



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.



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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.

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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

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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.



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EMPLOYEES STOCK OPTION SCHEME (ESOP) [SECTION 62 (I) (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**.

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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

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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 60th 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.

CLASSROOM NOTES



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.



3. Where all members of a company agree, the offer for buy-back **may** remain open for a period less than fifteen days.

Methods of buy back

- a) from the **existing shareholders** or security holders on a proportionate basis;
- b) from the **open market**;
- c) by purchasing the securities **issued to employees** of the company pursuant to a scheme of stock option or sweat equity.

Extinguishment of securities bought back

Securities bought back shall be extinguished within a period of **7 days from the date of completion of buy back**.

Prohibition on further issue of securities

Once the securities are bought back, it shall not issue securities of the same kind within 6 months except by way of bonus issue.

Register of buy back

When a company buys back its securities, it shall maintain a register of securities, 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.

Return of buy back

A company shall, file with the Registrar and SEBI, a return of buy-back within thirty days of such completion in **Form No. SH.II**, a certificate in **Form No SH.IS** signed by two directors of the company including the managing director.

Prohibition on buy back

- No company shall directly or indirectly purchase its own shares or other specified securities — through any subsidiary company including its own subsidiary companies;



- through any investment company or group of investment companies;

Consideration of financial statements for buy back

Normally, last audited financial statements were taken into consideration for calculating the limits under buy back done by a company. However, with this addition, if the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company.

MEANING OF PROSPECTUS [SECTION 2(70)]

Section 2(70) of the Companies Act, 2013 defines a prospectus as any document described or issued as a prospectus and includes a red herring prospectus, shelf prospectus or any notice, circular, advertisement or other document involving offers from the public for the subscription or purchase of any securities of a body corporate.

For any document to be called as a prospectus, it must fulfill the following :

1. There must be an **invitation to the public**.
2. The invitation must be made **by or on behalf of the company**.
3. The invitation **must be to subscribe** for any securities of the company.

A document is deemed to be issued to the public if the invitation to subscribe is open to anyone. However, an issue if directed to specified person or group of persons shall not constitute public.

CONTENTS OF PROSPECTUS (SECTION 26)

No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the



Registrar for ~~registration~~ **filing** a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorized attorney.

A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for ~~registration~~ **filing** and a statement to that effect shall be included in the prospectus.

Every prospectus issued shall, on the face of it,—

(a) state that a copy has been delivered for ~~registration~~ **filing** to the Registrar as required under sub-section (4); and

(b) Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

RED-HERRING PROSPECTUS [SECTION. 32]

- 1) Red-herring prospectus means a prospectus which **does not include complete details with respect to price or quantum of securities.**
- 2) A company in case of public issue, through book building process issues red-herring prospectus.
- 3) It shall be filed with the registrar **atleast 3 days prior to the opening of the subscription list.**
- 4) It shall carry the same obligations as that of the prospectus.

ABRIDGED PROSPECTUS [SECTION. 33]

- 1) Abridged prospectus means a prospectus which contains such information as specified by SEBI.
- 2) Such prospectus shall be **attached with the application** form for purchase of securities of the company.
- 3) In following cases, abridged prospectus is not required to be issued :-
 - i) Where the offer is not made to the public



- ii) In case of underwriting agreements.
- iii) Where offer is made to the existing debenture holders or members of the company.
- iv) In case of further public offers.

SHELF PROSPECTUS [SECTION. 31]

1. Shelf Prospectus means a prospectus, which when issued once, the company is not required to issue any other offer document for one or more issues for a certain period.
2. A shelf prospectus may be **filed with the registrar at the time of first offer of securities**, whose validity shall not be more than **1 year from the date of opening** of the 1st offer of securities.
3. In case of any issue during the said period, a company is **just required to file an information memorandum** intimating the changes that have happened since the last issue.
4. Information memorandum shall be filed in **form PAS-2** within **one month prior** to the issue of a second or subsequent offer of securities.
5. Such prospectus is **applicable to banking companies and financial institutions**.

OFFER FOR SALE

- Public Offer includes an **offer for sale (OFS)** of securities to the public by an existing shareholder, through issue of a prospectus.
- The document Offer for sale is an **invitation to the general public** to purchase the shares of a company through an intermediary, such as an issuing house or a merchant bank. A company may allot shares or debentures to an Issue house and the issue house in turn makes an Offer for sale to the public.
- All rules and disclosures as **applicable to a prospectus shall apply** in the same way to an offer for sale also.
- For it be an Offer for Sale it must fulfill either of the following conditions:
 - (a) "Offer for sale" to the public was made within six months after the allotment or agreement to allot; or
 - (b) at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.



- As for the signing of the Prospectus the section provides that where a person making an offer is a company or a firm, the Offer document is signed on behalf of the company by two directors of the company and in case of a firm by not less than one-half of the partners in the firm.

OFFER FOR SALE BY CERTAIN MEMBERS OF A COMPANY (SECTION 28)

- Members of a company, in consultation with Board of directors, can offer the whole or a part of their holdings of shares to the public.
- The document by which the offer of sale to the public is made shall be deemed to be a prospectus issued by the company.
- All laws and rules in this case as to the contents of the prospectus shall apply as if this is a prospectus issued by the company.
- The section lays that the members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose share were offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

CONCEPT OF ISSUE AND ALLOTMENT

Section 23 of the Companies Act, 2013 provides that a company whether public or private may issue securities:

- to public through prospectus called as public offer (applicable only to a public company) or
- through private placement or
- through a rights issue or a bonus issue

According to 2(81) of Companies Act, 2013 "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956. As per section 2(h) of Securities Contracts (Regulation) Act, 1956, 'Securities' includes the following:



- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in any incorporated company or other body corporate.
- Derivative.
- Units or any other instrument issued by any collective investment scheme.
- Government securities.
- Security receipt as defined in SARFAESI Act, 2002.
- Such other instruments as may be declared by the Central Government.
- Rights or interests in securities.
- Units or any other such instrument issued under any mutual fund scheme.
- Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt.

CONDITIONS OF ALLOTMENT

1. It should be made by **proper authority** ie it can only be done by board of directors or a committee on behalf of the board.
2. It should be made within **reasonable time**. Once allotted, securities must be issued within a period of 2 months from the date of allotment.
3. Allotment should be **absolute and unconditional**.
4. It must be **communicated**. Posting of letter of allotment or allotment advice will be taken as a valid communication.
5. Allotment should always be **against the application**.
6. It should **not be in contravention of any law**.
7. No allotment shall be made, until **minimum subscription** has been received on such share applications. Minimum subscription shall be **atleast 90%** of the total issue size.
8. The **application money** shall be at **least 5% of nominal value** of the amount of security.
9. It must be **received within a period of 30 days** from the issue of prospectus or such other date as may be prescribed by SEBI.
10. If the money **is not received** within the stipulated period, it shall be returned within **15 days from the closure of issue** or else it shall attract payment of **interest @ 15% p.a.**



11. A **return of allotment** is required to be submitted in **Form PAS-3** within 30 days of such allotment.
12. Further, in the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, a copy of the contract, duly stamped, pursuant to which the securities have been allotted together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration shall be attached to the Form PAS-3.
13. When a contract is not reduced to writing, the company shall furnish along with the Form PAS-3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (2 of 1899), and the Registrar may, require that the stamp duty payable be adjudicated. Further a report of a registered valuer in respect of valuation of the consideration shall also be attached along with the contract of sale if relating to property or an asset or a contract for services.

ISSUE OF SHARE CERTIFICATES

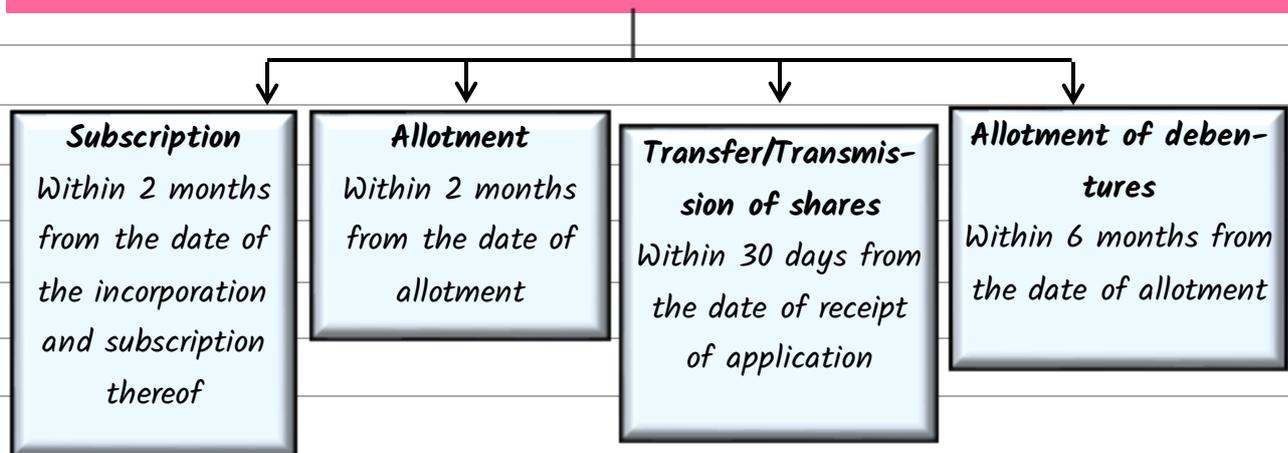
1. A share certificate is a certificate issued to the members of the company under its common seal specifying the number of shares held by him and the amount paid per share.
2. Each share issued shall have a **distinctive number** of its own.
3. For issue of share certificates, a **board resolution** is required to be passed.
4. Such share certificate is issued in **Form SH-1** which shall bear the name of the member.
5. It must be issued under the **common seal** of the company.
6. It must be signed by at **least two directors** of the company, or **by a director and the company secretary**, wherever the company has appointed company secretary.
7. In case of a **One Person Company**, every share certificate shall be issued under its seal shall be signed by **one director** and authenticated by either a company secretary or by a person authorized by the Board.
8. A director shall be **deemed to have signed** the share certificate if his signature is **printed thereon as a facsimile** signature by means of any machine, equipment or other mechanical means or digitally signed, but not by means of a rubber stamp.
9. Particulars of such share certificate shall be **entered in the register of member**.



ISSUE OF DUPLICATE SHARE CERTIFICATE

1. A duplicate share certificate may be issued, if the **original certificate lost or destroyed or has been defaced, mutilated or torn** and is surrendered to the company.
2. The company shall **issue duplicate share certificate** with the **prior consent of board** of directors of the company.
3. The applicant is required to submit with the company, the following documents:
 - i) Copy of a First Information Report for loss of such share certificate
 - ii) Indemnity Bond
 - iii) Affidavit confirming that the statements made in the Indemnity are true and correct
 - iv) Copy of newspaper advertisement indicating loss of such certificates, if it is provided by the articles of association.
 - v) An application in writing, requesting the company to issue such duplicate share certificate.
4. The company may charge a **fee not exceeding Rs 50** for issue of such duplicate share certificate.
5. If the company is **listed** then the duplicate share certificate shall be issued within a period of **45 days**. However, in case of **unlisted companies**, the time period is **3 months**.
6. The said issue can be done by either the **board of directors** or by a committee thereof.
7. A **register of duplicate share certificates** shall be maintained in **Form SH2** by the company at its registered office or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other authorized person.
8. The **new certificate** shall bear the following mark **duplicate share certificate issued in lieu of original certificate**.
9. If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447, for fraud.

TIME FOR ISSUE OF SECURITY CERTIFICATES



SIGNIFICANCE OF SHARE CERTIFICATE

1. A certificate of shares is evidence that the allottee is holding a certain number of shares of the company showing their nominal and paid-up value and distinctive numbers.
2. This certificate is a prime facie evidence of title to the shares in the possession of shareholders.
3. Moreover, when the company issues a certificate, it holds out to the world that the facts contained therein are true.
4. Any person acting on the faith of the share certificate of the company, can compel the company to pay compensation for any damage caused by reason of any misstatement in the share certificate as the company is bound by any statements made in the certificate.
5. Share certificate is the only documentary evidence of title and that the share certificate is a declaration by the company that the person in whose name the certificate is issued is a shareholder in the company.

SPLIT CERTIFICATE

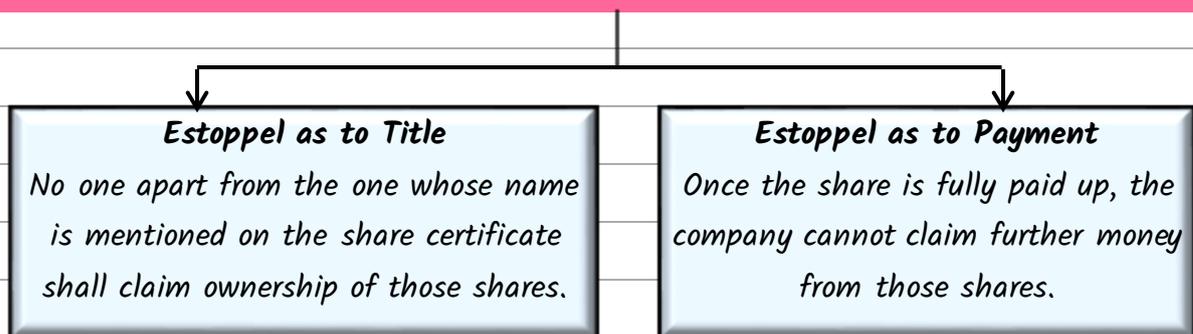
A split certificate means a separate certificate claimed by a shareholder for a portion of his holding. The advantages of a split certificate are that the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

WHETHER SHARE CERTIFICATE IS AN OFFICIAL PUBLICATION?

The Department has clarified that shares in a company are movable property transferable in the manner provided in the articles of the company. The Act further provides that a **certificate signifies ownership** of shares to a member.

Thus, shares are transferable movable property and that the share certificates are certificates of title and are movable property but are **not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement**. The conclusion reached, therefore, is that the share certificate is not an official publication.

LEGAL EFFECTS OF A SHARE CERTIFICATE



PUNISHMENT FOR PERSONATION OF SHAREHOLDERS

Where any person deceitfully personates an owner of any share and obtains such shares or receives or attempt to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to 3 years and with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.



TRANSFER OF SHARES

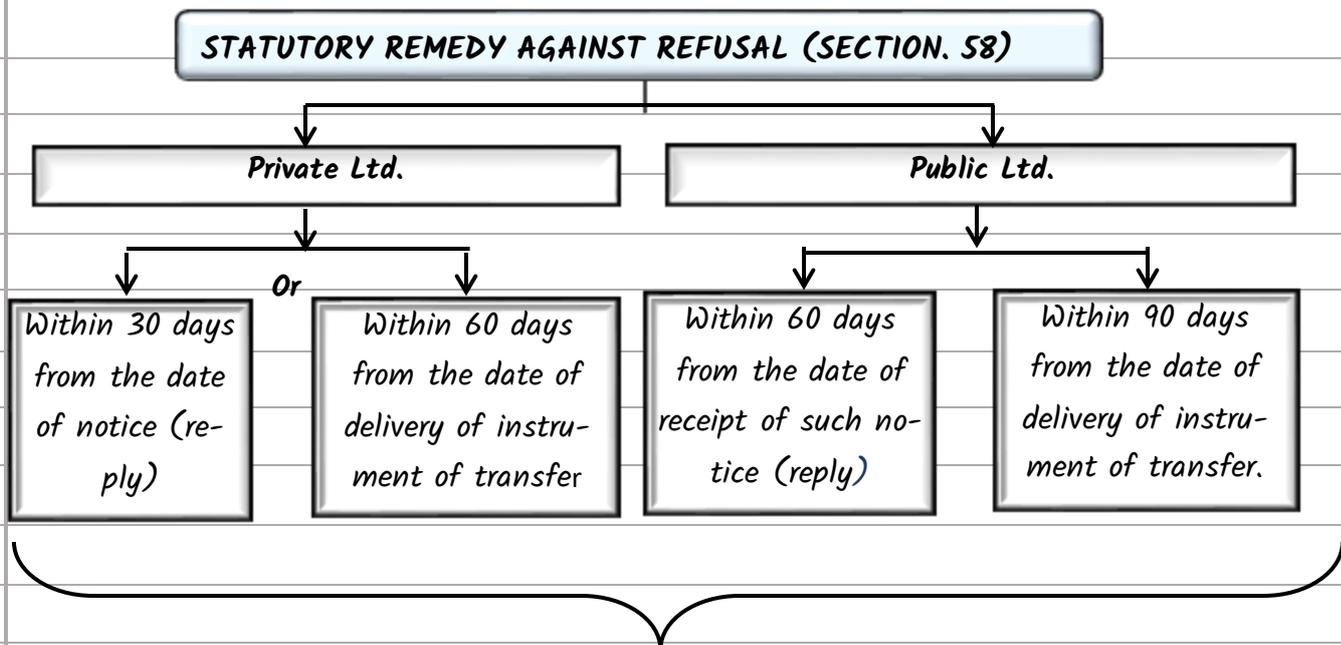
Transfer of shares means *transfer of ownership from one person to another*. It happens *inter vivo* i.e. *between two living persons*.

On the contrary, transmission takes effect by operation of law. It happens in case of death, insolvency or permanent incapacity of an existing shareholder of the company.

Shares of a public limited company are freely transferable while that of a private limited company are subject to the permission of the board of directors of the company.

INSTRUMENT OF TRANSFER

1. An application in form *SH - 4*, along with the share certificate shall be made to the company for transfer of securities.
2. Such form shall be duly stamped, signed, executed & dated by the transferor & the transferee & *within 60 days from the date of execution*, delivered to the company.
3. In case of *partly paid shares*, the company shall give notice in Form *SH - 5*, to the transferee & obtain a *no objection certificate within 2 weeks* from the date of application of transfer, without which the same shall not be registered.
4. Every company shall deliver the certificates of all securities allotted, transferred or transmitted, within a period of one month from the date of receipt by the company of the instrument of transfer.



1. Make an application with the Tribunal
2. Tribunal shall within a period of 10 days after hearing the parties either dismiss the appeal or order transfer or transmission of such securities.
3. If a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 5 lakh rupees. [Section 58 (6)]

Case Law on Refusal of Transfer

Bajaj Auto Ltd V/s N.K. Firodia

In the leading case of Bajaj Auto Ltd. v. N.K. Firodia, the Supreme Court held that even where the Articles give directors absolute and uncontrolled discretion to register or decline registration of shares, the directors will act bona fide for the paramount interest of the company and in the general interests of the shareholders because they are in a fiduciary position both towards the company and towards every shareholder. In all such cases, the following three points have to be considered:-

- a) Whether the directors have **acted in the interests** of the company?
- b) Whether they acted on a **wrong principle**?
- c) Whether they acted with an **oblique motive** for a collateral purpose?



Such refusal must be conveyed in writing to the transferor and the transferee, within the stipulated time period from the date on which the instrument was deposited with the company, giving reasons for refusal. Therefore, the directors cannot exercise their discretion to refuse transfer of shares without disclosing reasons for refusal even after they act bona fide in the interest of the Company.

The transferor or transferee is entitled to appeal to the Tribunal against any refusal of the company to register the transfer. An appeal herein shall be made within two months of the receipt of the notice of such refusal or in case no notice has been sent by the company, then within four months from the date on which the instrument of transfer was delivered to the Company.

RECTIFICATION OF REGISTER OF MEMBERS (SECTION 59)

1. The act provides that if the name of any person is **wrongly entered or is omitted from the register of members** the person aggrieved, or any member of the company, or the company may **appeal** in prescribed form, **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.
2. 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 10 days of the receipt of the order or direct rectification of the records of the depository or the register.

STAMP DUTY ON TRANSFER OF SHARES AND DEBENTURES

1. A company cannot register the transfer of securities unless a proper instrument of transfer duly stamped, dated & executed by or on behalf of the transferor and the transferee has been delivered to the company along with the certificate.
2. As per Indian Stamp Act, 1899 the stamp duty @ the **rate of 0.25%** on Rs 100 shall be payable.



3. On transfer of **debentures** while calculating the stamp duty, the rate at the **higher of the two shall be paid.**
- a) The **place** where the instrument of transfer has been **executed**
- OR**
- b) The **place** where the **Registered Office** of the company is situated.
4. Any **stamp affixed** on such transfer deed shall not be considered as duly stamped unless such stamps have been **cancelled.**
5. If the instrument is not sufficiently stamped or it is not properly cancelled, the company shall be under no obligation to transfer such securities.

TRANSFER OF SHARES OF A PRIVATE LIMITED COMPANY

Transfer of shares means **transfer of ownership from one person to another.** It happens *inter vivo* i.e. between two living persons.

The section 2(68) of the Companies Act 2013 restricts the right to transfer shares but does not prohibit the right to transfer shares.

The right to transfer may be subjected to restrictions contained in the articles and there cannot be total prohibition or ban on transferability of shares. However, only permissible restriction on transferability may be contained in the Articles of association.

Restriction on right to transfer shares is generally placed by using following two methods:

- (a) **Right of pre-emption:** If a member wishes to sell some or all of his shares, such shares shall first be offered to other existing members of the company at a price determined by the directors or by the auditor of the company or by the use of formula set out in the articles. If no existing member is determined to acquire shares, then shares can be transferred by the transferor to the proposed transferee. Articles of Association of private company provide that the shares are to be sold under pre-emption clause at a fair price determined by the directors or the auditor of the company. It may also be provided that the fair price would be certified by the auditor of the company.



(b) **Powers of directors to refuse registration of transfer of shares:** The Powers of directors to refuse registration of transfer of shares are specified in the articles of association of the company. This power is to be exercised by the Board of directors in good faith.

TRANSMISSION OF SHARES (SECURITIES)

1. Transmission of securities takes place when the registered holder of securities **dies or is adjudicated as an insolvent** or if it is a company, it goes into liquidation.
2. In case of death of the member, the shares go to his legal heirs or the nominee, if appointed.
3. On the insolvency of a shareholder, his **shares vest in the Official Assignee or Receiver**, who may get himself registered as holder of these shares, or dispose them off. He can also disclaim partly - paid shares or fully - paid shares which are subject to mortgage or other encumbrance.
4. For transmission of securities, **no document is required to be executed** as it takes effect by the operation of law and it largely depends upon its provisions in memorandum and articles of association.
5. A **succession certificate or a letter of probate is a sufficient proof** for transmission of shares.

DISTINCTION BETWEEN TRANSFER AND TRANSMISSION

Transfer	Transmission
It is a voluntary act of a member.	Transmission happens by operation of law.
In transfers, consideration is always involved.	No consideration is involved.
Transfer is affected as transfer of property when a member intends to sell his shares.	Transmission takes place only on the death, bankruptcy and lunacy of the member.
The member has to execute a valid instrument of transfer.	No instrument of transfer is required.



TRANSFER OF SHARES TO A MINOR

1. As per the Indian Contract Act, 1872, a person who has attained the age of majority is only competent to contract.
2. Since a minor cannot enter into a contract or agreement except through a guardian, it follows that his name cannot be entered in the Register of Members and therefore, he cannot become a member of a company.
3. However, there is no objection in law to the guardian of a minor entering into a contract on behalf of a minor.
4. Since Section 56 of the Companies Act, 2013, the transfer deed can be executed by a minor **through his natural guardian** as transferee.

TIME FOR POINTING OUT INSUFFICIENCY OF STAMPS

Where a company by mistake or otherwise registers a transfer which should have been refused because of insufficient or unconcealed stamps, or because of the instrument being unstamped, it should point out the error to the transferee **within one year** from the date of execution.

BLANK TRANSFERS

1. When the transferor signs the **transfer form without filling in the name of the transferee** and the date of execution and hands over such transfer deed along with the share certificate to the transferee to let him deal with those shares, it is called as a blank transfer.
2. Such blank transfers are usually done in the case of pledging of securities, where such shares are kept with the lender as a form of security.
3. **A blank transfer does not result into transfer of ownership** till the time it is duly executed and registered and the transferee gets a clear title of those shares only when it is registered with the company.

FORGED TRANSFER



1. A forged transfer is a nullity (null & void) and therefore, no ownership of shares can be transferred by way of a forged transfer.
2. In case of a forged transfer, the original owner of those shares can apply to the company and get his name restored on the register of members.
3. However, if the company issues the share certificate to the transferee and he further sells it to an innocent purchaser, the company is liable to compensate for such a purchase.
4. If the company suffers losses because of such damages paid to the innocent purchases the company shall have a right to recover the same from the person who did such forged transfer.

CERTIFICATION OF TRANSFER

Where a shareholder sells only a part of his shares (and not all) mentioned in the share certificate, the procedure for registration of transfer of shares is slightly different.

In this case, the share certificate is not handed over to the buyer along with the instrument of transfer. Both these documents are lodged by the transferor at the Company's registered office. The Company retains the share certificate, endorses the instrument with the words "Certificate lodged" and returns it to the transferor. This process is known as "certification of the transfer".



The transferor then sends the certified instrument of transfer to the transferee who applies to the Company for registration. The company cancels the original certificate and in its place issues two new certificates; one to the transferor to cover the shares, which he continues to own; and the other to the transferee for the shares he has purchased.

DEATH OF TRANSFEROR OR TRANSFEREE BEFORE THE DATE OF REGISTRATION

Where the **transferor dies** and the company has no notice of his death the company would obviously register the transfer. But if the company has notice of his death, the proper course is **not to register until the legal representative of the transferor has been referred to.**

Where the **transferee dies** and company has notice of his death, a transfer of shares cannot be registered in the name of the deceased. With the consent of the transferor and the legal representatives of the transferee, **the transfer may be registered in the names of the later.** But if there is a dispute, an order of Court will have to be insisted upon.

TRANSPOSITION OF SHARES

Changing the order of the names of the joint holders is known as transposition. It is done for the immediate purpose of receiving dividend as dividend is declared in the order specified in the joint holders name.

TRANSMISSION OF SHARES TO A WIDOW

If a widow applies for transmission of the shares standing in the name of her deceased husband **without producing a succession certificate and if the articles of association** of the company so authorises, the directors may dispense with the production of succession certificate, probate or letter of administration upon such terms as to indemnity as the directors may consider necessary, and transmit the shares to the widow of the deceased by obtaining an indemnity bond.



TRANSMISSION OF JOINT HOLDINGS

In case some shares are registered in joint names and the articles of the company provide that the survivor shall be the only person to be recognised by the company, then the **shares shall not be issued in favor of the legal heir of the deceased member.**

In the absence of such provision in the articles of the company, the legal representatives are entitled to the shares held by deceased member and the **company must accept the evidence of succession** e.g., a succession certificate or letter of administrations or probate or any other evidence properly required by the Board of directors.

RIGHTS OF TRANSFEREE

1. **Right to Dividend, Bonus and Rights shares:** If even after the transfer, the transferor has received any dividend on shares, bonus or other benefits accruing in respect thereof, the transferee can recover the same from him.
2. **Dividend to transferee after the transfer:** Once the shares are transferred to the transferee, he's lawfully entitled to receive all the corporate benefits accruing on such shares. Come what may, the transferor is no more entitled to such benefits.

LIEN ON SHARES

Lien means right to retain anything belonging to another until his claims are satisfied. The articles of a company invariably provide that the company shall have a first and paramount (supreme) lien on shares not fully paid-up or for debts due to the company. In case of fully paid-up shares as well, the articles may provide for the company's first and paramount lien on them. This enables the company to secure and recover any debts due from a member. Where such power is given by the articles, the company may sell the shares on which it has a lien for the recovery of a debt which is presently payable after giving him fourteen days notice. Any surplus is to be paid to the concerned members.



DIFFERENCE BETWEEN LIEN AND FORFEITURE

Lien	Forfeiture
Lien can be exercised even when dues are there on other accounts.	Right of forfeiture is exercised for amounts due on shares only.
It is a security for debt and is to be retained till the debt is repaid in full.	It is only a penalty clause to enforce the payment of money due on shares in time.
A lien is enforced by sale of shares, to adjust the outstanding dues.	Forfeiture is an act of depriving the shareholder of his rights.
Any surplus made out of the sale proceeds is to be returned to the member.	The member can't claim refund of money already paid by him.
A lien doesn't result into reduction of share capital, since shares are sold to recover the amount.	Here it may reduce the capital, if the forfeited shares are not sold or re-issued.

DEPOSITORIES

Introduction

The Depositories Act, 1996 has introduced the system of depositories in India. It has come into force with effect from 20th September, 1995.

A depository is an organization where the securities of an investor are held in the electronic form at his request through the medium of a Depository Participant (DP). If the investor wants to utilize the services offered by a Depository, the investor has to open a beneficiary account with the Depository through a DP. DP is the representative or agent in the depository system and it maintains the investor's securities account balances and intimates to him the status of his holding from time to time. The investor can open accounts with one or more DPs. When a person buys any security e.g. shares and debentures already in the depository mode, the buyer will become owner of the said security in the depository within a day of settlement



being made / completed. The buyer is not required to apply to the company for registering the security in his name.

Definition and Meaning of Depository

According to Section 2(e) of the Depositories Act, 1996: "Depository means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under Section 12 (1A) of the Securities and Exchange Board of India Act, 1992".

There are two depository players in the market i.e., National Securities Depository Limited (NSDL) and Central Depository Service (India) Limited (CDSL).

The name of the depository shall appear in the Register of the Issuer (i.e. the company), as the registered owner of the securities. The depository shall have the right to affect the transfer of securities on behalf of the beneficial owner (i.e. the investor) but shall not have voting and other rights associated with the securities.

Definition and Meaning of Depository Participant

Depository Participant (DP) is the agent of the depository and is an interface between the depository and the investor. According to SEBI Guidelines, financial institutions, banks, custodians, stock brokers etc. can become depository participants.

Stocking Holding Corporation of India Limited (SHCIL) is the first depository participant in India registered with NSDL. Besides SHCIL, a number of new and private and foreign banks like Times Bank, HDFC Bank, ICICI Bank, IDBI Bank, Hong Kong Bank, Standard Chartered Bank provide depository services to their customers from their various branches.

ADVANTAGE OF HOLDING SECURITIES IN THE ELECTRONIC MODE

- No stamp duty on transfers.
- Faster delivery and fund settlement.
- No odd lot-trading is possible in any lot.
- Eliminates risks associated with physical deliveries such as loss, theft, forgery etc.



- Eliminates handling of large volumes of paper.
- Facilitates pledge and hypothecation.

OPENING A BENEFICIARY ACCOUNT

The procedure for opening a beneficiary account is as under:

- i) Fill up account opening form and submits photographs of each signatory.
- ii) PAN number to be provided by the investor.
- iii) Signs agreement with DP.
- iv) DP intimates Account No.
- v) The Account number has to be quoted by the investor, every time that he corresponds with the DP.

DEMATERIALIZATION (CONVERSION OF PHYSICAL SHARES INTO ELECTRONIC SHARES)

The procedure for dematerialization is as under:-

- i) Submit dematerialization request form (DRF) along with the share certificates (transferred in the name of the investor).
- ii) Deface share certificates as "surrendered for dematerialization".
- iii) DP electronically transmits DRF to the depository.
- iv) DP sends the share certificates and physical DRF to the RTA/ Company.
- v) Depository electronically transmits the demat request and confirms to Depository Participant.
- vi) RTA/ Company checks authenticity of request and confirms to Depository.
- vii) Depository confirms dematerialization request to DP.
- viii) Investor's account with DP is credited.
- ix) DP sends Statement of Transaction to the investor.



REMATERIALISATION (CONVERSION OF ELECTRONIC SHARES INTO PHYSICAL SHARES)

The procedure for rematerialisation of securities is as follows:-

- i) The beneficial owner sends the request in rematerialisation request form (RRF) to DP.
- ii) DP intimates the Depository of such request electronically.
- iii) Depository confirms the rematerialisation request to the RTA/ Company.
- iv) RTA/ Company updates account and prints certificates and confirms the Depository.
- v) Depository updates account and downloads the details to DP.
- vi) RTA/ Company dispatches the certificates to the holder thereof.
- vii) DP also sends the intimation about rematerialisation to its client.

PLEDGE OR HYPOTHECATION OF SECURITIES

If a beneficial owner intends to create a pledge/hypothecation on a security owned by him, he shall make an application to the Depository through his Depository Participant.

The Depository, after confirmation from the pledgee (Pawnee) that the securities are available for pledge with the pledgor, shall, within 15 days of the receipt of application, create and record the pledge and send the intimation of the same to the Depository Participants of the pledgor and the pledgee. On receipt of intimation, the Depository Participants of both the pledgor and the pledgee shall inform the pledgor and the pledgee respectively of the entry of creation of pledge/hypothecation.

The entry of pledge/ hypothecation made may be cancelled by the Depository if the pledgor or pledgee makes an application to the Depository through their Depository Participants. It may be noted that if the application for cancellation of the entry of pledge has been made by the pledgee, then it shall be cancelled by Depository only with the prior concurrence of the pledgor.



ISSUE OF SECURITIES IN DEMATERIALIZED FORM BY UNLISTED PUBLIC COMPANIES

[Amended by The Companies (Amendment) Act, 2019- Effective From 15th August 2019]

- 1) Notwithstanding anything contained in any other provisions of this Act,—
- (a) every company making public offer; and
 - (b) such other class or classes of public companies as may be prescribed, shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
- (1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder. (NEWLY INSERTED).

RECONCILIATION OF SHARE CAPITAL AUDIT REPORT (HALF-YEARLY)

Every **unlisted public company** to which the provisions of issue of securities in dematerialised form are applicable is required to **submit E-Form PAS-6** w.r.t. Reconciliation of Share Capital Audit Report on a **Half-Yearly basis** to the **Registrar of Companies with such fee** as prescribed within **sixty days** from the conclusion of each half year **duly certified by a company secretary in practice or chartered accountant in practice**.