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# COMPANY LAW

**CS Vikas Vohra** *Corporate BaBa*

## HIGHLIGHTS

- Covers all the major concepts of the subject
- Coloured book for better learning
- Important concepts highlighted for quick revision



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## CHAPTER 2 - SHARE CAPITAL

JISKO BHI SAMAJHNA HAI SHARE EQUITY HAI YA PREFERENCE,  
USSSE DE DO VIKAS VOHRA KI BOOK KA REFERENCE!

### CAPITAL - MEANING

Capital means the money raised by the company by issuing various securities, shares, debentures, deposits etc. Broadly, *capital consists of two components namely share capital and debt capital.*

In particular, share capital comprise of equity as well as preference share capital vis-à-vis debt capital comprises of debentures, deposits, bonds etc.

### KINDS OF SHARE CAPITAL

- 1) **Authorised or Registered Capital:** The sum stated in the memorandum of association of the company & which is the *maximum share capital* of the company.
- 2) **Issued Capital:** That part of nominal capital which is *issued to the public* for subscription and allotment.
- 3) **Subscribed Capital:** Such part of the capital which is for the time being *subscribed by the members* of the company.
- 4) **Called-up Capital:** That part of the capital *which has been called up* for payment.
- 5) **Paid-up Share Capital:** That part of the capital of the company *which has been paid* by shareholders.
- 6) **Preference & Equity Share Capital:** Preference share capital is case of a company limited by shares means that part of the issued capital, which *carries a preferential right* with respect to:



- a) *Payment of dividend during the life-time of company.*
- b) *Repayment of capital at the time of winding-up.*

*Equity share capital of the company means that capital which is not preference share capital.*

### **PUBLICATION OF AUTHORISED, SUBSCRIBED AND PAID UP SHARE CAPITAL**

*Under section 60 where any notice, advertisement or other official publication, or any business letter of a company contains a statement of the amount of the authorised capital of the company, then such document shall also contain a statement the amount of the capital which has been subscribed and the amount paid-up.*

### **MEANING AND NATURE OF SHARE [SECTION 2(84)]**

*Section 2(84) of the Act defines a share, as a share in the share capital of the company & includes stock.*

- 1) *A share gives the right to participate in the profits of the company while it is a going concern.*
- 2) *In India, shares are regarded as goods.*
- 3) *Shares issued by the company have distinctive numbers.*
- 4) *Any amount raised by way of shares constitutes share capital.*
- 5) *Equity capital is also known as "Common Stock" or common share capital that represents ownership in a company.*

*Share capital is of two kinds- Preference and equity share capital*

Sr.no.	Preference Share Capital	Equity Share Capital
1.	Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.
2.	Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
3.	In case of winding up, preference share holder get preference over equity share holders with regard to the payment of capital.	In case of winding up, equity share holder get payment of capital after the payment of capital to preference shareholders.
5.	The voting rights of preference shareholders are restricted. A preference shareholder can vote only when his special rights as a preference shareholder are being varied, or on any resolution for the winding up of the company or for the repayment or reduction of its equity or preference share capital or their dividend has not been paid for a period of two years or more [section 47(2)].	An equity shareholder can vote on all matters affecting the company.
6.	No bonus shares / right shares are issued to preference share holders.	A company may issue rights shares or bonus shares to the company's existing equity shareholders.
7.	Redeemable preference shares may be redeemed by the company.	Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.



8.	Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid-up preference share capital of the company.	Voting right of an equity shareholders on a poll shall be in proportion to his share in the paid-up equity share capital of the company.
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### ISSUE OF SECURITIES AT A PREMIUM [SECTION 52]

As such the provisions of the Companies Act *does not restrict issue of securities at a premium* i.e. a company can raise money with any amount of premium, however, there are certain conditions with respect to the utilization of the amount of premium collected on such securities, which are as follows :

1. For issuing fully paid-up *bonus shares*.
2. Writing off the balance of *preliminary expenses*.
3. Writing off *commission paid or discount allowed* on issue of shares or debentures.
4. For providing *premium payable on redemption* of redeemable *preference shares or debentures*.
5. For *buying back* securities of the company.

Any amount received by way of premium shall be *transferred to Securities Premium Account*.

Any premium paid does not give the shareholder any preferential rights in case of a winding up. Monies in the securities premium account cannot be treated as free reserves, as they are in the nature of capital reserve *[See Departmental Circular No. 3/77 dated 15.4.1977]*.

Where a company issues shares at a premium, even though the consideration may be other than cash, a sum equal to the amount or value of the premium must be transferred to the securities premium account. *[Head (Henry) & Co. Ltd. v. Ropner Holding Ltd.]*



COMPANY CAN ISSUE SHARES AT ANY AMOUNT, SEC 53 SAYS SHARES CANNOT BE ISSUED AT DISCOUNT

### ISSUE OF SHARES AT DISCOUNT [SECTION. 53]

Except in case of *sweat equity* shares, company *cannot issue shares at a discount*. Any share issued by a company at a discounted price shall be **VOID**.

A company *may issue* shares at a discount to its *creditors* when its *debt is converted into shares* as per any statutory resolution plan or debt restructuring scheme.

When a company contravenes the provisions of this section, the company shall be punishable with penalty 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 penalty which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

### ISSUE OF SHARES WITH DIFFERENTIAL VOTING RIGHTS (SECTION 43)

No company shall issue equity with differential rights as to dividend or voting unless it complies with the following conditions:

- 1) It is authorized by its *Articles of Association*.
- 2) The issue is authorized by an *ordinary resolution*. In case of listed companies, it shall be passed through postal ballot
- 3) Shares with differential rights *shall not exceed seventy four percent of total voting power including voting power in respect of equity shares with differential rights* issued at any point of time.
- 4) The Company has *not defaulted in filing financial statements and annual returns* in the last 3 preceding financial years.
- 5) The company has *not defaulted in payment of declared dividend* to its shareholders or redemption or payment of interest on deposits or debentures or any bank loan.
- 6) The company has *not been penalized* by any court or tribunal during the last 3 years for any offence under RBI Act, SEBI Act, SCRA or FEMA.



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.

### Points to remember

- The company shall **not convert** its existing equity share capital **with voting rights** into equity share capital carrying **differential voting rights and vice versa**.
- The Board of Directors are required to disclose the details of the issue of equity shares with differential rights in the Board's Report for the financial year in which was completed.
- The holders of the equity shares with differential rights **enjoys 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.
- When a company issues equity shares with differential rights, the Register of Members shall contain all the particulars of the shares so issued along with details of the shareholders.

### PROCEDURE FOR ISSUE OF EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

1. Check whether the **Articles of Association** of the company authorizes issue of equity shares with differential rights.
2. Hold the **Board meeting** to issue the notice of general meeting of issuance of equity share with differential rights.
3. If the company is **listed** with any of the recognized stock exchange, then within 30 minutes of the completion of the Board Meeting, **intimate to the Stock Exchange** about the decision whether the board approved such issue or not.
4. Pass the **ordinary resolution** in the **general meeting** or through **Postal Ballot**.
5. Once the company makes any allotment, then it shall within **30 days** file with the **Registrar** a **return allotment in Form PAS-3**.
6. In case of **listed company**, send **copies of the notice** and a copy of the proceedings of the general meeting to the **stock exchange** within **24 hours** of the event.
7. Make **necessary entries in the register of members**. In case of issue of shares in demat form, inform the depositories about the same for credit to the respective accounts.



**CLASSROOM NOTES****ISSUE OF SWEAT EQUITY SHARES [SECTION. 54]****Meaning**

Sweat Equity shares means equity shares issued by a company to its *directors* or *employees* at a *discount* or for *consideration other than cash* for providing *know-how* or making available rights in the nature of *intellectual property rights* or value additions, by whatever name called.

**“Employee”** means-

- (a) a *permanent employee* of the company who has been working *in India or outside India*; or
- (b) a *director* of the company, whether a *whole time director or not*; or
- (c) an *employee* or a *director* of a *subsidiary, in India or outside India, or of a holding company* of the company;



### Conditions

The following conditions are required to be fulfilled for issue of sweat equity shares namely:

1. It shall be authorized by a **special resolution** in the **General Meeting**.
2. **Explanatory** statement is required to be attached to the notice of such meeting.
3. The special resolution passed for sweat equity shall be valid for a period of **12 months** from the date of special resolution.
4. Issue of such equity shares shall not exceed **15% of the existing paid up equity share capital** in a year or the shares of the issue value of **Rs. 5 crores**, whichever is **higher & 25% of the paid up equity capital** of the company at anytime.  
Provided further that a start-up company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty per cent of its paid up capital upto **five ten years** from the date of its incorporation or registration.
5. The **price** of sweat equity shall be determined by a **registered valuer**.
6. The company shall maintain the **register** in Form **SH3**.
7. Depending upon whether company is listed or an unlisted company it shall comply with **SEBI rules** or **company rules** as the case may be.
8. The holders of such shares shall **rank pari passu** with other equity shareholders.
9. The sweat equity shares issued to directors or employees shall be **locked in** for a period of **three years** from the date of **allotment**.

### ISSUE & REDEMPTION OF PREFERENCE SHARES [SECTION 55]

1. A company, if so authorized by its articles shall issue preference shares which are liable to be redeemed within a **period not exceeding 20 years** from the date of issue.
2. In case of **infrastructure companies**, preference shares can be issued for a **period of 20 years** but **not exceeding 30 years**, subject to **redemption of minimum of 10%** of such preference shares per year beginning from 21st year on a proportionate basis.
3. Preference shares shall be **redeemed only when they are fully paid**.



4. It shall be redeemed either *out of the profits* of the company or *proceeds of fresh issue of shares* made for such purpose.
5. A sum equivalent to the *nominal value* of shares so redeemed shall be transferred to *Capital Redemption Reserve Account*.
6. *Premium* on such shares, if any, shall be paid out of *securities premium account*.
7. In case, if the company is *not able to redeem the preference shares*, it shall with the permission of shareholders holding *3/4th in value of such shares* and with the *approval of the tribunal* issue *equal amount of redeemable preference shares*. On such issue, the unredeemed preference shares shall be deemed to have been redeemed.
8. Such issue requires permission of the *shareholders* by way of a *special resolution*.
9. When a company issues preference shares, *entries in the Register of Members* shall contain the particulars in respect of such preference shareholders.

### PROCEDURE FOR ISSUE AND REDEMPTION OF PREFERENCE SHARES

1. The *articles of the company* should authorize for it, if not then amendment in the articles of the company is required. Also ensure that there is no subsisting defaults in redemption of preference shares earlier or in payment of dividend due on any preference shares.
2. Issue the *notice of general meeting* along with the explanatory statement. In the case of listed entity, intimate the stock exchange at least two working days in advance of the date of board meeting.
3. *Pass special resolution* and file with the *registrar Form MGT-14* within *30 days* of passing the resolution.
4. Within *30 days* of allotment file with the registrar the *Return of allotment* in Form *PAS-3*.
5. Update the *register of members*.
6. *Deliver the share certificates* of allotted shares within a period of 2 months from the date of allotment.
7. Intimate the *details of allotment* of shares to the *Depository* immediately on allotment of such shares.
8. The company may redeem the preference shares only on the terms on which they were issued or as varied.



9. The preference shares may be redeemed as given below:
  - a. At affixed time or happening of a particular event
  - b. Any time at the company's option
  - c. Any time at the shareholders option
10. The **notice of redemption** of preference shares shall be filed by the company with the Registrar in **Form SH-7** along with altered MOA within **30 days** of redemption of preference shares.

### CLASSROOM NOTES

## FURTHER ISSUE OF SHARES/RIGHTS ISSUE OF SHARES (SECTION 62)



1. If at any time, a company proposes to increase its subscribed capital by issue of further shares, such shares would be offered first to the existing shareholders on proportionate basis. Such issue of shares is known as rights issue of shares.
2. A letter of offer is required to be sent to such shareholders at least 3 days before the issue opens.
3. Right issue shall remain open for a minimum period of 7 ~~15~~ days and for a maximum period of 30 days, in which shareholders shall decide whether they wish to subscribe to the shares or not. However, if 90% of the members of a private limited company have given their consent either in writing or through electronic mode, time limit for acceptance of offer by existing shareholders may be less than 15 days.
4. The shareholders may either accept, refuse or renounce the offer made to them provided the same is warranted by the terms of the articles. In case of no reply, the offer shall be treated as declined.
5. If the offer is given to some other persons other than the existing shareholders, following conditions are required to be met.
  - i) A special resolution in the general meeting shall be passed to that effect.
  - ii) The company has obtained a valuation report from the registered valuer to determine the value of such shares.
6. The provisions of section 62 are applicable to all types of companies except the Nidhi companies



### Exceptions

- i) The above provisions are not applicable in case of conversion of loans or debentures into share of the company.
- ii) In the public interest, if government has issued directions for the conversions of debentures or loans obtained from any government into the shares.

### PROCEDURE FOR RIGHTS ISSUE

1. Check whether the rights issue results in **increase of authorized capital**.
2. If so call a **board meeting** to approve the notice of General meeting to pass necessary special resolutions at the general meeting to amend Memorandum/Articles of Association.
3. Convene the **general Meeting** and obtain shareholders' approval through **Special Resolution**.
4. This notice shall be **dispatched through Registered post** or speed post or through electronic mode to all the existing shareholders **atleast three days** before the opening of the issue. However, in case of private companies in case 90% of members have given their consent in writing or in electronic mode, the lesser period than the specified period shall apply.
5. The offer must be accepted within **7 days** and not exceeding **30 days** from the date of the offer.
6. Check the copy of form **SH7, MGT14** filed with **ROC**.
7. The shares declined by the existing shareholder can be disposed off by the company in manner which is not disadvantageous to the shareholders and the company.
8. Once the allotment is made, the company shall within **30 days of allotment**, file with the **Registrar** return of allotment in **Form PAS3**.
9. **Deliver the share certificates** of allotted shares within a period of **2 months** from the date of allotment.
10. **Intimate** the details of allotment of shares to the **Depository** immediately on allotment of such shares

### CLASSROOM NOTES

## BONUS ISSUE OF SHARES [SECTION 63]



1. A company may, if its Articles provide, **capitalize its profits** by issuing fully-paid bonus shares.
2. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements.
3. Members do not have to pay any amount for such shares. They are given free. The bonus shares allotted to the members do not represent taxable income in their hands.

### Advantages of Issuing Bonus Shares

1. Fund flow is not affected adversely.
2. **Market value** of the Company's shares **comes down** to their nominal value by issue of bonus shares.
3. **Market value** of the **members' shareholdings increases** with the increase in number of shares in the company.
4. Bonus shares is **not an income**. Hence it is not a taxable income.
5. **Paid-up share capital increases** with the issue of bonus shares.



### Sources for issue of Bonus shares

According to section 63(1), 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**.

### Conditions for issue of Bonus Shares

In terms of section 63(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) the bonus shares shall **not be issued in lieu of dividend**.
- g) the company which has **once announced** the decision of its Board recommending a bonus issue, shall **not subsequently withdraw the same**.

### PROCEDURE FOR ISSUE OF BONUS SHARES

1. Check whether the **Article of Association** authorizes issue of bonus share. If not, the name and the Articles of Association of the company by passing the Special Resolution.
2. Check whether the Bonus issue results in **increase of authorized capital**. If so, make necessary alterations in the Memorandum/Articles of Association by passing Special Resolution.





3. In the case of **listed entity**, give **prior intimation to the stock exchange** at least two working days in advance of the date of Board Meeting excluding the date of intimation and the date of the meeting
4. Hold the **Board Meeting** and get the following proposal to be approved by the Board:
  - (i) To recommend the bonus issue;
  - (ii) To approve the resolution to be passed at a general meeting;
    - (a) To authorize the Bonus issue
    - (b) To approve requisite resolution for increase of the capital and consequential alteration of the Memorandum of Association/Articles of Association (if necessary)
    - (c) To enable the Articles to authorize the issue, if necessary.
5. Ensure that bonus issue has been **made out of free reserves** built out of the profits or securities premium or capital redemption reserve account.
6. Ensure that reserves created by **revaluation of assets are not capitalized**.
7. Ensure that the company has **not defaulted in repayment of debts** or statutory dues.
8. Ensure that the **bonus issue is not made in lieu of dividend**.
9. The company which has once announced the decision of its Board recommending a bonus issue shall not subsequently withdraw the same.
10. If there are any partly paid-up shares, ensure that these are made fully paid-up before the bonus issue is recommended by the Board of directors.
11. **Hold the general meeting** and get the resolution/s for issue of bonus shares passed by the members.
12. Once **Special Resolution** is passed file **Form MGT-14** with the Registrar within 30 days of passing of the resolution along with the altered article of association.
13. Within **30 days of allotment** file with the **registrar** the Return of allotment in **Form PAS-3**.
14. All **share certificates** shall be delivered to the **shareholders** within **two months** from the date of allotment.
15. **Intimate** the details of allotment of shares to the **Depository** immediately on allotment of such shares.
16. In case of **listed companies**, the company shall comply with SEBI Regulations.

**CLASSROOM NOTES****EMPLOYEES STOCK OPTION SCHEME (ESOP) [SECTION 62 (1) (b)]**

As per sec. 2(37) of the Companies Act, 2013, ESOP means right or an option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, which gives such director, officers or employees, the benefit or right to purchase or to subscribe for the shares of the company in future at a pre-determined price.

**Eligibility**

1. A permanent employee working in or outside India.
2. A director whether whole time or not but excluding an independent director.
3. An employee of a subsidiary, in India or outside India, or of a holding company of the company but does not include any employee who is a promoter or part of the promoter group or a director who either himself or through his relative or through any body corporate holds more than 10% of the total equity share capital of the company.

“Provided that in case of a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, the conditions mentioned in sub-clause (i) and (ii) shall not apply up to ten years from the date of its incorporation or registration.”



### Requirements

1. Any ESOP issue done by the company shall be approved by the company in **general meeting** by passing a **special resolution**.
2. For any variation or change in the ESOP scheme, the same shall also require sanction of the shareholders by way of a special resolution.
3. If the issue (ESOP) exceeds 1% of the issued capital of the company in any year, it shall also require permission of shareholders by way of special resolution.
4. In case of ESOP, company is **free to specify any lock-in period**.
5. In case of ESOP, a **certificate from the Auditors** is to be placed at the AGM stating that the scheme has been implemented as per the guidelines and in accordance with the special resolution passed. In the case of ESOPs, no such certificate is required.
6. **Directors' Report:** Directors' report shall contain the following disclosures about ESOP Scheme:
  - i) The total number of shares covered by ESOP as approved by the shareholders;
  - ii) The pricing formula;
  - iii) Options granted, options vested, options exercised, options forfeited, etc.,
  - iv) Fully diluted earnings per share (EPS) computed in accordance with International Accounting Standards.

### Important Considerations

#### 1. Grant Date:

Grant date is the date on which list of eligible employees or directors is determined and an offer is given to all of them.

#### 2. Vesting Date:

On this date, all those eligible persons who were being offered ESOPs, have a right to reply and the company accordingly vests the said number of stock options in their favour.

#### 3. Exercise Date:

All the options which are vested, are now due for exercise on this particular date i.e. the employees have a right to exercise the options granted to them.



### Lock in period

There has to be a **minimum gap of 1 year between grant date and vesting date**. However, for lock in, the company is free to decide the lock in period on the shares, issued pursuant to exercise of options.

No options shall carry right of dividend or interest till the time they are converted into shares. Listed companies are bound to comply with SEBI regulations.

### Transfer of options granted

The option granted to employees shall **not be transferable to any other person**. The same shall not be pledged, hypothecated, mortgaged. No person other than the employees to whom the option is granted shall be entitled to exercise the option.

### Death, permanent incapacity or resignation of an employee

In case of **death** of employee while in employment, all the options granted to him till such date shall vest in the **legal heirs or its nominees**. In case the employee suffers a **permanent incapacity** while in employment, all the options granted to him as on the date of permanent incapacitation, **shall vest in him on that day**. In the event of **resignation** or termination of employment, all options not vested in the employee as on that day **shall expire**. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme.

### Maintenance of Register

A company issuing ESOPs is required to maintain a register under form SH-6 which shall be kept at the registered office of the company and be authenticated by an authorised person.

## PROCEDURE FOR ESOP

1. Convene a **Board Meeting** to approve the **notice of the General meeting** to be approved by the shareholders through **special resolution**. In case of **private** company, it is sufficient that they obtain **ordinary resolution**.



2. The approval of shareholders by way of separate resolution shall be obtained by the company in case of-
  - (a) Grant of option to employees of subsidiary or holding company; or
  - (b) Grant of option to identified employees, during any one year, equal to or exceeding one per cent of the issued capital of the company.
3. There shall be a minimum period of **one year between the grant of options and vesting of option.**
4. The option granted to employees **shall not be transferable** to any other person.
5. The details to be **disclosed in Board of directors** should be ensured.
6. The company shall maintain a Register of Employee Stock Options in Form No. **SH.6** and shall enter therein the particulars of option. Such registrar shall be maintained at the registered office of the company or such other place as the Board may decide.
7. Once the allotment is made, the company shall within **30 days of allotment**, file with the Registrar a return of allotment in **Form PAS3**.
8. Deliver the **share certificates** of allotted shares within a period of **2 months** from the date of allotment.
9. **Intimate** the details of allotment of shares to the **Depository** immediately on allotment of such shares.
10. In case of a **listed company**, Employees Stock Option Scheme shall be issued in accordance with the regulations made by **SEBI**.

### CLASSROOM NOTES



## ISSUE OF SHARES ON PREFERENTIAL BASIS [SECTION 62 (1) (C)]

### Meaning of Preferential Allotment of Shares

'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue etc

### Conditions for Preferential Issue

A listed issuer may make a preferential issue of specified securities, if:

- a) The issue is authorised by the **articles of association** of the company;
- b) A **special resolution** has been passed by its shareholders;
- c) All the equity shares, if any, held by the proposed allottees in the issuer are in **dematerialized form**;
- d) The issuer is in compliance with the **conditions for continuous listing** of equity shares as specified in the listing agreement with the recognized stock exchange where the equity share of the issuer are listed; and
- e) The issuer has obtained the **Permanent Account Number** of the proposed **allottees**.
- f) the allotment of securities on a preferential basis shall be completed within a period of twelve months from the date of passing of the special resolution. If the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- g) The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;
- h) Where shares or other securities are to be allotted for consideration other than cash, the **valuation** of such consideration shall be done by a **registered valuer** who shall submit a valuation report to the company giving justification for the valuation;



### Procedure for preferential issue of shares

- (a) Check whether the issue is authorized by **Articles**. If not make necessary amendments to alter the articles of association, through special resolution passed at the shareholders' meeting.
- (b) Convene a **Board Meeting** to approve the **notice of General Meeting**.
- (c) Convene General Meeting and pass necessary **Special Resolution**.
- (d) Ensure to file Form **MGT-14** with **Registrar of Companies** within **30 days** of passing the Resolution.
- (e) The allotment of securities on a preferential made pursuant to the special resolution passed shall be completed within a period of 12 months from the date of passing of the special resolution.
- (f) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;
- (g) Once the allotment is made, the company shall within **30 days** of allotment, file with the **Registrar** a return of allotment in **Form PAS3**.
- (h) Deliver the **share certificates** of allotted shares within a period of **2 months** from the date of allotment.
- (i) Intimate the details of allotment of shares to the Depository immediately on allotment of such shares

### CLASSROOM NOTES



## PRIVATE PLACEMENT OF SECURITIES [SECTION 42]

- 1) Private placement means **offer to a select group of persons**, to subscribe to the securities of the company for making an invitation, **who have been identified by the Board (herein referred to as "IDENTIFIED PERSONS")**,
- 2) The number of persons to whom such offer shall be made **cannot go beyond 50 in numbers** which excludes Qualified Institutional Buyers & employees who are allotted shares under ESOP scheme **in a FINANCIAL YEAR**.
- 3) **Private Placement Offer letter shall be made to IDENTIFIED PERSONS** accompanied by an **application form serially numbered** & addressed either physically or in electronic form within 30 days of recording of names of such invitees. The private placement offer and application shall **NOT** carry any right of **RENUNCIATION**.
- 4) The company is **not allowed to advertise** such issue in any form or in any form of print media. It is strictly given on private basis.
- 5) The company has to pass a **special resolution in general meeting** for such issue. The MCA vide its notification dated October 16, 2020 has **provided relaxation to QIBs** also along with the existing relaxation available in case of offer or invitation for Non-convertible debentures. It now states that **in case of offer or invitation of any securities to qualified institutional buyers**, it shall be sufficient if the company passes a **previous special resolution only once in a year for all the allotments** to such buyers during the year.
- 6) All the monies collected shall be kept in a **separate bank account** & can only be collected by way of cheques and **not in cash**.
- 7) **Offer Letter** under such issue shall be filed in **Form PAS-4 with ROC within 30 days** from the date of circulation of private placement offer letter.
- 8) All the **records** of such offer shall be maintained by the company in **Form PAS-5**.
- 9) **Allotment** shall be made within a period of **60 days** from the receipt of the application. If not, money received shall be repaid within 15 days after the expiry of 60 days. **If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% per annum from the expiry of the 60<sup>th</sup> day.**





- 10) *Return of Allotment* is required to be filed in *Form PAS-3* with the *ROC* along with prescribed fee *within 15 days of allotment*. A company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.
- 11) The above mentioned provisions are *not applicable to a Non Banking Financial Company and Housing Finance Company*.
- 12) In case of debt issue, if the amount to be raised through such offer or invitation does not exceed the limit specified in Section 180(1)(c), in such cases relevant Board Resolution under Section 179(3)(c) would be adequate.
- 13) In case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation exceeds the limit specified in Section 180(1)(c), it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.
- 14) Sub-rule (2) to *Rule 14* provides that an offer or invitation to subscribe securities under private placement *shall not be made to persons more than two hundred in the aggregate in a financial year*. The limit of two hundred persons shall exclude the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option. It is further clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.
- 15) MCA has inserted a new proviso stating that no offer or invitation to securities shall be made to the nationals of or entities incorporated in a country sharing border with India until and unless they have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attach the same with the private placement offer cum application letter and the relevant modification to be made in Form PAS-4.



## CANCELLATION OF SHARE CAPITAL

1. Diminution of Share Capital is the cancellation of unsubscribed part of issued capital which can be done by ordinary resolution. Diminution of capital is not reduction of share capital.
2. Redemption of Redeemable preference shares.
3. Purchase of shares of a member by the company on an order of the Tribunal.
4. Buy Back of shares
5. Surrender of shares
6. Forfeiture of shares

## SURRENDER OF SHARES

As such, Companies Act, 2013 does not contain a provision on surrender of shares. At the same time, there is no restriction also on such surrender of shares. It all depends upon the articles of association of the company whether shares can be surrendered or not. Surrender of shares shall tantamount to cancellation of share capital.

## REDUCTION OF SHARE CAPITAL [SECTION 66]

1. For effective reduction, a **special resolution** in the **General Meeting** and an order of the tribunal shall be obtained.
2. The **Tribunal shall give notice** of such application for reduction to Central Government, ROC, Auditors, and SEBI in case of listed companies. The said authorities shall within a period of **3 months** from the date of such notice send their representations, if any.
3. Tribunal once satisfied that, the debt or claim of **every creditor** of the company has been discharged or a **no objection certificate** has been obtained from them, it shall issue such order for reduction of share capital.
4. The order of **confirmation of reduction** shall be **published by the company** in such a manner as the Tribunal may direct.



5. The **certified copy of the order** of the tribunal shall be filed with the Registrar within **30 days** of its **receipt**. Registrar shall issue necessary certificate to that effect which shall be a conclusive proof that the capital of the company stands redirect.

### MODES OF REDUCTION OF SHARE CAPITAL UNDER COMPANIES ACT, 2013

1. Reduce or extinguish the liability on any of its shares in respect of share capital not paid up e.g., where the shares are of Rs 100 each with Rs 75 paid-up reduce them to Rs 75 fully paid-up shares and thus relieve the shareholders from liability on the uncalled capital of Rs 25 per share;
2. Either with or without extinguishing or reducing liability on any of its shares, pay of any paid up share capital which is in excess of the wants of the company where the shares are fully paid-up, reduce them to Rs 75 each and pay back, Rs 25 per share, and
3. By writing off or cancelling the capital which has been lost or is under represented by the available assets e.g. a share of Rs. 100 fully paid-up is represented by Rs. 75 worth of assets.

### BUY BACK OF SECURITIES (SECTION 68)

#### Meaning

Buy back of securities means the company **buys its own shares and extinguishes the same** before the name of the company is entered in its register of members.

#### Advantages of buy back

1. It is an alternative mode of reduction in capital without requiring approval of the Court/NCLT,
2. to improve the earnings per share;
3. to improve return on capital, return on net worth and to enhance the long-term shareholders value;
4. to provide an additional exit route to shareholders when shares are undervalued or thinly traded;
5. to enhance consolidation of stake in the company;
6. to prevent unwelcome takeover bids;



7. to return surplus cash to shareholders;
8. to achieve optimum capital structure;
9. to support share price during periods of sluggish market condition;
10. to serve the equity more efficiently.

### Sources of buy back

A company may purchase its own securities out of:

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

### Authority

1. Buy back of securities shall be primarily **authorised by the articles** of association of the company.
2. Buy-back can be made with the **approval of the Board of directors** at a board meeting and/or by a **special resolution** passed by shareholders in a **general meeting**, depending on the quantum of buy back.
3. In case of a **listed company**, approval of shareholders shall be obtained only by **postal ballot**.

### Quantum of Buy Back

- a) Board of directors can approve buy-back up to **10% of the total paid-up equity capital and free reserves** of the company.
- b) Shareholders by a special resolution can approve buy-back up to **25% of the total paid-up capital and free reserves** of the company. However, in case of buy back of equity shares the limit of 25% of paid up capital shall be construed as **25% of Equity paid up capital**.
- c) In respect of any financial year, the shareholders can approve by special resolution upto **25% of total equity capital** in that year.



### Conditions for Buy Back

1. **Debt equity ratio** post buy back of securities shall be **2:1**. However, in case of government company carrying out a **Non-Banking Finance Institution** activities and Housing Finance Activities may maintain such ratio upto **6:1**.
2. Securities bought back shall only be **fully paid securities**.
3. A **declaration of solvency** signed by at **least two directors** of the company, one of whom shall be the managing director, if any, in **Form No. SH.9** and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

### Filing of letter of offer

1. The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a **letter of offer** in Form No **SH 8**, along with the fee as prescribed.
2. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

### Dispatch of letter of offer

The letter of offer shall be **dispatched** to the shareholders or security holders immediately after filing the same with the Registrar of Companies but **not later than 21 days** from its filing with the Registrar of Companies.

### Time period for buy back offer

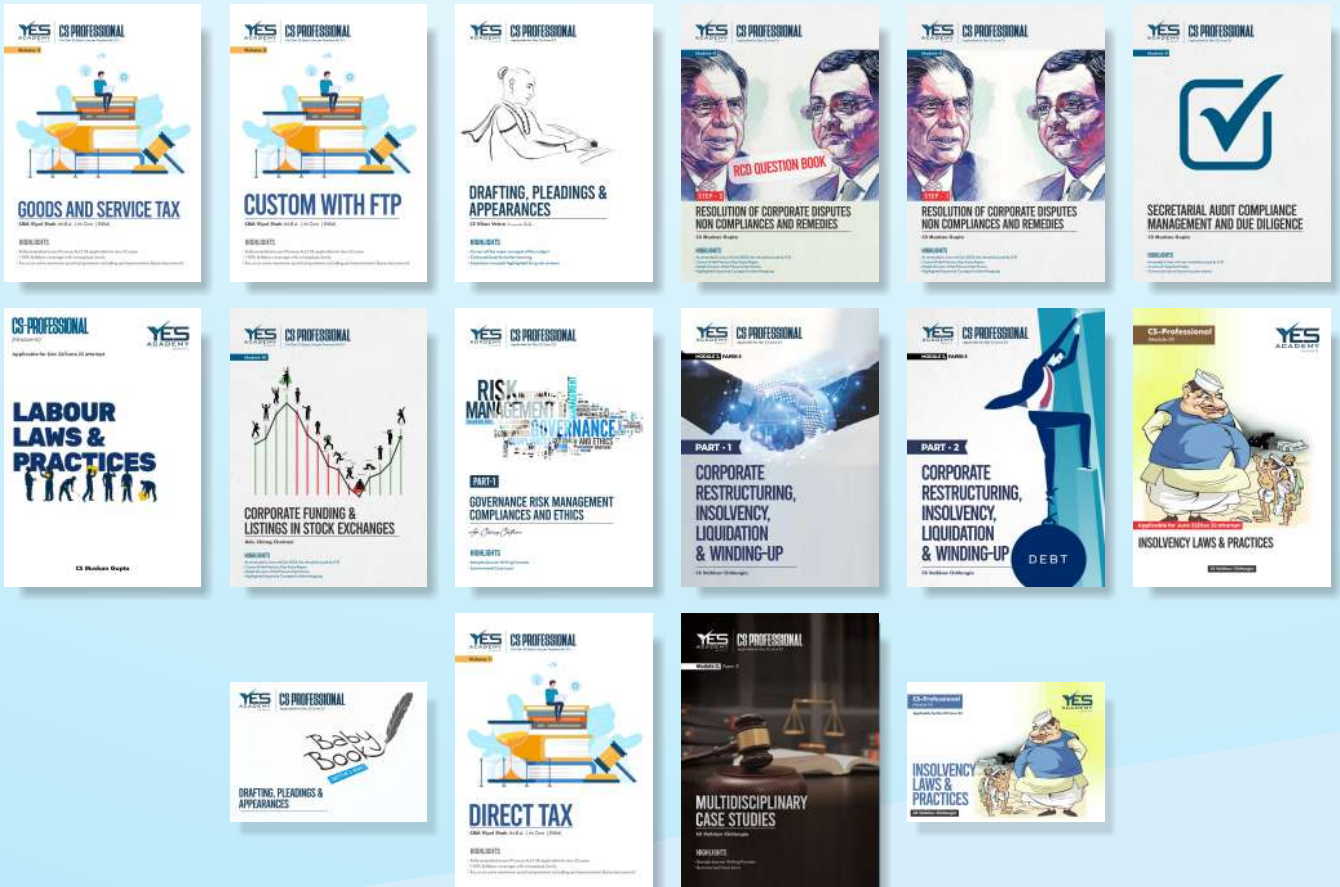
1. The offer for buy-back shall remain open for a period of **minimum period of 15 days** and for a **maximum period of 30 days** from the date of dispatch of the letter of offer.
2. Buy back shall be **completed** within a period of **one year** from the date of its approval the shareholders or board of directors of the company, as the case may be.

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**CS Vikas Vohra**  
(Corporate BABA)

### **CS Vikas Vohra, Founder - YES Academy**

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 10,000 students.

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He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

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