

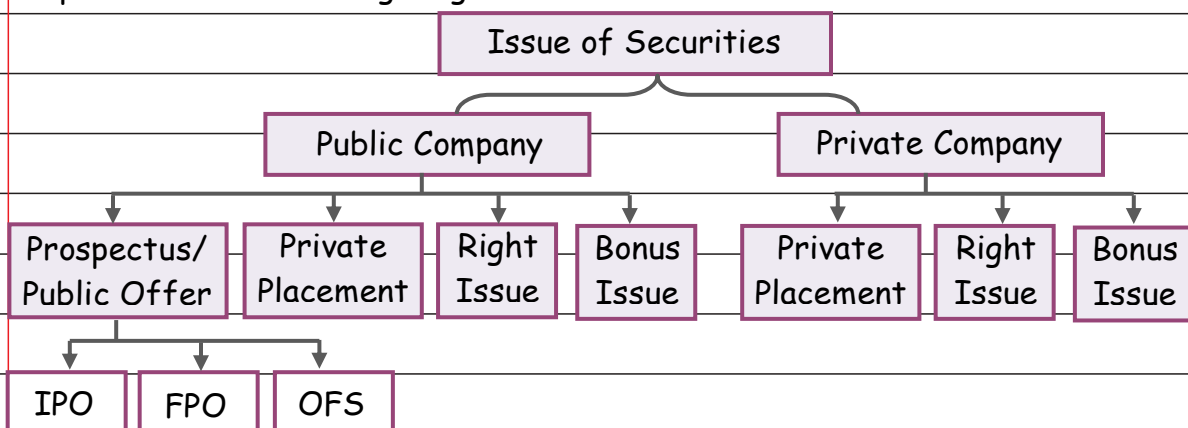
Companies act

Introduction

- One of the advantages of floating a company is raising of capital from the public at large or from a defined group or inner circle (pre-known select group of persons). When the capital is raised from public at large, it is undertaken through the medium of 'Public Offer' and when it is raised from a defined group of persons it is carried out through 'Private Placement of securities'. Acquisition of capital is inflow of funds for the issuer and needs advertisement which should be in accordance with the relevant legal provisions so that no investor is defrauded or cheated. On successful closure of the application process, securities are allotted to the investors which could then be listed on an appropriate segment of a recognised stock exchange after fulfilling due formalities.
- As already mentioned, the provisions relating to raising of capital such as issue of prospectus, allotment of securities etc., and other matters incidental thereto are contained in Chapter III of the Act. This Chapter is divided into two parts:
Part I relates to 'Public Offer' (sections 23 to 41); and
Part II relates to 'Private Placement' (section 42).
- The provisions contained in Part I and part II are supplemented by the Companies (Prospectus and Allotment of Securities) Rules, 2014. A number of amendments have been made from time to time in the Rules.

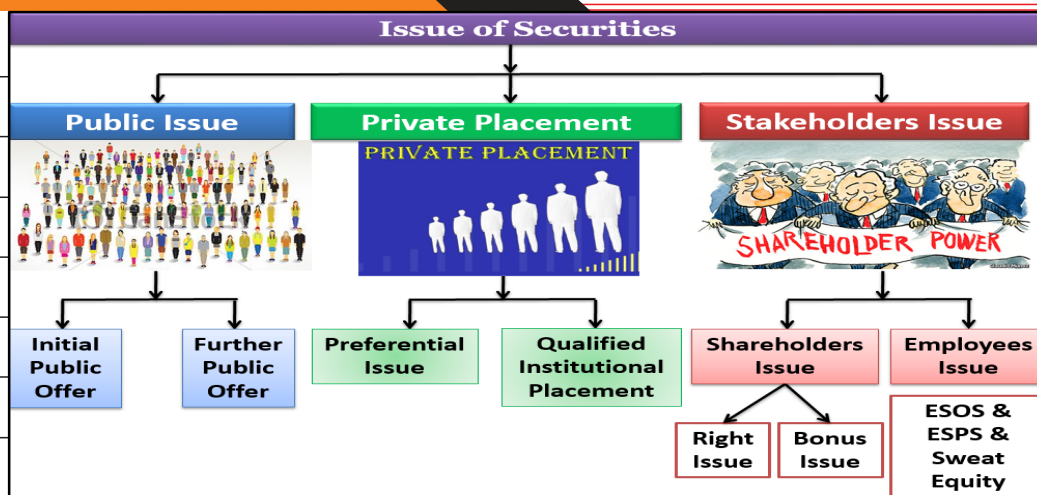
23 Public Offer and Private Placement

- Various modes of issue of securities by a public company or a private company are depicted in the following diagram:



- (1) A public company may issue securities—
 - a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of Part I; or
 - b) through private placement by complying with the provisions of Part II; or
 - c) through a rights issue or a bonus issue in accordance with the provisions of the Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (SEBI) and the rules and regulations made thereunder.
 - (2) A private company may issue securities—
 - a) by way of rights issue or bonus issue in accordance with the provisions of the Act; or
 - b) through private placement by complying with the provisions of Part II.
 - (3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.
 - (4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.
- By way of Explanation it is provided that, "public offer" includes initial public offer (IPO) or further public offer (FPO) of securities to the public by a company, or an offer for sale of securities (OFS) to the public by an existing shareholder, through issue of a prospectus.
- Meaning of Securities:-**
- As per section 2 (81), the term 'securities' means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [SCRA].
- The definition given by section 2 (h) of SCRA is as under:
- "Securities" include -
- i) Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable

	securities of a like nature in or of any incorporated company or other body corporate;															
ia)	derivative;															
ib)	units or any other instrument issued by any collective investment scheme to the investors in such schemes;															
ic)	security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.															
id)	units or any other such instrument issued to the investors under any mutual fund scheme.															
	Explanation: For the removal of doubts, it is hereby declared that "Securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938.															
ie)	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, assigned to such entity, & acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;															
ii)	Government securities;															
iiia)	such other instruments as may be declared by the Central Government to be securities; and															
iii)	rights or interests in securities.															
■	The provisions of Section 23 are tabulated below:															
	<table><tr><th></th><th>Public Company</th><th>Private Company</th></tr><tr><td>Public Offer (including IPO, FPO or OFS)</td><td>Yes</td><td>No</td></tr><tr><td>Private Placement</td><td>Yes</td><td>Yes</td></tr><tr><td>Rights issue / Bonus Issue</td><td>Yes</td><td>Yes</td></tr><tr><td>Compliance with SEBI rules and regulations</td><td>Yes (for a listed company or a company proposed to be listed)</td><td>No</td></tr></table>		Public Company	Private Company	Public Offer (including IPO, FPO or OFS)	Yes	No	Private Placement	Yes	Yes	Rights issue / Bonus Issue	Yes	Yes	Compliance with SEBI rules and regulations	Yes (for a listed company or a company proposed to be listed)	No
	Public Company	Private Company														
Public Offer (including IPO, FPO or OFS)	Yes	No														
Private Placement	Yes	Yes														
Rights issue / Bonus Issue	Yes	Yes														
Compliance with SEBI rules and regulations	Yes (for a listed company or a company proposed to be listed)	No														



Prospectus

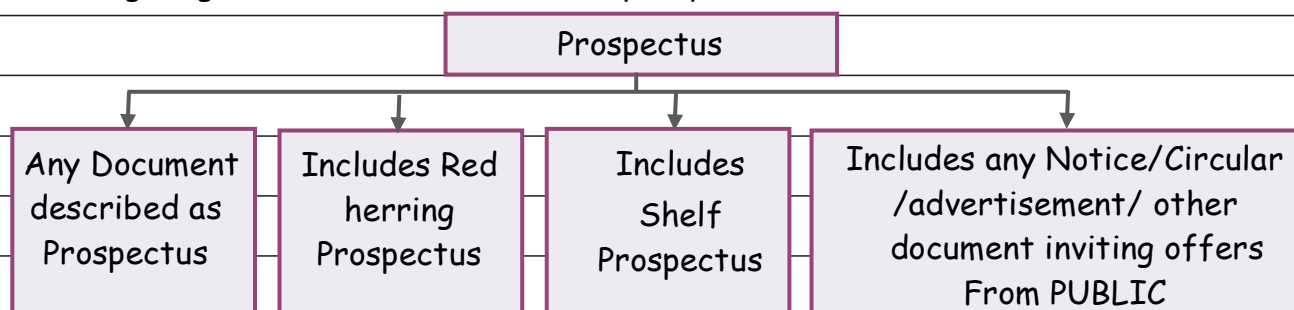
Meaning of Prospectus

- As per the definition given in [section 2 \(70\)](#), prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

According to the above definition, following points emerge in relation to prospectus:

- [Prospectus is any document described or issued as a prospectus](#). Thus, any document which is [described as a prospectus or issued as a prospectus is to called prospectus](#).
- A prospectus shall [include a red herring prospectus or shelf prospectus](#).
- A prospectus shall also include any notice, circular, advertisement or other document [which intends to invite offers from the public](#) for the subscription of any securities or purchase of any securities of a body corporate.

- Following diagram, in nutshell, describes prospectus



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Matters to be stated in Prospectus

(1)	Prospectus to be dated & signed & to state specified information, etc.	<p>Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed & shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.</p> <p>However, until the Securities and Exchange Board specifies the information & reports on financial information under this sub-section, the regulations made by the Securities & Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.</p> <p>Prospectus shall make a declaration about the compliance of the provisions of the Companies Act, 2013 & a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 & the Securities & Exchange Board of India Act, 1992 & the rules & regulations made thereunder. (clauses (a), (b) & (d) to sub-section (1) omitted by the Companies (Amendment) Act, 2017)</p>
(2)	Exceptions	<p>Nothing in sub-section (1) shall apply—</p> <p>a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or</p> <p>b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.</p>

(3)	Application of sub-section (1) to prospectus or to a form of application	Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently. As per the Explanation, the date indicated in the prospectus shall be deemed to be the date of its publication.
(4)	Prospectus to be issued after delivery to Registrar for filing	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 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 authorised attorney.
(5)	Prospectus not to include Experts' statement under certain circumstances	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 filing and a statement to that effect shall be included in the prospectus. Note: As per Section 2(38) 'expert' includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant & any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
(6)	Prospectus to mention compliances of certain formalities on its face	Every prospectus issued under sub-section (1) shall, on the face of it a) state that a copy has been delivered for 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.

(8)	Prospectus to be issued within specified time	No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).
(9)	Punishment if 'issued prospectus'	If a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

Example 1: The Board of Directors of Dr. Sunny Pharmaceutical Limited has allotted shares to the investors at large without issuing a prospectus with the Registrar of Companies, Mumbai. In this regard, it is to be noted that a public company can issue securities to the public only by issuing a prospectus (Section 23).

Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the filing of the prospectus with the Registrar before it is issued.

In the given case, the company has violated the above provisions of the Companies Act, 2013 and hence the allotment made by it is void. The company will have to refund the entire moneys received and will also be punishable under section 26 (9) of the Act.

Note: With the deletion of 2 Rules 3, 4, 5 and 6 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, substantial disclosure requirements, being duplicate in nature, have been dispensed with. Henceforth, a company needs to follow applicable SEBI Regulations till SEBI specifies the information and reports on financial information to be stated in a prospectus under sub- section (1)

29 Public Offer of Securities to be in Dematerialised Form

Section 29 along with Companies (Prospectus and Allotment of Securities) Rules, 2014 [PAS Rules] contain provisions which require public offer of securities to be in dematerialised form. Further, prescribed class or classes of companies shall issue the securities only in the dematerialised form.

(1) Every company making public offer & such other class or classes of 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.

- Dematerialisation of Securities: As per Rule 9 of PAS Rules, the promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form.

- It is provided that the entire holding of convertible securities of the company by the promoters held in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialised form only.

(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.

(2) Any company, other than a company mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with the provisions of the Depositories Act, 1996 & the regulations made thereunder.

Rule 9A of PAS Rules mentions about issue of securities in dematerialised form by unlisted public companies. The provisions are as under:

Issue of	According to Rule 9A (1), every unlisted public company (excluding a
securities in	Nidhi, a Government company and a wholly owned subsidiary) shall
dematerialised	issue the securities only in dematerialised form and also facilitate
form by	dematerialisation of all its existing securities in accordance with
unlisted public	provisions of the Depositories Act, 1996 & regulations made there
companies	under.

Conversion of securities in dematerialised form	Rule 9A (2) states that 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 and regulations made there under.
Responsibility of every holder of securities of an unlisted public company	According to Rule 9A (3), every holder of securities of an unlisted public company: <ul style="list-style-type: none"> a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or b) 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. As per Rule 9A (4), every unlisted public company shall facilitate
Application to the depository	dematerialisation of all its existing securities by making necessary application to a depository as defined in section 2 (1) (e) of the Depositories Act, 1996 and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.
Obligations of every unlisted public company	According to Rule 9A (5), every unlisted public company shall ensure that - <ul style="list-style-type: none"> 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, if any, issued by the Securities & Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.
Prohibition on defaulting unlisted public company		Rule 9A (6) states that 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.
Application of certain provisions		According to Rule 9A (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, 2018 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.
Filing with the Registrar		Rules 9A (8) prescribes that every unlisted public company governed by Rule 9A shall submit Form PAS-6 to the Registrar with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within 60 days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.
Reporting of difference		As per Rule 9A (8A), the company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

Grievances	According to Rule 9A (9), the grievances, if any, of security holders
redressal	of unlisted public companies under Rule 9A shall be filed before the
mechanism	Investor Education and Protection Fund Authority (IEPF).
Initiation of	Rule 9A (10) states that the Investor Education and Protection Fund
action by	Authority shall initiate any action against a depository or participant
IEPF	or registrar to an issue and share transfer agent after prior
Authority	consultation with the Securities and Exchange Board of India

30**Advertisement of Prospectus**

According to Section 30, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:

- i) the objects,
- ii) the liability of members and the amount of share capital of the company,
- iii) the names of the signatories to the memorandum,
- iv) the number of shares subscribed for by the signatories, and
- v) the capital structure of the company.

31**Shelf Prospectus**

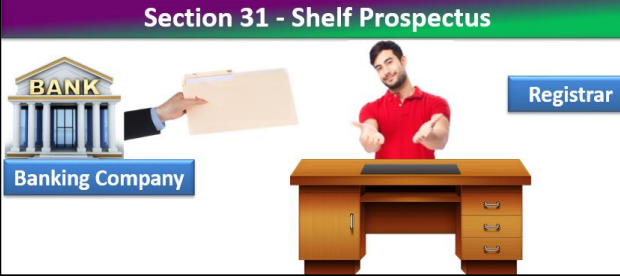
- Section 31 contains provisions relating to Shelf Prospectus. These provisions play a significant role in facilitating commercial and logistical consideration involved in the funds raising cycle.
- We may consider a situation where the issuer company issues debentures frequently and has to file a prospectus every time it issues a new series of debentures. Here, the concept of shelf prospectus comes into play. Literally, it means a prospectus with a given shelf life. Any number of issues could be made during the tenure of the shelf prospectus. The only caveat is to supplement the shelf prospectus by an "information memorandum" containing key updates or changes.

(1)	Filing of shelf prospectus with the Registrar	Any class or classes of companies, as the Securities & Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage- <ul style="list-style-type: none"> of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
(2)	Filing of 'Information Memorandum' with the Shelf Prospectus	<ul style="list-style-type: none"> A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus. It is provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof. According to Rule 10 of the Companies (Prospectus and Allotment of securities) Rules, 2014, the information memorandum shall be prepared in Form PAS-2 and filed with the Registrar along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within one month prior to the issue of a second or

		subsequent offer of securities under the shelf prospectus.
(3)	Deemed Prospectus	Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

- Explanation - For the purpose of this section, the expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further Prospectus.

Section 31 - Shelf Prospectus



Banking Company


Registrar

Information memorandum

A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to

- New charges created,
- Changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities
- Such other changes as may be prescribed

Shelf prospectus shall indicate a period not exceeding one year as the period of validity



BANK

Banking Company

Registrar

Information memorandum

A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to

- New charges created,
- Changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities
- Such other changes as may be prescribed

32 Red Herring Prospectus

Developments taking place in the financial markets from time to time allow innovative methods of raising funds so as to avail the most of favourable market conditions.

Timing the issue and book building of issue are facilitated by the concept of red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.

(1)	It is issued prior to issue of Prospectus	A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
(2)	Filing with the registrar	A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the

		subscription list and the offer.
(3)	Obligations under Red Herring Prospectus	A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
(4)	Filing of Red Herring Prospectus with Registrar & SEBI	Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, & the closing price of the securities & any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

- Explanation - For the purpose of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.






Over Subscribed







It means a prospectus which does not include complete particulars of the quantum or price of the securities included therein

Abridged Prospectus

The term 'Abridged Prospectus' has been defined by Section 2 (1). According to it, 'Abridged Prospectus' means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. In fact, 'Abridged Prospectus' is a summarised form of actual prospectus

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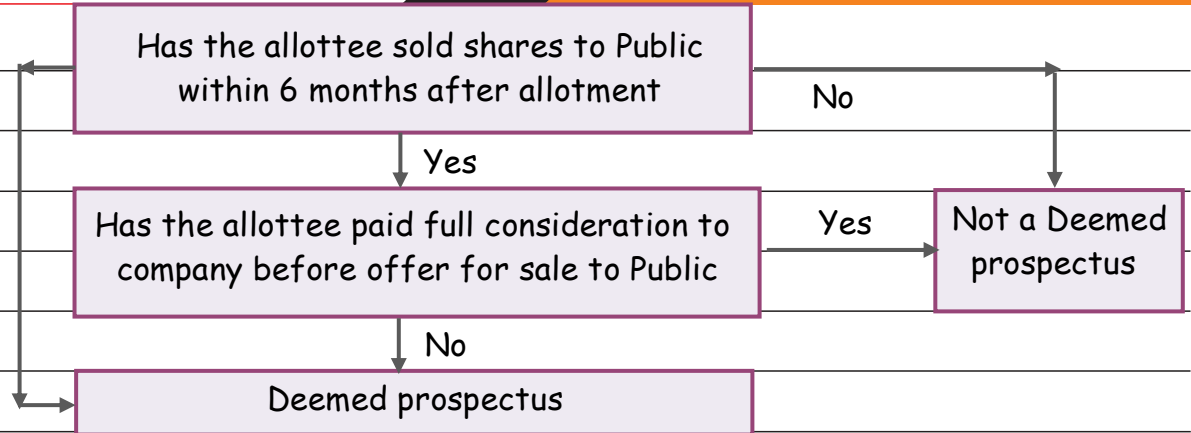
Document containing Offer of Securities for Sale to be Deemed Prospectus

- Section 25 provides that a document by which offer of securities for sale to the public is made, shall be a deemed prospectus. The provisions of Section 25 are mentioned as under -

(1)	Documents	Where a company allots or agrees to allot any securities of the
	which are	company with a view to all or any of those securities being offered for
	deemed to	sale to the public, any document by which the offer for sale to the
	be a	public is made shall, for all purposes, be deemed to be a prospectus
	Prospectus	issued by the company; and all enactments and rules of law as to the
		contents of prospectus & as to liability in respect of misstatements, in
		and omissions from, prospectus, or otherwise relating to prospectus,
		shall apply with the modifications specified in sub-sections (3) & (4) &
		shall have effect accordingly, as if the securities had been offered to
		the public for subscription and as if persons accepting the offer in
		respect of any securities were subscribers for those securities, but
		without prejudice to the liability, if any, of the persons by whom the
		offer is made in respect of misstatements contained in the document
		or otherwise in respect thereof.
(2)	Securities	For the purposes of the Companies Act, 2013, it shall, unless the
	offered for	contrary is proved, be evidence that an allotment of, or an agreement
	sale to the	to allot, securities was made with a view to the securities being
	public	offered for sale to the public if it is shown -
		a) that an offer of the securities or of any of them for sale to the
		public was made within six months after the allotment or agreement
		to allot; or
		b) that 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.
(3)	Effect of	Section 26 as applied by section 25 shall have effect as if —
	section 26	i) it required a prospectus to state in addition to the matters required

		by that section to be stated in a prospectus—
		a) the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
		b) the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;
		i) the persons making the offer were persons named in a prospectus as directors of a company.
(4)	Signing of Document in case of a company or a firm	Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document referred to in sub-section (1) is signed on behalf of the company or firm by two directors of the company or by not less than one-half of the partners in the firm, as the case may be.

- It is to be noted that all applicable provisions relating to prospectus viz., misstatements, contents, civil and criminal liability etc., are applicable to the deemed prospectus. There is no dilution of liability for the persons making the offer which is in addition to liability of the company whose securities are offered for sale. Additionally, below mentioned information needs to be disclosed as well in the deemed prospectus:
- the net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
 - the time and place at which the contract where under the said securities have been or are to be allotted may be inspected;
- The purpose of deeming provision is to protect gullible investors from various fraudulent practices.



Section 25 - Deemed Prospectus

Presumption as to deemed prospectus

Unless the contrary is proved, it shall be presumed that an allotment of an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown -

- i. That an offer of the securities for sale to the public was made within 6 months after the allotment or agreement to allot; or
- ii. That the whole consideration had not been received by the company in respect of the securities issued by it.

28 Offer of Sale of Shares by Certain Members of Company

- Sections 28 contains the provisions which regulate the offer for sale of securities by certain members of company. These provisions are stated as under:

(1)	Offering of shares to public by certain members permitted	Where certain members of a company propose, in consultation with the Board of Directors to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.
(2)	Document offering sale to public is deemed to be a prospectus	Any document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company and all laws and rules made thereunder as to the contents of the prospectus and as to liability in respect of misstatements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3)	Collective	The members, whether individuals or bodies corporate or both,
	Authorisation &	whose shares are proposed to be offered to the public, shall
	reimbursement	collectively authorise the company, whose shares are offered for
	of expenses to	sale to the public, to take all actions in respect of offer of sale for
	company	and on their behalf and they shall reimburse the company all
		expenses incurred by it on this matter.

- As regards offer of sale of shares by certain members of the company Rule 8 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, contains guiding provisions which are stated as under:
 - Exceptions to certain Matters: According to Rule 8 (1), the provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities" and rules made thereunder shall be applicable to an offer of sale referred to in section 28 except for the following, namely:-
 - a) the provisions relating to minimum subscription;
 - b) the provisions for minimum application value;
 - c) the provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and
 - d) any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.
 - Disclosure: As per Rules 8 (2), the prospectus issued under section 28 shall disclose the name of the person or persons or entity bearing the cost of making the offer of sale along with reasons.

27 Variation in terms of contract or objects in prospectus

- Section 27 contains provisions relating to variation in terms of contract or objects in prospectus. Once funds are raised through a given prospectus, the principle of "doctrine of ultra vires" (mutatis mutandis) comes into play i.e., the company has to use the funds strictly in accordance with the prospectus. Deviations are required to be pre-approved by the investors and 'recall option' needs to be given to the dissenting investors. Deviation regarding use of proceeds of issue for buying, trading

or otherwise dealing in equity shares of any other listed company is not permitted.

- The provisions of Section 27 are stated as under:

(1)	Variation on approval in general meeting by passing of SR	A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except subject to the approval of, or except subject to an authority given by the company in general meeting by way of special resolution.
		It is provided that the details, as may be prescribed, of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation.
(2)	Exit offer to dissenting shareholders	The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

- In respect of variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued, Rule 7 of the Companies (Prospectus and allotment of Securities) Rules, 2014, states as under:

- Special Resolution to be passed through Postal Ballot and Contents of Notice:

According to Sub-rule (1), where the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued except by passing a special resolution through postal ballot and the notice of the proposed special resolution shall contain the following particulars, namely:—

- the original purpose or object of the Issue;
- the total money raised;

- (c) the money utilised for the objects of the company stated in the prospectus;
- (d) the extent of achievement of proposed objects (that is 50%, 60%, etc.);
- (e) the unutilised amount out of the money so raised through prospectus,
- (f) the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;
- (g) the reason and justification for seeking variation;
- (h) the proposed time limit within which the proposed varied objects would be achieved;
- (i) the clause-wise details as specified in sub-rule (3) of rule 3 as was required with respect to the originally proposed objects of the issue;
- (j) the risk factors pertaining to the new objects; and
- (k) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

■ **Advertisement to be in Specified Form:** According to Sub-rule (2), the advertisement of the notice for getting the resolution passed for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in **Form PAS-1** and such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

■ **Placing of Notice on Web-site:** According to Sub-rule (3), the notice shall also be placed on the web-site of the company, if any.

40 Securities to be dealt with in Stock Exchanges

■ Section 40 contains following provisions in respect of securities which are to be dealt with in the recognised stock exchanges.

(1)	Filing of an application with recognised stock exchange	Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
(2)	Prospectus to state name of stock exchange	Where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3)	Maintaining of separate bank account	All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank & shall not be utilised for any purpose other than -
		a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchanges specified in the prospectus; or
		b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.
(4)	Condition purporting to waive compliance shall be void	Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.
(5)	Default in complying with provisions	If a default is made in complying with the provisions of this section, both the company and the officer of the company shall be punishable as under:
		a) Company - with minimum fine of five lakh rupees & maximum of fifty lakh rupees
		b) Defaulting officer - with fine varying from fifty thousand rupees to Three lakh rupees

- Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes the following conditions for the payment of commission:

- a) the payment of such commission shall be authorized in the company's articles of association;
- b) the commission may be paid out of proceeds of the issue or the profit of the company or both;
- c) Rate of commission: Following are the rates of commission-
 - i) In case of shares - shall not exceed 5% of the price at which the shares are issued,

or a rate authorised by the articles, whichever is less

- ii) In case of debentures - shall not exceed 2.5% of the price at which the debentures are issued, or as specified in the company's articles, whichever is less
- d) **Disclosure of the particulars in prospectus:** The prospectus of the company shall disclose the following particulars -
 - i) the name of the underwriters;
 - ii) the rate and amount of the commission payable to the underwriter; and
 - iii) the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
- e) **When no commission is to be paid:** There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
- f) **Copy of payment of commission to be delivered to Registrar:** A copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

- **Example 2:** A public limited company which wanted to raise funds through public issue of shares had applied for listing of its shares in three recognised Stock Exchanges. However, only two exchanges had given permission for listing. Can the company proceed with the public offer?

Answer: According to Section 40 (1) of the Companies Act, 2013, every company making a public offer of shares shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

As per Section 40 (2), where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which

- iv) the securities shall be dealt with.

From the above it is clear that not only the company has to apply for listing of the securities at a recognized stock exchange but also obtain permission thereof before making the public offer.

In view of the above provisions, the company cannot proceed with the public offer of shares before obtaining the necessary approval from the stock exchanges.

- **Example 3:** The Board of Directors of a company decide to pay 5% of the issue price of shares as underwriting commission to the underwriters. However, the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 2013?
- Answer:** Under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
- The same rule allows the commission to be paid out of proceeds of the issue or the profit of the company or both.
- Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid since the same cannot exceed the rate which is permitted by the Articles. However, the decision to pay commission out of the proceeds of the share issue is valid provided it is paid at the rate authorised by the Articles.

Section 40 - Securities to be dealt with in stock exchanges
Read with Rule 13 of the Companies (Prospectus & Allotment of Securities) Rules, 2014

Underwriting Commission	Companies Act	SEBI
Shares	5% * IP	2.5% * IP
Debentures	2.5% * IP	2.5% * IP

39 Allotment of Securities by Company

- **Meaning of Allotment -**
- "Allotment" means the appropriation out of previously un-appropriated capital of a company, of a certain number of shares to a person. Till the allotment, as such the shares do not exist. It is on allotment that the shares come into existence. In fact, with the sending of allotment letters, the company starts the process of allotment and it is nothing but acceptance of offer made by the applicants of securities.
- **Legal Provisions governing Allotment -**

Section 39 contains provisions in respect of allotment of securities when there is a public offer. Further, the Companies (Prospectus and Allotment of Securities) Rules, 2014 [PAS Rules] have also been issued.

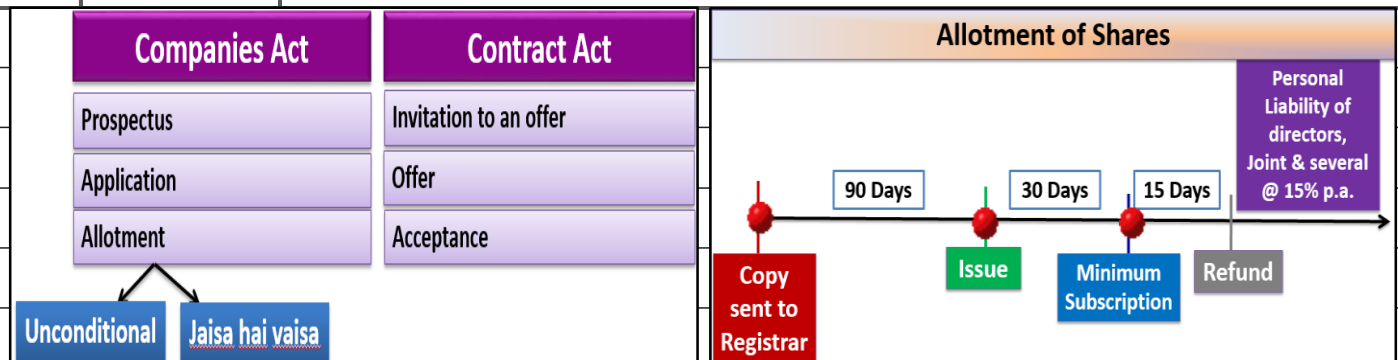
(1)	Receipt of Minimum Amount is a must	<p>No allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.</p> <p>The prospectus must state the minimum amount to be subscribed. Such minimum amount must be received from the subscribers or investors at the time of making application.</p>
(2)	Quantum of Amount Payable on Application	<p>The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.</p>
(3)	Consequences if minimum amount is not subscribed	<p>If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount received under sub-section (1) shall be returned within such time and manner as may be prescribed.</p> <p>■ Refund of Application Money - Rule 11 (1) of the PAS Rules mentions that if the stated minimum amount has not been subscribed & the sum payable on application is not received within the period specified therein, then the application money shall be repaid within a period of 15 days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of 15% per annum.</p>

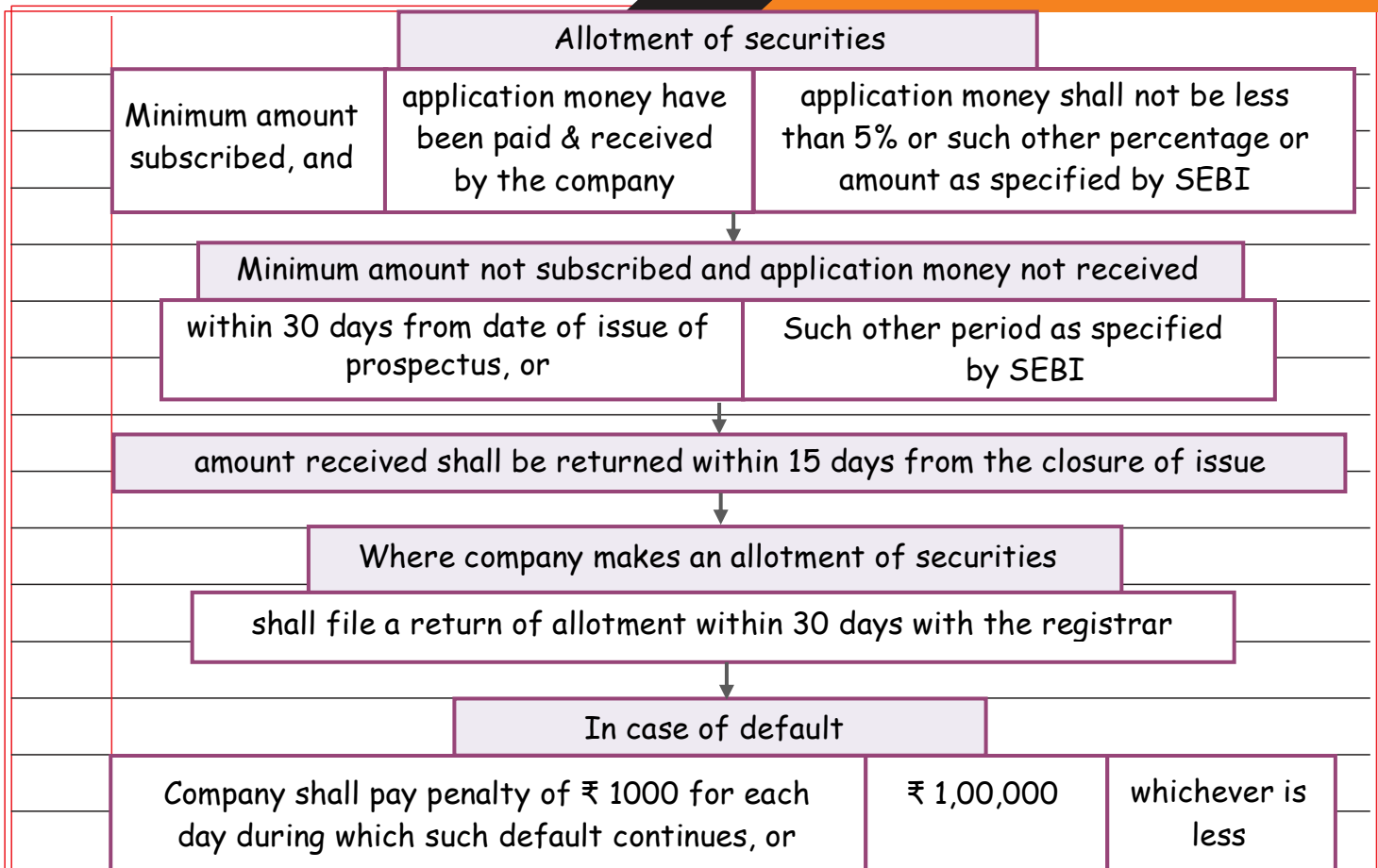
		<ul style="list-style-type: none"> ■ Which Account to be used for Refund - According to Rule 11 (2), the application money to be refunded shall be credited only to the bank account from which the subscription was remitted.
(4)	Return of Allotment	<p>Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in such manner as may be prescribed.</p> <ul style="list-style-type: none"> ■ Time Limit for filing Return of Allotment - According to Rule 12 (1) of PAS Rules, whenever a company having a share capital makes any allotment of its securities, the company shall, within 30 days thereafter, file with the Registrar a return of allotment in Form PAS-3, along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014. ■ Details to be attached with PAS-3 - Rule 12 (2) states that there shall be attached to the Form PAS-3 a list of allottees stating their names, address, occupation, if any, & number of securities allotted to each of the allottees & the list shall be certified by the signatory of the Form PAS-3 as being complete & correct as per the records of the company. ■ Attachments with PAS-3 when Securities are issued for consideration other than cash - According to Rule 12 (3), in the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form PAS-3 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. ■ Attachments with PAS-3 when Contract is not Reduced to Writing - Rule 12 (4) states that where a contract referred to in sub-rule (3) 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, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

- **Attachment of Report of a Registered Valuer** - According to **Rule 12 (5)**, a **report of a registered valuer in respect of valuation of the consideration** shall also be attached along with the contract as mentioned in sub-rule (3) and sub-rule (4).
- **Attachment of Resolution in case of Bonus Shares**- **Rule 12 (6)** states that **in the case of issue of bonus shares**, a **copy of the resolution** passed in the **general meeting** authorizing the issue of such shares shall be attached to the **Form PAS-3**.
- **Attachment of Valuation Report of the Registered Valuer when shares have been issued in pursuance of Section 62 (1) (c)**- **Rule 12 (7)** states that in case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62 by a **company other than a listed company** whose **equity shares or convertible preference shares** are listed on any recognised stock exchange, there shall be attached to **Form PAS-3**, the **valuation report of the registered valuer**.

(5) Punishment for Default	In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less .
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- Once securities are issued and subscribed for, these needs to be allotted according to the conditions given below:
 - Minimum subscription to be received within 30 days of issue of prospectus. In case minimum subscription is not received, the issue is considered as failed. To take care of such an eventuality, the merchant bankers in case of public offer resort to underwriting, suitable pricing, bringing in anchor investors etc., among other things. In case of a failed issue, the entire issue proceeds need to be refunded along with applicable interest.
 - Application money need to be minimum 5% of the nominal amount and such amount must be sufficient to cover the minimum amount stated in the prospectus.
 - Return of allotment needs to be filed with the ROC within the specified time after the allotment of securities.

- Example 4: After having received 80% of the minimum subscription as stated in the prospectus, Raksha Detective Instruments Limited, before finalisation of the allotment, withdrew 50% of the said amount from the bank for the purchase of certain assets. Thereafter, it started allotting the shares to the subscribers. Rashmi, one of the subscribers, was allotted 1000 equity shares. She, however, refused to accept the allotment on the ground that such allotment was violative of the provisions of the Companies Act, 2013.

Answer: According to the above example, Raksha Detective Instruments Limited has received only 80% of the minimum subscription as stated in the prospectus. Since minimum amount has not been received in full, the allotment is in contravention of section 39 (1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Further, under section 39 (3), such company is required to refund the application money received (i.e. 80% of the minimum subscription) to the applicants.

Therefore, in the present case, Rashmi is within her rights to refuse the allotment of shares which has been illegally made by the company.

Misstatements in Prospectus

- In common parlance, misstatement is the act of stating something that is false or not accurate. It could **either be due to commission or omission or both**.
- Misstatement of prospectus is a serious offence which attracts the provisions of section 34 and / or section 35. Liabilities can be classified under two headings:

Civil Liability

- Loss or damage is an essential condition
- Civil Procedure Code, 1908 applicable
- Offence against the counterparty

Criminal Liability

- Mens rea (guilty mind) is an essential condition
- Criminal Procedure Code, 1973 applicable
- Offence is regarded as being committed against the state

34 Criminal Liability for Misstatements in Prospectus

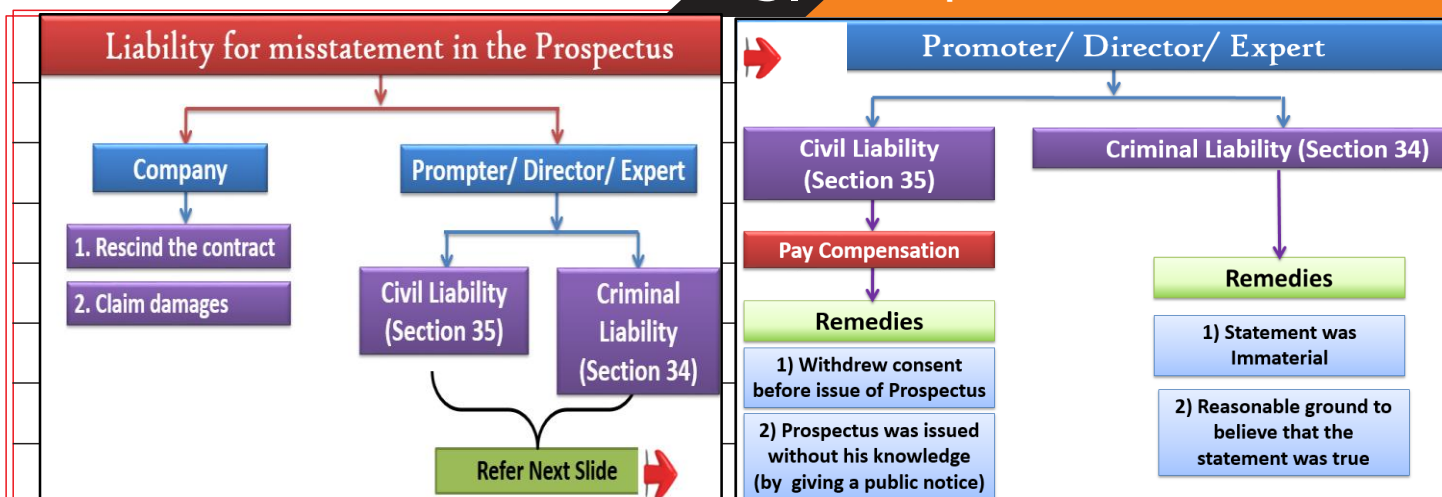
- The provision of Section 34 which mentions criminal liability for misstatements in a prospectus are stated as under -
- Where a prospectus, issued, circulated or distributed under Chapter III, **includes any statement which is untrue or misleading** in form or context in which it is included or where any **inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.**
- **Exception: It is provided that nothing in this section shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.**
- **Note: The provisions of section 447 are given later in the chapter.**

35 Civil Liability for Misstatements in Prospectus

- Section 35 contains the provisions relating to civil liability for misstatements in a prospectus. They are stated as under -

(1)	Liabilities of	Where a person has subscribed for securities of a company acting
	Persons	on any statement included, or the inclusion or omission of any
	involved	matter, in the prospectus which is misleading & has sustained any loss or
		damage as a consequence thereof, the company and every person who -
		a) is a director of the company at the time of the issue of the
		prospectus;
		b) has authorised himself to be named and is named in the prospectus
		as a director of the company, or has agreed to become such director,
		either immediately or after an interval of time;
		c) is a promoter of the company;
		d) has authorised the issue of the prospectus; and
		e) is an expert referred to in sub-section (5) of section 26,
		shall, without prejudice to any punishment to which any person may be
		liable under section 36, be liable to pay compensation to every person

		who has sustained such loss or damage.
(2)	Exceptions	No person shall be liable under Sub-section (1) if he proves—
		a) that, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
		b) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
		c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before [filing of a copy of the prospectus with the Registrar] or, to the defendant's knowledge, before allotment thereunder.
(3)	Unlimited Liability when prospectus issued with intent to defraud	Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in subsection (1) shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.



- **Example 5:** An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under the circumstances?

Answer: Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such misstatements.

Certain situations when a director will not incur any liability for mis-statements in a prospectus are covered under exceptions provided by Section 35 (2) but no such exception specifies that relying on the statements prepared the promoters of the company is a valid ground for a director to escape liability for mis-statement.

- **Example 6:** All the statements contained in a prospectus issued by a company were literally true. It was also stated in the prospectus that the company had paid dividends for a number of years but there was no disclosure regarding the fact that the dividends were paid out of realised capital profits and not out of trading profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars.

Answer: The non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional

circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.

Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

- **Example 7:** A prospectus issued by a company contained certain misstatements. On becoming aware of the fact regarding misstatements in the prospectus, one of the experts Anilesh who had earlier given his consent, forthwith gave a reasonable public notice stating that the prospectus was issued without his knowledge and consent. Is it possible for Anilesh to escape liability for misstatement in the prospectus?

Answer: Section 35 (2) of the Companies Act, 2013 states that no person shall be liable under Sub-section (1) if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

The case of Anilesh is covered under the above exception provided by Sub-section (2) and therefore, he will escape liability for misstatement in the prospectus

36 Punishment for Fraudulently Inducing Persons to Invest Money

- Section 36 prescribes punishment for fraudulently inducing persons to invest money. The provision is stated as under:
- Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,-
 - a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
 - b) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
 - c) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,
- shall be liable for action under section 447.

Note: The provisions of section 447 are given later in the chapter

37 Action by Affected Persons

According to Section 37, a suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Section 37 has paved way for class action

Class Actions - Gift of the Companies Act, 2013

- Class action suit is for a group of people filing a suit against a defendant who has caused common harm to the entire group or class. This is not like a common litigation method where one defendant files a case against another defendant while both the parties are available in court. In the case of class action suit, the class or the group of people filing the case need not be present in the court and can be represented by one petitioner. The benefit of these type of suits is that if several people have been injured by one defendant, each of the injured person need not file a case separately but all of the people can file one single case together against the defendant.
- The need for these types of suits was first felt in the context of securities market during the time of Satyam Scam, where a large group of persons was cheated and all such persons had to lose their hard-earned money invested in the stock market. During that time, it was felt that it was not at all viable and cost effective for a small stakeholder to file a case independently against the defendants. Millions of cheated investors during that time formed a large group and filed the case against the company, but since there was no available legal remedy or law which could actually support this type of litigation initiated by a group, it became tough for those investors to take a recourse or gain advantage from the Indian Judicial System. Class action suits in India were so far filed under the guise of public interest litigations. Courts were free to dismiss them. These shareholders ran pillar to post right from the National Consumer Disputes Redressal Commission up to the extent of Supreme

Court and ultimately had their claims rejected.

- **Example 8:** M applies for equity shares of a company on the basis of a prospectus which contains misstatement. The shares are allotted to him, who afterwards transfers them to N. Whether N can bring an action for a rescission on the ground of misstatement under section 37 of the Companies Act, 2013?
- Answer: No. N cannot bring an action for rescission of the contract for buying shares from M on the ground of misstatement made in the prospectus. Section 37 of the Companies Act, 2013 does not become applicable in such a situation.
- It is noteworthy that according to Section 37, a suit may be filed or any other action may be taken under section 34 or section 35 or section 36 only by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus. Therefore, only M is eligible to file a suit.

447 Punishment for Fraud

- Section 447 describes punishment for fraud. According to it, **any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years** and shall also be liable to fine which shall **not be less than the amount involved in the fraud**, but which may extend to **three times the amount involved in the fraud**.
- It is provided that where the fraud in question **involves public interest**, the term of **imprisonment shall not be less than three years**.
- It is provided further that where the **fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower**, and does **not involve public interest**, any person guilty of such fraud shall be punishable with imprisonment for a term which **may extend to five years** or with fine which **may extend to fifty lakh rupees or with both**.

■ Meaning of Certain Terms -

- a) **Fraud:** The term 'fraud' in relation to affairs of a company or any body corporate, includes- any act, omission, concealment of any fact, or abuse of position committed by any person, or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- b) **Wrongful Gain:** The term 'wrongful gain' means the gain by unlawful means of property to which the person gaining is not legally entitled;
- c) **Wrongful Loss:** The term 'wrongful loss' means the loss by unlawful means of property to which the person losing is legally entitled.

	Fine		Imprisonment
i) Fraud involving less than 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Up to ₹ 50 lakhs	or/ and	Up to 5 years Minimum 6 months; & Maximum 10 Years
ii) Fraud involving at least 10 lakh rupees or 1% of turnover, whichever is lower (public interest not involved)	Minimum fine equal to amount of fraud; and Maximum fine 3 times of amount of fraud	and	Minimum 3 years; & Maximum 10 Years
iii) Fraud at (ii) involves public interest	Minimum fine equal to amount of fraud; & Maximum fine 3 times of amount of fraud	and	

42 Offer or Invitation for Subscription of Securities on Private Placement

■ Private Placement -

- a) A private placement is a way of raising capital that involves the issue of securities to a relatively small number of select investors.
- b) A private placement is different from a public issue in which securities are made available for issue or sale on the open market to any type of investor

Issue of Shares on Private Placement Basis -

According to Section 42, following provisions are applicable when shares are issued on private placement basis. They are also supplemented by Rule 149 the Companies (Prospectus and Allotment of Securities) Rules, 2014 [PAS Rules].

(1) Applicability -

A company may, **subject to the provisions of section 42**, make a private placement of securities.

(2) Offer to be made only to a Select Group of Persons -

- A private placement shall be made only to a select **group of persons who have been identified by the Board** (herein referred to as "identified persons"), **whose number shall not exceed 50 or such higher number as may be prescribed** [excluding the qualified institutional buyers & employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.
- According to **Rule 14 (2) of the PAS Rules**, an offer or invitation to subscribe securities under private placement **shall not be made to persons more than 200 in the aggregate in a financial year**.
- It is provided that any **offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees' stock option** as per provisions of clause (b) of sub-section (1) of section 62 **shall not be considered while calculating the limit of two hundred persons**.
- As per Explanation given in this Rule, it is clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.
- **Non-applicability of Sub-rule (2): The provisions of sub-rule (2) shall not be applicable to -**
 - a) **non-banking financial companies (NBFCs) which are registered with the Reserve Bank of India; and**
 - b) **housing finance companies (HFCs) which are registered with the National Housing Bank;**

- if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis.
 - It is provided that such companies shall comply with sub-rule (2) in case the Reserve Bank of India or the National Housing Bank have not specified similar regulations.
- (3) **Manner of Issuing Private Placement Offer and Application -**
- A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed.
- It is provided that the private placement offer and application shall not carry any right of renunciation.
- **Meaning of 'Private Placement':** As per Explanation I, the term "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement Offer-cum-application, which satisfies the conditions specified in section 42.
 - **Meaning of 'Qualified Institutional Buyer':** As per Explanation II, the term "qualified institutional buyer" means the qualified institutional buyer as defined in the Securities & Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.
 - **When a Private Placement shall be deemed to be an Offer to the Public:** As per Explanation III, if a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public & shall accordingly be governed by the provisions of Part I of Chapter III.
 - **Requirement of Special resolution:** According to Rule 14 (1) of the PAS Rules, for the purposes of sub-section (2) and sub-section (3) of section 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the

proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations.

- In the explanatory statement annexed to the notice for shareholders' approval, the following disclosure shall be made:-

- a) particulars of the offer including date of passing of Board resolution;
- b) kinds of securities offered and the price at which security is being offered;
- c) basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
- d) name and address of valuer who performed valuation;
- e) amount which the company intends to raise by way of such securities;
- f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities.

- As per the 2nd Proviso to Rule 14 (1), sub-rule (1) shall not apply in case of offer or invitation for non-convertible debentures, where the proposed amount to be raised through such offer or invitation does not exceed the limit as specified in clause (c) of sub section (1) of section 180 and in such cases relevant Board resolution under clause (c) of sub-section (3) of section 179 would be adequate.

- As per the 3rd Proviso to Rule 14 (1), 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 as specified in clause (c) of sub-section (1) of section 180, 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.

- As per the 4th proviso to Rule 14(1), 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 in a year for all the allotments to such buyers during the year.

Applicable Application Form: According to Rule 14 (3) of the PAS Rules, a private placement offer cum application letter shall be in the form of an application in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is

made and shall be sent to him, either in writing or in electronic mode, within 30 days of recording the name of such person pursuant to section 42 (3).

Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter

- It is provided that no person other than the person so addressed in the private placement offer cum application letter shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.
- **Maintaining of Complete Record:** According to Rule 14 (4) of the PAS Rules, the company shall maintain a complete record of private placement offers in Form PAS-5.
- **Timing of issue of private placement offer cum application letter:** According to Rule 14 (8) of the PAS Rules, a company shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry.
- It is provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of sub- section (3) of section 179.

(4) Manner of Subscribing to the Private Placement Issue -

Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash.

- It is provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8) of Section 42.
- **Utilisation of Bank account:** Supplementing the above sub-section (4), Rule 14(1) of the PAS Rules provides that the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the

company shall keep the record of the bank account from where such payment for subscription has been received.

- In case of joint holders, it is provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.
- It is further provided that the provisions of sub-rule (5) shall not apply in case of issue of shares for consideration other than cash.
- *Example 9:* Ruhi and her younger brother Sohit were offered jointly 1000 equity shares of ₹ 100 each by Soumya Software Private Limited under the issue of shares on private placement basis. From whose account the company is required to take subscription money for 1000 equity shares?
 Answer: According to the first Proviso of Rule 14 (5) of the PAS Rules, monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. It is presumed that Ruhi's name appears first in the application and therefore, the subscription of ₹ 1,00,000 shall be payable by her from her account. It is obligatory for the company to ensure that the money is paid from her bank account and not from the bank account of her younger brother Sohit.

(5) Limit on Fresh Offer -

No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.

- It is provided that subject to the maximum number of identified persons under sub-section (2) of section 42, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) Time Limit for Allotment of Securities -

A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay

the application money to the subscribers within **fifteen days** from the expiry of **sixty days** and 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 twelve per cent per annum from the expiry of the sixtieth day.**

- It is provided that the monies received on application under this section shall be kept in **a separate bank account** in a scheduled bank and shall not be utilised for any purpose other than -
 - a) for **adjustment against allotment of securities**; or
 - b) for the **repayment of monies where the company is unable to allot securities.**

(7) Prohibition on Public Advertisement -

No company **issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.**

(8) Filing of Return of Allotment -

A company making any allotment of securities under this section, **shall file with the Registrar a return of allotment** within **fifteen days** from the date of the allotment in such manner as may be prescribed, **including a complete list of all allottees, with their full names, addresses, number of securities allotted** and such other relevant information as may be prescribed.

- As regards Return of Allotment, **Rule 14 (6)** of the PAS Rules states that a return of allotment of securities under section 42 shall be filed with the Registrar within **15 days** of allotment in Form **PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all the allottees containing-
 - a) the **full name, address, Permanent Account Number & E-mail ID of such security holder;**
 - b) the **class of security held;**
 - c) the **date of allotment of security;**
 - d) the **number of securities held, nominal value and amount paid on such securities, and particulars of consideration received if the securities were issued for consideration other than cash.**

(9) Default in Filing the Return of Allotment -

If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Punishment for Contravening the Private Placement Provisions -

Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of section 42, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Deemed Public Offer -

Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.

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Introduction

- Finance, the lifeblood for running the affairs of a company, can be raised, inter- alia, by issuing shares and debentures. In fact, shares and debentures are financial instruments which help in arranging funds for the company. Under the Companies Act, 2013, they are jointly referred to as "securities".
- Shares represent ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lenders' interest in the company with limited risks and returns.
- Sometimes, after the issue of capital, a company may either alter or reduce the share capital depending upon the exigencies of the situation. The company has to follow the requisite provisions for alteration or reduction of share capital.
- Both the shares and debentures are presented in the Balance Sheet on the liabilities side of the issuer company and on the assets side of the investor and lender respectively.
- Legal provisions relating to these instruments are covered under Chapter IV of the Companies Act, 2013 (comprising sections 43 to 72) and the Companies (Share Capital & Debentures) Rules, 2014 as amended from time to time along with endorsement in the company formation documents or approved at the suitable company forum, wherever necessary.

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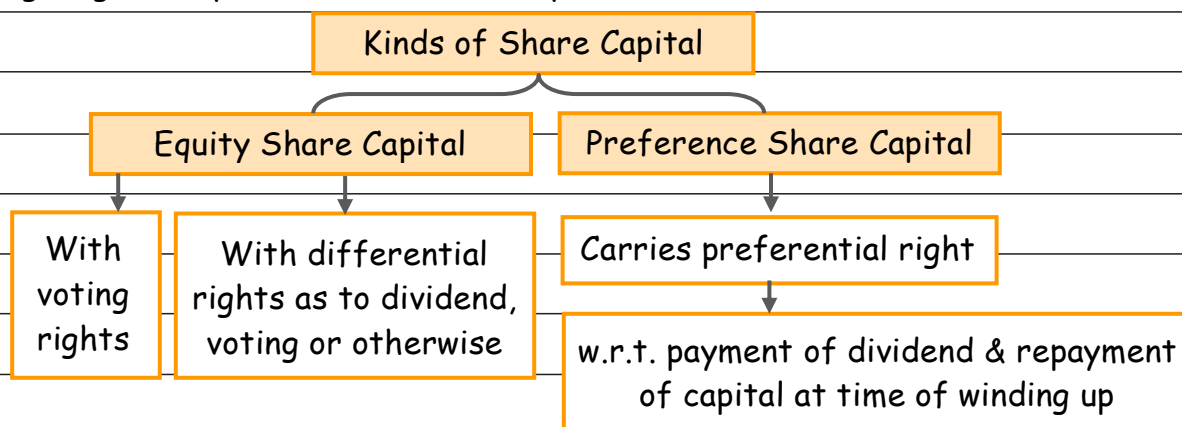
Kinds of Share Capital

Definition of Share and Stock -

- Section 2(84) defines share as a share in the share capital of a company & includes stock.
- The share capital of a company is divided into small units having a certain face value. Each such unit is termed as share.
- *Example 1:* Sun Bakers Limited has authorised share capital of ₹ 50.00 lacs. The face value of each unit of capital or 'share' is ₹ 10. In this case, it can be said that the company has 5.00 lacs shares of ₹ 10 each. When these shares (either in part or whole) are allotted to various persons, they, on the date of allotment, become shareholders of

the company.

- The definition of 'share' states that the term '**share**' includes '**stock**'. If a company undertakes to aggregate the fully paid up shares of various members as per their requests and merge those shares into one fund, then such fund is called 'stock'. In simple words we can say that '**stock**' is a collection or bundle of fully paid-up shares. According to Section 61 (1) (c), a limited company having a share capital, after completing certain formalities, can convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination. **Stock is stated in lump sum whereas a 'share' being the smallest unit is having face value.** Originally shares are issued to the shareholders while in case of stock, the fully paid-up shares of the members are converted into 'stock' afterwards. Thus 'stock' is not issued originally but is obtained by conversion of fully paid-up shares.
- Following diagram depicts kinds of share capital -



Two Kinds of Share Capital:

- Broadly, there are two kinds of share capital of a company limited by shares:
 - **Equity share capital**
 - **Preference share capital.**
- The Act defines preference share capital as instruments which have preferential right to dividend payment (absolute/fixed or ad-valorem/ %) and preferential repayment during winding up of the company. These shareholders can also participate in equity pool post the preferential entitlements.
- **Shares which are not preference shares are termed as equity shares.**

■	Equity shares are further classified as plain vanilla (same voting rights) or differential equity shares (differential with respect to dividend or voting rights or otherwise).
■	According to Section 43, the share capital of a company limited by shares shall be of two kinds, namely:—
a)	equity share capital -
i)	with voting rights ; or
ii)	with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
b)	preference share capital
■	Note: Nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.
■	Explanation—For the purposes Section 43, -
i)	"equity share capital" , with reference to any company limited by shares, means all share capital which is not preference share capital;
ii)	"preference share capital" , with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to -
a)	payment of dividend , either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
b)	repayment, in the case of a winding up or repayment of capital , of the amount of the share capital paid-up or deemed to have been paid- up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;
iii)	capital shall be deemed to be preference capital , notwithstanding that it is entitled to either or both of the following rights, namely:—
a)	that in respect of dividends, in addition to the preferential rights to the amounts specified in sub-clause (a) of clause (ii) , it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts specified in sub-clause (b) of clause (ii), it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Equity Shares with Differential Rights

- Rule 4 of the Companies (Share capital and Debenture) Rules, 2014 contains provisions which need to be followed while issuing equity shares with differential rights. These are stated as under:

i) Conditions for the issue of equity shares with differential rights -

According to Rule 4 (1), a company limited by shares may issue equity shares with differential rights as to dividend, voting or otherwise, if it complies with the following conditions, namely:

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

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

- c) the voting power in respect of shares with differential rights of the company shall not exceed seventy-four per cent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;
- d) Omitted;
- e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest

	on such deposits or debentures or payment of dividend;
g)	the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
	It is provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
h)	the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 (RBI), the Securities and Exchange Board of India Act, 1992 (SEBI), the Securities Contracts Regulation Act, 1956 (SCRA), the Foreign Exchange Management Act, 1999 (FEMA) or any other special Act, under which such companies being regulated by sectoral regulators.
ii)	Contents of Explanatory statement -
	Rule 4 (2) states that the explanatory statement to be annexed to the notice of the general meeting or of a postal ballot shall contain various matters like particulars of the issue including its size, details of differential rights, etc.
iii)	Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights -
	Rule 4 (3) specifies that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.
iv)	Disclosure in the Board's Report -
	According to Rule 4 (4), the Board of Directors shall, inter-alia, disclose the specified particulars in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed.
v)	Rights to the holders of the equity shares with differential rights -
	Rule 4 (5) states that the holders of the equity shares with differential rights shall

enjoy all other rights such as **bonus shares, rights shares, etc.**, which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

vi) **Particulars of shares to be maintained in the register of members -**

Rule 4 (6) provides that where a **company issues equity shares with differential rights, the Register of Members maintained under section 88** shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

■ **Section 43 shall not apply to a -**

- a) **private company, where memorandum or articles of association of the private company so provides. However, the exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar. (Notification No. GSR 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13th June, 2017.)**
- b) **Specified IFSC Public Company, where memorandum of association or articles of association of such company provides for it. - (Notification No. GSR 8 (E), dated 4th January, 2017.)**

46 Certificate of Shares

A certificate of shares is required when shares are issued in physical form. Section 46 contains provisions which regulate certificate of shares. They are stated as under:

(1)	Share Certificate is prima facie evidence of title	According to section 46 (1), a certificate, issued under the common seal (Now it is optional for a company to have a common seal in terms of Proviso - inserted by the Companies (Amendment) Act, 2015), if any, of the company or signed by 2 directors or by a director & the Company Secretary , wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares.
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(2)	Issue of Duplicate Certificate	Section 46 (2) states that a duplicate certificate of shares may be issued, if such certificate — a) is proved to have been lost or destroyed; or b) has been defaced, mutilated or torn & is surrendered to the company.
(3)	Manner of Issue of Certificates/ Duplicate certificates	According to section 46 (3), notwithstanding anything contained in the articles of a company, the manner of issue of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members and other matters shall be such as may be prescribed
(4)	Shares held in Depository Form	According to Section 46 (4), where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.
(5)	Punishment for issuing Duplicate Certificate of Shares with intent to Defraud	As per Section 46 (5), if a company with intent to defraud issues a duplicate certificate of shares, the punishment shall be as under: a) 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 b) every officer of the company who is in default shall be liable for action under section 447
■	Physical entitlement to a particular portion of share capital is prima facie evidenced by way of a share certificate which has to be:	
a)	distinctively numbered; and	
b)	issued under common seal of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.	
■	In case the company is required to issue duplicate certificates, it can do so after	

following the procedure prescribed in [Rule 6 of the Companies \(Shares & Debentures\) Rules, 2014](#).

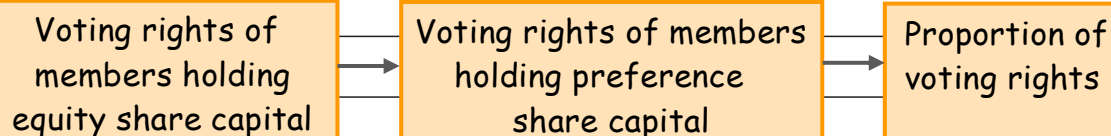
- The aforesaid requirements are [not applicable in case of dematerialised shares or shares held in electronic form with any depository](#). In such a case, records of the depository will be treated as prima facie evidence of the interest of the beneficial owner.
- [Dematerialisation \(in short 'Demat'\) of Securities](#) - After the depositories started functioning in India, the listed shares are required to be held in electronic form. Even banks and financial institutions insist for demat of securities for creation of charge. Now, [Rule 9A \(inserted w.e.f. 2-10-2018\) of the Companies \(Prospectus and Allotment of Securities\) Rules, 2014](#), requires every [unlisted public company](#) to issue the securities only in dematerialised form and also facilitate dematerialisation of all its existing securities.
- According to Rule 9A (3), every holder of securities of an unlisted public company,
 - a) [who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer](#); or
 - b) [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](#).
- [Rule 9A \(11\) states that Rule 9A shall not apply to an unlisted public company which is:](#)
 - a) [a Nidhi](#);
 - b) [a Government company](#); or
 - c) [a wholly owned subsidiary](#).
- It is to be noted that only unlisted public companies (subject to exceptions) are covered by Rule 9A and therefore, [it is not necessary for a private limited company to get its securities dematerialized](#)
- At present, there are [two depositories available in India i.e. NSDL and CDSL](#). Various depository participants (DPs) are linked to them. Dematerialised securities are held by the investors in their respective accounts with the DP which keeps a track of

transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all such procedures.

- It is noteworthy to observe that the **share certificates issued by a company are comparable with the currency notes issued by the Central Bank i.e. Reserve Bank of India**. Therefore, strict penal provisions are in existence against fraudulent activities. In such cases, the wrong-doer company and every officer who is in default are punishable under Section 447.

47

Voting Rights



Section 47 governs the voting rights of the members of a company. The provisions of Section 47 are stated as under:

(1)	Voting Rights of Members holding Equity Share Capital	Section 47 (1) states that subject to the provisions of section 43, section 50 (2) and section 188 (1) -
		a) every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company ; and
		b) his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company .
		(In case of Nidhis, Section 47 (1) (b) shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of 5%, of total voting rights of equity shareholders.)
(2)	Voting Rights of Members holding Preference Share Capital	According to Section 47 (2), every member of a company limited by shares who is holding any preference share capital shall, in respect of such capital, have -
		a) a right to vote only on resolutions placed before the company which directly affect the rights attached to his preference shares , and

b) a right to vote on any resolution for the winding up of the company, or for the repayment or reduction of its equity or preference share capital.

and his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of the company.

Provided that, proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

Provided further that, where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, then such class of preference shareholders shall have a right to vote on all the resolutions placed before the company.

- From the above provisions, it is clear that in case of equity shares other than equity shares with differential voting rights, each shareholder is entitled to vote on any resolution placed before the company i.e., in the Annual General Meeting (AGM) or Extra-ordinary General Meeting (EGM) of the members of the company. The voting right shall be proportionate to the paid-up capital of the class of shares involved.

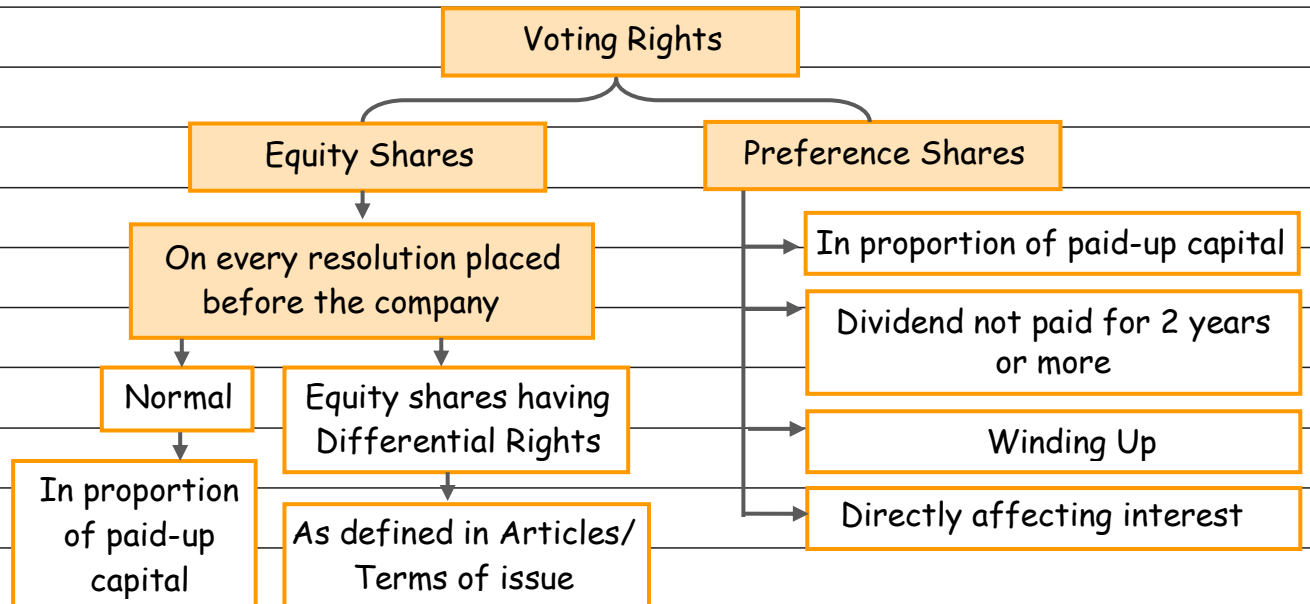
- Though the preference shareholders have limited voting rights but they shall have a right to vote on all the resolutions placed before the company if the dividend has not been paid to them for a period of two years or more. Similarly, they have a right to vote on any resolution for the winding up of the company or for the repayment or reduction of company's equity or preference share capital.

■ Exemption to a Private Company -

- Section 47 shall not apply to a private company, where memorandum or articles of association of the private company so provides. However, the exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar. Thus, Private company could be more innovative in terms of voting rights

if permitted by their Articles of Association.

- In case of Nidhis, Section 47 (1) (b) shall apply, subject to the modification that no member shall exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders.



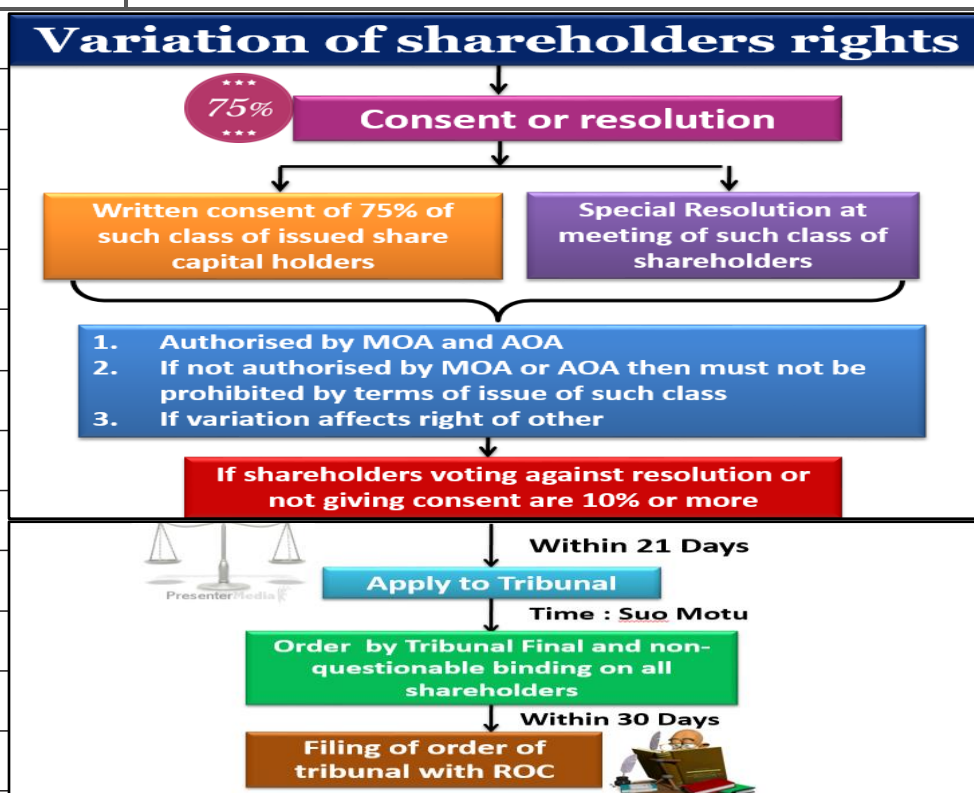
48

Variation of Shareholders' Rights

In case share capital of a company is divided into different classes of shares, it may sometimes be necessary for it to amend the rights attached to one or more classes of shares. Section 48 deals with such a situation and regulates the variations of shareholders' rights as under:

(1)	Variation in Rights of Shareholders with Consent	where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,—
		a) if provision with respect to such variation is contained in the memorandum or articles of the company ; or
		b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue

		of the shares of that class.
(2)	No Consent given for Variation	where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal. Provided that an application under this section shall be made within 21 days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.
(3)	Decision of Tribunal	The decision of the Tribunal on any application under sub-section (2) shall be binding on the shareholders.
(4)	Filing of copy of order with Registrar	The company shall, within 30 days of the date of the order of the Tribunal, file a copy thereof with the Registrar.



49

Calls on Shares of Same Class to be made on Uniform Basis

- When the shares are partly paid-up, the company issuing them can make calls, asking the shareholders to pay the amount 'called up' in respect of such partly paid-up shares.
- As per Section 49, these calls have to be uniformly made and there should be no differentiation for a given class of shareholders.
- As per Explanation to Section 49, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class (i.e. the provision is not applicable in case where different amounts are paid for a same class of shares).

50

Company to Accept Unpaid Share Capital, although not Called Up

- (1) a company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up (i.e. if authorised by the articles, a company is permitted to keep advance subscription or call money received in advance).
- (2) However, a member of a company limited by shares shall have no voting right in respect of the 'advance amount' paid by him on 'calls' till the amount is duly called up.

51

Payment of Dividend in Proportion to Amount Paid-Up

- According to Section 51, the company is permitted to pay dividends in proportion to the amount paid-up on each share, if so authorised by the articles.
- In other words, advance payment will not lead to increased voting rights but delayed payment of call money could be the reason of decreased voting rights.
- *Example 2:* Moon Star Machineries Limited is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member even if no part of that amount has been called up by it. 'Anand', a shareholder, deposits in advance the remaining amount due on his partly paid-up shares without any calls being made by the company.

In view of the authorisation given by the Articles, Moon Star Machineries Limited is permitted to accept the advance amount received on unpaid calls from Anand. In other words, this is a valid transaction.

- *Example 3:* Coriander Masale Limited has issued 10,00,000 equity shares of ₹ 10 each on which ₹ 6 per share has been called till allotment and the first and final call of ₹ 4 is yet to be made. Reena holds 10,000 shares on which she has paid whole of ₹ 10 per share. In the upcoming extra-ordinary general meeting of the company she wants to exercise her voting rights as the owner of fully paid-up shares. However, the company cannot permit her as she does not have voting right in respect of the 'advance amount' paid by her in respect of first and final call. The restriction will continue till the amount is duly called up by the company.

Issue of Shares at Premium or Discount

- Under the concepts of financial management, fair value of a share may be equal to, less than or more than its face value. If a **share is issued to the new investors at a price lower than the fair value then the existing shareholders are likely to make an objection**. Also, issuing a share at a value more than or less than the fair value may have adverse consequences under the Income Tax Act or under the Foreign Exchange Management Act (FEMA).
- **When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium.**
- *Example 4:* A share having face value of ₹ 10 is issued at a price of ₹ 14. The amount over and above the face value of ₹ 10 is called premium.
Where the issue price is lower than the face value of the shares, such issue of shares is regarded as being issued at discount and the differential amount is known as discount.
- *Example 5:* A share having face value of ₹ 5 is issued at a lower price of ₹ 4. The differential amount of ₹ 1 is known as discount which is being allowed by the company.
- There are precautionary provisions covered in Sections 52 & 53 for both these scenarios (i.e. premium or discount) to safeguard issuer company & its stakeholders.

52

Application of Premiums Received on Issue of Shares

- (1) Where a company issues shares at a premium, *whether for cash or otherwise*, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "*securities premium account*". Further, the provisions of the Companies Act, 2013 relating to reduction of share capital (which are very stringent) of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.
- (2) **Application of Securities Premium Account -**
 The securities premium account may be applied by the company -
- towards the *issue of unissued shares of the company to the members of the company as fully paid bonus shares*;
 - in *writing off the preliminary expenses* of the company;
 - in *writing off the expenses of, or the commission paid or discount allowed* on, any issue of shares or debentures of the company;
 - in providing for the *premium payable on the redemption of any redeemable preference shares* or of any *debentures of the company*; or
 - for the purchase of its *own shares or other securities under section 68*.
- (3) **Prescribed Class of Companies are permitted to apply Securities Premium Account -**
 The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under Section 133:
- in *paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares*; or
 - in *writing off the expenses* of or the *commission paid* or *discount allowed* on any issue of equity shares of the company; or
 - for the *purchase of its own shares or other securities under section 68*

53 Prohibition on Issue of Shares at Discount

- A company is prohibited from issuing shares at a discount if it does not follow the provisions of Section 53.
- (1) According to Section 53 (1), a company shall not issue shares at a discount, except as provided in Section 54.
- Note: Section 54 contains provisions for the issue of 'Sweat Equity Shares'.
- (2) Section 53 (2) states that any share issued by a company at a discount shall be void.
- **Exception: Section 53 (2A) states that notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.**
- (3) According to Section 53 (3), where any company fails to comply with the provisions of Section 53, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent per annum from the date of issue of such shares to the persons to whom such shares have been issued.
- It is to be noted that the restrictions mentioned in Sections 52 and 53 apply only in respect of issue of shares (either equity or preference shares) but not to the issue of any debt related products like bonds or debentures whose pricing is mostly governed by YTM (yield to maturity) considerations.

54 Issue of Sweat Equity Shares

- Sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.
- **Meaning of 'sweat equity shares':** As per Section 2 (88), the term 'sweat equity shares' means such equity shares as are issued by a company to its directors or

employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

- Issue of 'sweat equity shares': Section 54 mentions the provisions which need to be adhered to by a company if it desires to issue sweat equity shares.

(1)	Conditions	According to Section 54 (1), a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—
		a) the issue is authorised by a special resolution passed by the company;
		b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
		c) Omitted
		d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with Rule 8 of the Companies (Share and Debentures) Rules, 2014.
(2)	Sweat equity shareholders to rank pari passu with other equity shareholders	According to Section 54 (2), the rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

- Some of the important provisions contained in Rule 8 of the Companies (Share and Debentures) Rules, 2014, are stated as under:

(1) Meaning of Employee¹³: "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 as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;

(2) Meaning of 'Value additions' -

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

(3) Validity of Special Resolution -

According to Rule 8 (3), the special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

(4) Limit on issue of Sweat Equity Shares -

According to Rule 8 (4), a company shall not issue sweat equity shares for more than fifteen per cent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher.

It is provided that the issuance of sweat equity shares in the Company shall not exceed twenty-five per cent of the paid-up equity capital of the Company at any time. However, in case of a startup company, it is provided that it may issue sweat equity shares not exceeding fifty per cent of its paid-up capital up to five years (ten years w.e.f. 05-06-2020) from the date of its incorporation or registration.

(5) Lock-in Period -

Rule 8 (5) states that the sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment.

(6) Valuation of Sweat Equity Shares -

Rule 8 (6) mentions that the sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such

valuation.

(7) Valuation of IPR/know-how/value additions to be done by a Registered Valuer -

According to Rule 8 (7), the valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

(8) Treatment of non-cash consideration -

According to Rule 8 (9), where the sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company:

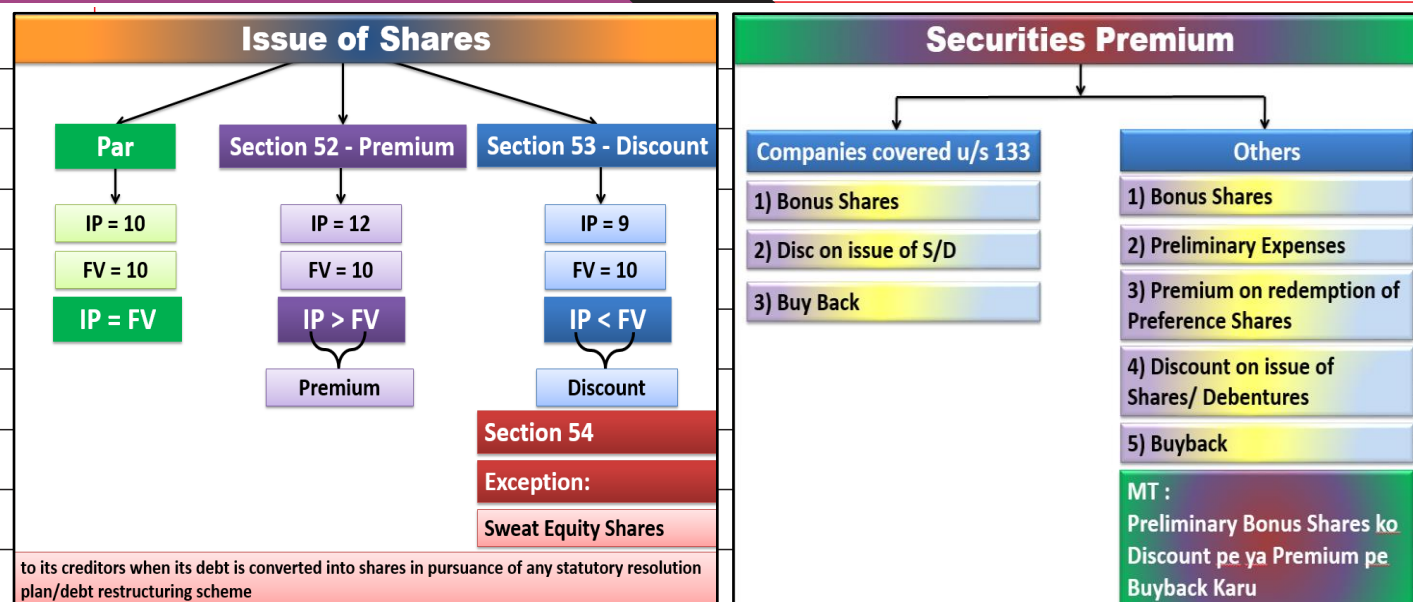
- a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
- b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

(13) Disclosure in the Directors' Report -

Rule 8 (13) states that the Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the specified details of issue of sweat equity shares.

(14) Maintenance of Register -

According to Rule 8 (14), the company shall maintain a Register of Sweat Equity Shares in Form No. SH. 3. It shall be maintained at the registered office of the company or such other place as the Board may decide.



55 Issue and Redemption of Preference Shares

Types of Preference Shares

On the basis of Dividend payout

- a) Cumulative
- b) Non-cumulative
- c) Participatory
- d) Non-participatory

On the basis of convertibility to shares

- a) Convertible (mandatorily or optionally; partially or fully)
- b) Non-convertible

On the basis of redeemability

- a) Redeemable
- b) Irredeemable (Cannot be issued)

Section 55 contains provisions for regulation of issue and redemption of preference shares. These are stated as under:

(1) Company to issue only Redeemable Preference Shares -

A company limited by shares shall not issue any preference shares which are irredeemable.

(2) Time Period within which Preference Shares are to be redeemed -

A company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as are prescribed in Rule 9 of

the Companies (Share Capital and Debentures) Rules, 2014. These conditions are mentioned as under:

- **Requirement of Special Resolution and Condition of no Default:** According to Rule 9 (1), the issue of preference shares has to be **authorized by passing a special resolution** in the general meeting of the company. Further, at the time of such issue of preference shares, the company should **not have subsisting default in the redemption of preference shares** issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.
- **Maintenance of Register:** Rule 9 (4) requires that if a company issues preference shares, the Register of Members maintained under Section 88 shall contain the particulars in respect of such preference shareholder(s).
- Provided that A company may issue preference shares for a period exceeding **twenty years** (but not exceeding **thirty years**) for infrastructure projects, subject to the **redemption of 10% of such preference shares beginning 21st year** onwards or earlier, on proportionate basis, at the option of such preferential shareholders.
- Provided further that -
 - a) **Preference Shares to be redeemed out of the Profits only** - No such shares shall be redeemed **except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares** made for the purposes of such redemption.
 - b) **Only fully paid Preference Shares are to be redeemed** - No such shares shall be redeemed **unless they are fully paid**.
 - c) **Transfer to CRR Account** - Where such shares are proposed to be redeemed out of the profits of the company, there shall, **out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed**, to a reserve, to be called the **Capital Redemption Reserve (CRR)** Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company.
- **Example 6:** During the current financial year, the Board of Directors of Vintee Lifestyles Garments Limited is to undertake redemption of 20,000 preference shares

of ₹ 100 each at a premium of ₹ 20 per share. It is made out by the Accounts Department that the profits are sufficient to meet the ensuing liability arising out of redemption of preference shares at premium.

In this case, the amount that needs to be transferred to Capital Redemption Reserve (CRR) account, if preference shares are redeemed at a premium out of profits which are otherwise available for dividend, is ₹ 20,00,000 being the sum equal to the nominal amount of the preference shares to be redeemed. There is no need to transfer to CRR account any amount paid towards premium.

(d)(i) **Payment of Premium in case of prescribed Class of Companies:** In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under [section 133](#), the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.

- Provided also that, premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such [company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.](#)

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

(3) **Issue of further Redeemable Preference Shares if a Company is unable to redeem existing preference shares or pay dividend -**

According to Section 55 (3), where a company is [not in a position to redeem any preference shares or to pay dividend](#), if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—

- with the [consent of the holders of three-fourths in value of such preference shares](#), &
- with the [approval of the Tribunal on a petition made by it in this behalf](#), issue further [redeemable preference shares equal to the amount due, including the dividend thereon](#), in respect of the unredeemed preference shares, and on the issue

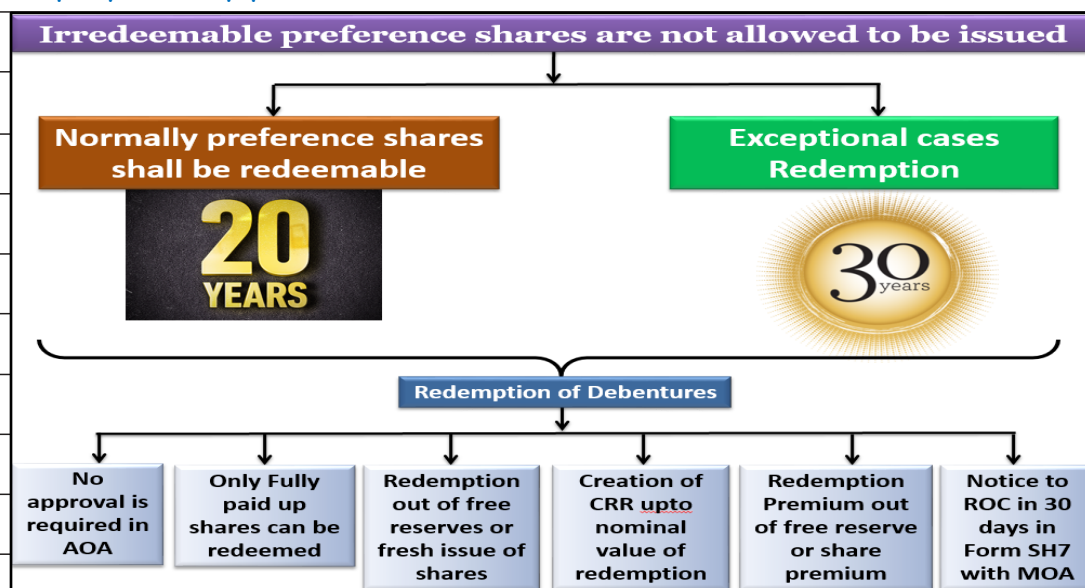
of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

It is provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

- Note: According to the Explanation given, the issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

(4) Utilisation of CRR Account -

According to Section 55 (4), the capital redemption reserve account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.



56 Transfer and Transmission of Securities

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

(1)	Requirement for Registering the Transfer of Securities	<ul style="list-style-type: none"> According to Section 56(1), a company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, unless a proper instrument of transfer in the prescribed form (As per Rule
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11 (1), Form No. SH-4 is to be used, in case securities are held in physical form.), duly stamped, dated and executed by or on behalf of transferor & the transferee (except where the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository), specifying the name, address & occupation, if any, of the transferee, has been delivered to the company by the transferor or the transferee within a period of 60 days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

- Where Instrument of Transfer lost/not delivered - First proviso to section 56(1) states that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

- Instrument of Transfer not required in case of Bonds issued by a Government Company - It is provided that the provisions of this sub-section [i.e. section 56(1)], in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address & occupation, if any, has been delivered to the company along with the certificate relating to the bond; & if no such certificate is in existence, along with the letter of allotment of the bond.

Further, the provisions of section 56 (1) shall not apply to a Government Company in respect of securities held by nominees of the Government.

- Note: The above exceptions are applicable to a Government Company, which has not committed a default in filing its financial statements under section 137 or Annual Return under section 92 with the Registrar.

(2)	Power of Company to Register Transmission of Shares not affected by section 56 (1)	According to section 56 (2), the power of company to register shall not be affected by the provision contained in Section 56 (1). Accordingly, the company is empowered to register, if it receives an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. In other words, there is no need for submission of instrument of transfer in case of transmission of shares.
(3)	Procedure for Transfer of partly paid Shares on an application of transferor alone	<ul style="list-style-type: none"> According to Section 56 (3), where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice. Subscribing the above position, Rule 11 (3) of the Companies (Share Capital and Debentures) Rules, 2014, states that a company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH-5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice. Example 7: Himanshu has received a notice from Chaitanya Progressive Books Private Limited on 7th August, 2019 intimating that Shefali has submitted a transfer deed duly signed by her for transfer of 500 partly paid shares (₹ 6 paid- up out of Face Value of ₹ 10 per share) in his name. Himanshu as transferee must raise his objection to the proposed transfer of partly paid shares latest by 21st August, 2019.
(4)	Time Period for Delivery of certificates	<ul style="list-style-type: none"> Section 56 (4) states the time period for delivery of certificates. Accordingly, every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted-

Particulars	Time Period for delivering the Certificates of all Securities allotted, transferred or transmitted
In the case of subscribers to the memorandum.	Within 2 months from the date of incorporation
In the case of any allotment of any of its shares by a company.	Within a period of 2 months from the date of allotment.
In the case of a transfer or transmission of securities.	Within a period of 1 month from the date of receipt by the company of the instrument of transfer or the intimation of transmission
In the case of any allotment of debenture.	Within a period of 6 months from the date of allotment.

- **Securities dealt with in a Depository:** According to the Proviso to Section 56 (4), where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

In case of Specified IFSC Public or Specified IFSC Private Company, after the proviso to Section 56 (4), the following proviso shall be inserted, namely:-

"Provided further that a Specified IFSC public company/Specified IFSC Private Company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days." (Vide Notification No. GSR 9 (E), dated 4th January, 2017)

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|-----|---|---|
| (5) | Transfer of Security of the Deceased Person by his Legal Representative | <ul style="list-style-type: none"> • According to Section 56 (5), the transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer. • Example 8: Richa Daniel, after having obtained succession |
|-----|---|---|

certificate, succeeded to 7,000 shares of ₹ 100 each allotted to her late father Alexander Daniel by Speed Software Limited. To pay off the debt of her cousin Stesley, she wants to transfer whole of the 7,000 shares to her on the basis of a duly stamped instrument of transfer which has been signed by her as well as Stesley. Accordingly, she has delivered the required documents to the company for transfer of shares.

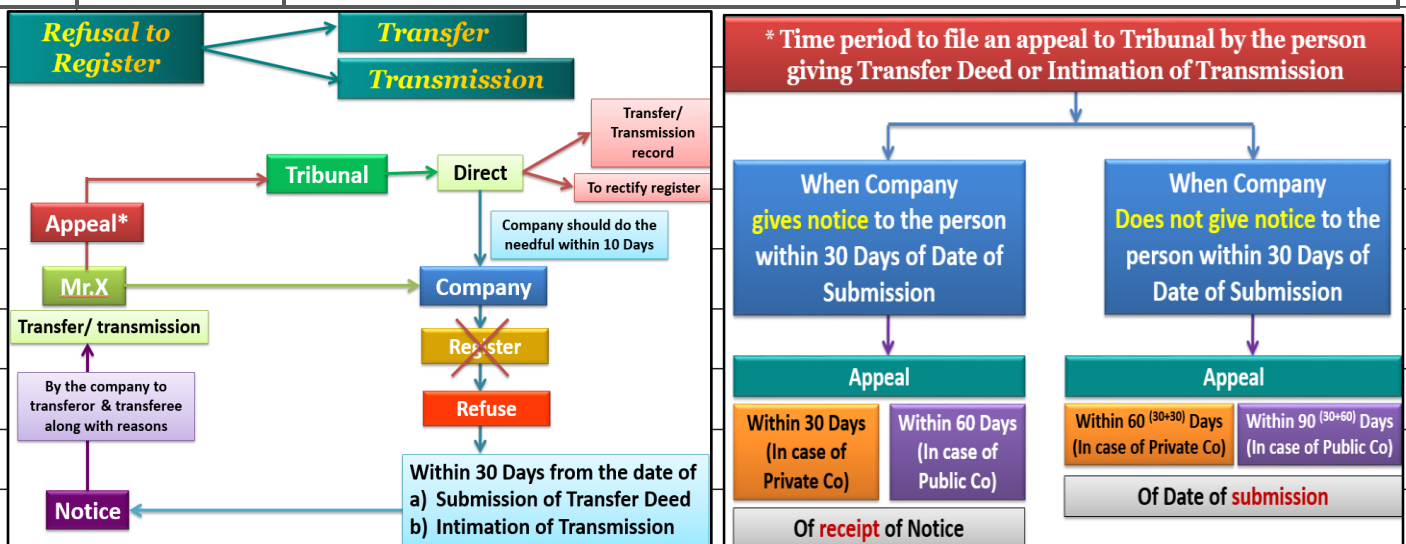
- In terms of Section 56 (5), the company, on receipt of duly stamped instrument of transfer along with requisite share certificates and succession certificate, shall transfer the shares in favour of Stesley. Thus, even though Richa Daniel, the legal representative of Alexander Daniel, is not a holder of 7,000 shares as per the Register of Members of the company, the transfer effected by her in favour of her cousin Stesley is a valid transfer as if she had been the holder of securities at the time of executing the transfer deed.
- Note: As an alternative, Richa Daniel may choose to get herself registered as holder of the 7,000 shares in which case, she will make an application to Speed Software Limited. Such application shall be accompanied with share certificates and succession certificate. There is no need to submit instrument of transfer or transfer deed in such a case of transmission. This is so because transfer deed cannot be signed by the deceased person as transferor.
- On receipt of these documents, the company will scrutinize them & if found in order, it shall proceed to enter the name of Richa Daniel in the Register of Members. Consequently, the name of the deceased person i.e. Alexander Daniel shall be deleted. Further, new share certificates will be issued in the name of Richa Daniel, the legal representative of Alexander Daniel.
- **Cases of Transmission:** In the following cases, transmission of shares shall take place:
 - **Death:** When a shareholder expires, his shares need to be transmitted

to his legal representative.

- **Insolvency:** When a shareholder becomes insolvent, his shares are to be transmitted to his Official Receiver.
- **Lunacy:** When a shareholder becomes lunatic, his shares are to be transmitted to his administrator appointed by the Court.

(6) **Punishment for Default** Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

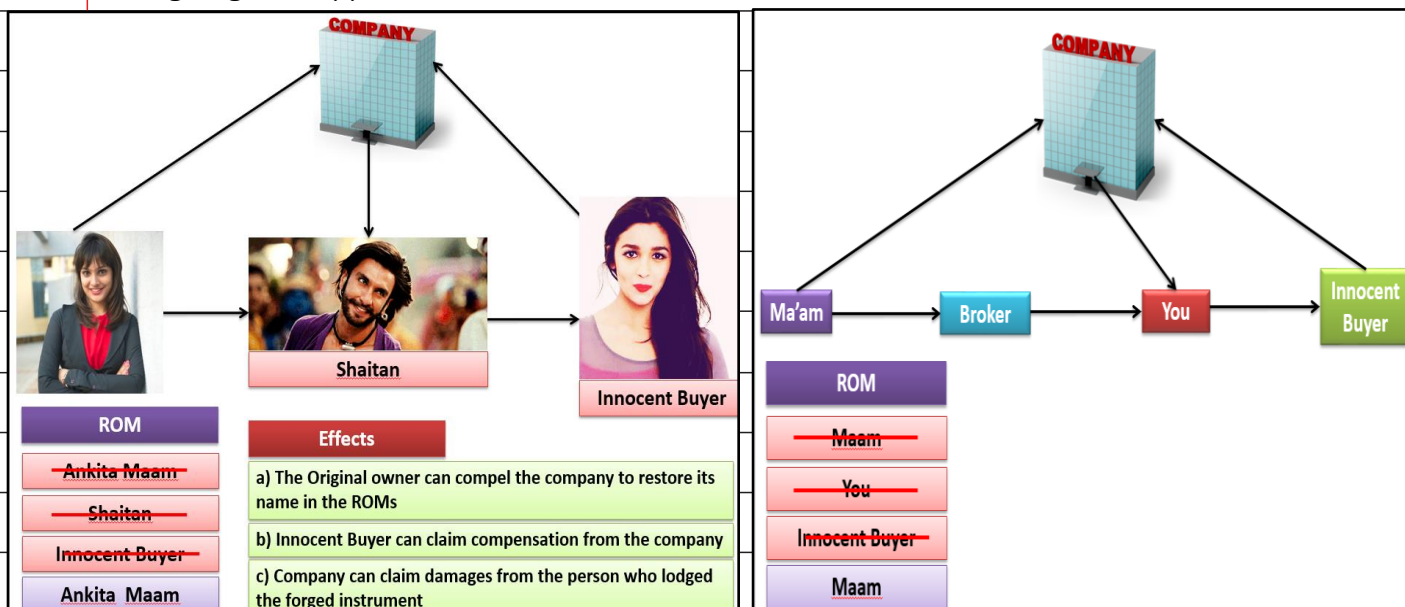
(7) **Liability of Depository** Section 56 (7) states that where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under Section 447 along with the liability mentioned under the Depositories Act, 1996.



Forged Transfer:

- A forged transfer is a 'nullity' and is not legally binding. Forged transfer takes place when a company effects transfer of shares on the basis of an instrument of transfer containing forged signatures of transferor. Is it possible for a transferee of 'forged transfer' to acquire ownership of shares contained in the instrument of transfer? The answer is 'NO'. At the same time, the transferor who is the real owner continues to be the shareholder and accordingly, the company can be forced by him to delete the name of the transferee and to restore his name as owner of shares in the Register of Members.

- What will happen if the transferee of 'forged transfer' transfers the shares to another buyer who does not know about the forgery and the company also registers the transfer in the name of new buyer and endorses the share certificates. In fact, the company cannot deny the ownership rights of new genuine buyer but it can also not deny the ownership rights of original shareholder because 'forged transfer' is void ab-initio and therefore, the company has to restore his name. While restoring the name of the original shareholder, the company may be asked to compensate the new genuine buyer who exercised good faith in purchasing the shares. As a remedy, the company may get itself indemnified by the first transferee who used the forged instrument of transfer to get the shares transferred in his name.
- Note: With the dematerialisation process becoming a necessity in case of unlisted public companies i.e. they are required to dematerialise all of their securities as per Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the chances of forgery are very thin or almost negligible. Though private companies are not required to dematerialise their securities but due to the limited number of shareholders, the company can exercise caution and easily detect the forgery, if at all it is going to happen.



57 Punishment for Personation of Shareholder

Section 57 contains provisions relating to punishment for personation of a shareholder.

If any person deceitfully personates -

- a) as an owner of any security or interest in a company, or
- b) as an owner of any share warrant or coupon issued in pursuance of the Companies Act, 2013, and

thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, such person shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

58 Refusal of Registration and Appeal against Refusal

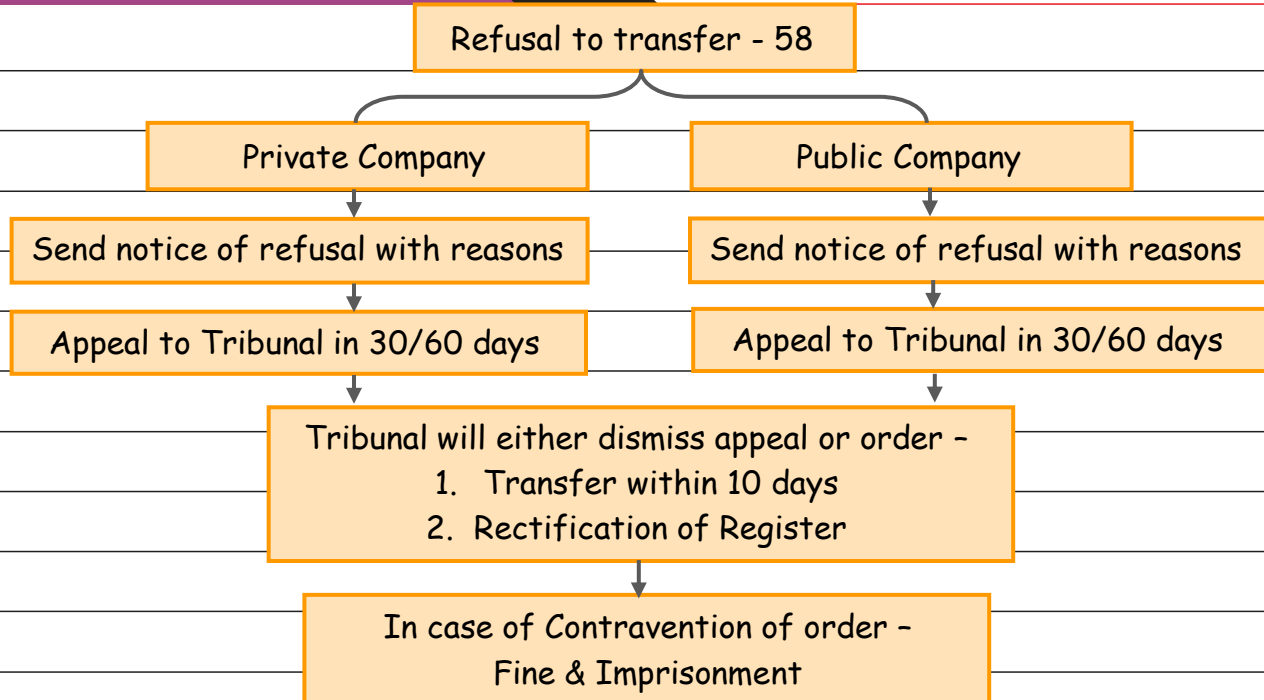
- It is possible that a company may refuse registration of transfer or transmission.

According to Section 2 (68) (i), a private company is required to restrict the right to transfer its shares by providing so in its Articles. However, this right to prohibit transfer is not absolute but it should be reasonable so that it is in the interest of the company.

- Section 58 contains the procedure which needs to be followed by a company while refusing to register the transfer of securities. It also contains process of filing appeal against such refusal. The provisions of Section 58 are stated as under:

(1)	Notice of	According to Section 58 (1), if a private company limited by shares
	Refusal to	refuses to register the transfer of, or the transmission by operation of
	be sent	law of the right to any securities or interest of a member in the
		company, then the company shall send notice of refusal to the transferor
		& the transferee or to the person giving intimation of such transmission,
		within a period of 30 days from the date on which the instrument of
		transfer, or the intimation of such transmission, was delivered to the
		company.

(2)	Securities/ other interest a Public Company	As per Section 58 (2), the securities or other interest of any member in a public company are freely transferable. It is provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.
(3)	Appeal to Tribunal against Refusal	According to Section 58 (3), the transferee may appeal to the Tribunal against the refusal within a period of 30 days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of 60 days from the date on which the instrument of transfer or the intimation of transmission, was delivered to the company.
(4)	Appeal to Tribunal against Refusal by a Public Company without sufficient cause	Section 58 (4) states that if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer or the intimation of transmission, is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 9 days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.
(5)	Order of Tribunal	According to Section 58 (5), the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.
(6)	Contravention of the Order of the Tribunal	As per Section 58 (6), if a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term not less than 1 year but may extend to three years and with fine not less than one lakh rupees which may extend to five lakh rupees

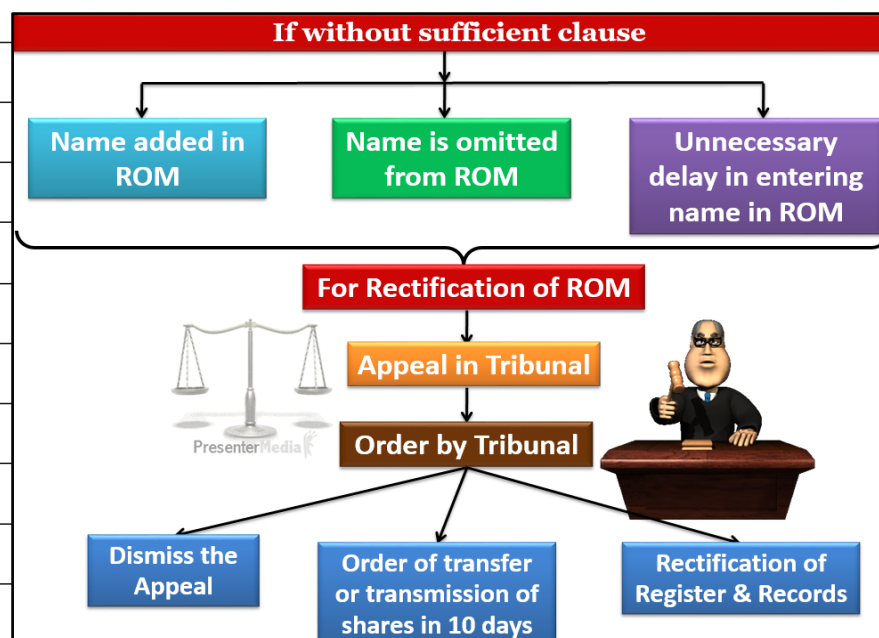


59 Rectification of Register of Members

- Section 59 provides the procedure for the rectification of register of members. These provisions are stated as under:

(1)	Appeal by Aggrieved Person	According to Section 59 (1), if the name of any person is, without sufficient cause ,
		<ul style="list-style-type: none"> entered in the register of members of a company, or after having been entered in the register, is, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member
		then the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.
(2)	Order of the Tribunal	Section 59 (2) states that the Tribunal may, after hearing the parties to the appeal by order ,
		<ul style="list-style-type: none"> either dismiss the appeal, or direct that the transfer or transmission shall be registered by the

		company within a period of 10 days of the receipt of the order, or
		• direct rectification of the records of the depository or the register
		and in the latter case, direct the company to pay damages, if any,
		sustained by the party aggrieved.
(3)	Entitlement to Voting Rights	Section 59 (3) states that the provisions of Section 59 shall not restrict the right of a holder of securities, to transfer such securities. Further, any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.
(4)	Transfer of Securities contravenes certain Acts & Direction of Tribunal	According to Section 59 (4), where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (SCRA), the Securities and Exchange Board of India Act, 1992 (SEBI) or the Companies Act, 2013 or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.



Alteration of Share Capital

Before proceeding further, we may look at the following definitions:

- Definition of Authorised Capital or Nominal Capital: Section 2(8) defines the term authorised capital or nominal capital to mean such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.
- Definition of Called-up Capital: Section 2(15) states that the term called-up capital means such part of the capital, which has been called for payment.

61 Power of Limited Company to Alter its Share Capital

According to Section 61, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:

- (1) Section 61 (1) states that a **limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to—**
 - a) **increase its authorised share capital** by such amount as it thinks expedient;
 - b) **consolidate and divide** all or any of its **share capital into shares of a larger amount than its existing shares,**

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

 - c) **convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;**
 - d) **sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum,** so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.
 - e) **cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.**
- (2) Section 61 (2) provides that the **cancellation of shares shall not be deemed to be a reduction of share capital.**

Note: Section 64 states that a company shall, within **30 days** of **its share capital having been altered** in the manner provided in Section 61 (1), give notice to the Registrar in the prescribed form (**Form No. SH-7** is to be used as per Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014) along with an altered memorandum.

62 Further Issue of Share Capital

- A rights issue **involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders**. It is a non-dilutive pro rata way to raise capital.
- **Example 9:** If a company announces '1:10 rights issue', it means an existing shareholder can buy one extra share for every ten shares held by him/her. Usually the price at which the new shares are issued by way of rights issue is less than the prevailing market price of the stock to encourage subscription.
- A public company **may issue securities through a rights issue or a bonus issue** in accordance with the provisions of this Act and in case of a listed company or a company which **intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992** and the rules and regulations made thereunder as per **section 23(1)(c) of the Companies Act, 2013**.
- A private company **may issue securities by way of rights issue or bonus issue** in accordance with the provisions of this Act as per the **section 23(2)(a)**.
- Section 62 deals with further issue of share capital. The provisions **ensure equitable distribution of such shares to the existing shareholders**. These are mentioned in the following paragraphs:
- **In case of Nidhis, Section 62 shall not apply. While complying with such exception, the Nidhis shall ensure that the interests of their shareholders are protected.**
(Notification No. GSR 465 (E), dated 5th June, 2015).

(1) Offering of issue of further Shares -

- According to Section 62 (1), where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—
 - a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:—

(Insertion of Proviso in clause (a) of sub-section (1) of Section 62 - "Provided that notwithstanding anything contained in sub-clause (i), in case of a Specified IFSC Public Company, the periods lesser than those specified in the said sub-clause shall apply if ninety per cent of the members have given their consent in writing or in electronic mode." - Notification No. GSR 8 (E), dated 4th January, 2017)

 - i) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than 15 days or such lesser number of days as may be prescribed and not exceeding 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(In case of private companies, Section 62 (1)(a)(i) and Section 62 (2) shall apply with following modification - In clause (a), in sub-clause (i), the following proviso shall be inserted - "Provided that that notwithstanding anything contained in this sub-clause and sub- section (2) of Section 62, in case ninety percent of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub-clause or sub-section (2), shall apply". - Notification No. GSR 464 (E), dated 05-06-2015).
 - ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;
 - iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not

	dis- advantageous to the shareholders and the company.
b)	to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to the conditions as may be prescribed; or
	(In case of private company - In clause (b) of Sub-section (1) of Section 62 for the words "special resolution", the words "ordinary resolution" shall be substituted.
	However, this is applicable to a private company which has not defaulted in filing its financial statements under Section 137 or Annual Return under Section 92. -
	Notification No. GSR 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13th June, 2017.
	In case of Specified IFSC Public Company - Clause (b) of Sub- section (1) of section 62: for the words "special resolution" read as "ordinary resolution". - Notification No. GSR 8 (E), dated 4th January, 2017.)
c)	to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
■	This clause authorises company to issue shares to persons other than its existing shareholders & to employees under ESOP. However, the process to issue those shares is provided under section 42 of the Act (Private Placement).
■	In case an unlisted company (A listed company while issuing shares under ESOP Scheme shall follow the provisions of SEBI (Share Based Employee Benefits) Regulations, 2014.) desires to issue shares under ESOP Scheme to its directors, officers or employees, Rule 12 of the Companies (Shares and Debentures) Rules, 2014 requires certain conditions to be fulfilled. Some of the important provisions are as under:
i)	According to Rule 12 (1), the issue of Employees' Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.
	The term '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 but excluding an independent director; or
- c) an employee as defined in clause (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company, but does not include-
- an employee who is a promoter or a person belonging to the promoter group; or
 - a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company:
- Provided that in case of a startup company, the conditions mentioned in sub-clauses (i) & (ii) shall not apply up to 10 years from the date of its incorporation or registration.
- ii) According to Rule 12 (2), the company shall make the specified disclosures in the explanatory statement annexed to the notice for passing of the resolution.
- iii) According to Rule 12 (3), the companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
- iv) According to Rule 12 (6):
- a) There shall be a minimum period of one year between the grant of options and vesting of option:
- It is provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;
- b) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
- c) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- v) According to Rule 12 (8):

- a) The option granted to employees shall not be transferable to any other person.
- b) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
- c) Subject to clause (d), no person other than the employees to whom the option is granted shall be entitled to exercise the option.
- d) In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
- e) 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.
- f) 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 & conditions under the scheme granting such options as approved by the Board.

(2) Dispatch of Notice to the existing Shareholders:

Section 62 (2) requires that the notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.

(3) Exception:

According to Section 62 (3), Section 62 shall not apply to the increase of the subscribed capital of a company caused by the exercise of an option attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.

It is provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(4) Conversion of Debentures/Loan into Shares:

According to Section 62 (4), where any debentures have been issued, or loan has been

obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

Term of Conversion not acceptable to the Company: It is provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(5) Consideration of Terms and Conditions of Conversion by the Government:

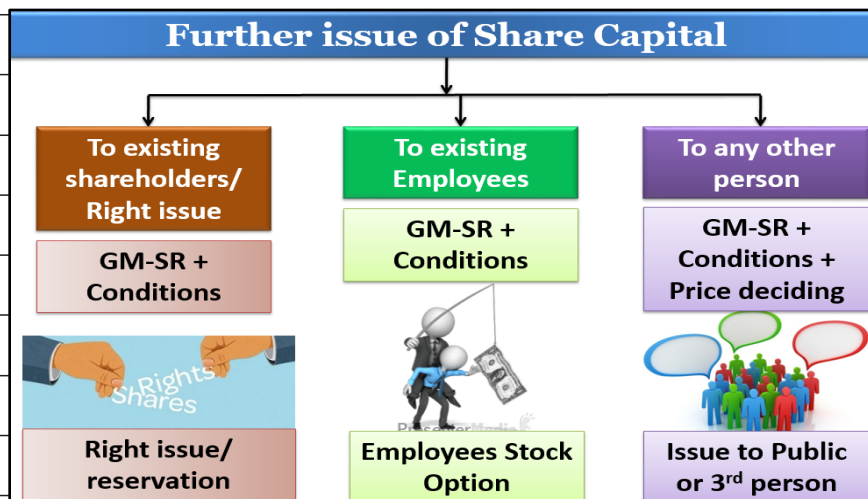
Section 62(5) requires that in determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(6) If required, Memorandum needs to be Altered to accommodate increased Share Capital:

According to Section 62 (6), where the Government has, by an order made under sub-section (4), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

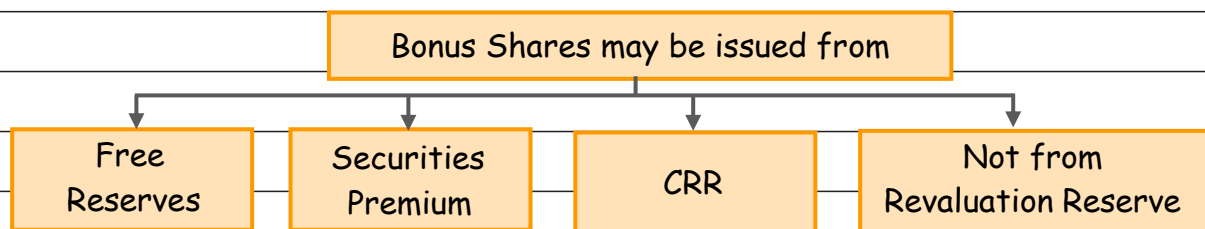
Example 10: A company, listed at Bombay Stock Exchange, intends to offer its new shares to the non-members. The existing members of the company consider such offer as invalid in view of the provisions contained in Section 62 (1) (a). However, the company is not prohibited in absolute terms while offering new shares to the non-members. It can do so after fulfilling the conditions given in Section 62 (1) (c). Thus, new shares of a company limited by shares may be issued to non-members under

certain circumstances.



63 Issue of Bonus Shares

- Bonus shares are shares issued proportionately by a company to its current shareholders as fully paid-up shares free of cost.
- Section 63 prescribes the condition and the manner of issue of fully paid-up bonus shares by a company to its members. The provisions are as under:
 - (1) 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.
 - However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets. In other words, a company cannot issue bonus shares out of reserves created by the revaluation of assets.



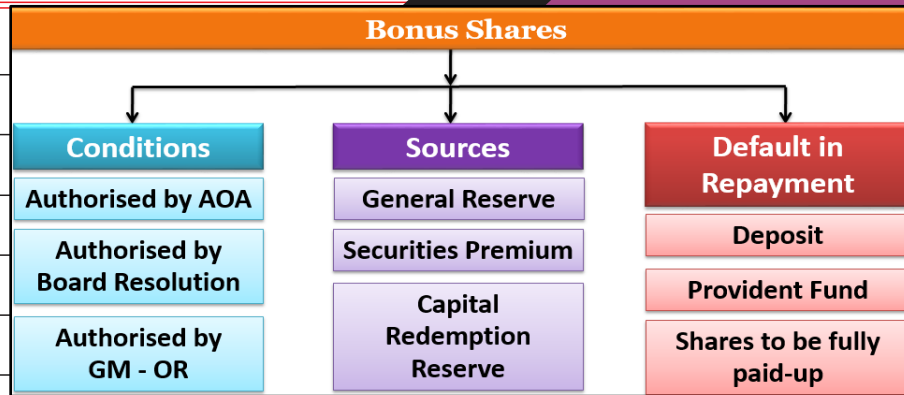
- (2) Section 63 (2) states that no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
 - a) it is authorised by its articles;

- b) it has on the recommendation of the Board, been authorised in the general meeting of the company;
- c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- f) it complies with such conditions as prescribed by Rule 14 (given below).

- According to Rule 14 of the Companies (Share capital and debenture) Rules, 2014, a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

(3) According to Section 63 (3), the bonus shares shall not be issued in lieu of dividend.

- It is noteworthy that the fully paid-up bonus shares can only be issued if the articles of the company contain authorisation in this respect. Bonus shares are issued out of profits which are otherwise available for distribution among the members. Such profits are not distributed among them in cash but the shareholders are allotted further shares in the form of bonus shares. Free reserves, share premium amount and amount lying in capital redemption reserve account can be used for the purpose of issuing fully paid-up bonus shares.
- Note: According to the proviso to Section 123(5) of the Companies Act, 2013, it is permissible for a company to capitalise its profits or reserves for the purpose of issuing fully paid up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.
- Example 11: XYZ Limited declares bonus shares in the ratio of 1:5. It means an existing shareholder of the company, say Mr. 'R', will get one bonus share free of cost for every five shares already held by him. The larger the holding of any shareholder, the more bonus shares he will get in comparison to others.



64

Notice to be Given to Registrar for Alteration of Share Capital

As and when, there is an alteration of share capital, the company concerned shall notify the registrar. The provisions in this respect are contained in Section 64.

(1)	Filing of Prescribed Notice	According to Section 64 (1), where- <ul style="list-style-type: none"> a company alters its share capital in any manner specified in section 61 (1), an order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or a company redeems any redeemable preference shares, the company shall file a notice in the prescribed form (Form No. SH-7 is to be used as per Rule 15 of the Companies (Share Capital & Debentures) Rules, 2014) with the Registrar within a period of 30 days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.
(2)	Default in Filing of Notice	Section 64 (2) states that where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default."

66 Reduction of Share Capital

- As a principle of sound financial management, a company is required to keep its capital intact. At times, however, it may become necessary for the company to bring about a reduction in its capital. Accumulated business losses, assets of reduced or doubtful value like unsound investments proving bad or having paid-up capital in excess of the requirements of the company or surplus capital which cannot be employed gainfully, require corrective measures to be taken to keep the financial health of the company in a reasonably well position. Accordingly, the company may find it necessary to reduce its share capital.

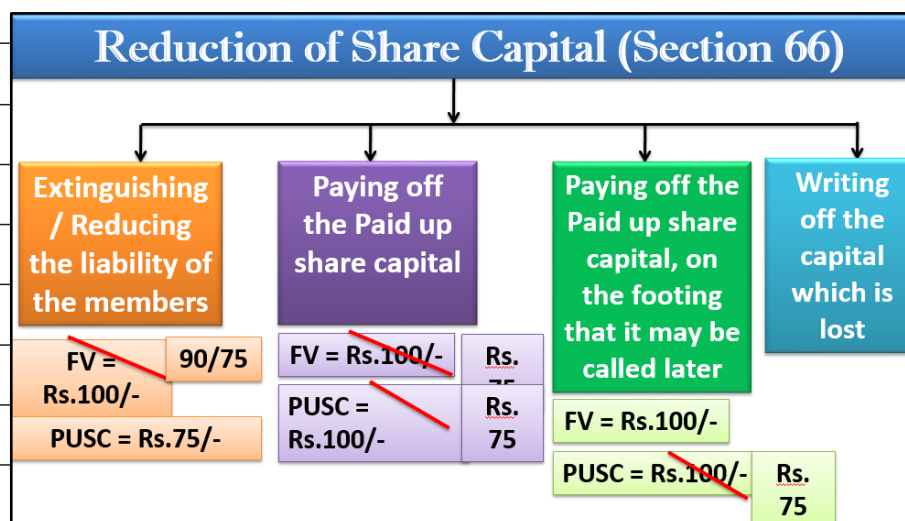
- Section 66 deals with the reduction of share capital. The provisions are stated as under:

(1)	Reduction of Share Capital by Special Resolution to be confirmed by Tribunal	<p>Section 66 (1) provides that subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee & having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—</p> <p>a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up:</p> <p>Example 12: In respect of a share of ₹ 10, a company has called only ₹ 7 per share and the same has been paid by all the shareholders. The company decides not to call remaining ₹ 3 per share and reduces its shareholders' liability. If done, the company is said to have reduced its share of ₹ 10 to ₹ 7 as fully paid-up share.</p> <p>b) either with or without extinguishing or reducing liability on any of its shares,—</p> <p>i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or</p> <p>ii) pay off any paid-up share capital which is in excess of the wants of the company,</p> <p>The company shall also alter its memorandum by reducing the amount of its share capital and of its shares accordingly.</p> <p>Reduction not permitted: Section 66 (1) further Provides that no such</p>
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(4)	Publication of Order of Confirmation of Tribunal	Section 66 (4) states that the order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.
(5)	Delivery of Certified Copy of Order of Tribunal to Registrar	Section 66 (5) requires that the company shall deliver a certified copy of the order of the Tribunal under sub-section (3) and of a minute approved by the Tribunal showing— a) the amount of share capital ; b) the number of shares into which it is to be divided ; c) the amount of each share ; and d) the amount, if any, at the date of registration deemed to be paid-up on each share , to the Registrar within 30 days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.
(6)	Exemption to Buy-Back	According to Section 66 (6), nothing in this section shall apply to buy-back of its own securities by a company under Section 68.
(7)	No Liability of Members	Section 66 (7) states that a member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.
(8)	In case where Creditor is entitled to object but was not included in the list of Creditors	According to Section 66 (8), where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors , and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim— a) every person, who was a member of the company on the date of the

		registration of the order for reduction by the Registrar, shall be
		liable to contribute to the payment of that debt or claim, an
		amount not exceeding the amount which he would have been liable
		to contribute if the company had commenced winding up on the day
		immediately before the said date; and
		b) if the company is wound up, the Tribunal may, on the application of
		any such creditor and proof of his ignorance as aforesaid, if it
		thinks fit, settle a list of persons so liable to contribute, and make
		and enforce calls and orders on the contributories settled on the
		list, as if they were ordinary contributories in a winding up.
(9)	Rights of Contributories not affected	Section 66 (9) provides that nothing in sub-section (8) shall affect the rights of the contributories among themselves.
(10)	Liability of Officers	Section 66 (10) deals with the liability of defaulting officers. Accordingly, if any officer of the company—
		a) knowingly conceals the name of any creditor entitled to object to the reduction;
		b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
		c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under Section 447.



67 Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

As a fundamental principle, a company cannot buy its own shares because in that case it will involve reduction of share capital affecting the creditors. However, this restriction is not absolute. If the prescribed procedure as laid by Section 67 is followed, the company is permitted to buy its own shares and the prohibition shall not apply. The provisions of Section 67 are mentioned below:

(1)	Reduction according to the applicable Provisions	Section 67(1) lays down that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act. (In case of Nidhis, Section 67 (1) shall not apply, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under Section 66 of the Companies Act, 2013. While complying with such exception, the Nidhis shall ensure that the interests of their shareholders are protected. - Notification No. GSR 465 (E), dated 5th June, 2015)
(2)	Restriction on giving Loan, Guarantee or provision of Security, etc.	According to Section 67 (2), no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
(3)	Exceptions	As per Section 66(3), there are, however, certain exceptions where a company may provide the financial assistance, namely: a) the lending of money by a banking company in the ordinary course of its business; b) the provision is made by a company for lending of money in accordance with any scheme approved by company through special resolution with such requirements as may be prescribed, for the

		purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
		c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.
		However, disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.
(4)	Redemption of Preference Shares	According to Section 67 (4), nothing in Section 67 shall affect the right of a company to redeem any preference shares issued under this Act or under any previous company law.
(5)	Permitted Punishment for Contravention	Section 67 (5) states that if a company contravenes the provisions of this section, the punishment shall be as under: a) Company: It shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees; b) Every officer of the company who is in default: He shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
■	Private companies: Section 67 shall not apply to private companies-	
a)	in whose share capital no other body corporate has invested any money;	
b)	if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid-up share capital or fifty crore rupees, whichever is lower; and	

- c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section. However, the exemption is applicable if the private company has not defaulted in filing its financial statements under Section 137 and Annual Return under Section 92. (Notification No. GSR 464 (E), dated 5th June, 2015 as amended by Notification No. GSR 583 (E), dated 13th June, 2017).
- Specified IFSC Public Company - Section 67 Shall not apply to a Specified IFSC public company-
- a) In whose share capital no other body corporate has invested any money;
- b) if the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
- c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section. (Notification No. GSR 8 (E), dated 4th January, 2017).

Buy Back of Securities

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors. Section 68 to Section 70 contain provisions for buy back of securities by the issuer company. They are stated as under:

68 Power of Company to Purchase its Own Securities

Section 68 contains provisions which describe the power a company to purchase its own securities subject to the applicable conditions.

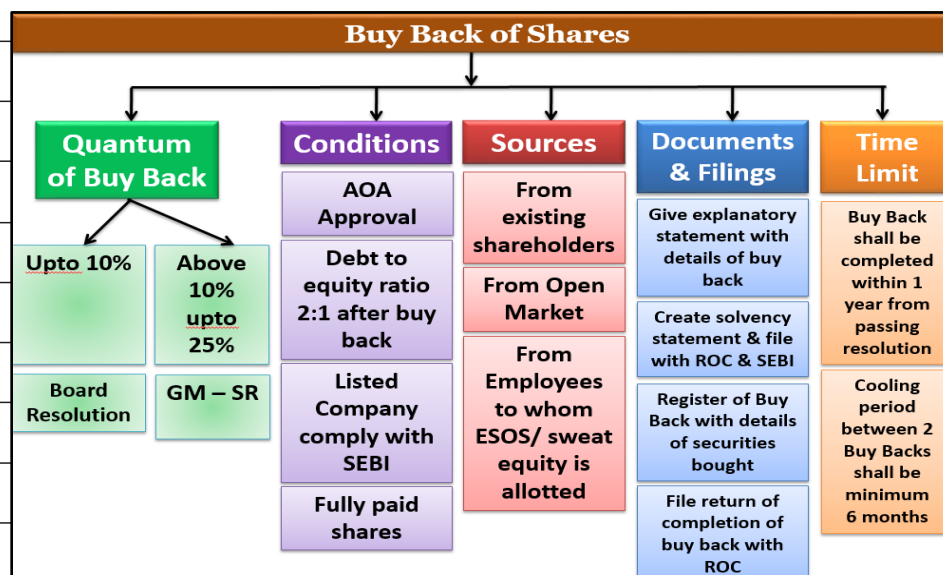
(1)	Sources of Funds for Buy-Back of Shares	According to Section 68 (1), a company may purchase its own shares or other specified securities. The purchase should be made out of:
		i) its free reserves; or
		ii) the securities premium account; or
		iii) the proceeds of the issue of any shares or other specified securities
		However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind

		of other specified securities.
		"Specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.
(2)	Conditions for Buy-Back	According to Section 68 (2), the company shall not purchase its own shares or other specified securities unless:
		a) the buy-back is authorised by its articles;
		b) a special resolution authorising the buy-back is passed in general meeting of the company;
		Exception: A special resolution is not necessary where:
		i) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; &
		ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
		c) the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company;
		It is provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
		d) the ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves;
		It is provided that the Central Government may prescribe a higher ratio of the debt to capital & free reserves for a class or classes of companies.
		The expression "free reserves" includes securities premium account.
		e) all the shares or other specified securities for buy-back are fully paid-up;
		f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made

		by SEBI in this behalf;
		g) the buy-back in respect of shares or other specified securities other than those specified in Clause (f) is in accordance with rules as may be prescribed. [Sections 68(2)]
		Provided that no offer of buy-back, shall be made within a period of 1 year from the date of the closure of the preceding offer of buy-back, if any.
(3)	Procedure before Buy-Back	According to Section 68 (3), the notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating -
		a) a full and complete disclosure of all the material facts;
		b) the necessity for the buy-back;
		c) the class of shares or securities intended to be purchased under the buy back;
		d) the amount to be invested under the buy-back; and
		e) the time limit for completion of buy-back.
(4)	Time limit for Completion of Buy-Back	Section 68(4) states that every buy-back shall be completed within 12 months from the date of passing the special resolution or a resolution passed by the Board at general meeting authorising the buy-back.
(5)	Whose Securities are to be Purchased under 'Buy-Back'	According to Section 68 (5), the buy-back under sub-section (1) may be—
		a) from the existing shareholders or security holders on a proportionate basis; or
		b) from the open market; or
		c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.
(6)	Declaration of Solvency	According to Section 68 (6), where a company has passed a special resolution under clause (b) of sub-section (2) or the Board has passed a resolution under item (ii) of the proviso to clause (b) of sub-section (2) to buy-back its own shares or other securities, it shall,

		before making such buy-back, file with the Registrar and the SEBI, a declaration of solvency in the form as may be prescribed (Form No. SH-9 to be used as per Rule 17 (3) of the Companies - Share Capital & Debentures, Rules, 2014) and verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of 1 year from the date of declaration of solvency adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any;
		Provided that no declaration of solvency shall be filed with the SEBI by a company whose shares are not listed on any recognised stock exchange.
(7)	Extinguishment of Securities	Section 68 (7) requires that where a company buys back its own securities or other specified securities, it shall extinguish and physically destroy the shares or securities so bought-back within 7 days of the last date of completion of buy-back.
(8)	Cooling Period	Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under Section 62 (1) (a) or other specified securities within a period of 6 months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.
(9)	Register of Buy Back	Section 68 (9) requires that where a company buys- back its shares or other specified securities under this section, it shall maintain a register (To be maintained in Form No. SH-10 as per Rule 17 (12)(a) of the Companies - Share Capital and Debentures, Rules, 2014) of the

		shares or securities so bought, the consideration paid for the shares
		or securities bought-back, the date of cancellation of shares or
		securities, the date of extinguishing and physically destroying the
		shares or securities and such other particulars as may be prescribed.
(10)	Filing of Return of Buy-back	According to Section 68 (10), a company shall, after completion of the buy-back under this section, file with the Registrar and the SEBI, a return (To be filed in Form No. SH-11 as per Rule 17 (13) of the Companies - Share Capital and Debenture), Rules, 2014) containing such particulars relating to the buy-back within 30 days of such completion, as may be prescribed. However, no return shall be filed with the SEBI by a company whose shares are not listed on any recognised stock exchange.
(11)	Penalty for Default	Section 68 (11) states that if a company makes default in complying with the provisions of this section or any regulations made by SEBI under clause (f) of sub-section (2), the punishment shall be as under: <ul style="list-style-type: none"> Company- It shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees; and Every officer of the company who is in default- He shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.



69 Transfer of Certain Sums to Capital Redemption Reserve Account

Section 69 requires certain amount to be transferred to the capital redemption reserve account in case a company buys back its own shares. The provisions are as under:

(1)	Amount to be transferred to CRR Account	Section 69 (1) prescribes that where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
(2)	Application of CRR Account	Section 69 (2) states that the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

70 Prohibition for Buy-Back in Certain Circumstances

Section 70 prohibits a company to buy back its own securities in certain circumstances. The provisions are as under:

- (1) No company shall directly or indirectly purchase its own shares or other specified securities-
 - a) through any subsidiary company including its own subsidiary companies; or
 - b) through any investment company or group of investment companies; or
 - c) if a default, is made by the company, in repayment of deposits, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institutions or banking company;

It is provided that where the default is remedied and a period of 3 years has lapsed after such default ceased to subsist, such buy-back is not prohibited.
- (2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of:
 - a) Section 92 (Annual Report),
 - b) Section 123 (Declaration and Payment of Dividend),
 - c) Section 127 (Punishment for failure to distribute dividends), and

d) Section 129 (Financial Statement).

71 Debentures

- Before taking up the provisions of Section 71, we may look into the definition of debenture as given below:

- Definition of Debenture -

As per Section 2(30), debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not:

Provided that—

- the instruments referred to in Ch. III-D of the Reserve Bank of India Act, 1934; and
- such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture.

- Features of Debentures

- A debenture is the smallest unit of a sizeable amount of loan.
 - When debentures are issued, the applicants are given certificates representing the money they have lent to the company.
 - A debenture certificate is issued by the company under its common seal, if any, or under the signatures of two directors or a director and the company secretary, if he has been appointed.
 - The company pays periodic interest on the amount raised by issuing debentures till they are fully redeemed.
 - A debenture is generally pre-fixed with the rate of interest which the company intends to pay.
- Example 13:* The name '10% Debentures' indicates that the company shall pay interest at the rate of 10% on the outstanding amount till maturity of such debentures.
- Voting rights are not available in case of debentures since Section 71 (2) clearly states that no company shall issue any debentures carrying any voting rights.
 - A debenture is in the nature of movable property which is transferable as per the

provisions contained in the Articles of the company issuing the debentures.

- h) A debenture may be secured or unsecured. In case of secured debentures, a **charge is created on the assets of the company in favour of debenture trustee.**
- i) As per the terms of the issue of debentures, they may be redeemed (i.e. repaid) **at the end of full term or in installments, say yearly or bi-yearly or any other period like in two installments.**
- j) The terms of issue may **also provide for conversion of debentures at maturity into equity shares at the option of the debenture holders.**
- k) The debenture certificates are **required to be delivered within a period of six months from the date of allotment of debentures, unless the company is prohibited by any provision of law or any order of Court, Tribunal or any other authority**
- **Example 14:** Sigma Computers Limited desires to borrow ₹ 50,00,000 from the public by issuing 7% Debentures. It is intended that each unit of debenture shall be of ₹ 100. Thus, it can issue 50,000 debentures of ₹ 100 each carrying 7% rate of interest which can be paid at the end of every quarter. If such debentures (secured by a charge on the assets of the company) are issued for six-year duration, the principal amount shall be repaid by the end of sixth year. The terms of issue may even allow repayment of principal amount in equal yearly instalments, in which case a portion of debentures shall be redeemed on yearly basis and the company shall be required to pay interest only on the outstanding amount. The debenture holders may also be given the option of converting their debentures into equity shares at the time of maturity.
- Thus, Sigma Computers Limited is able to borrow a large sum of money from different borrowers with the help of debentures and it is not required to approach a single borrower for such a big amount. In other words, 'issue of debentures' is the most convenient way of borrowing large sums of money and at the same time the debenture holders do not exert any influence over the ownership and working of the company unless their interest is jeopardized by certain decisions.

Types of Debentures

On the basis of security

- a) Secured
- b) Unsecured

On the basis of Convertibility to shares

- a) Convertible (mandatorily or optionally; partially or fully)
- b) Non-convertible

On the basis of Redeemability

- a) Redeemable
- b) Irredeemable

(1) Issue of Debentures with an Option to Convert -

- According to Section 71 (1), a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption.
- As a pre-condition, it is provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

(2) No Voting Rights -

Section 71 (2) states that no company shall issue any debentures carrying any voting rights.

(3) Issue of Secured Debentures -

- According to Section 71 (3), secured debentures may be issued by a company subject to such terms and conditions as are prescribed in Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014.
- According to Rule 18 (1), the company issuing secured debentures shall comply with the following conditions:
 - a) Date of redemption of secured debentures shall not exceed 10 years from the date of issue.
 - b) Following classes of companies are permitted to issued secured debentures for a period exceeding ten years but not exceeding 30 years:
 - Companies engaged in setting up of infrastructure projects;

- Infrastructure Finance Companies;
 - Infrastructure Debt Fund Non-Banking Financial Companies;
 - Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory body to issue debentures for a period exceeding 10 years.
- c) **Creation of Charge:** Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies. Such assets or properties shall be of value which is sufficient for the due repayment of the amount of debentures and interest thereon.
- d) **Appointment of Debenture Trustee:** The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures. Further, not later than 60 days after the allotment of the debentures, it shall execute a debenture trust deed (Form No. SH-12 is to be used for execution of Trust Deed - refer Rule 18 (5) to protect the interest of the debenture holders.
- e) **Security:** The security for the debentures by way of a charge or mortgage shall be created by the company in favour of the debenture trustee.

(4) Creation of Debenture Redemption Reserve (DRR) Account -

- Section 71 requires that where debentures are issued by a company under section 71, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.
 - In this respect Rule 18 (7) is relevant which is mentioned below:
Rule 18 (7) specifies that the company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:-
- a) Debenture Redemption Reserve shall be created out of profits of the company available for payment of dividend;
- b) The limits with respect to adequacy of Debenture Redemption Reserve & investment

or deposits, as the case may be, shall be as under:-

- i) Debenture Redemption Reserve is **not required for debentures issued by All India Financial Institutions regulated by Reserve Bank of India** and Banking Companies for both public as well as privately placed debentures;
- ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, Debenture Redemption Reserve shall be as **applicable to Non-Banking Finance Companies registered with Reserve Bank of India.**
- iii) For listed companies (other than All India financial Institutions and Banking Companies as specified in sub-clause (i)), **Debenture Redemption Reserve is not required in the following cases -**
 - **in case of public issue of debentures** - for NBFCs registered with Reserve Bank of India under section 45-1A of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank; for other listed companies;
 - **in case of privately placed debentures**, for companies specified in sub-items A & B,
- iv) for unlisted companies, (other than All India financial Institutions and Banking Companies as specified in sub-clause (i)) -
 - **for NBFCs registered with RBI** under section 45-IA of the Reserve Bank of India Act, 1934 and for **Housing Finance Companies** registered with National Housing Bank, Debenture Redemption Reserve is **not required in case of privately placed debentures.**
 - for other unlisted companies, the adequacy of **Debenture Redemption Reserve shall be 10 percent, of the value of the outstanding debentures;**
- v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), **it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):**
Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year".

vi)	for the purpose of sub clause (v), the methods of deposits or investments, as the case may be, are as follows: -
•	in deposits with any scheduled bank, free from any charge or lien;
•	in unencumbered securities of the Central Government or any State Government;
•	in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882;
•	in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian trusts Act, 1882:
•	Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.
c)	in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule,
d)	the amount credited to Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.
(5)	Limitation on the Issue of Prospectus/Offer/Invitation to the public -
■	According to Section 71 (5), no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as are prescribed in Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014.
■	The provisions of Rule 18 (2) are as under -
	The company shall appoint debenture trustees under sub-section (5) of section 71, after complying with the following conditions, namely:—
a)	the names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

- b) before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;
- c) A person shall not be appointed as a debenture trustee, if he—
- beneficially holds shares in the company;
 - is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
 - is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
 - is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
 - has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the 2 immediately preceding financial years or during the current financial year;
 - is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.
- d) the Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act.
- It is provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
- e) any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

(6)	Debenture Trustee to protect Interest of Debenture Holders -
■	Section 71 (6) requires that a debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.
■	In order to protect the interest of debenture holders, Rule 18 (4) provides for the convening of the meeting of debenture-holders. Accordingly, the meeting of all the debenture holders shall be convened by the debenture trustee on:
a)	requisition in writing signed by debenture holders holding at least one- tenth in value of the debentures for the time being outstanding;
b)	the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.
(7)	Liability of Debenture Trustee -
■	According to Section 71 (7), any provision contained in a trust deed for securing the issue of debentures, or in any contract with the debenture-holders secured by a trust deed, shall be void in so far as it would have the effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show the degree of care and due diligence required of him as a trustee, having regard to the provisions of the trust deed conferring on him any power, authority or discretion.
■	It is provided that the liability of the debenture trustee shall be subject to such exemptions as may be agreed upon by a majority of debenture-holders holding not less than three-fourths in value of the total debentures at a meeting held for the purpose.
(8)	To pay Interest and Redeem Debentures -
■	Section 71 (8) requires that a company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.
(9)	Filing of Petition before Tribunal by Debenture Trustee -
■	Section 71 (9) states that where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to

become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Tribunal and the Tribunal may, after hearing the company and any other person interested in the matter, by order, impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders

(10) Order of Tribunal on Failure to Redeem Debentures/Pay Interest -

- According to Section 71 (10), where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.

(11) Specific Performance of the Contract -

- Section 71 (12) states that a contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

(12) Procedure to be prescribed by Central Government -

- According to Section 71 (13), the Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

(13) Limit on Borrowings through Debentures -

- Before the issue of debentures, the Board of Directors of the company shall obtain approval of the shareholders through special resolution if the borrowings by issuing debentures together with the amount already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amount. Temporary loans obtained from the company's bankers in the ordinary course of business are not to be included in the borrowings. (As per Section 180 (1) (c) [not

applicable to a private company vide Notification No. GSR 464 (E), dated 5-6-2015)

(14) Return of Allotment -

- If a company having share capital makes allotment of any debentures (falls within the definition of 'securities'), it is required to file with the jurisdictional Registrar a Return of Allotment (Form No. PAS-3) within 30 days of such allotment.

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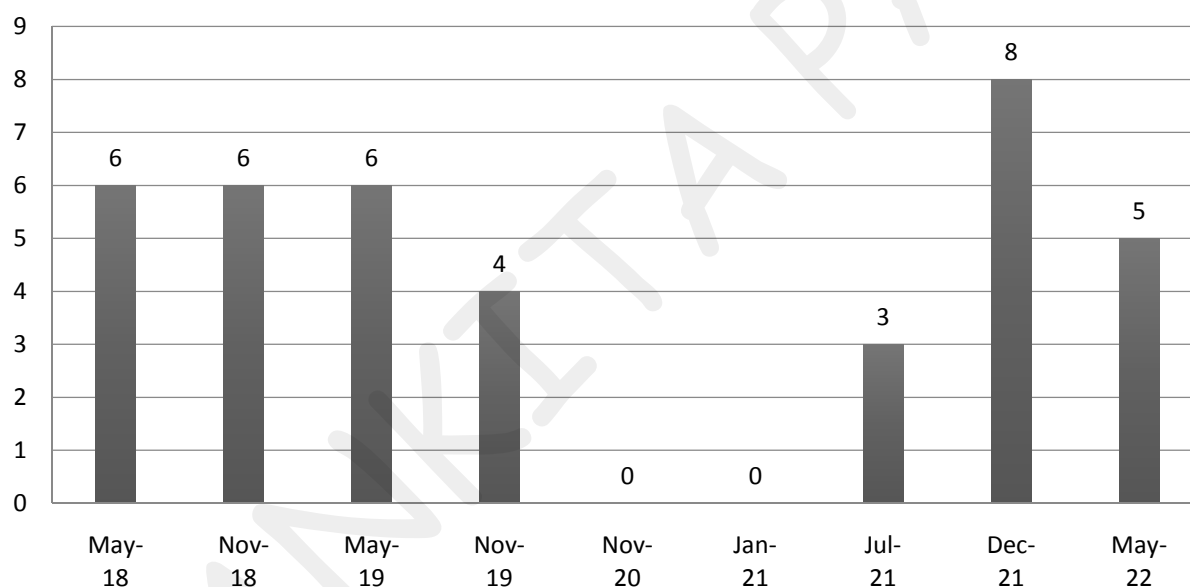
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Question Bank

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Question 1:

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act, 2013.

November 18, RTP November 18, ICAI

Answer :

- (i) **Shelf prospectus :** As per the Explanation given in Section 31 of the Companies Act, 2013, the expression “shelf prospectus” means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.
- (ii) Provisions relating to issue of Shelf-prospectus :
- a) **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage- (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
 - b) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:
 - c) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.

- d) **Memorandum together with the shelf prospectus shall be deemed to be a prospectus** : Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Question 2 :

Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013.

May 19, ICAI

Answer :

- Irregular allotment: The Companies Act, 2013 does not specifically provide for the term “Irregular Allotment” of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non-fulfilment of those requirements.
- In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances :
 - i) Where a company does not issue a prospectus in a public issue as required by section 23; or
 - ii) Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
 - iii) Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
 - iv) The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
 - v) The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or 6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Question 3 :

The Board of Directors of Chandra Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013.

November 2019, RTP November 2020, RTP May 2022

Answer :

- As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:
- Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.
- Prospectus issued make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.
- Accordingly, the Board of Directors of Chandra Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

Question 4 :

A Ltd. issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus

further reveals that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and A Ltd. received an amount of ₹ 20,00,000 on share application. A Ltd., then proceeded for allotment of shares.

Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013.

Jan 21

Answer :

- As per the requirement of the question, disclosures which are the deciding factors in an allotment of shares are laid down in section 39 of the Companies Act, 2013.
- According to Section 39(1), no allotment of any securities of a company offered to the public for subscription shall be made unless-
 - i) The amount stated in the prospectus as the minimum amount has been subscribed, and
 - ii) the sums payable on application for the amount so stated have been paid to, and received by the company by cheque or other instrument.
- The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf.
- In the question, A Ltd. issued shares to public by issuing of prospectus, disclosing minimum subscription, sum payable on application for the amount; and the amount received on share application is more than 5% of the nominal amount of the security.
- Further, it revealed that A Ltd. has applied for listing of shares in 3 recognized stock exchanges of which one application was rejected.
- In the given instance, there is compliance to section 23, as nothing is talked about matters required to be included in the prospectus under section 26 (1) and about filing with the registrar; assuming that the said requirements have been complied with, requirement of section 39 as regards obtaining of minimum subscription and the minimum amount receivable on application (not less than 5% of the nominal value of the securities offered) are fulfilled.

- The provisions of section 40 of the Companies Act, 2013 states that every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
- The above provision is very clear that not only the company has to apply for listing of the securities at a recognized stock exchange, but also obtain permission thereof from all the stock exchanges where it has applied, before making the public offer.
- Since one of the three recognized stock exchanges, where the company has applied for enlisting, has rejected the application and the company has proceeded with making the offer of shares, it has violated the provisions of section 40. Therefore, this shall be deemed to be irregular allotment of shares.
- Consequently, A Ltd. shall be required to refund the application money to the applicants in the prescribed manner within the stipulated time frame.

Question 5 :

ABC Limited proposes to issue series of debentures frequently within a period of one year to raise the funds without undergoing the complicated exercise of issuing the prospectus every time of issuing a new series of debentures. Examine the feasibility of the proposal of ABC Limited having taken into account the concept of deemed prospectus dealt with under the provisions of the Companies Act, 2013.

July 2021

Answer :

- Information Memorandum to ether with Shelf Prospectus is deemed Prospectus. The expression "shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Section 31]
- Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage:
 - i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and

- ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus,
- No further prospectus is required for issue of securities. [Sub-section (1)] Hence, the proposal of ABC Limited to take into account the concept of deemed prospectus is correct.

Question 6 :

RD Ltd. issued a prospectus. All the statements contained therein were literally true. It also stated that company had paid dividends for a number of years but did not disclose the fact that the dividends were not paid out of trading profits but out of capital profits. An allottee of shares claims to avoid the contract on the ground that the prospectus was false in material particulars. Decide that the argument of shareholder, as per the provision of the Companies Act, 2013, is correct or not?

Dec 21

Answer :

- According to section 34 of the Companies Act, 2013, where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorises the issue of such prospectus shall be liable under section 447.
- Further, Section 35(3) provides that, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in sub-section (1) of section 35, shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
- In the given question, the non-disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances it can pay dividend out of capital profits. Hence, a material misrepresentation has been made.
- Accordingly, in the given case the allottee can avoid the contract of allotment of shares.

Question 7 :

Examine that following offers of ABC Limited are in compliance with provisions of the Companies Act, 2013, related to private placement or should these offers be treated as public:

- i) ABC limited wants to raise funds for its upcoming project. It has issued private placement offer letters to 55 persons in their individual name to issue its equity shares. Out of these four are qualified institutional buyers.*
- ii) If in case (i) before allotment under this offer letter company issued another private placement offer to another 155 persons in their individual name for issue of its debentures.*
- iii) Being a public company can it issue securities in a private placement offers ?*

December 21

Answer :

- According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.
- However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.
- Further, Rule 14 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.
- It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.
- Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.
- Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

- i) In the given case ABC Limited, though is a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.
- ii) However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

- iii) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter. Hence, ABC Limited can issue securities in a private placement offer.

Question 8 :

The Board of Directors of ABC Limited are proposing to raise funds from the public through issue of equity shares. However due to volatile financial markets, the price per share and the number of shares to be issued are left open and to be decided post closure of the issue. As a financial advisor of the company, what would you suggest to the Board in this regard as per the provisions of the Companies Act, 2013?

May 22

Answer :

- As a financial consultant the Board of Directors of ABC Limited would be advised to issue a Red Herring Prospectus. The expression “red herring prospectus” means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. [Explanation to Section 32]
- Thus, ABC Limited may raise funds from public through red herring prospectus whereby the price per security and number of securities are left open to be decided post closure of the issue.
- The company may follow the provisions of section 32 in issuing a red herring prospectus:

- i) **Red Herring Prospectus is issued prior to issue of Prospectus:** A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
- ii) **Filing with the registrar:** A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- iii) **Obligations under Red Herring Prospectus vis-à-vis Prospectus:** A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- iv) **Filing of Red Herring Prospectus with Registrar and SEBI upon closing of Offer:** Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Question 9 :

Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.

RTP May 20, ICAI

Answer :

- Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

- In the present case, Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares.
- Hence, Mr. Andrew will have no remedy against the company.
- Circumstances when an expert is not liable: An expert will not be liable for any misstatements in the prospectus under the following situations:
 - i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for filing, or
 - ii) Under section 35 (2), that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;
 - ii) An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;
 - iv) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereof.

Question 10 :

Keya Limited decides to issue securities of the company. The company decides to publish an advertisement of the prospectus. Enumerate to the company about necessary contents of its memorandum to be specified therein.

RTP May 21

Answer :

According to Section 30, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following :

- i) the objects,
- ii) the liability of members and the amount of share capital of the company,
- iii) the names of the signatories to the memorandum,
- iv) the number of shares subscribed for by the signatories, and (xi) the capital structure of the company.

Question 11 :

The Board of Directors of Reckless Investments Limited, having registered office at Mumbai, has allotted equity shares to the 550 investors of the company without issuing a prospectus. As no prospectus was issued, nothing was delivered to the Registrar of Companies, Mumbai for filing. Explain the remedy available to the investors in this regard.

ICA**Answer:**

- According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Further, where the limit crosses 200 investors the issue shall be deemed to be a public offer, as provided by Section 42. Section 26 (1) lays down the matters required to be disclosed and included in a prospectus and requires the delivery of the prospectus to the Registrar for filing before its issue.
- In the given case, the company has violated the above provisions and therefore, the allotment made by it is void. The company will be required to refund the entire moneys received and will also be punishable under section 26 (9).

Question 12 :

An allottee of shares in a company brought action against a director in respect of false statements made in the prospectus. The director contended that the statements were prepared by the promoters and he simply relied on them. Is the director liable under these circumstances? Decide referring to the provisions of the Companies Act, 2013.

ICA

Answer :

- Yes, the Director shall be held liable for the false statements made in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus, section 35 more particularly includes a director of the company in the imposition of liability for such misstatements.
- The only situations when a director will not incur any liability for mis-statements in a prospectus are as under :
 - i) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
 - ii) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that :
 - a) having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - b) the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- Therefore, in the present case the director cannot escape the liability by stating that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

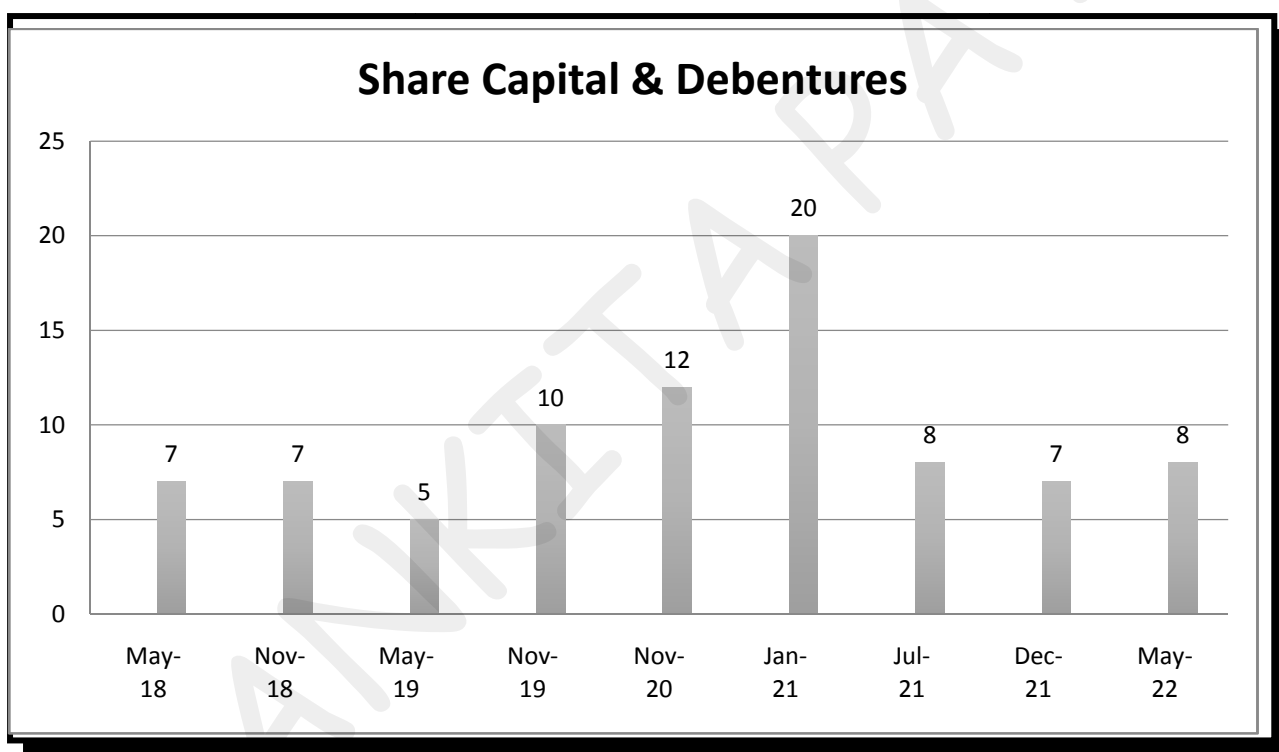


**“BE PROUD OF YOURSELF FOR GETTING
THROUGH THE DAYS YOU THOUGHT YOU
NEVER COULD”**

CHAPTER 4

SHARE CAPITAL AND DEBENTURES

Statistics Analysis



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Question 1 :

TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013.

May 18

Answer :

- The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows: Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014. Conditions for the payment of commission:
- i) The payment of such commission shall be authorized in the company's articles of association;
 - ii) the commission may be paid out of proceeds of the issue or the profit of the company or both;
 - iii) **Rate of commission :** The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
 - iv) **Disclosure of particulars :** the prospectus of the company shall disclose the following particulars - a. the name of the underwriters; b. the rate and amount of the commission payable to the underwriter; and c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
 - v) No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
 - vi) Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Question 2 :

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him ?

May 18, RTP May 18, ICAI

Answer :

Refusal for Registration of transferred/transmitted securities: According to Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of ninety days of the delivery of the instrument of transfer, appeal to the Tribunal. Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order— (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved; In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Question 3 :

Xgen Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following (i) Is special resolution required to be passed? (ii) What is the time limit for completion of buy-back? (iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back? **May 18**

Answer :

- Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares. As per the Act, the company shall not purchase its own shares or other specified securities unless :

- i) The buy-back is authorized by its articles;
 - ii) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where :
 - a) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
 - b) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
- **Time limit for Completion of Buy Back:** As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).
- **Ratio of aggregate debts:** Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.
- As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000. Referring to the above provisions, the answers will be as follows :
- i) No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves ($50,00,000 \times 10/100 = 5,00,000$) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
 - ii) Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
 - iii) The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves. The above buy-back is possible when backed by the authorization by the articles of the company.

Question 4 :

Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued.

May 18

Answer :

- Conditions for the issue of equity shares with differential rights (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014): No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely :-
- i) the articles of association of the company authorizes the issue of shares with differential rights;
 - ii) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
 - iii) However, where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
 - iv) the shares with differential rights shall not exceed **seventy-four percent** of the total postissue paid up equity share capital including equity shares with differential rights issued at any point of time;
 - v) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
 - vi) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
 - vii) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or Scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
 - viii) However, 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.

- ix) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

Question 5 :

Discuss the provisions relating to private placement of shares under the Companies Act, 2013.

November 18

OR

Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus?

RTP- November 2018

Answer :

- **“Private placement”** means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.
- **Requirements of offer or invitation for subscription of securities on private placement: (Section 42)**
 - i) **Issue of private placement offer letter:** According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.

- ii) **Offer/invitation to number of persons:** The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the *Companies (Prospectus and Allotment of Securities) Rules, 2014*.

Offer/ invitation made to more than the prescribed number of persons :

If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

- iii) **No issue of fresh offer/ invitation:** No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
- a) have been completed, or
 - b) that offer or invitation has been withdrawn, or
 - c) abandoned by the company.(Not applicable to specified IFSC Public and IFSC Private Companies)
- iv) **Offer / invitation treated as public offer :** Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.
- v) **Payment of amount :** All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- vi) **Time for allotment of securities :** A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)

Default in allotment of securities : Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and 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 twelve per cent per annum from the expiry of the sixtieth day:

Separate Bank Account : Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

- a) for adjustment against allotment of securities; or
- b) for the repayment of monies where the company is unable to allot securities.

vii) Offers made to the persons whose name is recorded : All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

viii) No publication required: No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.

ix) Filing with the registrar: Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

x) In contravention of the section: If a company makes an offer or accepts monies in contravention of this section :

Persons liable	Penalty
Company, Promoters and Directors	May extend to the amount involved in the offer or invitation, or
	Two crore rupees- whichever is higher
Company	Shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Question 6 :

ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

		₹
(1)	<i>Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)</i>	<i>30.00 lacs</i>
(2)	<i>Free reserves</i>	<i>5.00 lacs</i>
(3)	<i>Securities Premium Account</i>	<i>3.00 lacs</i>
(4)	<i>Capital redemption reserve account</i>	<i>4.00 lacs</i>
(5)	<i>Revaluation Reserve</i>	<i>3.00 lacs</i>

Directors of the company seeks your advice in following cases :

- i) *Whether company can give bonus shares in the ratio of 1:3?*
- ii) *What if company decide to give bonus shares in the ratio of 1:2?*

November 18

Answer :

- **Issue of bonus shares (Section 63):** As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of :
- (i) its free reserves;
 - (ii) the securities premium account; or
 - (iii) the capital redemption reserve account:

- Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
- As per the given facts, ABC Ltd. has total eligible amount of ₹ 12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs. Accordingly:
 - i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., $\frac{1}{3} \times 30.00$ lakh) which is well within the limit of available amount of ₹ 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.
 - ii) In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of ₹ 15 lakhs (i.e., $\frac{1}{2} \times 30.00$ lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of ₹ 15 Lakhs is exceeding the available eligible amount of ₹ 12 lakhs.

Question 7 :

Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares. **May 19**

Funds utilized for purchase of its own securities: Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

- i) its free reserves; or***
- ii) the securities premium account; or***
- iii) the proceeds of the issue of any shares or other specified securities. However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.***

Answer :

Prohibition for buy-back in certain circumstances (Section 70)

- i) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
 - a) through any subsidiary company including its own subsidiary companies; or
 - b) through any investment company or group of investment companies; or

- c) if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company;

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

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

Question 8 :

X Ltd. issued a notice on 1 st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.?

November 19

Answer :

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered :

- i) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely :-
- a) the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
 - b) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause

- (1) shall contain a statement of this right;
 - (2) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.
- ii) In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
- iii) As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation. Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company.
- iv) In the second part of the question, even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Question 9 :

XYZ unlisted company passed a special resolution in a general meeting on January 5th, 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013, (i) Decide, whether the company's proposal is in order. (ii) What will be your answer if buy back offer date is revised from January 5th , 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above?

November 19, January 21

Answer:

- (i) In the instant case, the company's proposal is not in order due to the following reasons :
- a) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buyback of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
 - b) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).
 - c) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any. (proviso to section 68(2))
 - d) The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as according to proviso to section 68(1), buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
- (ii) If buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Question 10 :

The Authorized share capital of SSP Limited is ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each. The Company issued 30 Lakhs equity shares for subscription which was fully subscribed. The Company called so far ₹ 8 per share and it was paid up. Later on the Company proposed to reduce the Nominal Value of equity share from ₹ 10 each to ₹ 8 each and to carry out the following proposals:

- i) Reduction in Authorized Capital from ₹ 5 crore divided into 50 Lakhs equity shares of ₹ 10 each to ₹ 4 crore divided into 50 Lakhs equity shares of ₹ 8 each.***

- ii) **Conversion of 30 Lakhs partly paid up equity shares of ₹ 8 each to fully paid up equity shares of ₹ 8 each there by relieving the shareholders from making further payment of ₹2 per share.**

State the procedures to be followed by the Company to carry out the above proposals under the provisions of the Companies Act, 2013. November 20

Answer (i) :

- i) **Procedure for reduction of share capital :** In order to carry out proposals by SSP Limited to reduce the nominal value of the equity share, the company has to comply with the procedure given under section 66 of the Companies Act, 2013 which deals with the Reduction of share capital. Procedure
- a) **Reduction of share capital by special resolution :** Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—
- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
 - (b) either with or without extinguishing or reducing liability on any of its shares, :
 - c) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - d) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
- ii) **Issue of Notice from the Tribunal :** The Tribunal shall give notice of every application made to it to the Central Government, Registrar and the creditors of the company and shall take into consideration the representations, if any, made to it by them within a period of three months from the date of receipt of the notice.
- iii) **Order of tribunal :** The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.
- iv) **Publishing of order of confirmation of tribunal :** The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

- v) **Delivery of certified copy of order to the registrar :** The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.
- vi) **Alteration of Share Capital :** SSP Limited proposes to alter its share capital. The Present authorized share capital ₹ 5 Crore will be altered to ₹ 4 Crore. According to Section 61 of the Companies Act, 2013, a limited company having a share capital may alter its capital part of the memorandum.

Answer (ii) :

- A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its general meeting to :
- Cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be reduction of share capital.
 - A company shall within 30 days of the shares having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, shall give a notice to the Registrar in the prescribed form along with an altered memorandum [Section 64 of the Companies Act, 2013].
- The Company has to follow the above procedures to alter its authorized share capital.

Question 11 :

ABC Limited is a public company incorporated in New Delhi. The Board of Directors (BOD) of the company wants to bring a public issue of 100000 equity shares of ₹10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course. Decide whether the issue of shares as mentioned above is valid or not as per Section 53 of Companies Act 2013. What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?

November 20, RTP May 19, ICAI

Answer :

- Sweat equity shares of a class of shares already issued.
- According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:
 - i) the issue is authorised by a special resolution passed by the company;
 - ii) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
 - iii) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014
- The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under Section 54 and the holders of such shares shall rank pari passu with other equity shareholders.

Question 12 :

The Board of Directors of Rajesh Exports Ltd., a subsidiary of Manish Ltd., decides to grant a loan of ₹ 3 lakh to Bhaskar, the finance manager of Manish Ltd., getting salary of ₹ 40,000 per month, to buy 500 partly paid up equity shares of ₹ 1,000 each of Rajesh Exports Ltd. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 2013.

January 21, ICAI, RTP May 20, RTP May 18, RTP November 18

Answer :

- As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
- As per section 67(2) of the Companies Act, 2013, no public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

- If we analyse the provisions of section 67(3)(c) of the Companies Act, 2013, we can come to know that the relaxation given here can be availed only when all the following three conditions are fulfilled:
- i) The loan has been given to the employees of the company other than its directors or key managerial personnel (not the employee of its holding company). - Therefore this condition has not been fulfilled;
 - ii) The amount does not exceed their salary or wages for a period of six months.- This condition has not been fulfilled.
 - iii) The amount should be utilized by the employee for purchase of fully shares or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership. - Here Mr. Bhaskar is going to purchase the shares in Rajesh Exports Ltd., which is neither his employer company, nor holding company of his employer company and the shares are not fully paid-up. Therefore, this condition has also not been fulfilled.
- Even in case Mr. Bhaskar would not have fulfilled any one of the above conditions, the decision of the Board of Directors of Rajesh Exports Ltd. would not have been valid. Therefore, we can conclude that the decision of the Board of Directors of Rajesh Exports Ltd. is not valid.

Question 13 :

"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy -back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions."
Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

July 21

Answer :

- According to proviso to section 68(2) of the Companies Act, 2013, no offer of buy back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any.
- Section 68 (8) casts an obligation that where a company completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares including allotment of further shares under section 62

(1) (a) or other specified securities within a period of six months except by way of bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

- Keeping in view of the above provisions, the statement “the offer of buy -back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions” is not valid.

Question 14:

Following is the extract of the Balance sheet Beltex Ltd. as on 31st March, 2020:

Particulars		Amount (₹)
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ₹10 each		
1,00,000 equity shares of ₹10 each Issued &		11,00,000
Subscribed Capital : 8000,12% Preference Shares		
of ₹10 each fully paid up 90,000 equity shares of		80,000
₹10 each, ₹8 paid up	1,00,000	
(b) Reserve and Surplus	10,00,000	7,20,000
General Reserve Capital Reserve		
Securities Premium		
Surplus in statement of P& L		
(2) Non-Current Liabilities:		
(a) Long-term borrowings:		
Secured Loan: 12% partly convertible	1,20,000	4,20,000
Debenture @ ₹100 each	75,000	
	25,000	
	2,00,000	5,00,000

On 1st April, 2020 the company has made final call at ₹ 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2020. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

- (A) Which of the above-mentioned sources can be used by company to issue bonus shares?
- (B) Calculate the amount to be capitalized from free reserves to issue bonus shares?

If the company did not ask for the final call on April 1st, 2020. Can it still issue bonus shares to its members?

December 21

Answer :

Issue of Bonus Shares

i) According to section 63 (1) of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- a) its free reserves;
- b) the securities premium account; or
- c) the capital redemption reserve account.

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

ii) Section 63 (2) provides that the company can issue bonus shares only when the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

iii) The following sources can be used by the company to issue bonus shares:

- a) General Reserve
- b) Securities Premium
- c) Surplus in statement of P&L

iv) Amount of bonus shares to be issued = $90,000 \text{ shares} \times \frac{1}{4} = 22,500 \text{ shares}$

Amount that ought to be capitalized for issue of = $22,500 \times ₹ 10 \text{ per share bonus shares} = ₹ 2,25,000$

Total amount available to be capitalized from = 1,20,000 + 25,000 + 2,00,000 free reserves to issue bonus shares = ₹ 3,45,000

Hence, the amount to be capitalized from free reserves to issue bonus shares will be ₹ 2,25,000.

- v) A company can issue bonus shares on only fully paid shares. Hence, if the company did not ask for the final call on 1st April, 2020, it cannot issue bonus shares to its members.

Question 15 :

What are provisions of the Companies Act, 2013 relating to the appointment of 'Debenture Trustee' by a company? Whether the following can be appointed as 'Debenture Trustee'?

- i) ***A shareholder of the company who has shares of ₹10,000.***
- ii) ***A creditor whom the company owes ₹999 only.***
- iii) ***A person who has given a guarantee for repayment of amount of debentures issued by the company.***

December 21, RTP November 22, ICAI

Answer :

- **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.
- Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014, framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures. Further according to the provided rules inter-alia, no person shall be appointed as a debenture trustee, if he-
 - i) beneficially holds shares in the company;
 - ii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

iii) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

➤ Thus, based on the above provisions answers to the given questions are as follows:

- i) A shareholder who has holds shares of ₹ 10,000, cannot be appointed as a debenture trustee.
- ii) A creditor whom company owes ₹ 999 cannot be appointed as a debenture trustee. The amount owed is immaterial.
- iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

Question 16 :

SKS Limited issued 8% ₹ 1,50,000; Redeemable Preference Shares of ₹ 100 each in the month of May, 2010, which are liable to be redeemed within a period of 10 years. Due to the Covid-19 pandemic, the Company is neither in a position to redeem the preference shares nor to pay dividend in accordance with the terms of issue. The Company with the consent of Redeemable Preference Shareholders of 70% in value, made a petition to the Tribunal [NCLT] to accord approval to issue further redeemable preference shares equal to the amount due. Will the petition be approved by the Tribunal in the light of the provisions of the Companies Act, 2013?

Can the company include the dividend unpaid in the above issue of redeemable preference shares?

May 22, ICAI

Answer :

- According to section 55(3) of the Companies Act, 2013, where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares), it may—
- i) with the consent of the holders of three-fourths in value of such preference shares, and
 - ii) with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.

- Provided that the Tribunal shall, while giving approval under this sub-section, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.
- In the instant case, since the company made a petition to the NCLT with the consent of Redeemable Preference Shareholders of 70% in value, the said petition is not valid and will not be approved by the NCLT.
- If the consent has been taken by three-fourths (75%) in value of such preference shares, the company can include the dividend unpaid in the above issue of redeemable preference shares.

Question 17 :

As per the financial statement as at 31.03.2021, the Authorized and Issued share capital of Manorama Travels Private Limited (the Company) is of ₹ 100 Lakh divided into 10 Lakh equity shares of ₹10 each. The subscribed and paid-up share capital on that date is ₹ 80 Lakh divided into 8 Lakh equity shares of ₹10 each. The Company has reduced its share capital by cancelling 2 Lakh issued but unsubscribed equity shares during the financial year 2021-22, without obtaining the confirmation from the National Company Law Tribunal (the Tribunal). It is noted that the Company has amended its Memorandum of Association by passing the requisite resolution at the duly convened meeting for the above purpose. While filing the relevant e-form the Practicing Company Secretary refused to certify the form for the reason that the action of the Company reducing the share capital without confirmation of the Tribunal is invalid.

In light of the above facts and in accordance with the provisions of the Companies Act, 2013, you are requested to (i) examine, the validity of the decision of the Company and contention of the practicing Company Secretary and (ii) state, the type of resolution required to be passed for amending the capital clause of the Memorandum of Association. **May 22**

Answer :

- According to section 61 of the Companies Act, 2013, a limited company having a share capital is empowered to alter its capital clause of the Memorandum of Association. The provisions are as under:
 - i) According to the section, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

- ii) It provides that the cancellation of shares shall not be deemed to be a reduction of share capital.
- According to the given facts, in the said question, the company reduced its share capital without obtaining the confirmation from the NCLT. The Company amended its memorandum by passing the requisite resolution at the duly convened meeting. However, Company Secretary refused to certify stating that action of company reducing the share capital without confirmation of the Tribunal, is invalid.
- Accordingly, in the light of the stated facts, following shall be the answers:
- i) Decision of the company is valid, as for alteration of share capital by cancellation of shares and diminishing of amount of share capital by the amount of the shares so cancelled, does not require confirmation of the Tribunal. As per the law, passing of the resolution in that behalf at the duly convened meeting by amending Memorandum of Association, is the sufficient compliance. Therefore, contention of practicing Company Secretary is not valid.
- ii) According to section 13, save as provided in section 61 of the Companies Act, 2013, company may alter the provisions of its memorandum with the approval of the members by a special resolution.

Question 18 :

500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?

RTP November 21

Answer :

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

- However, a forged transfer is a nullity. It does not give the transferee (Mr. Amit) any title to the shares. Similarly, any transfer made by Mr. Amit (to Mr. Abhi) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.
- Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Manoj) from the Register of Members, then the company is bound to restore the name of Mr. Manoj as the holder of the shares and to pay him any dividends which he ought to have received'
- In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name. However, neither Mr. Amit nor Mr. Abhi have any rights against the company even if they are bona fide purchasers. But as Mr. Abhi acted on the faith of share certificate issued by company, he can demand compensation from Mr. Amit.

Question 19 :

Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

RTP November 18

Answer :

According to section 48 of the Companies Act, 2013-

- i) **Variation in rights of shareholders with consent :** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class:
 - a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
 - b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:
- ii) Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

iii) Cancellation of variation : Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

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

Question 20 :

Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders?

RTP November 2018

Answer :

- According to Section 62 (1) of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the
 - i) existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
 - ii) employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
 - iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.
- From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Question 21 :

Walnut Limited has an authorized share capital of equity shares of Rs. 100 per share and an amount of Rs. 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.

RTP May 19, ICAI Module

Answer :

- According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.
- The securities premium account may be applied by the company—
 - i) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
 - ii) in writing off the preliminary expenses of the company;
 - iii) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
 - iv) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
 - v) for the purchase of its own shares or other securities under section 68
- The securities premium account may be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133:
 - i) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
 - ii) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
 - iii) for the purchase of its own shares or other securities under section 68.
- Keeping the above points in view Walnut Foods Limited should proceed to utilise the amount of Securities Premium Account.

Question 22 :

Surya Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2019 shows the following position:

Authorized Share Capital (25,00,000 equity shares of face value of ₹ 10/- each) ₹2,50,00,000

Issued, subscribed and paid-up capital (10,00,000 equity shares of face value of ₹10/- each, fully paid-up) ₹1,00,00,000

Free Reserves ₹3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Discuss.

RTP Nov 20, RTP May 21, ICAI

Answer:

- According to Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
 - i) its free reserves;
 - ii) the securities premium account; or
 - iii) the capital redemption reserve account. Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.
- Conditions for issue of Bonus Shares: No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—
 - i) it is authorised by its Articles;
 - ii) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
 - iii) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - iv) it has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
 - v) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
 - vi) it complies with such conditions as may be prescribed.

- But the company has to ensure that the bonus shares shall not be issued in lieu of dividend.
- To issue bonus shares, company will need reserves of ₹ 50,00,000 (half of ₹1,00,00,000), which is available with the company. Hence, after following the above compliances on issuing bonus shares under the Companies Act, 2013, Surya Ltd. may proceed for a bonus issue of 1 share for every 2 shares held by the existing shareholders.

Question 23 :

Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain?

RTP November 21

Answer :

- Sweat Equity Shares is governed by Section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.
- According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its in incorporation or registration.
- According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.
- Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

Question 24 :

VRS Company Ltd. is holding 45% of total equity shares in SV Company Ltd. The Board of Directors of SV Company Ltd. (incorporated on January 1, 2019) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to VRS Company Ltd., on the ground that it was already holding a high percentage of the total number of shares issued by SV Company Ltd. The Articles of Association of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders of the company. On March 1, 2019 SV Company Ltd. offered new equity shares to all the shareholders except VRS Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SV Company Ltd. of not offering any further shares to VRS Company Limited.

ICAI

Answer :

- The legal issues involved herein are covered under Section 62 (1) of the Companies Act, 2013.
- Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by issue of further shares, such shares should first be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the paid-up capital on those shares. Hence, the company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion of their holdings.
- As per facts of the case, the Articles of SV Company Ltd. provide that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting VRS Company Ltd., which held a major portion of its equity shares. It is to be noted that under the Companies Act, 2013, SV Company Ltd. did not have any legal authority to do so.
- Therefore, in the given case, decision of the Board of Directors of SV Company Ltd. not to offer any further equity shares to VRS Company Ltd. on the ground that VRS Company Ltd. already held a high percentage of shareholding in SV Company Ltd. is not valid. Such a decision violates the provisions of Section 62 (1) (a) as well as Articles of the issuing company.

Companies act.

CHART

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.1)

Public offer & Private Placement

ii) As per Sec 23 (1) A public co. may issue securities-

- a) to public through prospectus
- b) through private placement
- c) through a rights issue or a bonus issue

iii) As per Section 23(2), a private co. may issue securities-

- a) by way of rights issue or bonus issue
- b) through private placement

iii) Such class of public companies may issue such class of securities for purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

iv) The CG may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament. "

Prospectus

As per Sec 2(70) of the Companies Act, 2013, prospectus means any document described or issued as a prospectus & includes a red herring prospectus referred to in sec 32 or shelf prospectus referred to in sec 31 or any notice, circular, advertisement or other document inviting offers from public for subscription or purchase of any securities of body corporate

I) Deemed Prospectus (Section 25)

i) Documents which deemed to be a prospectus:

- a) where a co. allots or agrees to allot any securities of Co. with a view to all or any of those securities being offered for sale to public, any document by which offer for sale to public is made shall, for all purposes, be deemed to be a prospectus issued by Co. &
- b) all enactments & rules of law as to contents of prospectus & as to liability in respect of mis-statements, in & omissions from, prospectus, or otherwise relating to prospectus, shall apply.

ii) Securities offered for sale to public :

- unless contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to securities being offered for sale to public if it is shown-
 - a) that an offer of securities or of any of them for sale to public was made within 6 mnths after allotment or agreement to allot; or
 - b) that at date when offer was made, whole consideration to be received by Co. in respect of securities had not been received by it.

iii) Person making an offer is a co. or a firm :

- Disclosure to be made in Deemed Prospectus-
 - a) net amt of consideration received or to be received by Co. in respect of securities to which offer relates; &
 - b) time & place at which contract where under said securities have been or are to be allotted may be inspected

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.2)

Prospectus

II) Shelf prospectus (Section 31)

It means a prospectus in respect of which securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

i) Filing of shelf prospectus with registrar :

any class or classes of companies, as Securities & Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with Registrar at stage-

a) of first offer of securities included therein which shall indicate a period not exceeding 1 yr as period of validity of such prospectus which shall commence from date of opening of first offer of securities under that prospectus, &

b) in respect of a second or subsequent offer of such securities issued during period of validity of that prospectus, no further prospectus is required

ii) Filing of information memorandum with shelf prospectus :

A co. filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in financial position of co. as have occurred between first offer of securities or previous offer of securities & succeeding offer of securities & such other changes as may be prescribed, with Registrar within prescribed time, prior to issue of a second or subsequent offer of securities under shelf prospectus

Provided that where a co. has received applications for allotment of securities along with advance payments of subscription before making of any such change, co. shall intimate changes to such applicants & if they express a desire to withdraw their application, Co. shall refund all monies received as subscription within 15 days.

iii) Memorandum together with shelf prospectus shall be deemed to be a prospectus :

Where an information memorandum is filed, every time an offer of securities is made under sub-sec (2), such memorandum together with shelf prospectus shall be deemed to be a prospectus

III) Red Herring Prospectus (Section 32)

It means a prospectus which does not include complete particulars of quantum or price of securities

i) Issue a red herring prospectus prior to issue of a

Co. may issue a red herring prospectus prior to issue of a prospectus.

ii) Filing with the registrar :

Co. proposing to issue a red herring prospectus shall file it with Registrar at least 3 days prior to opening of subscription list & offer.

iii) Same obligation :

A red herring prospectus shall carry same obligations as are applicable to a prospectus & any variation between red herring prospectus & a prospectus shall be highlighted as variations in prospectus

iv) Filing of red herring prospectus with registrar & SEBI upon closing of offer :

Upon closing of offer of securities under this sec, prospectus stating therein total capital raised, whether by way of debt or share capital, & closing price of securities & any other details as are not included in red herring prospectus shall be filed with Registrar & Securities and Exchange Board

IV) Abridged prospectus (Section 33)

It means a memorandum containing such salient features of a prospectus as may be specified by Securities & Exchange Board by making regulations in this behalf.

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.3)

Public offer of securities to be in dematerialised form

- 1) Section 29(1) states that every Co. making public offer; & such other class or classes of companies as may be prescribed under Rule 9 shall issue securities only in dematerialised form by complying with provisions of Depositories Act, 1996 & regulations made thereunder
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 manner laid down in Depositories Act, 1996 & regulations made thereunder
- 2) Any Co, other than co. mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with provisions of Depositories Act, 1996 & Regulations made thereunder.
 Securities could be held in physical or dematerialised form. However public offer of securities has to be mandatorily in demat form in accordance with Depositories Act, 1996. Demat ensures fool proof control over issue, sale, purchase, pledge, extinguishment of securities lending transparency & credibility to entire process & securities markets

Securities to be Dealt with in Stock Exchanges

i) Filing of an application with recognised stock exchange
 every co. making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges & obtain permission for securities to be dealt with in such stock exchange or exchanges

ii) Prospectus to state name of stock exchange :
 prospectus shall also state name or names of stock exchange in which securities shall be dealt with

iii) To maintain separate bank account :

All monies received on application from the public shall be kept in a separate bank account in a scheduled bank & shall not be utilised for any purpose other than-
 a) for adjustment against allotment of securities
 b) for Repayment of monies within time specified by SEBI

iv) Condition purporting to waive compliance shall
 Any condition purporting to require or bind any applicant for securities to waive compliance with any of requirements of this section shall be void

v) In case of default :

- a) Company = fine - 5L to 50L
- b) Officer = imprisonment upto 1 year or fine - 50K to 3L or both

vi) Payment of commission :

Conditions for payment of commission:

- a) payment of such commission shall be authorized in Co's articles of association
- b) commission may be paid out of proceeds of issue or profit of Co. or both
- c) Rate of commission -

Shares

- shall not exceed 5% of price at which shares are issued or rate authorised by articles
- Whichever is less

Debentures

- shall not exceed 2.5% of price at which debentures are issued or as specified by co's article
- Whichever is less

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.4)



Misstatements in Prospectus				Punishment for Fraudulently Inducing Persons to Invest Money (Section 36)	
Allotment of Securities by Company (Section 39)	ii) Criminal liability (Section 34)				iii) Liability on defraud : Where it is proved that a prospectus has been issued with intent to defraud applicants for securities of a co. or any other person or for any fraudulent purpose, every person referred to in subsec. (1) shall be personally responsible, without any limitation of liability, for all or any of losses or damages that may have been incurred by any person who subscribed to securities on basis of such prospectus
	i) Criminal liability (Section 34) • every person who authorises issue of such prospectus shall be liable under sec 447: • nothing in this sec shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, & did up to time of issue of prospectus believe, that statement was true or inclusion or omission was necessary.				
ii) Civil liability (Section 35)				Where it is proved that a prospectus has been issued with intent to defraud applicants for securities of a co. or any other person or for any fraudulent purpose, every person referred to in subsec. (1) shall be personally responsible, without any limitation of liability, for all or any of losses or damages that may have been incurred by any person who subscribed to securities on basis of such prospectus	
a) Liabilities of persons: where a person has subscribed for securities of a co. acting on any statement included, or inclusion or omission of any matter, in prospectus which is misleading & has sustained any loss or damage as a consequence thereof, Co. & every person who- • is a director of Co. at time of issue of prospectus • has authorised himself to be named & is named in prospectus as a director • promoter of Co. • authorised issue of prospectus; & • is an expert referred to in sub-section (5) of section 26,					
b) Exceptions : No person shall be liable if he proves- • withdrew his consent to become director before issue of prospectus • Prospectus issued without his knowledge				iii) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or ii) any agreement, purpose or pretended purpose of which is to secure a profit to any of parties from yield of securities or by reference to fluctuations in value of securities; or iii) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,	
shall be liable for action under section 447.					

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.5)

Action by Affected Persons (Section 37)

Class Actions – Gift of Companies Act, 2013

- i) Class action suit is for a group of people filing a suit against a defendant who has caused common harm to entire group or class
- ii) class or group of people filing case need not be present in court & can be represented by one petitioner
- iii) Benefit - if several people have been injured by one defendant, each one of injured people need not file a case separately but all of people can file one single case together against defendant.
- iv) Example - Satyam Scam

Punishment for Fraud

As per Sec 447 -

- i) any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years & shall also be liable to fine which shall not be less than amount involved in fraud, but which may extend to 3 times amt involved in fraud
- ii) where fraud involves public interest, term of imprisonment shall not be less than 3 yrs

Provided further that where the fraud involves an amount less than 10 lakh rupees or 1% of the turnover of the company, whichever is lower, & does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to 50 lakh rupees or with both.

	Fine		Imprisonment
Fraud of less than 10 lakh rupees or 1% of turnover whichever is less	Upto ₹ 50 Lakhs	or	Upto 5 years
Fraud of equal to or more than 10 lakh rupees or 1% of turnover whichever is less	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 6 months Max: 10 Years
Involving Public Interest	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 3 years Max: 10 Years

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.6)



Private Placement - Offer or Invitation for Subscription of Securities on Private Placement (Section 42)

It means any offer of securities or invitation to subscribe securities to select group of persons by co. (other than by way of public offer) through issue of private placement offer letter.

<p>iii) A private placement shall be made only to a select group of persons who have been identified by Board (herein referred to as "identified persons", whose number shall not exceed 50 or such higher number as may be prescribed [excluding QIB & employees of company being offered securities under a scheme of employees stock option], in FY.</p> <p>iii) A company making private placement shall issue private placement offer & application in such form & manner as may be prescribed to identified persons, whose names & addresses are recorded by company in such manner as may be prescribed</p> <p>Provided that private placement offer and application shall not carry any right of renunciation.</p>	<p>iv) Every identified person willing to subscribe to private placement issue shall apply in private placement & application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel & not by cash</p> <p>Provided that a company shall not utilize monies raised through private placement unless allotment is made & return of allotment is filed with Registrar in accordance with sub-section (8).</p>	<p>vi) A company making an offer or invitation under this sec. shall allot its securities within 60 days from date of receipt of application money for such securities & if company is not able to allot securities within that period, it shall repay application money to subscribers within 15 days from expiry of 60 days & if company fails to repay application money within aforesaid period, it shall be liable to repay that money with interest at rate of 12% p.a. from expiry of 16th day:</p> <p>Provided that monies received on application under this sec. shall be kept in a separate bank account in a scheduled bank & shall not be utilized for any purpose other than-</p> <p>a) for adjustment against allotment of securities; or</p> <p>b) for repayment of monies where company is unable to allot securities.</p> <p>vii) No co. issuing securities under this sec. shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform public at large about such an issue</p>	<p>xi) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act & the Securities Contracts (Regulation) Act, 1956 & the Securities and Exchange Board of India Act, 1992 shall be applicable).</p>
	<p>v) No fresh offer or invitation under this section shall be made unless allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:</p> <p>Provided that, subject to maximum number of identified persons under sub-sec (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.</p>	<p>viii) A company making any allotment of securities under this sec., shall file with Registrar a return of allotment within 15 days from date of allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted & such other relevant info. as may be prescribed</p> <p>ix) If a company defaults in filing return of allotment within period prescribed under sub-sec (8), company, its promoters & directors shall be liable to a penalty for each default of 1000 rupees for each day during which such default continues but not exceeding 25 lakh rupees</p>	
		<p>x) Subject to sub-sec (11), if a co. makes an offer or accepts monies in contravention of this section, company, its promoters & directors shall be liable for a penalty which may extend to amount raised through the private placement or 2 crore Rs., whichever is lower, & co. shall also refund all monies with interest as specified in sub-sec. (6) to subscribers within a period of 30 days of order imposing penalty</p>	

SHARE CAPITAL AND DEBENTURES (Chart 4.1)

Share Capital - Types (Section 43)

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

A) Preference share capital.

It is an **instrument** which have

preferential right to dividend payment (absolute/fixed or advalorem / %) & **preferential** repayment during winding up of co.

These shareholders

could also participate in equity pool post preferential entitlements

B) Equity share capital

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

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

iii) Conditions for issue of equity shares with **differential rights :-**

a) **AOA of co. authorizes** issue of shares with differential rights

b) issue of shares is authorized by an **ordinary resolution** passed at a **GM of share holders**

c) **Voting power in respect of shares with differential rights of co. shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;**

d) ~~co. having consistent track record of distributable profits for last 3 years~~

e) co. has not defaulted in filing financial statements & annual returns for 3 FY immediately preceding FY in which it is decided to issue such shares

f) co. has no subsisting **default in payment of a declared dividend** to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures

g) co. has **not defaulted in payment of dividend on pref. shares or repayment of any term loan or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting amount in Investor Education & Protection Fund to CG**

h) co. has **not been penalized by Court or Tribunal during the last 3 years**

iv) **Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights :**

co. shall not convert its existing eq. share capital with voting rights into eq. share capital carrying differential voting rights & vice-versa

v) **Rights to holders of equity shares with differential rights :**

holders of equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc

vi) **Particulars of shares to be maintained in register of members :**

Where a co. issues eq. shares with differential rights, Register of Members maintained under section 88 shall contain all relevant particulars of shares so issued along with details of shareholders

SHARE CAPITAL AND DEBENTURES (Chart 4.2)

Basic Requirement (Section 45 & 46)

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

- i) Distinctively numbered; &
- ii) To be issued under common seal of Co. or signed by two directors or by a director & CS, wherever Co. has appointed a CS.

Demat

i) At present there are 2 depositories in India: **NSDL & CDSL** with various depository participants (DPs) linked to them

iii) Dematerialised securities are held by investors in their respective accounts with DP. DP keeps a track of transfer, transmission, charge creation etc

iii) share certificate issues by a co. could be in a way compared to currency notes issued by Central Bank.

iv) wrongdoer co. is punishable with monetary penalty of 5 to 10 times of face value of shares involved or Rs. 10 cr whichever is higher.

v) every officer in default is liable to imprisonment ranging from 6 mnths to 10 yrs along with monetary penalty of 3 times fraud (Sec 447)

Voting rights of members (Section 47)

Subject to the provisions of section 43, section 50(2) & section 188(1), —

i) Voting right of member holding equity share capital :

Every member of a co. limited by shares who is holding eq. share capital, shall have a right to vote on every resolution placed before Co.; and his voting right on a poll shall be in proportion to his share in paid-up eq. share capital of Co.

ii) Voting right of member holding preference share capital :

Every member of a co. limited by shares who is holding any preference share capital shall, in respect of such capital, have-

a) a right to vote only on resolutions placed before Co.

b) any resolution for winding up of Co.

c) for repayment or reduction of its equity or preference share capital & his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of Co.

iii) Proportion of voting rights :

a) proportion of voting rights of eq. shareholders to voting rights of preference shareholders shall be in same proportion as paid-up capital

b) Where dividend in respect of a class of preference shares has not been paid for a period of 2 yrs or more, there such class of preference shareholders shall have a right to vote on all resolutions placed before Co.

c) in case of equity shares other than equity shares with differential voting rights, each shareholder is entitled to vote on any resolution placed before Co.

d) In a meeting of pref. shareholders, preference voting rights are proportionate to one's pref. share investment to total nominal pref. share capital in Co.

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

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

Variations of shareholders' rights (Section 48)

i) Variation in rights of shareholders with consent :

Where a share capital of Co. is divided into different classes of shares, rights attached to shares of any class may be varied with consent in writing of holders of not less than 3/4th of issued shares of that class or by means of a SR passed at a separate meeting of holders

iii) No consent for variation :

Where holders of not less than 10 % of issued shares of a class did not consent to such variation or vote in favour of SR for variation, they may apply to Tribunal to have variation cancelled, & where any such application is made, variation shall not have effect unless & until it is confirmed by tribunal.

Application shall be made within 21 days.

iii) Binding decision of tribunal :

decision of Tribunal on any application shall be binding on share- holders

iv) Filing copy of order with Registrar :

Co. shall, within 30 days of date of order of Tribunal, file a copy thereof with Registrar.

SHARE CAPITAL AND DEBENTURES (Chart 4.3)

Calls & Incidental Matters (Section 49 to Section 51)

- i) Calls are made by Co. on security holders to pay amount called up in respect of partly paid up securities
- ii) As per Sec 49, these calls have to uniformly made & there should be no differentiation for a given class of security holders
- iii) The provision is not applicable in case where different amounts are paid for a same class for security.
- iv) As per Sec. 50, if authorised by articles, a co. can keep advance subscription or call money received in advance
- v) Co. could pay proportionate dividends in proportion to amount paid on each share, if authorised by articles (Sec 51).
- vi) advance payment will never lead to increased voting rights but delayed payment of call money could be reason of decreased voting rights.

Application of premiums received on issue of shares (Section 52)

- i) Where a co. issues shares at a premium, whether for cash or otherwise, a sum equal to aggregate amt of premium received on those shares shall be transferred to a securities premium account
- ii) Application of securities premium account-
 - a) towards issue of Bonus shares
 - b) In writing off preliminary expenses
 - c) In writing off expenses of, or commission paid or discount allowed on, any issue of shares or debentures
 - d) In providing for premium payable on redemption of any redeemable preference shares or of any debentures
 - e) for purchase of its own shares under sec 68.
- iii) Who may apply the securities premium account -
 - a) in paying up unissued eq. shares of Co. to be issued to members of Co. as fully paid bonus shares; or
 - b) in writing off expenses of or commission paid or discount allowed on any issue of eq shares of co.; or
 - c) for purchase of its own shares under section 68.

Prohibition on issue of shares at discount (Section 53)

- i) Co. shall not issue shares at a discount, except in the case of an issue of sweat equity shares
- ii) Any share issued by a co. at a discount shall be void
- iii) Fine for Contravention -
 - Company - Rs. 1 Lakh to Rs. 5 Lakh
 - Officer - Imprisonment - upto 6 mnths or - Fine - Rs. 1 Lakh to Rs. 5 Lakh or Both
- iv) Notwithstanding anything contained in sub-sec. (1) & (2), a co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by RBI under the RBI Act, 1934 or Banking (Regulation) Act, 1949].

Where any Co. fails to comply with provisions of this section, such company & every officer in default shall be liable to penalty which may extend to an amount equal to amount raised through issue of shares at discount or Rs. 5,00,000/-, whichever is less, & Co. shall also be liable to refund all monies received with interest @ 12% per annum from date of issue of such shares to persons to whom such shares have been issued

SHARE CAPITAL AND DEBENTURES (Chart 4.4)

Issue of Sweat equity shares (Section 54)

i) Section 2(88) - sweat equity shares means such eq. shares as are issued by a co. to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in nature of intellectual property rights or value additions, by whatever name called;

ii) Section 2 (37) - employees' stock option means option given to directors, officers or employees of a co. or of its holding co. or subsidiary co. or co's, if any, which gives such directors, officers or employees, benefit or right to purchase, or to subscribe for, shares of Co. at a future date at a pre-determined price

iii) Conditions-
a) issue is authorised by a SR
b) resolution specifies number of shares, current market price, consideration, if any, & class or classes of directors or employees to whom such equity shares are to be issued
c) where eq. shares of co. are listed on a recognised stock exchange, sweat eq. shares are issued in accordance with regulations made by Securities & Exchange Board in this behalf & if they are not so listed, sweat eq. shares are issued in accordance with rules as prescribed under Rule

i) Co. to issue redeemable pref. No Co. limited by shares shall issue any preference shares which are irredeemable

ii) Period for redeem of pref shares : pref shares are liable to be redeemed within a period not exceeding 20 years

iii) Shares to be redeemed out of profits only : No such shares shall be redeemed except out of profits of Co. which would other- wise be available for dividend or out of proceeds of a fresh issue of shares made for purposes of such redemption

iv) Redeemed shares to be fully paid : no such shares shall be redeemed unless they are fully paid;

v) Proposed shares to be redeemed shall be transferred to CRR account : a sum equal to nominal amount of shares to be redeemed, to a reserve, to be called Capital Redemption Reserve(CRR) Account

vi) Class of co's whose financial statement complies with Accounting standards : Premium, if any, payable on redemption shall be provided for out of profits of co., before shares are redeemed

vii) In case of unredeemed pref shares : Co. May -
a) with consent of holders of 3/4th in value of such pref. shares, &
b) with approval of Tribunal on a petition made by it in this behalf
c) issue further redeemable pref. shares equal to amount due, including dividend thereon

viii) Paying of unissued shares to members : CRR account may, be applied by Co., in paying up unissued shares of Co. to be issued to members of Co. as fully paid bonus shares.

Preference shares - Issue and redemption [Section 55]

SHARE CAPITAL AND DEBENTURES (Chart 4.5)

Transfer and Transmission of Securities or Interest of a Member in the Company (Section 56)

i) Requirement for registering transfer of securities

Co. shall not register a transfer of securities of Co., or interest of a member in Co. in case of a co. having **no share capital, unless a proper instrument of transfer, duly stamped, dated & executed** by or on behalf of transferor & transferee **specifying name, address & occupation**, if any, of transferee, has been delivered to Co. by transferor or transferee **within a period of 60 days from date of execution**, along with certificate relating to securities, or if no such certificate is in existence, along with letter of allotment of securities.

ii) Instrument of transfer lost/ not delivered :

Co. may register transfer on such terms as to **indemnity as Board may think fit.**

iii) Power of Co. to register :

Power of co. to register shall not be effected by above provision **on receipt of an intimation of transmission of any right to securities** by operation of law from any person to whom such right has been transmitted.

iv) Transmission of securities on an application of transferor alone :

Where an application is made by **transferor alone & relates to partly paid shares**, transfer shall not be registered, **unless co. gives notice of application**, in such manner as may be prescribed, to transferee & transferee gives no objection to transfer **within 2 weeks from receipt of notice**

vi) Transfer of security of deceased :

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

viii) Liability of depository :

Where any depository or depository participant, with an **intention to defraud a person**, has transferred shares, it shall be liable under **section 447**

v) Co. delivering certificate :

Different conditions	Period of the delivering the certificates
In the case of subscribers to the memorandum;	Within 2 months from the date of in-corporation
In the case of any allotment of any of its shares	Within a period of two months from the date of allotment
In the case of a transfer or transmission of securities	Within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission
In the case of any allotment of debenture	Within a period of six months from the date of allotment

Punishment for personation of shareholder (Section 57)

If any person deceitfully personates as—

i) an **owner of any security or interest in a co., or**

ii) of any **share warrant or coupon** issued in pursuance of this Act, &

iii) thereby **obtains or attempts to obtain** any such security or interest or any such share warrant or coupon, or

iv) **receives or attempts to receive** any money due to any such owner,

Punishment -

Imprisonment - 1 yr to 3 yrs Fine - 1 Lakh Rs. to 5 Lakh Rs.

SHARE CAPITAL AND DEBENTURES (Chart 4.6)

Refusal of registration and appeal against refusal [Section 58]

i) If a private co. limited by shares refuses, to register transfer of, or transmission of right to any securities or interest of a member in Co., then co. shall **send notice of refusal to transferor & transferee** or to person giving intimation of such transmission, **within a period of 30 days**

ii) Transferee may appeal to **Tribunal against refusal within a period of 30 days**

iii) If a public co. **without sufficient cause** refuses to register transfer of securities **within a period of 30 days**, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from Co., within 90 days appeal to Tribunal.

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

a) direct that transfer or transmission shall be registered by Co. & Co. shall comply with such order within a **period of 10 days of receipt of order; or**

b) **direct rectification of register** & also direct Co. to pay damages, if any, sustained by any party aggrieved.

v) If a person contravenes order of Tribunal -
Imprisonment - 1yr to 3yrs
Fine - 1Lakh to 3Lakhs

Rectification of register of member [Section 59]

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

may appeal in such form as may be prescribed, to Tribunal, or to a competent court outside India, specified by CG by notification, in respect of **foreign members or debenture holders residing outside India, for rectification of register.**

ii) **Order of the Tribunal :**

either dismiss appeal or direct that transfer or transmission shall be registered by Co. **within a period of 10 days of receipt of order**, or direct rectification of records of depository or register & in latter case, direct co. to pay damages, if any, **sustained by party aggrieved**

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

iv) Where transfer of securities is in contravention of any of provisions of the Securities Contracts (Regulation) Act, 1956, the Securities & Exchange Board of India Act, 1992 :

direct any co. or a depository to set right contravention & rectify its register or records concerned.

SHARE CAPITAL AND DEBENTURES (Chart 4.7)

Alteration of share capital [Section 61]

- i) a limited co. having a share capital may, if so authorised by its articles, alter its memorandum in its GM to—
 - a) increase its authorised share capital
 - b) consolidate & divide all or any of its share capital into shares of a larger amt than its existing shares
 - c) convert all or any of its fully paid-up shares into stock, & reconvert that stock into fully paid-up shares of any denomination;
 - d) sub-divide its shares, or any of them, into shares of smaller amt than is fixed by memorandum
 - e) cancel shares which, at date of passing of resolution in that behalf, have not been taken or agreed to be taken by any person,
 - ii) cancellation of shares shall not be deemed to be a reduction of share capital.

- i) A rights issue involves pre-emptive subscription rights to buy additional securities in a co. offered to the co's existing security holders. It is a non-dilutive pro rata way to raise capital.
- ii) a co. having a share capital proposes to increase its subscribed capital by issue of further shares, such shares shall be offered—
 - a) to persons who, at date of offer, are holders of equity shares of Co. in proportion, to paid-up share capital
 - b) to employees under a scheme of employees' stock option, subject to SR passed by co.
 - c) to any persons, if it is authorised by a SR, whether or not those persons include persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if price of such shares is determined by valuation report of a registered valuer, subject to compliance with applicable provisions of Chap. III & any other conditions as may be prescribed

- iii) Notice of offer of shares shall be despatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all existing shareholders at least 30 days before opening of issue
- iv) Exception - section shall not apply to increase of subscribed capital of a co. caused by exercise of an option attached to debentures issued or loan raised by Co. to convert such debentures or loans into shares in Co.
- v) Conversion of debentures/loan into shares :
 - on such terms & conditions as appear to Government to be reasonable in circumstances of case even if terms of issue of such debentures or raising of such loans do not include a term for providing for an option for such conversion.
 - vi) Term of conversion not acceptable to Co.: Co. may, within 60 days from date of communication of such order, appeal to Tribunal which shall after hearing co. & Government pass such order as it deems fit.

Further issue of share capital – Rights Issue; Preferential Allotment [Section 62]

- vii) Points to be taken into consideration for term of conversion:
 - In determining terms & conditions of conversion, Government shall have due regard to financial position of Co.
 - viii) When memorandum of co. stand altered & increases authorized share capital :
 - Where Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a co. & where no appeal has been preferred to Tribunal or where such appeal has been dismissed, then memorandum of co. shall, by such order having effect of increasing authorised share capital of Co., stand altered & authorised share capital of such co. shall stand increased by an amount equal to amount of value of shares which such debentures or loans or part thereof has been converted into.

Issue of bonus shares [Section 63]

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

- i) co. may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
 - a) its free reserves;
 - b) securities premium account; or
 - c) CRP account

Provided that no issue of bonus shares shall be made by capitalising reserves created by revaluation of assets.
- ii) The bonus shares shall not be issued in lieu of dividend.
- ii) No co. shall capitalise its profits or reserves for purpose of issuing fully paid-up bonus shares unless-
 - a) it is authorised by its articles;
 - b) it has on recommendation of Board, been authorised in GM of Co.;
 - 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 payment of statutory dues of employees, such as, contribution to provident fund, gratuity & bonus;
 - e) partly paid-up shares, if any outstanding on date of allotment, are made fully paid-up;
 - f) it complies with such conditions as may be prescribed.

SHARE CAPITAL AND DEBENTURES (Chart 4.8)



Notice to be given to Registrar for Alteration of Share Capital (Section 64)		Reduction of share capital [Section 66]	
i) Where— a) a co. alters its share capital in any manner specified in sec 61(1) b) an order made by Government under sec 62(4) read with 62(6) has the effect of increasing authorised capital of a co.; or c) a co. redeems any redeemable preference shares, iii) co. shall file a notice in prescribed form with Registrar within a period of 30 days of such alteration or increase or redemption	ii) Reduction of share capital by SR: Subject to confirmation by Tribunal on an application by Co., a co. limited by shares or limited by guarantee & having a share capital may, by a SR, reduce share capital in any manner & in particular, may - a) Extinguish or reduce liability on any of its shares in respect of share capital not paid-up; or b) either with or without extinguishing or reducing liability on any of its shares,- • cancel any paid-up share capital which is lost or is unrepresented by available assets; or • pay off any paid-up share capital which is in excess of wants of Co., alter its memorandum by reducing amount of its share capital & of its shares accordingly :	iii) Order of tribunal :	vi) Nothing in this section shall apply to buy-back of its own securities by a co. under section 68.
		iv) Publishing of order of confirmation of tribunal :	vii) No liability of member: member of co., past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding amount of difference, if any, between amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, & amount of share as fixed by order of reduction
		v) Delivery of certified copy of order to registrar :	viii) In case where creditor is entitled to object :
iii) Default - Where any company fails to comply with provisions of sub-section (1), such company & every officer who is in default shall be liable to penalty of Rs. 500/- for each day during which such default continues, or Rs. 5,00,000/- whichever is less	ii) Issue of Notice from the Tribunal	ix) Liability of officer : If any officer of the co.- a) knowingly conceals name of any creditor entitled to object to reduction b) knowingly misrepresents nature or amount of debt or claim of any creditor; or c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under sec 447.	

SHARE CAPITAL AND DEBENTURES (Chart 4.9)

Restriction on purchase by company or giving of loans by it for purchase of its shares (Section 67)

Buy back of securities (Sections 68- 70)

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

i) Power of co. to purchase its own securities [Section 68]		ii) Transfer of certain sums to CRR account (Section 69)	
<p>iv) Exceptions :</p> <p>a) lending of money by a banking co. in ordinary course of its business;</p> <p>b) provision is made by a co. for lending of money in accordance with any scheme approved by co. through SR</p> <p>c) giving of loans by a co. to persons in employment of Co. other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of 6 months</p> <p>v) Contavention - Company - Fine - 1Lakh to 25Lakh officer - Imorisonment - Upto 3 years & Fine - 1Lakh to 25Lakhs</p>	<p>a) Sources of funds for buy-back of shares</p> <ul style="list-style-type: none"> free reserves; or securities premium account; or proceeds of issue of any shares or other specified securities. 	<p>j) Register of Buy Back :</p> <p>Co shall maintain a register of shares or securities so bought, consideration paid for shares or securities bought-back, date of cancellation of shares or securities, date of extinguishing & physically destroying into affairs of Co.</p>	<p>a) Where a co. purchases its own shares out of free reserves or securities premium account, then a sum equal to nominal value of share so purchased shall be transferred to CRR account & details of such transfer shall be disclosed in balance sheet.</p> <p>b) CRR Account may be utilized for payment of bonus shares</p>
	<p>b) Conditions for buy-back :</p> <ul style="list-style-type: none"> buy-back is authorised by its articles; SR at GM of Company <p>Except - Buy-back is, 10% or less of total paid-up equity capital & free reserves of Co.; & such buy-back has been authorised by Board by means of a resolution passed at its meeting</p> <ul style="list-style-type: none"> buy-back is 25% or less of aggregate of paid-up Debt equity ratio is not more than 2:1 All shares are fully paid - up listed on any recognised stock exchange is in accordance with regulations made by SEBI 	<p>g) Declaration of Solvency :</p> <p>before making buy-back, file with Registrar & the Securities & Exchange Board of India a declaration of solvency in form as may be prescribed & verified by an affidavit to the effect that Board has made a full inquiry into affairs of Co.</p>	<p>iii) Prohibition for buy-back in certain circumstances (Section 70)</p> <p>a) No co. shall directly or indirectly purchase its own shares or other specified securities-</p> <ul style="list-style-type: none"> Through any subsidiary co. including its own subsidiary co's; or Through any investment co. or group of investment co's; or <p>if a default, is made by co., in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend or repayment of term loan or interest payable to any financial institutions or banking co.;</p>
<p>iii) A fundamental principle of Company Law was that a Co. cannot buy its own shares</p> <p>ii) no co. limited by shares or by guarantee & having a share capital shall have power to buy its own shares unless consequent reduction of share capital is effected</p> <p>iii) No public co. shall give, whether directly or indirectly & whether by means of a loan, guarantee, provision of security or otherwise, any financial assistance for purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in Co. or in its holding co.</p>	<p>c) no offer of buy-back, shall be made within a period of 1 year from date of closure of preceding offer of buy-back, if any.</p> <p>d) Procedure before buy-back :</p> <p>notice of meeting at which SR is proposed to be passed shall be accompanied by an explanatory statement stating -</p> <ul style="list-style-type: none"> a full & complete disclosure of all material facts; necessity for buy-back; class of shares or securities intended to be purchased under buy back; amount to be invested under buy-back; & time limit for completion of buy-back 	<p>h) Extinguishment of Securities:</p> <p>Co. shall extinguish & physically destroy shares or securities so bought-back within 7 days of last date of completion of buy-back.</p>	<p>k) Filing of Buy-back Return :</p> <p>File a return with Registrar and the Securities and Exchange Board of India, within 30 days</p> <p>l) Penalty for Default :</p> <p>Company- 1 Lakh to 3 Lakh Officer - Fine - 1 Lakh to 3 Lakh</p>
	<p>e) Time limit for completion of buy-back :</p> <p>within 12 months from date of passing SR</p> <p>f) Buy-Back from Whom? :</p> <ul style="list-style-type: none"> from existing share holders or security holders on a proportionate basis; or from open market; or by purchasing securities issued under 	<p>i) Cooling Period :</p> <p>Where a co. completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares within a period of 6 months</p>	

SHARE CAPITAL AND DEBENTURES (Chart 4.10)

Debentures (Sections 71)

As per Section 2(30), debenture includes debenture stock, bonds or any other instrument of company evidencing debt, whether constituting charge on assets of company or not

Provided that :

- a) instruments referred to in Chapter III-D of RBI Act, 1934; and
- b) such other instrument, as may be prescribed by CG in consultation with RBI, issued by company, shall not be treated as debenture

Companies (Share Capital & Debentures) Rules, 2014			
As per Section 2(30), debenture includes debenture stock, bonds or any other instrument of company evidencing debt, whether constituting charge on assets of company or not Provided that : a) instruments referred to in Chapter III-D of RBI Act, 1934; and b) such other instrument, as may be prescribed by CG in consultation with RBI, issued by company, shall not be treated as debenture		The co. shall comply with requirements with regard to DRR & investment or deposit of sum in respect of debentures maturing during year ending on the 31st day of March of next year, in accordance with the conditions given below:- (a) DRR shall be created out of profits of the co. available for payment of dividend; (b) Limits with respect to adequacy of DRR & investment or deposits, as the case may be, shall be as under:- (i) DRR is not required for debentures issued by All India Financial Institutions regulated by RBI & Banking Companies for both public as well as privately placed debentures; (ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR shall be as applicable to NBFC registered with RBI (iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), DRR is not required in the following cases- (A) in case of public issue of debentures – A. for NBFCs registered with RBI under section 45-IA of the RBI Act, 1934 & for Housing Finance Companies registered with National Housing Bank; B. for other listed companies; (B) in case of privately placed debentures, for co's specified in sub-items A & B. (iv) for unlisted companies, (other than All India Financial Institutions & Banking Companies as specified in sub-clause (i)) –	
i) Issue of debentures with an option to convert : co. may issue debentures with an option to convert such debentures into shares, either wholly or partly at time of redemption	vi) Debenture trustee to protect interest of debenture holders vii) Liability of debenture trustee : Any provision contained in a trust deed for securing issue of debentures, or in any contract with debenture-holders secured by a trust deed, shall be void in so far as it would have effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show degree of care & due diligence required of him as a trustee, having regard to provisions of trust deed conferring on him any power, authority or discretion	x) On failure to redeem debentures/ to pay interest on debentures : Tribunal may, on application of any or all of debenture-holders, or debenture trustee &, after hearing parties concerned, direct, by order, co. to redeem debentures forthwith on payment of principal & interest due thereon. xii) Specific performance of contract : A contract with co. to take up & pay for any debentures of Co. may be enforced by a decree for specific performance. xiii) Procedure to be prescribed by CG: CG may prescribe procedure, for securing the issue of debentures, form of debenture trust deed, procedure for debenture-holders to inspect trust deed & to obtain copies thereof, quantum of debenture redemption reserve required to be created & such other matters.	(A) for NBFCs registered with RBI under section 45-IA of the RBI Act, 1934 & for Housing Finance Companies registered with National Housing Bank, DRR is not required in case of privately placed debentures. (B) for other unlisted companies, the adequacy of DRR shall be 10% of the value of the outstanding debentures; (v) In case a co. is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than 15% of the amt. of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi); Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year. (vi) for the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:- (A) in deposits with any scheduled bank, free from any charge or lien; (B) in unencumbered securities of the CG or any State Government;
ii) No Co. shall issue any debentures carrying any voting rights. iii) Issue of secured debentures : Secured debentures may be issued by a co. subject to such terms & conditions as may be prescribed in Rule 18 iv) Creation of debenture redemption reserve (DRR) account : Co. shall create a DRR account out of profits of co. available for payment of dividend & amount credited to such account shall not be utilised by Co. except for redemption of debentures. v) Limitation on issue of prospectus/ offer / invitation to public : No co. shall issue a prospectus or make an offer or invitation to public or to its members exceeding 500 for subscription of its debentures, unless Co. has, before such issue or offer, appointed 1 or more debenture trustees & conditions governing appointment of such trustees shall be such as may be prescribed.	viii) To pay interest & redeem debentures: A co. shall pay interest & redeem debentures in accordance with terms & conditions of their issue ix) Filing of petition before Tribunal by debenture trustee : Where at any time debenture trustee comes to a conclusion that assets of co. are insufficient or are likely to become insufficient to discharge principal amount as & when it becomes due, debenture trustee may file a petition before Tribunal. Tribunal may impose such restrictions on incurring of any further liabilities by co. as it may consider necessary in interests of debenture-holders.	(c) in unencumbered securities mentioned in sub-clause (a) to (d) & (ee) of section 20 of the Indian Trusts Act, 1882; in unencumbered bonds issued by any other co. which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882; Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above. (c) in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule. (d) the amount credited to DRR shall not be utilized by the company except for the purpose of redemption of debentures."	

TRISHULA

NOTES



CA INTERMEDIATE

CORPORATE & OTHER LAWS

May-23 Attempt



CA Ankita Patni

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Trishul

Sr No.	Chapter Name	May- 18	Nov-18	May-19	Nov-19	Nov-20	Jan-21	Jul-21	Dec-21	May-22
	Company Law-									
1	Preliminary	6	6	0	2	0	0	6	2	3
2	Incorporation of Company & Matters Incidental There to	0	4	9	7	9	5	10	3	9
3	Prospectus & Allotment of Securities	6	6	6	4	0	0	3	8	5
4	Share Capital & Debentures	7	7	5	10	12	20	8	7	8
5	Acceptance of Deposits by Companies	0	6	2	6	6	7	4	5	2
6	Registration of Charges	0	0	2	5	4	3	0	0	4
7	Management & Administration	19	14	16	4	4	8	9	15	7
8	Declaration & Payment of Dividend	6	10	7	5	8	5	3	2	2
9	Accounts of Companies	10	7	7	8	6	6	6	6	7
10	Audit & Auditors	6	6	3	6	6	3	8	9	10

OTHER LAWS WEIGHTAGE

CHAPTER	MAY18	NOV18	MAY19	NOV19	NOV20	JAN21	JULY21	DEC21	MAY22
INDIAN CONTRACT ACT,1872	12	9	12	12	11	12	12	12	12
NEGOTIABLES INSTRUMENT ACT,1881	8	8	11	10	13	10	9	10	10
GENERAL CLAUSES ACT,1897	10	3	4	7	8	7	7	7	7
INTERPRETATION OF STATUTES	10	12	9	6	6	6	6	6	6

Multiple Choice Questions with Answers

Q.1 *Roma along with her six friends has incorporated Roma Trading Ltd. in May 2019. The paid-up share capital of the company is ₹ 30 lacs. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below ₹ 20 crores. Advise whether the company can be treated as a 'small company'.*

- (a) *Roma Trading Ltd. is definitely a 'small company' since its paid-up capital is much below ₹ 2 crores and also its turnover has not exceeded the threshold limit of ₹ 20 crores.*
- (b) *The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company it cannot enjoy benefits of 'small company'.*
- (c) *Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.*
- (d) *If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small company'.*

Q.2 *Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover was less than ₹ 20 crores and its paid up share capital was less than ₹ 2 crores. Advise.*

- (a) *A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.*

- (b) *If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.*
- (c) *The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.*
- (d) *A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.*

Answer Keys

Q.1	(b)
Q.2	(c)

INCORPORATION OF COMPANIES AND MATTERS INCIDENTAL THERETO

Multiple Choice Questions with Answers

Q.1 *Namita Ceramic Goods Limited having 152 members was incorporated with the main objects of manufacture of ceramic goods, glazed, unglazed floor and wall tiles, etc. and to carry on trading in such products. After three years of successful operation, it wants to diversify its business by entering into the field of manufacturing electronic goods for which it is required to alter its objects clause. Advise the company in relation to alteration of Memorandum.*

- (a) *The company can alter its Memorandum of Association by passing an ordinary resolution and obtaining the confirmation of the Regional Director (RD).*
- (b) *The company can alter its Memorandum of Association by passing a special resolution at the shareholders' meeting.*
- (c) *The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and obtaining the confirmation of the Regional Director (RD).*
- (d) *The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and simultaneously publishing the contents of special resolution in two newspapers (one in English and the other one in vernacular language) circulating in that area*

Q.2 *Anupam incorporated a 'One Person Company' (OPC) with his sister Alpana as the nominee and about three years have passed satisfactorily. Anupam does a number of charitable works and is associated with three NGOs. His business under his OPC has also flourished. Now he is planning to convert the OPC into a Section 8 company (i.e. a company formed with charitable objects). Choose the correct option.*

- (a) *Since the company belongs to Anupam, he has full discretion to convert the OPC either as a Section 8 company or as a private or public company*

- (b) *Since the company was formed as a private company, the only option available with Anupam is to convert it into a public limited company.*
- (c) *There is specific prohibition on converting OPC into a Section 8 company; otherwise it can be converted into a private or public company without any hindrance.*
- (d) *Since Anupam does a lot of charitable works there is no prohibition on converting his OPC into a Section 8 company.*

Answer Key

Q.3

(b)

Q.4

(c)

PROSPECTUS AND ALLOTMENT OF SECURITIES

Multiple Choice Questions with Answers

Q.1 *An issuing house (share broker) has issued an advertisement in two leading newspapers for selling a large number of shares allotted to it by a company under a private placement. In which of the following conditions will the advertisement NOT be deemed to be a prospectus:*

- (a) *Advertisement was given within six months from the date of allotment*
- (b) *Advertisement was given after six months from the date of allotment and the issuing house has paid the entire consideration to the company*
- (c) *The issuing house did not pay entire consideration to the company till the date of allotment*
- (d) *advertisement was given within three month from the date of allotment*

Q.2 *Which of the following statements is not true?*

- (a) *in case of shares, the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.*
- (b) *underwriting commission should not be more than the rate specified by the Article of Association.*
- (c) *in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.*
- (d) *amount of commission may be paid out of profits of the company.*

Q.3 *A shelf prospectus filed with the ROC shall remain valid for a period of:*

- (a) *one year from the date of registration*
- (b) *one year from the date of closing of first issue*
- (c) *one year from the date of opening of first issue*
- (d) *Ninety days from the date on which a copy was delivered to ROC*

Q.4 *Shripad Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.*

- (a) 9th November, 2019
- (b) 24th November, 2019
- (c) 9th December, 2019.
- (d) 8th January, 2020

Q.5 *Neptune Metal Tools Limited was incorporated on 2nd December, 2018 with twenty-five subscribers and authorised capital of ₹ 50,00,000 (5,00,000 equity shares of ₹ 10 each). The directors of the company are in a dilemma whether to issue share certificates to the subscribers in physical form or in dematerialized form. Advise them correctly on this matter:*

- (a) *Being an unlisted company, Neptune may either issue physical share certificates to the subscribers or alternatively, issue them in dematerialized form.*
- (b) *Neptune needs to issue shares to the subscribers only in dematerialized form.*
- (c) *A company having more than 100 shareholders needs to issue shares in dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.*
- (d) *A company having authorised capital of fifty lakhs and above needs to issue shares in dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.*

Answer Key :

Q.1	(b)	Q.2	(c)
Q.3	(c)	Q.4	(c)
Q.5	(b)		

SHARE CAPITAL AND DEBENTURES

Multiple Choice Questions with Answers

Q.1 Which of the following statement is contrary to the provisions of the Companies Act, 2013 ?

- (a) A private company can make a private placement of its securities.
- (b) The company has to pass a special resolution for private placement.
- (c) Minimum offer per person should have Market Value of ₹ 20,000.
- (d) A public company can make a private placement of its securities.

Q.2 Being in need of further capital, Rimsi Cotton-Silk Products Limited offered 50 lacs equity shares of ₹ 1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by application the necessary form was sent to them after fulfillment of due formalities including passing of special resolution. One of the applicants Rajan made a written complaint to the company highlighting the fact that the offer letter was incomplete as well as illegal, as it did not contain 'renunciation clause' as he wanted to exercise his 'right of renunciation' in favour of his son Uday. By choosing the correct option, advise the company in this matter.

- (a) As the 'Right of Renunciation' cannot be denied, the company needs to rectify its mistake by including the same in the offer letter and the application form.
- (b) The company is prohibited from providing 'Right of Renunciation' so the offer letter and the application form need not include any such clause.
- (c) Instead of absolute prohibition, the company can provide 'Right of Renunciation' limited to twenty five percent of offering.
- (d) Instead of absolute prohibition, the company can provide 'Right of Renunciation' limited to fifty percent of offering.

Q.3 Innovative Tech Sol Limited intends to invite subscription for ₹ 1.10 crores equity shares of ₹ 10 each on private placement basis. The persons identified as potential subscribers are within the statutory limit and also include the two other categories to which such statutory limit is not applicable. One such category is employees of the company who are offered equity shares under Employees' Stock Option Scheme. the other excluded category is :

- (a) *Quality Institutional Buyers*
- (b) *Qualified Institutional Buyers.*
- (c) *Qualificational Institutional Buyers.*
- (d) *Qualified Investing Institutional Buyers.*

Q.4 *The amount that an unlisted public company is required to maintain as security deposit, at all times, with the respective depository when it dematerializes its securities shall be*

- (a) *Equal to not less than one year's fees payable to the depository*
- (b) *Equal to not less than two years' fees payable to the depository*
- (c) *Equal to not less than two and a half years' fees payable to the depository*
- (d) *Equal to not less than three years' fees payable to the depository*

Q.5 *Commission is permitted to be paid to any underwriter by the company only in respect of an offer of securities:*

- (a) *where securities are offered on rights basis*
- (b) *where securities are offered in the form of bonus issue*
- (c) *where securities are offered on private placement basis*
- (d) *where securities are offered to the public for subscription*

Q.6 *In case of 'offer of sale of shares by certain members of the company', which of the following options is applicable:*

- (a) *The provisions relating to minimum subscription are not applicable*
- (b) *Entire minimum subscription amount is required to be received within three days of the opening date*
- (c) *25% of the minimum subscription amount is required to be received on the opening date and the remaining 75% within three days thereafter*
- (d) *50% of the minimum subscription is required to be received by the second day of the opening date and the remaining 50% within next three days after the second day*

Q.7 *The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is :*

- (a) *Three days before the delivery of the prospectus for registration*
- (b) *At the time of delivery of the prospectus for registration*

(c) *Three days after the delivery of the prospectus for registration*

(d) *Five days after the delivery of the prospectus for registration*

Q.8 *Shares issued by a company to its directors or employees at a discount or for a consideration other than cash for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called are known as:*

(a) *Equity Shares*

(b) *Preference Shares*

(c) *Sweat Equity Shares*

(d) *Redeemable preference shares*

Q.9 *The Articles of Association of a private limited company state that the company may issue preference shares which will have preference with respect to payment of dividend only but no preference as to the repayment of capital, in the case of winding up. Is it possible for the company to issue such preference shares?*

(a) *No; as per section 43 preference shares should have both preferences.*

(b) *No; this will become an equity share as per section 43.*

(c) *Yes; because as per section 43 preference shares should have any one preference.*

(d) *Yes; because Articles of Association of the company allow issue of such preference shares and the issuing company is a private limited company.*

Q.10 *A general meeting of the company is to be held on 30th August, 2020. The company has not paid dividend in respect of its preference shares for the financial year 2018-19 as well as 2019-20. In such case preference shareholders:*

(a) *will not have the right to vote because preferential shareholders have no right to vote*

(b) *will have the right to vote because dividend has not been paid for the last two years*

(c) *will not have the right to vote because only equity shareholders can vote in general meetings*

(d) *will have right to vote because preference shareholders have the right to vote in general meetings*

Q.11 *Where there is a change in the rights of one class of shareholders of a company that also affects the rights of another class therein, then:*

- (a) *A special resolution should be passed at a general meeting in this regard*
- (b) *The company need not to do anything further*
- (c) *the consent in writing of three-fourths of such other class of shareholders shall also be obtained*
- (d) *A resolution at a joint meeting of both the classes should be passed*

Q.12 *Rajesh Infrastructure Limited wants to issue preference shares for a period exceeding 20 years for financing its proposed infrastructure project. On the basis of which statement, company can do so?*

- (a) *Yes, the company can issue irredeemable preference shares by passing a special resolution*
- (b) *Yes, company can issue preference shares for a period exceeding 20 years with the prior approval of Central Government*
- (c) *Yes, the company can issue irredeemable preference shares for infrastructure project*
- (d) *Yes, the company can issue preference shares for financing an infrastructure project for a period exceeding to 20 years.*

Q.13 *If a company has Authorised Share Capital of ₹ 6,00,000, Paid-up Share Capital of ₹ 5,00,000 and a loan of ₹ 2,00,000 obtained from the State Government. The State Government has directed the company to convert its loan into equity shares, then such order shall have the effect of increasing:*

- (a) *The subscribed share capital of the company*
- (b) *The paid-up share capital of the company*
- (c) *The Authorised Share Capital of the company*
- (d) *All of the above*

Q.14 *A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again bought back another 10% equity shares in September 2020. Is second buy-back valid?*

- (a) *It can do so subject to the fulfilment of other conditions because maximum buy-back in a financial year is up to 25%*
- (b) *It cannot do so because there must be a time gap of 12 months between two buy-backs*
- (c) *It can buy back shares within one year but the company should pass an ordinary resolution at a meeting of its board*

- (d) *It can buy back shares within one year but the company will have to pass a special resolution*

Q.15 *Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30th September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights ?*

- (a) *Upon expiry of five years from the date on which the default was made good*
- (b) *Upon expiry of three years from the end of the financial Year in which the default was made good*
- (c) *Upon expiry of five years from the end of the financial Year in which the default was made good*
- (d) *Upon expiry of seven years from the end of the financial Year in which the default was made good*

Q.16 *Keshika, the original allottee and owner of 1000 equity shares of ₹ 50 each in Modern Biscuits Private Limited, wanted to transfer these shares to her younger sister Vanshika by way of gift. She completed the transfer deed in all respects and delivered the same to the company along with the share certificates on 17th July, 2020. However, the company did not register the transfer even after the expiry of more than one month nor did it send any notice of refusal. The lone reminder to the company remained unanswered. An appeal is to be filed against the company with the National Company Law Tribunal (NCLT) against this failure to register transfer of the said shares. Who has the right to file the appeal in this regard?*

- (a) *Keshika, who continues to remain owner and transferor of the said equity shares till they are registered in the name of Vanshika, has the right to file an appeal with NCLT against the company.*
- (b) *Vanshika, as transferee and potential owner of equity shares, has the right to file an appeal with NCLT against the company.*
- (c) *Both Keshika and Vanshika have to file a joint appeal with NCLT against the company, for neither Keshika nor Vanshika are authorised to file the appeal individually.*
- (d) *As per its discretion, NCLT may allow either Keshika or Vanshika to file an appeal against the company.*

Q.17 Vanita Watches Limited has proposed to issue sweat equity shares to five of its employees for the 'value additions' made by them in term of economic benefits which proved beneficial to the company. The period for which the employees who have been allotted the said sweat equity shares cannot transfer them is:

- (a) One year from the date of allotment
- (b) Three years from the date of allotment
- (c) Five years from the date of allotment
- (d) Six months from the date of allotment

Q.18 Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Choose the right option from the following:

- (a) Prithvi Cements Limited can issue debentures carrying voting rights by passing an ordinary resolution at a general meeting of the company.
- (b) Prithvi Cements Limited can issue debentures carrying voting rights by passing a special resolution at a general meeting of the company.
- (c) Prithvi Cements Limited can issue such debentures carrying voting rights only if it mortgages its land and buildings worth two times the amount of the debentures.
- (d) Prithvi Cements Limited cannot issue debentures carrying voting rights.

Answer Key :

Q.1	(c)	Q.2	(b)	Q.3	(b)
Q.4	(b)	Q.5	(d)	Q.6	(a)
Q.7	(b)	Q.8	(c)	Q.9	(d)
Q.10	(b)	Q.11	(c)	Q.12	(d)
Q.13	(d)	Q.14	(b)	Q.15	(c)
Q.16	(b)	Q.17	(b)	Q.18	(d)

ACCEPTANCE OF DEPOSITS BY THE COMPANY

Multiple Choice Questions With Answers

- Q.1** *A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called:*
- (a) *Debenture redemption reserve account*
 - (b) *Deposit repayment reserve account*
 - (c) *Capital redemption reserve account*
 - (d) *Free reserve account*
- Q.2** *Normally no deposits are repayable earlier than _____ from the date of such deposits or renewal thereof.*
- (a) *3 months*
 - (b) *6 months*
 - (c) *12 months*
 - (d) *1 year*
- Q.3** *Bhumi Real Estate Developers Limited has accepted deposits from its members. There is no default in repayment of such deposits on their maturity. The statutory amount to be deposited by the company on or before 30th April of each year in a specified account opened with its bankers, till the deposits are fully repaid is:*
- (a) *Not less than 50% of the amount of its deposits maturing during the following financial year.*
 - (b) *Not less than 30% of the amount of its deposits maturing during the following financial year.*
 - (c) *Not less than 20% of the amount of its deposits maturing during the following financial year.*
 - (d) *Not less than 10% of the amount of its deposits maturing during the following financial year.*

Q.4 A Limited Company is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the mandatory minimum period for which it should be preserved in good order.

- (a) Four years from the financial year in which the latest entry is made in the Register.
- (b) Six years from the financial year in which the latest entry is made in the Register.
- (c) Eight years from the financial year in which the latest entry is made in the Register.
- (d) Ten years from the latest date of entry.

Q.5 Dream World Entertainment Limited, has accepted deposits worth ₹ 50.00 lacs from public on 1st April 2019 for a period of 24 months i.e. repayment of deposit would be made on 31st March 2021. The rate of interest payable on such deposits is 9% p.a. One of the depositors Mr. Aman requested the company on 1st June 2020 for premature repayment of his deposit of ₹ 6.00 lacs along with interest. Advise the company in the said matter.

- (a) The company can make premature repayment of deposits only with an intention to reduce the total amount of deposits to bring it within permissible limits. Hence, in the given case, the company cannot repay the deposit before the actual maturity.
- (b) The company can prematurely repay the deposit along with interest @9% p.a. for the period of 12 months (from 1st April 2019 to 31st March 2020).
- (c) The company can prematurely repay the deposit along with interest @8% p.a. for the period of 12 months (from 1st April 2019 to 31st March 2020).
- (d) The company can prematurely repay the deposit along with interest @8% p.a. for the period of 14 months (from 1st April 2019 to 31st May 2020).

Q.6 Suneet Spices Limited decides to raise deposits of ₹ 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth ₹ 15.00 lacs. Which of the following options best describe such deposits:

- (a) Fully secured deposits (except a small portion)
- (b) Unsecured deposits
- (c) Partially secured deposits
- (d) These cannot be classified as deposits

Q.7 What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?

- (a) 12 months
- (b) 24 months
- (c) 36 months
- (d) 48 months

Answer Key :

Q.1	(b)	Q.2	(b)
Q.3	(c)	Q.4	(c)
Q.5	(d)	Q.6	(b)
Q.7	(c)		

REGISTRATION OF CHARGES

Multiple Choice Questions with Answers

Q.1 Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from:

- (a) the expiry of thirty days of such charge
- (b) the date of application for registration of the charge
- (c) the date of acquiring the property
- (d) the date of such registration

Q.2 An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as :

- (a) Debt
- (b) Charge
- (c) Liability
- (d) Hypothecation

Q.3 A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹ 1.00 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is

- (a) 27th April, 2019.
- (b) 17th April, 2019.
- (c) 2nd May, 2019.
- (d) 16th June 2019

Answer Key :

Q.1

(d)

Q.2

(b)

Q.3

(b)

MANAGEMENT AND ADMINISTRATION

Multiple Choice Questions with Answers

Q.1 *Due to the management disputes, Flow Writing Industries Limited could not hold its current Annual General Meeting by the latest due date. Even after lapse of the due date, it seemed rather impossible to convene the AGM. In such a grim situation, one option available was to approach National Company Law Tribunal (NCLT) and seek direction for the calling of AGM. Out of the following four options, which one is applicable in the given case:*

- (a) *Any member of the company can make an application to the National Company Law Tribunal (NCLT) and seek direction for the calling of AGM.*
- (b) *A member of the company holding at least 1% of the total paid-up share capital must make an application to the National Company Law Tribunal (NCLT) and seek direction for the calling of AGM.*
- (c) *Minimum two members of the company holding at least 1% of the total paid-up share capital must make a joint application to the National Company Law Tribunal (NCLT) and seek direction for the calling of AGM.*
- (d) *Minimum five members of the company holding at least 1% of the total paid-up share capital must make a joint application to the National Company Law Tribunal (NCLT) and seek direction for the calling of AGM.*

Q.2 *Which one of the following transactions requires the passing of an ordinary resolution ?*

- (a) *To change the name of the company*
- (b) *To alter the articles of association*
- (c) *To reduce the share capital*
- (d) *To declare dividends.*

Q.3 *A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than the number of votes, if any, cast against the resolution.*

- (a) *Twice*
- (b) *Three times*

- (c) *Three fourth of*
- (d) *Two third of*

Q.4 *Every listed company shall file with the Registrar a copy of the report on each annual general meeting within of the conclusion of the annual general meeting.*

- (a) *7 days*
- (b) *30 days*
- (c) *60 days*
- (d) *90 days*

Q.5 *The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?*

- (a) *75% of members entitled*
- (b) *90% of members entitled*
- (c) *91% of members entitled*
- (d) *95% of members entitled.*

Answer Key :

Q.1	(a)	Q.2	(d)
Q.3	(b)	Q.4	(b)
Q.5	(d)		

Declaration And Payment Of Dividend

Multiple Choice Questions with Answers

- Q.1** Dividend once declared, should be paid within _____ days from the date of declaration
- (a) 14 days (b) 21 days
(c) 30 days (d) 45 days
- Q.2** Which of the following amount need not be credited to Investor Education and Protection Fund Account (IEPF)?
- (a) Amount in unpaid dividend account (UDA) of company
(b) Amount of matured deposits with the company
(c) Profit on sale of asset
(d) Amount of matured debentures with the company.
- Q.3** Amount to be transferred to reserves out of profits before any declaration of dividend is _____
- (a) 5%
(b) 7.5%
(c) 10%
(d) at the discretion of the company.
- Q.4** The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is ₹ 50.00 lacs divided into 5,00,000 equity shares of ₹ 10 each. At its Annual General Meeting (AGM) held on 24th September, 2019, the company declared a dividend of ₹ 2 per share by passing an ordinary resolution. Mention the latest date by which the amount of dividend must be deposited in a separate account maintained with a scheduled bank
- (a) Latest by 29th September, 2019
(b) Latest by 4th October, 2019
(c) Latest by 9th October, 2019
(d) Latest by 24th October, 2019

Q.5 *The Directors of Silver tongue Solutions Limited proposed dividend at 18% on equity shares for the financial year 2018-2019. The same was approved at the Annual general body meeting held on 30th September 2019. Mr. Jagan was the holder of 2000 equity of shares on 31st March, 2019, but he transferred the shares to Mr. Rajiv on 8th August 2019. Mr. Rajiv has sent the shares together with the instrument of transfer to the company for registration of the shares in his favour only on 25th September 2019. The registration of the transfer of shares is pending on 30th September 2019. With respect to the dividend declared the correct action to be taken by the company is:*

- (a) *Pay the dividend to Mr. Jagan*
- (b) *Pay the dividend to Mr. Rajiv*
- (c) *Transfer the dividend in relation to such shares to the Unpaid Dividend Account*
- (d) *Transfer the dividend in relation to such shares to the Investor Education and Protection Fund.*

Q.6 *The Board of Directors of Jip Rise Pharmaceuticals Limited wish to declare interim dividend in the last week of July, 2018. The company has incurred a loss during the current financial year up to the end of June, 2018. However, it is noted that during the previous five financial years i.e., 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.*

- (a) *10%.*
- (b) *11%.*
- (c) *10.5%.*
- (d) *11.5%.*

Q.7 *CSR Committee of the Board of shall consist of:*

- (a) *Directors forming 1/3rd of the total no of directors.*
- (b) *At least 2 directors out of which one shall be independent director.*
- (c) *3 or more directors out of which one shall be managing director.*
- (d) *3 or more directors, out of which at least 1 director shall be an independent director.*

Q.8 Provisions of CSR are applicable to:

- (a) Companies with net worth of ₹ 250 crore or more but less than 500 crore.
- (b) Companies with turnover of ₹ 1000 crore or more.
- (c) Companies with net profit of ₹ 1 crore or more but less than ₹ crore in any financial year
- (d) Companies having aggregate outstanding loans and deposits exceeding ₹ 50 crore or more in any financial year.

Q.9 One Person Company shall file a copy of the duly adopted financial statements to the Registrar within :

- (a) 30 days of the date of meeting at which it was adopted.
- (b) 90 days of the date of meeting at which it was adopted.
- (c) 90 days from the closure of the financial year.
- (d) 180 days from the closure of the financial year.

Q.10 Rema formed and occupied the office of director in Rem Stationers (OPC) Private Limited which deals in manufacturing and trading of various items of stationery. Rema noticed a changed provision which mandates that from the Financial Year 2020-21 onwards, an OPC shall file its Annual Return in MGT - 7A. Rema is also one of the directors in another company which too is required to file its Annual Return in MGT - 7A. Which is that 'other company' where Rema also occupies the office of director in addition to OPC.

- (a) That other company is a 'small company' where Rema also occupies the office of director in addition to OPC.
- (b) That other company is an 'associate company' where Rema also occupies the office of director in addition to OPC.
- (c) That other company is a 'subsidiary company' where Rema also occupies the office of director in addition to OPC.
- (d) That other company is a 'dormant company' where Rema also occupies the office of director in addition to OPC.

Answer Key :

Q.1	(c)	Q.2	(c)	Q.3	(d)
Q.4	(a)	Q.5	(c)	Q.6	(b)
Q.7	(d)	Q.8	(b)	Q.9	(d)
Q.10	(a)				

ACCOUNTS OF COMPANIES

Multiple Choice Questions with Answers

- Q.1** *Ayush Power Limited has reported a net profit of ₹ 6 crore, ₹ 7.5 crore and ₹ 3 crore for the financial year(s) ended on March 2017, March 2018 and March 2019 respectively. The board's report of the company for the year ended March 2020 did not disclose the composition of the CSR Committee on the grounds that company is not required to constitute CSR committee as net profit during the immediately preceding financial year is less than the statutory requirements laid down in section 135. You are required to examine in the given scenario whether the act of non-composition and non-disclosure of the composition of CSR committee in the Board's Report is valid in law?*
- (a) *No, the act of the company is not valid in law as every company is required to constitute a CSR committee and disclose the constitution of same in the board's report in every financial year irrespective of the profits earned by the company.*
 - (b) *Yes, the act of the company is valid in law as the net profit of the company is less than ₹ 5 crore in the immediately preceding financial year.*
 - (c) *No, the act of the company is not valid in law as composition and disclosure of composition of CSR Committee will be required only if the profits of the company are not less than ₹ 5 crore for a consecutive period of 3 financial years.*
 - (d) *The act of the company is valid only to the extent of non-disclosure of the composition of CSR committee as the net profit of the company is less than ₹ 5 crore in the immediately preceding financial year.*
- Q.2** *During the half year ended September 2019, the board of directors (BOD) of Vidyut Manufacturing Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended as on March 2017. Further during the year ended March 2020, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2019. You are required to state the validity of the acts of the Board of directors.*

- (a) *The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.*
- (b) *The act of the BOD is valid as the applications made for revision in the accounts and board's report pertain to two different financial years.*
- (c) *The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.*
- (d) *The act of the BOD is invalid as the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2020. The application made for revision in the Board report is however valid in law.*

Q.3 *Adani Enterprises Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2020, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company. Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise with which last financial year for reopening of books of accounts an application can be made?*

- (a) *2015-2016*
- (b) *2013-2014*
- (c) *2010-2011*
- (d) *2011-2012*

Q.4 *Ganesh Company Ltd, a public company incorporated under the Companies Act, 2013 has Mr. Jay- Director, Mr. Sagar – Independent Director, Mr. Abhishek – Nominee Director and Mr. Yash – Whole time director. Mr. Abhishek wants to inspect the books of account of Shankar Company Limited, the subsidiary of Ganesh Company Limited. You are required to state whether Mr. Abhishek is eligible to inspect the books of accounts of Ganesh Company Limited?*

- (a) *Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization of the public financial institution on whose behalf he has been so appointed in the board of the Ganesh Company Ltd.*
- (b) *No. Mr. Abhishek being a nominee director can only inspect the books of account of Ganesh Company Ltd and not its subsidiary company.*

- (c) *Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the board of directors.*
- (d) *Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the members holding not less than 25% of the paid up share capital of the company.*

Answer Key :

Q.1	(b)	Q.2	(b)
Q.3	(d)	Q.4	(c)

AUDIT AND AUDITORS

Multiple Choice Questions with Answers

- Q.1** For appointing an auditor other than the retiring auditor,
- (a) Special notice is required.
 - (b) Ordinary notice is required.
 - (c) Neither ordinary nor special notice is required
 - (d) Approval of Central Government is required
- Q.2** The auditor of a Government Company shall be appointed or re- appointed by-
- (a) The Central Government
 - (b) Comptroller and Auditor General of India (CAG).
 - (c) Central Government on the advice of Comptroller and Auditor General of India.
 - (d) Chairman of the Board of Directors
- Q.3** Which of the following is a service prohibited to be rendered by the auditor of the Company?
- (a) Design and implementation of any financial information system
 - (b) Making report to the members of the company on the accounts examined by him
 - (c) Compliance with the auditing standards
 - (d) Reporting of fraud against the company by officers or employees to the Central Government
- Q.4** The word 'firm' for the purpose of Section 139 shall include-
- (a) An individual auditor
 - (b) LLP
 - (c) Both an individual auditor and LLP
 - (d) A company

Answer Key :

Q.1	(a)	Q.2	(b)
Q.3	(a)	Q.4	(b)



**“MAKE SHORT NOTES ON YOUR STICKY NOTES
AND PASTE IT ON YOUR WALLS (SECTION WISE)
REVISE IT EVERYNIGHT BEFORE SLEEPING”**

INDIAN CONTRACT ACT, 1872

Multiple Choice Questions with Answers

- Q.1** *A contracts to save B against the consequences of any proceedings, which C may take against B in respect of a certain sum of 500 rupees. This is a:*
- (a) *Contract of guarantee*
 - (b) *Quasi contract*
 - (c) *Contract of indemnity*
 - (d) *Void contract*
- Q.2** *S and P go into a shop. S says to the shopkeeper, C, "Let P have the goods, and if he does not pay you, I will." This is a*
- (a) *Contract of Guarantee*
 - (b) *Contract of Indemnity*
 - (c) *Wagering agreement*
 - (d) *Quasi-contract*
- Q.3** *A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a :*
- (a) *Surety contract*
 - (b) *Simple contract*
 - (c) *Contract of indemnity*
 - (d) *Contract of guarantee*
- Q.4** *Any guarantee obtained by means of misrepresentation made by the creditor or with his knowledge and assent concerning a material part of the transaction is*
- (a) *Valid*
 - (b) *Invalid*
 - (c) *voidable at the option of the surety*
 - (d) *void*

Q.5 Mr. Sharad has recently shifted from Delhi to Noida. During the shifting some of the furniture was damaged. Mr. Sharad gave the items to Asian Arts, Greater Noida for repair, refabrication, and painting, etc. Asian Arts deals in the sale of furniture and repair thereof. It was decided that the whole work will be done on a lumpsum amount of ₹ 50,000. In between this period, the workshop at Asian Arts caught fire and there was no fault of the proprietors. Goods bailed by Mr. Sharad along with another furniture destroyed in this fire incident. Mr. Sharad has lost furniture due to fire at workshop of Asian Arts. What is the correct statement considering there was no specific contract?

- (a) Asian Arts is liable, because fire took place at his place
- (b) Asian Arts is liable, because bailment is on going
- (c) Asian Arts is not liable because risk of any loss during bailment is to be borne by bailor.
- (d) Asian Arts is not liable because fire is not due to any negligence of their part.

Q.6 Atul contracts to indemnify Neha against the consequences of any proceedings which Chirag may take against Neha in respect of a sum of ₹ 15000/- advanced by Chirag to Neha. Neha who is called upon to pay the sum of money due to Chirag fails to do so. Advise Chirag on the course of action to be taken as per the provisions of the Indian Contract Act, 1872.

- (a) Chirag can file a suit only against Neha
- (b) Chirag can file a suit only against Atul
- (c) Chirag can file a suit against both Neha and Atul
- (d) Chirag can file a suit only against Atul but not against Neha

Q.7 The position of a finder of lost goods is that of a

- (a) Bailor
- (b) Bailee
- (c) Surety
- (d) Principal debtor

Q.8 The delivery of goods by one person to another for some specific purpose is known as :

- | | |
|--------------|------------|
| (a) Mortgage | (b) Pledge |
| (c) Bailment | (d) Charge |

Q.9 *With respect to Contract of Bailment, which of the following statement is incorrect:*

- (a) *No consideration is necessary to create a valid contract of bailment.*
- (b) *It involves the delivery of goods from one person to another for a specific purpose.*
- (c) *Bailment is only for immovable goods and never for moveable goods*
- (d) *Change of possession in bailment does not lead to change of ownership.*

Q.10 *Vishal parks his car at a parking lot, locks it, and keeps the keys with himself. Which of the following statements is correct in this regard?*

- (a) *This is a case of bailment*
- (b) *The operator of the parking lot has possession of Vishal's car*
- (c) *The operator of the parking lot has custody of Vishal's car*
- (d) *This is a case of mortgage*

Q.11 *The Pawnee doesn't have the right to retain the goods pledged for*

- (a) *Performance of the promise*
- (b) *Extraordinary expenses incurred by him for preservation of goods pledged*
- (c) *Payment of debt*
- (d) *Necessary expenses incurred by him in respect of possession of goods pledged*

Q.12 *A hires a carriage from B. The carriage is unsafe though B is not aware of it and A is injured. Choose the correct answer as per the provisions of the Indian Contract Act, 1872.*

- (a) *B is responsible to A for the injury*
- (b) *B is not responsible to A for the injury*
- (c) *Neither is responsible to the other*
- (d) *A himself is responsible for his injury*

Q.13 *is one who represents to be an agent of another when in reality he has no such authority from the other agent at all.*

- (a) *Substituted agent*
- (b) *Subordinate agent*
- (c) *Pretended agent*
- (d) *Both (a) & (b)*

Q.14 *L made an offer to the Managing Director of a company. The Managing Director accepted the offer though he had no authority to do so. Subsequently L withdrew the offer but the company had already ratified the Managing Director's acceptance. State which of the statements given below is correct:*

- (a) *L is bound by the offer due to ratification*
- (b) *An offer once accepted cannot be withdrawn*
- (c) *Both option (a) & (b) is correct*
- (d) *L is not bound by the offer.*

Q.15 *A is residing in Delhi and has a house in Mumbai. A appoints B by a power of attorney to take care of his house. State the nature of agency created between A and B :*

- (a) *Implied agency*
- (b) *Agency by ratification*
- (c) *Agency by necessity*
- (d) *Express agency*

Q.16 *Vinod, a transporter was transporting tomatoes of Avinash from his (Avinash's) farm to the market. However, due to heavy rains, Vinod was stuck for three days and thus he sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Choose the correct option in the light of the provisions of the Indian Contract Act, 1872.*

- (a) *Avinash will succeed in recovering losses of tomatoes from Vinod*
- (b) *Avinash will not succeed in recovering losses of tomatoes from Vinod*
- (c) *Vinod can sell the tomatoes only at a price higher than the market rate*
- (d) *Avinash is liable to compensate Vinod as his truck was stuck for three days and hence, he (Vinod) could not complete the deliveries of other clients and thus he (Vinod) suffered loss*

Q.17 *Jane has appointed Vinita as his agent to sell the garments manufactured by Jane. Vinita due to her personal issues could not work effectively. Hence, she appointed Kanth to sell on her behalf. Can Jane be bound by the acts of Kanth?*

- (a) *No, an agent without authority cannot lawfully appoint a sub- agent.*
- (b) *Yes, Vinita is liable for the acts of Kanth and in turn Jane is liable for the transaction.*
- (c) *No, Kanth will be liable on his own account for any sales made.*
- (d) *Yes, Kanth now becomes direct agent of Jane as Kanth has sold garments manufactured by Jane.*

Answer Key :

Q.1	(c)	Q.2	(a)	Q.3	(c)
Q.4	(b)	Q.5	(c)	Q.6	(a)
Q.7	(b)	Q.8	(c)	Q.9	(c)
Q.10	(c)	Q.11	(b)	Q.12	(a)
Q.13	(c)	Q.14	(c)	Q.15	(d)
Q.16	(b)	Q.17	(a)		

NEGOTIABLES INSTRUMENT ACT 1881

Multiple Choice Questions with Answers

Q.1 Days of grace provided to the Instruments at maturity is—

- (a) 1 day
- (b) 2 days
- (c) 3 days
- (d) 5 days

Q.2 Parties to a negotiable instrument can be discharged from liability by—

- (a) Cancellation
- (b) Payment
- (c) Release
- (d) All of the above

Q.3 Validity period for the presentment of cheque in bank is—

- (a) 3 months
- (b) 6 months
- (c) 1 year
- (d) 2 years

Q.4 A negotiable instrument that is payable to order can be transferred by:

- (a) Simple delivery
- (b) Indorsement and delivery
- (c) Indorsement
- (d) Registered post

Q.5 A negotiable instrument drawn in favour of a minor is

- (a) Void ab initio
- (b) Void but enforceable
- (c) Valid
- (d) Quasi contract

Q.6 As per the Negotiable Instruments Act, 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the..... .

- (a) Said public holiday
- (b) 5 days succeeding public holiday
- (c) Next succeeding business day
- (d) Next preceding business day

Q.7 Which of the following is an essential characteristic of a promissory note:

- (a) There must be an order to pay certain sum
- (b) It must be payable to bearer
- (c) It must be signed by the Payee
- (d) It must contain an unconditional undertaking

Q.8 Mr. Aylam issued a cheque amounting to ₹ 25,000 dated 2nd February 2020 to Mr. Gandhi which was deposited by Mr. Gandhi on 16th March 2020 in his bank account. The said cheque was returned unpaid on 17th March 2020 by the bank of Mr. Aylam citing insufficient funds in the account of Mr. Aylam. Mr. Gandhi demanded the payment from Mr. Aylam by issuing the notice on 31st March 2020 which was received by Mr. Aylam on 2nd April 2020. Assuming that Mr. Aylam failed to make the payment within stipulated time, what is the last date by which Mr. Gandhi should have made a complaint in the court?

- (a) 17th May 2020
- (b) 2nd May 2020
- (c) 17th April 2020
- (d) 30th April 2020

Answer Key :

Q.1	(c)	Q.2	(d)	Q.3	(a)	Q.4	(b)
Q.5	(c)	Q.6	(d)	Q.7	(a)	Q.8	(a)

GENERAL CLAUSES ACT

Multiple Choice Questions with Answers

Q.1 *The preamble is most important in any legislation, it:*

- (a) *Provides definitions in the Act.*
- (b) *Expresses scope, object and purpose of the Act.*
- (c) *Provides summary of the entire Act.*
- (d) *provides side notes often found at the side of a section.*

Q.2 *As per the rules of an educational institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which means:*

- (a) *Attending extra classes on weekends is optional but appearing in weekly test is compulsory*
- (b) *Attending weekend classes is compulsory but appearing in weekly test is optional*
- (c) *Attending weekend classes and appearing in weekly test, both are compulsory for students*
- (d) *Attending weekend classes and appearing in weekly test both are optional for students.*

Q.3 *Which of the following is not an Immovable Property?*

- (a) *Land*
- (b) *Building*
- (c) *Timber*
- (d) *Machinery permanently attached to the land*

Q.4 *Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which :*

- (a) *It receives the assent of the President*
- (b) *It receives the assent of the Governor General*
- (c) *It receives assent of both the houses of Parliament*
- (d) *It receives assent of the Prime Minister*

Q.5 *As per the provisions of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under:*

- (a) *Under either or any of those enactments*
- (b) *Twice for the same offence*
- (c) *Either (a) or (b) as per the discretion of the court*
- (d) *Under the cumulative effect of both the enactments*

Q.6 *Formal legal document which creates or confirms a right or records a fact is —*

- (a) *a Document*
- (b) *a Deed*
- (c) *a Statute*
- (d) *an Instrument*

Answer Key :

Q.1	(b)	Q.2	(a)	Q.3	(c)
Q.4	(a)	Q.5	(a)	Q.6	(d)

INTERPRETATION OF STATUTES

Multiple Choice Questions with Answers

Q.1 *The Rule in Heydon's case is also known as—*

- (a) *Purposive construction*
- (b) *Mischief Rule*
- (c) *Golden Rule*
- (d) *Exceptional Construction*

Q.2 *Pick the odd one out of the following aids to interpretation—*

- (a) *Preamble*
- (b) *Marginal Notes*
- (c) *Proviso*
- (d) *Usage*

Q.3 *Which rule of construction is applicable where there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other—*

- (a) *Rule of Beneficial construction*
- (b) *Rule of Literal construction*
- (c) *Rule of Harmonious construction*
- (d) *Rule of Exceptional construction*

Q.4 *An internal aid that may be added to include something within the section or to exclude something from it, is—*

- (a) *Proviso*
- (b) *Explanation*
- (c) *Schedule*
- (d) *Illustrations*

Answer Key :



















Q.1	(b)	Q.2	(d)
Q.3	(c)	Q.4	(b)



**“GET UP EVERY MORNING TELLING
YOURSELF ‘YOU CAN DO THIS’”**

LIMIT CHARTS

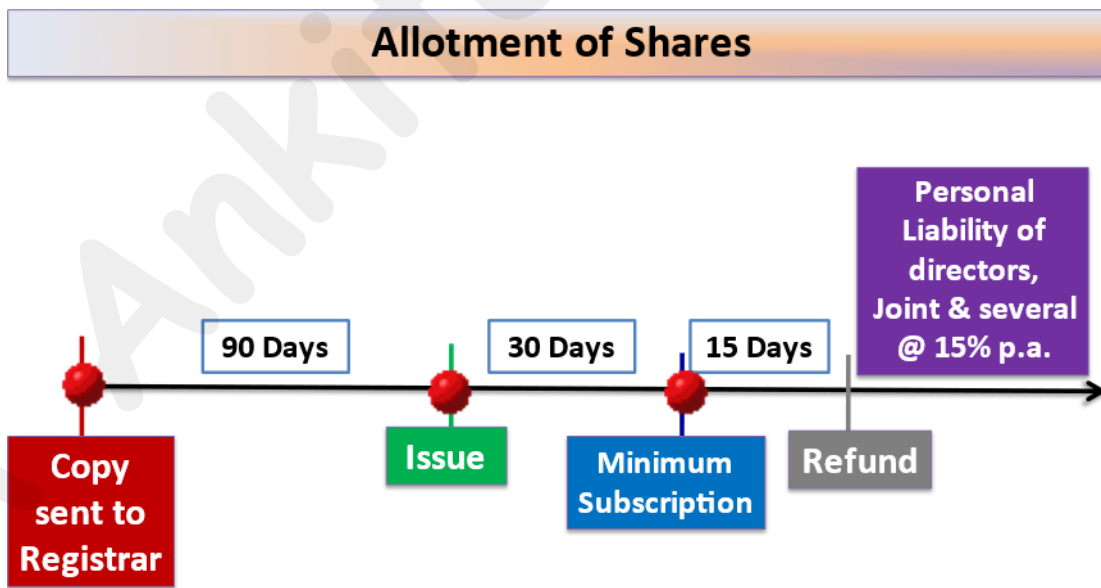
CHAPTER 1 : PRELIMINARY

Private Company, Public Company, One Person Company	<table><tr><td colspan="3">No. of Shareholders</td></tr><tr><td>Public</td><td>Private</td><td>OPC</td></tr><tr><td>Section No.</td><td>2(71)</td><td>2(68)</td><td>2(62)</td></tr><tr><td>Minimum</td><td>7 </td><td>2 </td><td>1 </td></tr><tr><td>Maximum</td><td>No Limit</td><td>200</td><td>1</td></tr><tr><td>Who can be</td><td>Any person</td><td>Any Person</td><td>Individual</td></tr></table> <table><tr><td colspan="3">No. of Directors</td></tr><tr><td>Public</td><td>Private</td><td>OPC</td></tr><tr><td>Section No.</td><td colspan="2">149(1)</td></tr><tr><td>Minimum</td><td>3 </td><td>2 </td><td>1 </td></tr><tr><td>Maximum</td><td colspan="2">15 (AOA can provide lower amount)</td></tr><tr><td>Who can be</td><td colspan="2">Individual</td></tr></table>	No. of Shareholders			Public	Private	OPC	Section No.	2(71)	2(68)	2(62)	Minimum	7 	2 	1 	Maximum	No Limit	200	1	Who can be	Any person	Any Person	Individual	No. of Directors			Public	Private	OPC	Section No.	149(1)		Minimum	3 	2 	1 	Maximum	15 (AOA can provide lower amount)		Who can be	Individual	
No. of Shareholders																																										
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Minimum	7 	2 	1 																																							
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Section No.	149(1)																																									
Minimum	3 	2 	1 																																							
Maximum	15 (AOA can provide lower amount)																																									
Who can be	Individual																																									
Subsidiary	> 50% TVP; Layers ≤ 2																																									
Small Co.	Private company with PSC ≤ 4 crore; and Turnover of last FY ≤ 40 crore																																									
Govt. Co.	≥ 51% PSC held by Govt. ≥ 51% TVP if DVR has been issued																																									
Associate Co.	Significant Influence ≥ 20% TVP																																									
Illegal Association	Maximum 50 members																																									

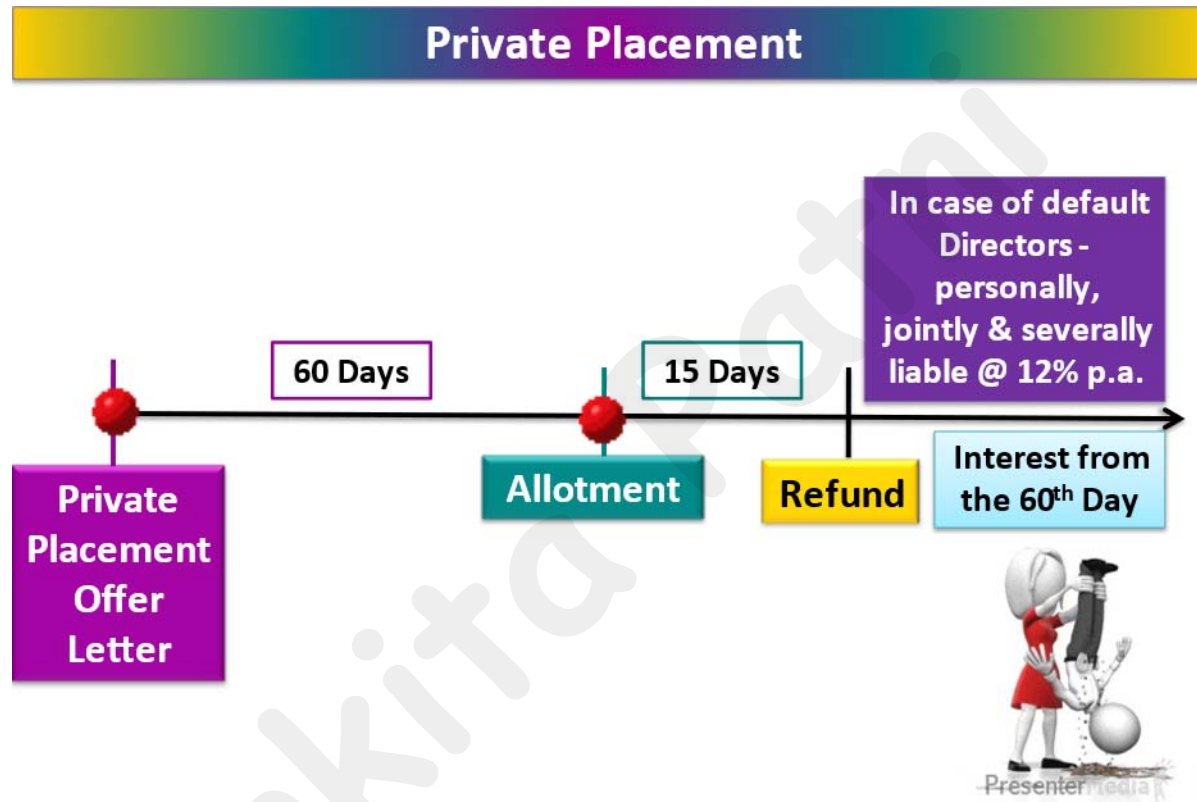
CHAPTER 2 : INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERE TO

Section 3	<ul style="list-style-type: none"> ➤ Resident ≥ 120 days stay in India in preceding FY ➤ If becomes member in 2 OPCs, correct situation within 180 days
Section 3A	<ul style="list-style-type: none"> ➤ If members below statutory limit, they will be liable after 6 months
Section 4	<ul style="list-style-type: none"> ➤ Name to be reserved for 20 days New name 60 days Change of name ➤ If incorporated by false particulars, RoC may direct to change name within 3 months by OR
Section 12	<ul style="list-style-type: none"> ➤ Verification of registered office within 30 days of incorporation ➤ In case of name change, former name to be affixed for 2 years ➤ Change of RoC within same state <ul style="list-style-type: none"> a) RD approval within 30 days; – Co. will file confirmation with RoC within next 60 days b) RoC to certify within 30 days
Section 13	<ul style="list-style-type: none"> ➤ Copy of SR altering MOA to be filed with RoC within 30 days
Section 14	<ul style="list-style-type: none"> ➤ Copy of SR altering AOA to be filed with RoC within 15 days
Section 16	<ul style="list-style-type: none"> Rectification of name by CG ➤ Suo-moto: 3 months + OR ➤ On application of trademark holder within 3 years: 3 months + OR
Section 17	<ul style="list-style-type: none"> ➤ Members to get copies of MOA or AOA within 7 days

CHAPTER 3 : PROSPECTUS & ALLOTMENT OF SECURITIES

Section 25	Document to be deemed as prospectus if issue house sells the shares within 6 months of allotment
Section 26	Prospectus to be issued within 90 days of filing with RoC
Section 31	Shelf prospectus is valid for 1 year from date of opening of first offer
Section 32	Red herring prospectus is filed with RoC 3 days prior to opening of issue
Section 40	Rate of underwriting commission is lower of Shares: 5% of issue price or rate in AOA Debentures: 2.5% of issue price or rate in AOA
Section 39	<div style="text-align: center;">  <p>Allotment of Shares</p> <p>The timeline starts with 'Copy sent to Registrar' (red box) at Day 0. 90 Days later, 'Issue' (green box) occurs. 30 Days after issue, 'Minimum Subscription' (blue box) is reached. 15 Days after minimum subscription, 'Refund' (grey box) occurs. Finally, 'Personal Liability of directors, Joint & several @ 15% p.a.' (purple box) is indicated.</p> </div>

Section 42



CHAPTER 4 : SHARE CAPITAL & DEBENTURES

Section 43	<ul style="list-style-type: none"> ➤ Voting rights on DVR \leq 74% of TVP ➤ During 3 years no default in financial statement, annual return, not been penalised under SEBI, SCRA, RBI, FEMA ➤ During 5 years no default in Pref. dividend, term loan, IEPF, employees' statutory dues 								
Section 47	<ul style="list-style-type: none"> ➤ Voting rights to Preference, if dividend not paid for 2 years 								
Section 48	<p>Right to appeal against variation to NCLT</p> <ul style="list-style-type: none"> ➤ Holders having \geq 10% issued shares of that class ➤ Appeal shall be made within 21 days 								
Section 53	<ul style="list-style-type: none"> ➤ If shares are issued at discount, to refund the money with 12% interest 								
Section 55	<ul style="list-style-type: none"> ➤ Preference shares = max. 20 years ➤ For infrastructure companies; tenure can be 30 years but redemption option shall be given to \geq 10% from 21st year onwards 								
Section 56	<p>Time for delivery of share certificate</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Subscribers to MOA</td><td style="width: 50%;">2 months from incorporation</td></tr> <tr> <td>Allotment of shares</td><td>2 months from allotment</td></tr> <tr> <td>Allotment of debentures</td><td>6 months from allotment</td></tr> <tr> <td>Transfer</td><td>1 month of receipt of transfer deed</td></tr> </table>	Subscribers to MOA	2 months from incorporation	Allotment of shares	2 months from allotment	Allotment of debentures	6 months from allotment	Transfer	1 month of receipt of transfer deed
Subscribers to MOA	2 months from incorporation								
Allotment of shares	2 months from allotment								
Allotment of debentures	6 months from allotment								
Transfer	1 month of receipt of transfer deed								

Section 58	<div data-bbox="779 108 1798 738" data-label="Diagram"> <p>* Time period to file an appeal to Tribunal by the person giving Transfer Deed or Intimation of Transmission</p> <pre> graph TD A["* Time period to file an appeal to Tribunal by the person giving Transfer Deed or Intimation of Transmission"] --> B["When Company gives notice to the person within 30 Days of Date of Submission"] A --> C["When Company Does not give notice to the person within 30 Days of Date of Submission"] B --> D["Appeal"] C --> E["Appeal"] D --> F["Within 30 Days (In case of Private Co)"] D --> G["Within 60 Days (In case of Public Co)"] F --> H["Of receipt of Notice"] G --> H E --> I["Within 60 (30+30) Days (In case of Private Co)"] E --> J["Within 90 (30+60) Days (In case of Public Co)"] I --> K["Of Date of submission"] J --> K </pre> </div>
Section 62	<ul style="list-style-type: none"> ➤ Rights issue to remain open for 7 to 30 days. Letter of offer is dispatched 3 days before opening of issue. (For Pvt Co. – lesser time period applicable where 90% members agree) ➤ In case of conversion of loan into shares on Govt's order, Co. may appeal to NCLT within 60 days ESOP vesting period ≥ 1 year
Section 67	<ul style="list-style-type: none"> ➤ Public co. can give loan to its employees (other than directors/ KMP) ≤ 6 months' salary to purchase fully paid-up shares
Section 68	<ul style="list-style-type: none"> ➤ Max. Buy-back by Board – 10% of paid-up equity + free reserves ➤ Max. Buy-back by Members – 25% of paid-up + free reserves AND max. 25% no. of equity in a FY ➤ Max. post buy-back Debt-Equity ratio – 2:1 (6:1 for Govt Co. in NBFC or Housing finance) ➤ Destroy shares within 7 days

- Gap of **1 year** between 2 buy-backs
- Buy-back to be completed within **1 year** of resolution
- No further issue of same kind within **6 months**
- Buy-back return within **30 days**

Section 70

- No buy-back if during **3 years**, default in Deposits; Dividend; Pref. shares; term loans

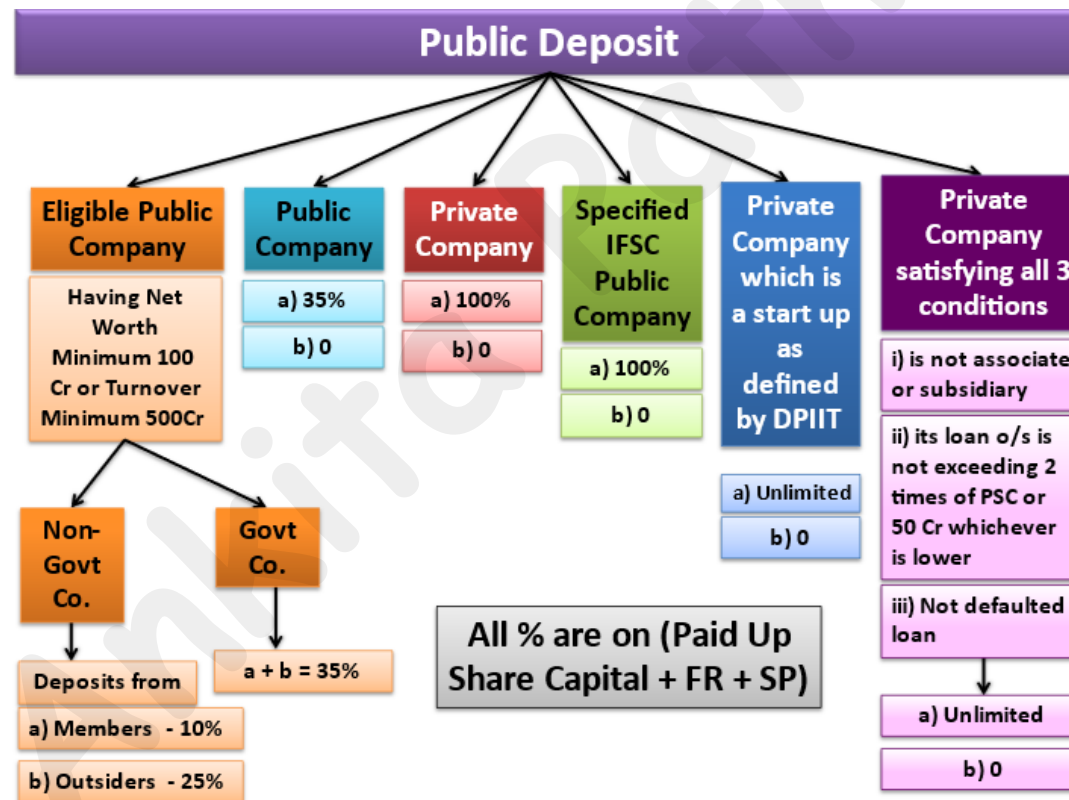
Section 71

Debentures (Section 71)

Sr. No.	Type of Company	Mode of Issue of Debentures	DRR Needed?	How much DRR?	How much DRI?
(i)	All India Financial Institutions (AIFI) & Banking Companies	Public Issue or Private Placement	No	N/A	N/A
(ii)	Public Financial Institution (PFI)	Public Issue Private Placement	No	Same as for NBFC	N/A
(iii)	Listed Companies except (i)	(A) Public Issue (Listed NBFC/HFC)	No	N/A	15%
		(A) Public Issue (other Listed Co.)	No	N/A	15%
		(B) Private Placement (Listed NBFC/HFC)	No	N/A	N/A
		(B) Private Placement (other Listed Co.)	No	N/A	N/A
(iv)	Unlisted Companies except (i)	(A) Unlisted NBFC/HFC	No	N/A	N/A
		(B) Other Unlisted Companies	Yes	10% of O/S Deb.	15%

CHAPTER 5 : ACCEPTANCE OF DEPOSITS BY COMPANIES

Section 73



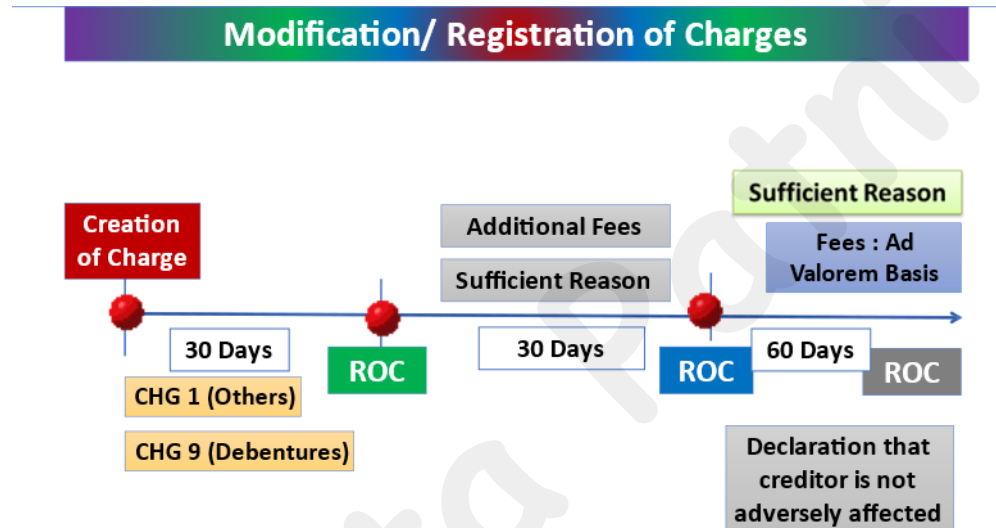
Section 76

Eligible Co. means Public Co. having –

- Net Worth ≥ **100 crore**; or
- Turnover ≥ **500 crore**

CHAPTER 6 : REGISTRATION OF CHARGES

Section 77



Section 78

- If Co. fails to register within **30 days**; Charge-holder may register
- RoC shall give **14 days' notice** to Co. before registering
- Extension of **≤ 3 months** from RoC on special reasons
- AGM of unlisted company at any place in India with consent of **ALL members**

Section 82

Time limit to report satisfaction of charge

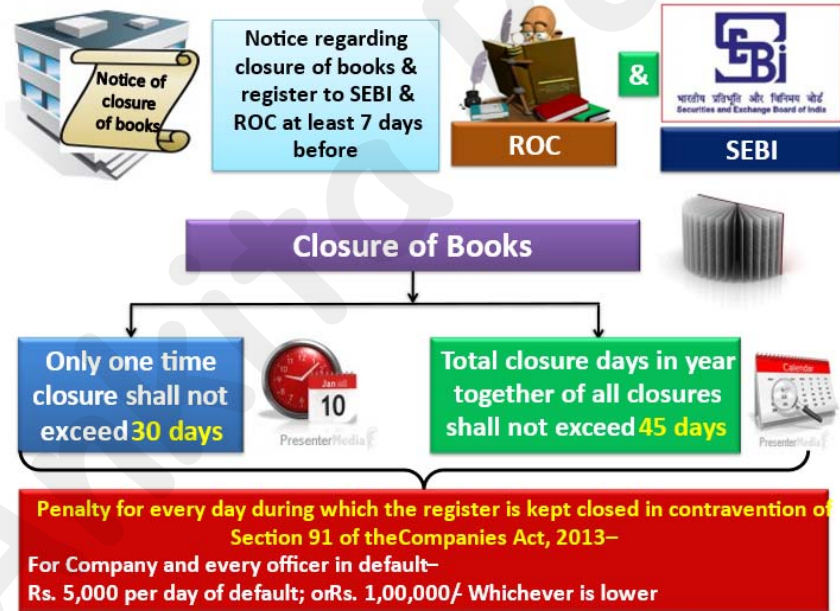
Within 30 days of satisfaction	normal fees
Within 300 days of satisfaction	additional fees
Beyond 300 days	Delay to be condoned by CG

RoC to give **14 days' notice** to charge-holder, if form is not signed by charge-holder

Section 85

- Co. to preserve **register of charges permanently** & instrument creating charge for **8 years** from the date of satisfaction

CHAPTER 7 : MANAGEMENT & ADMINISTRATION

Section 88	<ul style="list-style-type: none"> ➤ Index to be maintain in register if members ≥ 50 Foreign Register ➤ File MGT-3 within 30 days ➤ Copy of foreign register is sent to India within 15 days
Section 90	SBO means INDIVIDUAL holding $\geq 10\%$ beneficial interest
Section 91	 <p style="text-align: center;"> Penalty for every day during which the register is kept closed in contravention of Section 91 of the Companies Act, 2013– For Company and every officer in default– Rs. 5,000 per day of default; or Rs. 1,00,000/- Whichever is lower </p>
Section 92	<ul style="list-style-type: none"> ➤ Annual return is certified by CS in practices in case of <ul style="list-style-type: none"> a) Listed Co.; or b) Companies having o PSC ≥ 10 crore; or of Turnover ≥ 50 crore ➤ Annual return is filed with RoC within 60 days of AGM ➤ If no AGM, file within 60 days of last due date of AGM

Section 94

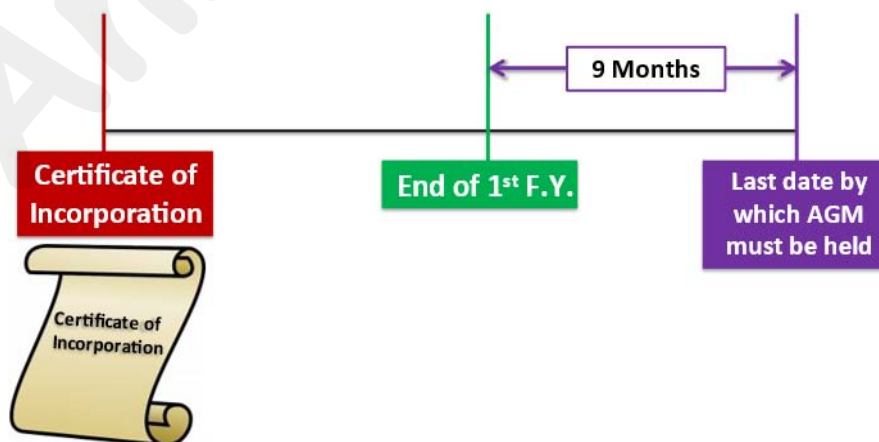
Register & Annual return can be kept at any other place in India where **> 1/10th members** reside, after SR

Time period for preservation :

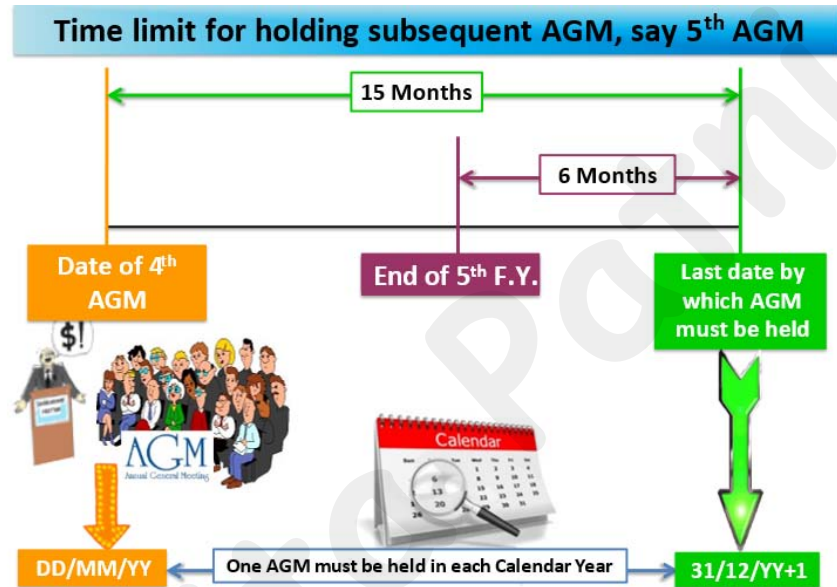
Register of members	Permanently
Register of other security holders	8 years
Annual Return	8 years
Foreign register of members	Permanently
Foreign register of other security holders	8 years

Section 96**First AGM**

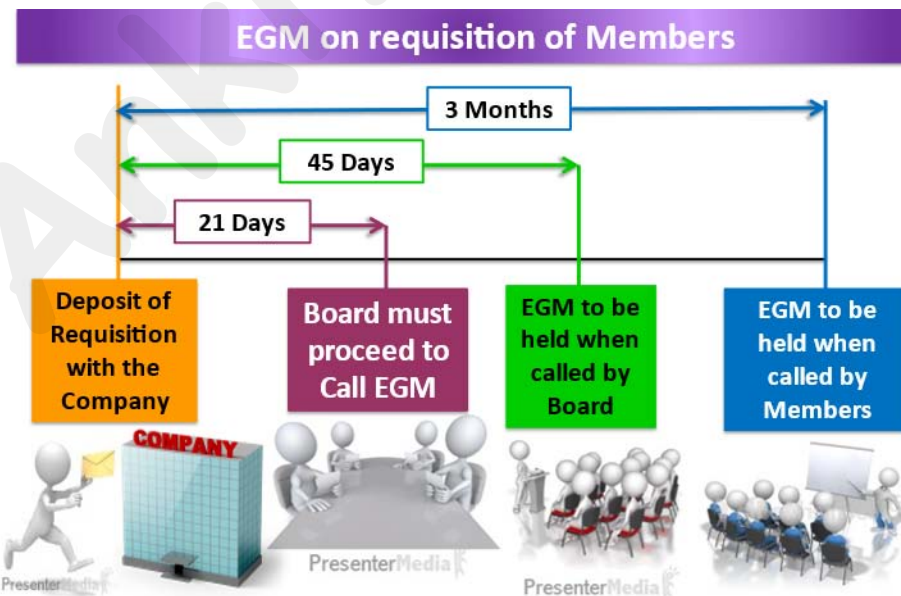
Time limit for holding first AGM



Subsequent AGM



Section 100



Section 101	<p>Notice of 21 clear days (excludes date of dispatch; date of meeting & 48 hours in case of post) 14 days' notice in Section 8 Co.</p> <p>Shorter notice if consent of</p> <table><tr><td>EGM</td></tr><tr><td>Is Co. having S/C ?</td></tr><tr><td>Yes Majority in No. +95% TVP</td></tr><tr><td>No 95 % TVP</td></tr></table>	EGM	Is Co. having S/C ?	Yes Majority in No. +95% TVP	No 95 % TVP				
EGM									
Is Co. having S/C ?									
Yes Majority in No. +95% TVP									
No 95 % TVP									
Section 103	<p>Quorum Pvt Co. 2 members</p> <p>Public Co.</p> <table><tr><td>Members</td><td>Quorum</td></tr><tr><td>≤ 1,000</td><td>5</td></tr><tr><td>> 1,000 but ≤ 5,000</td><td>15</td></tr><tr><td>> 5,000</td><td>30</td></tr></table> <p>Articles may increase quorum</p>	Members	Quorum	≤ 1,000	5	> 1,000 but ≤ 5,000	15	> 5,000	30
Members	Quorum								
≤ 1,000	5								
> 1,000 but ≤ 5,000	15								
> 5,000	30								
Section 105	<p>Max. 50 members, but having ≤ 10% share capital can have 1 proxy</p> <p>Proxy form to be deposited 48 hours before the meeting Co. cannot increase 48 hours</p> <p>3 days' Notice to be given for inspection of proxy forms</p> <p>Inspection period – 24 hours before meeting till conclusion</p>								

Section 108	E-voting mandatory for Listed Co.; or Every Co. with $\geq 1,000$ members Co. shall announce cut-off date which shall be within max. 7 days before the GM Remote e-voting to remain open for ≥ 3 days and to conclude at 5:00 p.m. one day before GM								
Section 109	Poll to be taken within 48 hours Demand of Poll by <table><tr><td>Co. having S/C</td><td colspan="2">$\geq 1/10$th TVP or paid-up capital of ₹ 5 lakh</td></tr><tr><td>Any other Co.</td><td colspan="2">$\geq 1/10$th TVP</td></tr></table>			Co. having S/C	$\geq 1/10$ th TVP or paid-up capital of ₹ 5 lakh		Any other Co.	$\geq 1/10$ th TVP	
Co. having S/C	$\geq 1/10$ th TVP or paid-up capital of ₹ 5 lakh								
Any other Co.	$\geq 1/10$ th TVP								
Section 110	OPC and Co. having ≤ 200 members are exempt from Postal Ballot								
Section 111	On request of members having $\geq 10\%$ TVP; Co. shall <table><tr><td>Give notice of resolution</td><td>≥ 6</td><td>weeks before meeting</td></tr><tr><td>Circulate statement</td><td>≥ 2</td><td>weeks before meeting</td></tr></table>			Give notice of resolution	≥ 6	weeks before meeting	Circulate statement	≥ 2	weeks before meeting
Give notice of resolution	≥ 6	weeks before meeting							
Circulate statement	≥ 2	weeks before meeting							

Section 115	<p>Eligible members for Special Notice</p> <p>Having $\geq 1\%$ TVP; or</p> <p>Holding shares of ₹ 5 lakh</p> <p>Notice to be received within 3 months before GM but at least 14 days before GM</p> <p>Co. shall give notice to all members 7 days before GM</p>
Section 117	Copy of certain resolutions & agreements to be filed within 30 days
Section 118	Minutes to be prepared within 30 days of conclusion of the meeting
Section 119	Members entitled to get copies of minutes within 7 working days
Section 121	Listed Public Co. to file report on AGM within 30 days

CHAPTER 8 : DECLARATION & PAYMENT OF DIVIDEND

Section 123	<p>➤ Dividend shall be deposited in separate scheduled bank A/c within 5 days from declaration</p> <p style="text-align: center;"><i>Max. Dividend out of reserves in case of inadequate profits</i></p> <ol style="list-style-type: none"> 1) Dividend \leq Average of last 3 years' dividend rate 2) Amount drawn \leq 10% (PSC + FR) 3) Losses set-off against amount drawn 4) Balance of reserves \geq 15% PSC <p>Max. interim dividend in case of loss in previous quarter</p> <p>➤ Average of last 3 years' dividend rate</p>
Section 124	<p>➤ Dividend to be paid within 30 days</p> <p>➤ If remaining unclaimed, transfer to Unclaimed Div. A/c within 7 days</p> <p>➤ If not transferred, transfer with interest @ 12% p.a.</p> <p>➤ If transferred, upload statement within 90 days</p> <p>➤ Transfer to IEPF after 7 years</p>
Section 127	<p>➤ If dividend is not paid to the shareholder within 30 days, pay along with 18% p.a. interest</p>

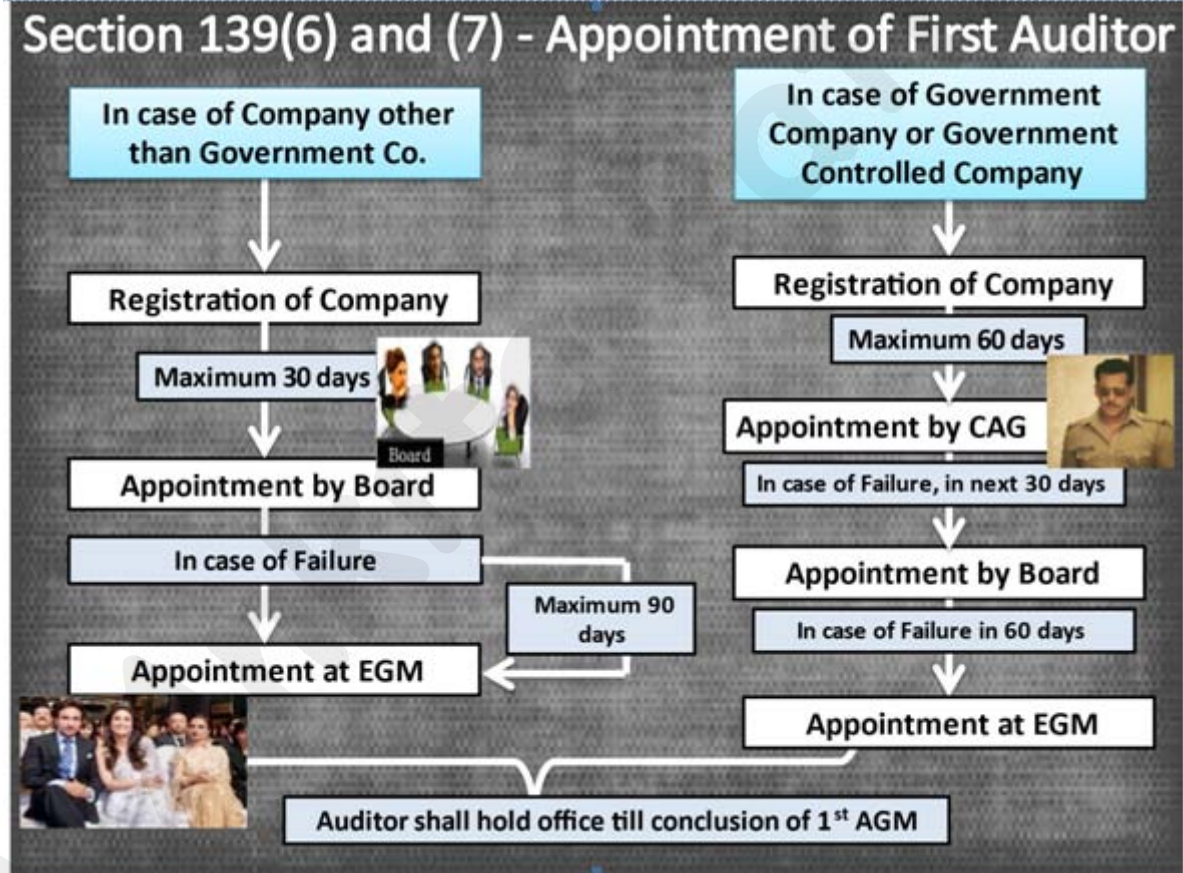
CHAPTER 9 : ACCOUNTS OF COMPANIES

Section 128	Books of A/c to be preserved for 8 years Can be kept at any place in India, after giving notice to RoC within 7 days				
Section 129	Copy of periodical financial statements to be filed within 30 days				
Section 130	Accounts can be re-opened for 8 FYs				
Section 131	Voluntary revision of financials is allowed for max. 3 FYs				
Section 135	<p>CSR applicable to companies having</p> <ul style="list-style-type: none"> ➤ Net Worth \geq 500 cr; or ➤ Turnover \geq 1,000 cr; or ➤ Net Profits \geq 5 cr, in the preceding FY 				
Section 136	<ul style="list-style-type: none"> ➤ Annual Report is circulated 21 days before the GM ➤ 14 days in case of Sec. 8 Co. Shorter period if consent of <table border="1" style="margin-left: 20px;"> <tr> <td>Co. having S/C</td><td>Majority in + Number \geq 95% TVP</td></tr> <tr> <td>Any other Co.</td><td>\geq 95% TVP</td></tr> </table> 	Co. having S/C	Majority in + Number \geq 95% TVP	Any other Co.	\geq 95% TVP
Co. having S/C	Majority in + Number \geq 95% TVP				
Any other Co.	\geq 95% TVP				

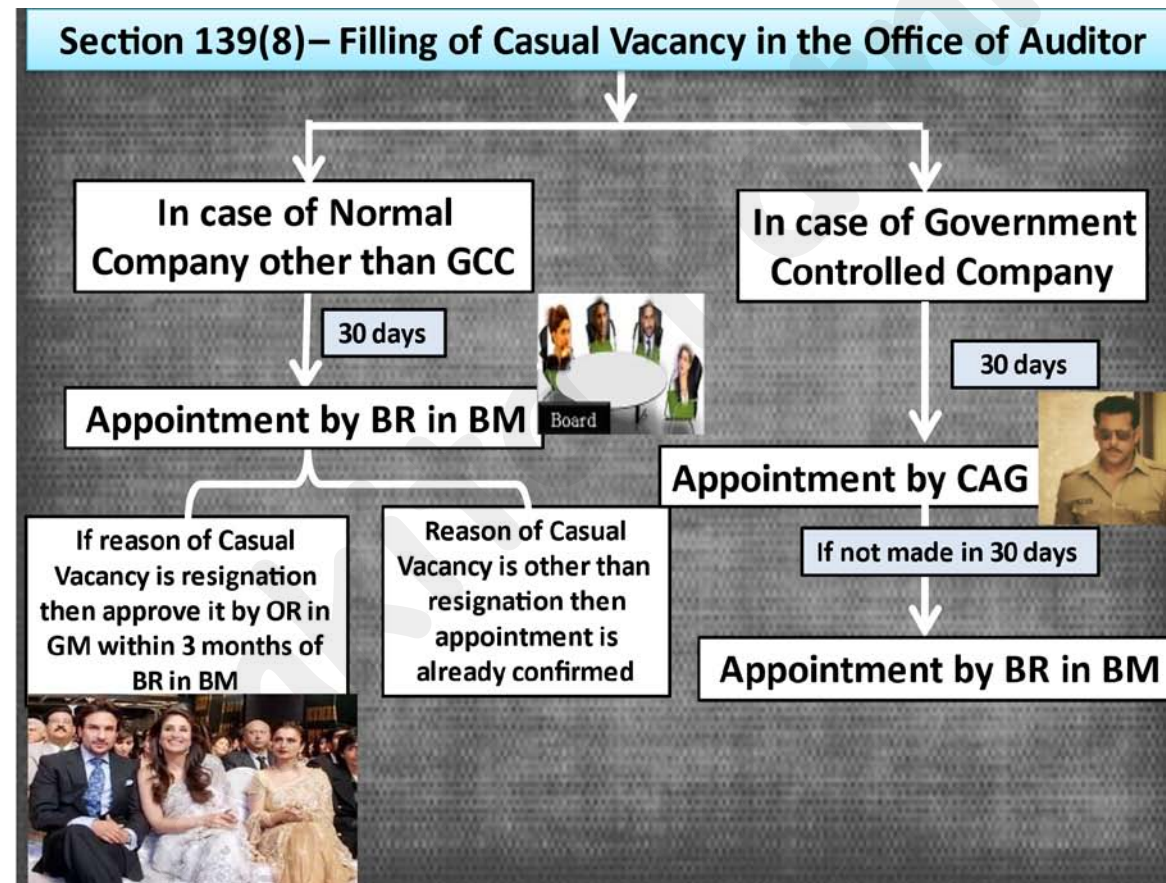
Section 137	<ul style="list-style-type: none">➤ Annual report is filed with RoC within 30 days of AGM or adjourned AGM or else the last due date of AGM➤ OPC to file within 180 days from end of FY➤ XBRL filing mandatory for – Listed + their Indian subs.<ul style="list-style-type: none">a) Co. with PSC \geq 5 crb) Co. with turnover \geq 100 crc) Co. covered under Ind-AS➤ Listed Co. or➤ Public Co. having o NW > 1 cr; and Turnover > 10 cr															
Section 138	<p>Internal Audit applicable on Listed Co. and either of following :</p> <table><tr><td></td><td>Public</td><td>Private</td></tr><tr><td>O/s Deposit</td><td>\geq 25 cr</td><td>-</td></tr><tr><td>PSC</td><td>\geq 50 cr</td><td>-</td></tr><tr><td>Borrowings</td><td>> 100 cr</td><td>> 100 cr</td></tr><tr><td>Turnover</td><td>\geq200 cr</td><td>\geq200 cr</td></tr></table>		Public	Private	O/s Deposit	\geq 25 cr	-	PSC	\geq 50 cr	-	Borrowings	> 100 cr	> 100 cr	Turnover	\geq 200 cr	\geq 200 cr
	Public	Private														
O/s Deposit	\geq 25 cr	-														
PSC	\geq 50 cr	-														
Borrowings	> 100 cr	> 100 cr														
Turnover	\geq 200 cr	\geq 200 cr														

CHAPTER 10 : AUDIT & AUDITORS

Section 139



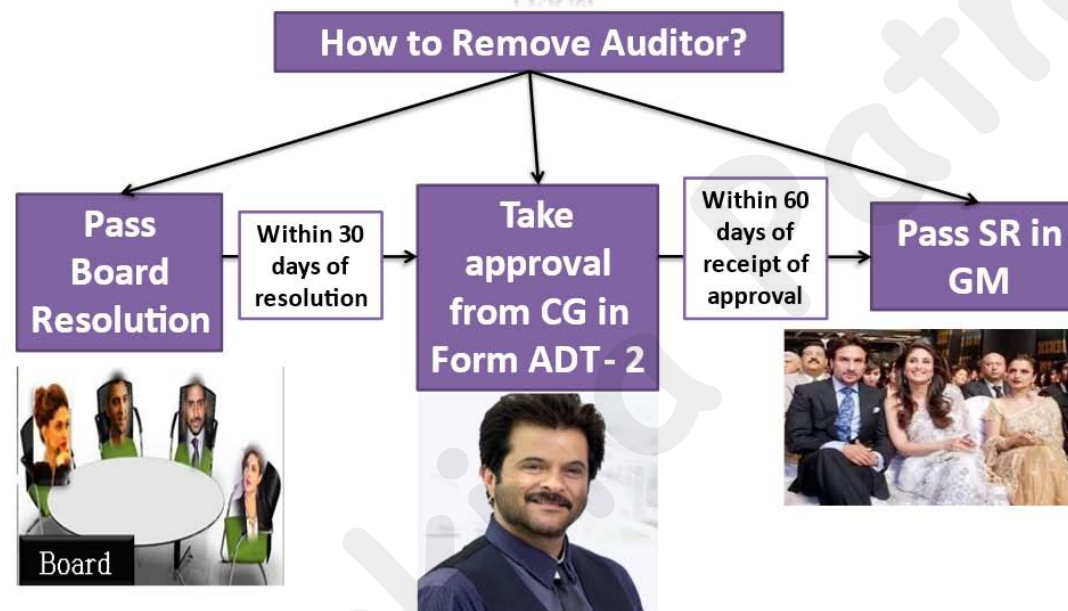
Casual Vacancy



Section 140

Removal of Auditor :

SECTION 140(1) – REMOVAL OF AUDITOR BEFORE EXPIRY OF HIS TERM



Before taking any action for removal of auditor before expiry of his term, auditor concerned shall be given **reasonable opportunity of being heard**

- **Resignation** : Auditor shall give notice within **30 days**
- **NCLT changed auditor** : Cannot be appointed as auditor for **5 years**

Section 141

Auditor disqualified

- Person, Relative or Partner holds security or interest in CASH or co subsidiary
- But Relative may hold security in Co. of **FV ≤ 1 lakh**
- Further if > 1 lakh, relative may take corrective action in **60 days**
- Person, Relative or Partner indebted for **≥ 5 lakh** in CASH or Co-subsidary

	<ul style="list-style-type: none"> ➤ Person, Relative or Partner has given Guarantee or security for ≥ 1 lakh to CASH or Co-subsiary ➤ Audit of > 20 Co. [Exclusion – OPC, Dormant, Small & Pvt Co. + PSC < 100 cr]
Section 143	<ul style="list-style-type: none"> ➤ Fraud < 1cr = Auditor to report to Board within 2 days ➤ Fraud ≥ 1 cr = Auditor to seek reply of Board within 45 days, then report to CG within 15 days
Section 148	<p>Cost Records</p> <ul style="list-style-type: none"> ➤ Specified goods + service + Overall turnover ≥ 35 cr <p>Cost Audit</p> <div data-bbox="896 520 1662 1106" data-label="Diagram"> <pre> graph TD A[Applicability of Cost Audit] --> B[Regulated] A --> C[Non-Regulated] B --> D[Overall Annual Turnover ≥ 50 Cr] D -- AND --> E[Turnover of Individual Product ≥ 25 Cr] C --> F[Overall Annual Turnover ≥ 100 Cr] F -- AND --> G[Turnover of Individual Product ≥ 35 Cr] E --> H[Exception] G --> H H --> I[SEZ] H --> J[75% Export] </pre> </div> <ul style="list-style-type: none"> ➤ Cost auditor appointed within 180 days of commencement of FY ➤ Appointed till earlier of 180 days of closure of FY or submission of report ➤ Casual vacancy filled by Board within 30 days ➤ Cost auditor to submit report within 180 days from closure of FY ➤ Co. shall intimate everything to CG within 30 days

RANKERS OF NOV 2022 ATTEMPT



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