal and claim damages.

