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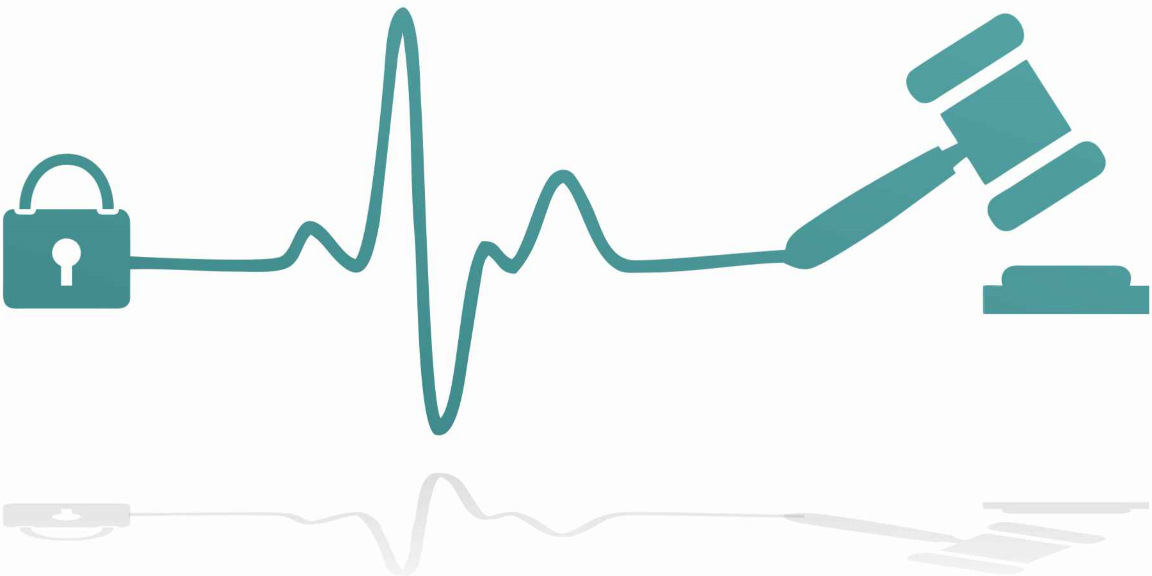
Part-1



COMPANY LAW

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Corporate BaBa

CHAPTER 2 - SHARE CAPITAL

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.

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.]**

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 26% of post issue paid up equity capital of the company including equity shares with differential rights issued.
4) It shall have a track record of distributable profits in the past 3 years.
5) The Company has not defaulted in filing financial statements and annual returns in the last 3 preceding financial years.
6) 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.
7) 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 15 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 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 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 fifteen days and not exceeding thirty 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 suchshares.
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 five 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 ESPS, 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 pursuing 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.

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.

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, cancels any paid up share capital which is lost, or is unrepresented by available assets or
3. 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
4. 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.

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.

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.11, a certificate in Form No SH.15 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.

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 shallbe 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.

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

Subscription	Allotment	Transfer/Transmission of shares	Allotment of debentures
Within 2 months from the date of the incorporation and subscription thereof	Within 2 months from the date of allotment	Within 30 days from the date of receipt of application	Within 6 months from the date of allotment

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

Estoppel as to Title
No one apart from the one whose name is mentioned on the share certificate shall claim ownership of those shares.

Estoppel as to Payment
Once the share is fully paid up, the company cannot claim further money from those shares.

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

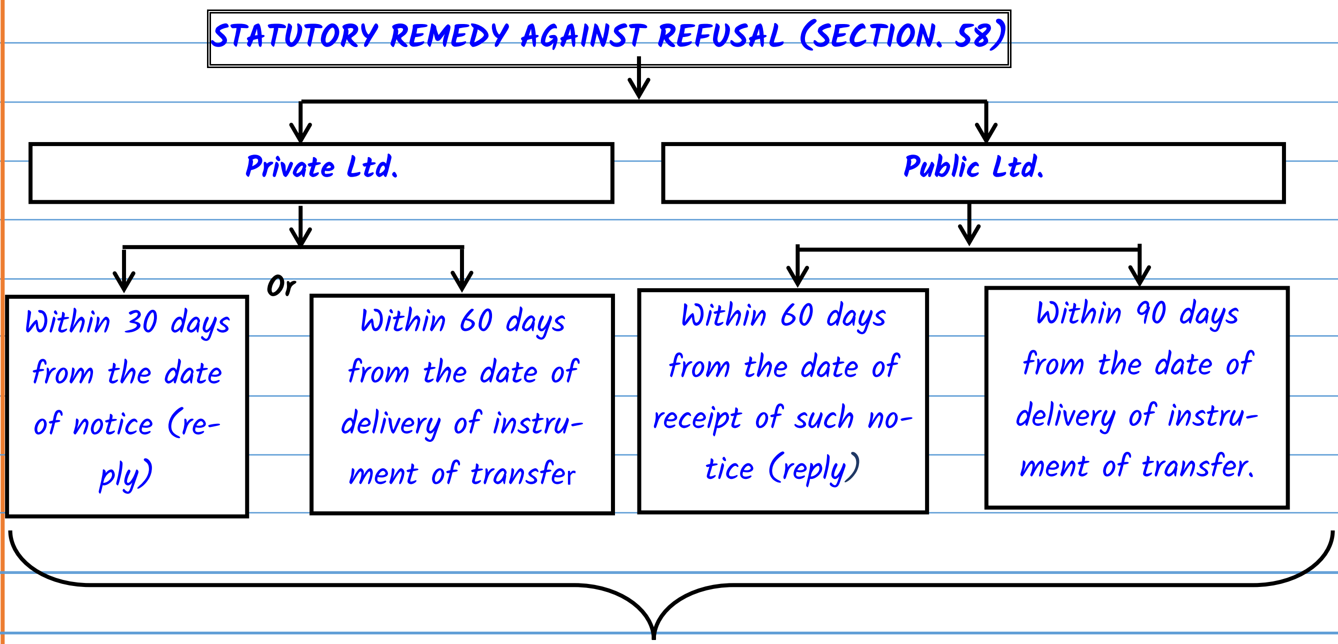
Transfer of shares means transfer of ownership from one person to another. It happens inter vivo i.e. between two living persons.

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.

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

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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 share-holder 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 for-feited 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 deposito-ry 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 deposi-tory 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 (IA) 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 a 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 confirm 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 pledge (Pawnee) that the securities are available for pledge with the pawner, 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 pledge 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 pledge, then it shall be cancelled by Depository only with the prior concurrence of the pledge.

ISSUE OF SECURITIES IN DEMATERIALISED FORM BY UNLISTED PUBLIC COMPANIES

1. Every unlisted public company shall issue the securities **only in dematerialised form** and facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996.
2. Every unlisted public company **making any offer for issue of any securities** or buyback of securities or issue of bonus shares or rights offer shall ensure that **before making such offer, entire holding** of securities of its **promoters, directors, key managerial personnel** has been **dematerialised** in accordance with provisions of the Depositories Act, 1996.
3. Every holder of securities of an unlisted public company,-
   - who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
   - who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such
   - subscription.
4. Every unlisted public company shall facilitate dematerialisation of all its existing securities by making **necessary application** to a depository and shall secure International Security Identification Number **(ISIN)** for each type of security and shall inform all its existing security holders about such facility.
5. Every unlisted public company shall ensure that –

(a) it makes **timely payment of fees** (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;

(b) it **maintains security deposit**, at all times, of **not less than two years' fees** with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and

(c) it **complies with the regulations** or directions or guidelines or circulars, issued by SEBI or Depository with respect to dematerialisation of shares of unlisted public companies.

6. **No** unlisted public company **which has defaulted in sub-rule (5) shall make offer** of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
7. Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.
8. The **audit report** provided under regulation 55A of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 shall be submitted by the unlisted public company on a **half-yearly basis to the Registrar** under whose jurisdiction the registered office of the company is situated.
9. The **grievances of security holders** of unlisted public companies under this rule shall be filed before the **Investor Education and Protection Fund Authority**.
10. The Investor Education and Protection Fund Authority shall **initiate any action** against a depository or participant or registrar to an issue and share transfer agent after prior consultation with the Securities and Exchange Board of India.

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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.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

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.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.