

COMPANY LAW

REVISION BOOK

CS Vikas Vohra *Corporate BaBa*

WHY THIS BOOK?

- Last day quickest revision in detail.
- Helps you revise Co Law anytime.
- Not just points, it has details of every topic.
- Covers the entire subject.

**EXE
SHIELD**





CS Vikas Vohra (Founder)

CSEET EXECUTIVE : Current Affairs
 : Company Law
 : Securities Laws & Capital Markets
PROFESSIONAL : Drafting, Pleadings and Appearances



CA CMA Suraj Tatiya

CSEET EXECUTIVE : Economics
 : Financial and Strategic Management



CA CS Harish A. Mathariya (Founder)

CSEET EXECUTIVE : Business Environment
 : Corporate & Management Accounting



CS Vaibhav Chitlangia

CSEET PROFESSIONAL : Logical Reasoning
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 : Insolvency – Law and Practice



CMA Vipul Shah

EXECUTIVE PROFESSIONAL : Tax Laws
 : Advanced Tax Laws



CS Muskan Gupta

CSEET PROFESSIONAL : Business Communication
 : Secretarial Audit, Compliance Management and Due Diligence
 : Resolution of Corporate Disputes, Non-Compliances & Remedies
 : Labour Laws & Practice



Adv Chirag Chotrani

CSEET EXECUTIVE : Legal Aptitude
 : Jurisprudence, Interpretation & General Laws
 : Setting up of Business Entities and Closure
 : Economic, Business and Commercial Laws
PROFESSIONAL : Governance, Risk Management, Compliances and Ethics
 : Corporate Funding & Listings in Stock Exchanges

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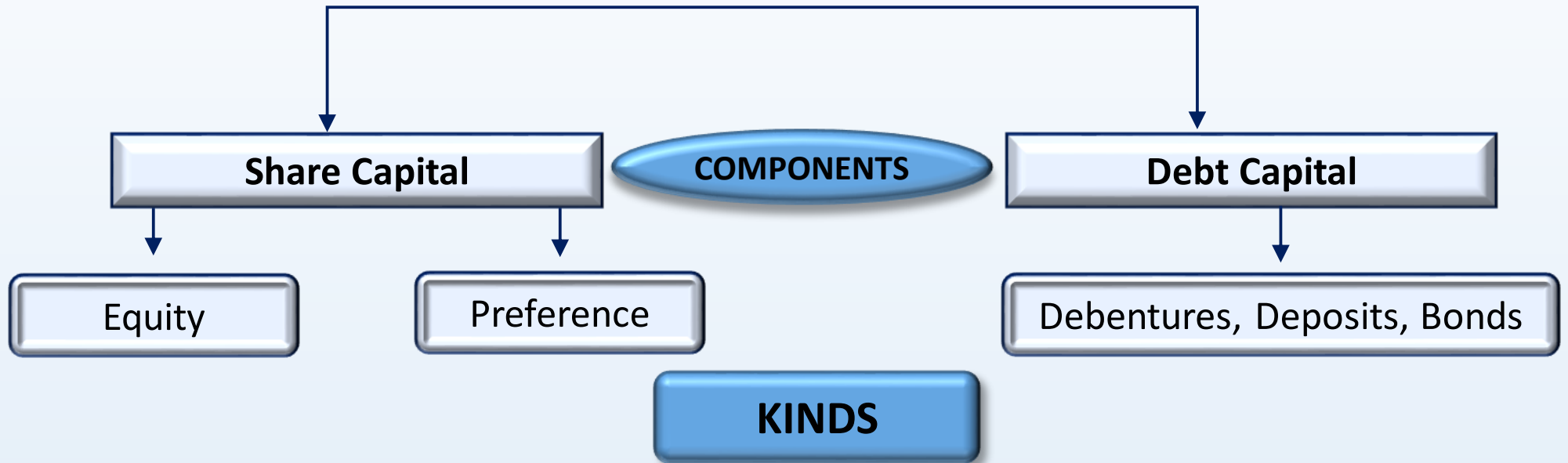
CHAPTER 2

SHARE CAPITAL



CAPITAL

(the money raised by the company by issuing various securities, shares, debentures, deposits etc.)



Authorised	Issued	Subscribed	Called up	Paid up	Eq./Pref.
The sum stated in the MOA & Max. share cap.	Part of nominal cap. - issued to the public for subscription and allotment.	Which is subscribed by the members.	Capital which has been called up for payment.	Which has been paid by shareholders.	(on next page)

SHARE [SECTION 2(84)]

(It means share in share capital & includes stock)

FEATURES

- Rights to participate in profits
- Regarded as goods
- Distinctive Number
- Constitutes share capital
- Also known as “Common Stock” or common share

EQUITY SHARE	PREFERENCE SHARE
<input type="checkbox"/> No fixed rate of dividend <input type="checkbox"/> Depends upon the amount of profit available	<input type="checkbox"/> Fixed Rate of Dividend
<input type="checkbox"/> No Preference	<input type="checkbox"/> Preference w.r.t. <input type="checkbox"/> Payment of dividend <input type="checkbox"/> Repayment of capital
<input type="checkbox"/> Voting Rights	<input type="checkbox"/> No Voting Rights <input type="checkbox"/> Except : special rights are varied, Dividend not paid for two years, Winding up, Repayment, Reduction
<input type="checkbox"/> Bonus may be issued	<input type="checkbox"/> No Bonus issue
<input type="checkbox"/> No redemption except under- Buyback or Reduction.	<input type="checkbox"/> Can be Redeemed

ISSUE OF SECURITIES

At Premium (Sec 52)

- Treated as capital reserve- not as free reserves.
- Co. can raise money with any amount of premium
- Any amount received as a premium - transferred to Securities Premium Account.

UTILIZATION OF SECURITIES PREMIUM:

1. Issuing fully paid-up bonus shares.
2. Writing off - bal. of preliminary exps.
3. Writing off - commission paid or discount allowed
4. Premium on redemption
5. Buy back of securities

At Discount (Sec 53)

It is VOID except:

1. In case of Sweat equity shares.
2. To creditors - debt is converted into shares as per debt restructuring scheme.

CONTRAVENTION:

- ❖ **CO.:** Fine- Min 1 Lakh; Max 5 Lakh or
- ❖ **Officer in default:** Imprisonment- Max 6m or Fine- Min 1 Lakh; Max 5 Lakh or both

ISSUE OF SHARES WITH DVR (SECTION 43)

Dividend

Voting Rights

CONDITIONS:

- ❖ Authority- AOA.
- ❖ GM -OR; listed Co. - passed through postal ballot.
- ❖ Can issue < 74% of total voting power
- ❖ No default in filing FS & AR – in last 3 preceding FY.
- ❖ No default- in payment of dividend or redemption or interest.
- ❖ Not penalized - for the last 3 years -under RBI Act, SEBI Act, SCRA or FEMA.
(on expiry of 5 years from the end of the FY – when such default was made good- can issue it)

Points to remember:

- Co cannot convert - existing eq. sh cap with VR into equity sh cap carrying DVR & vice versa.
- Enjoys all other rights such as bonus shares, rights shares etc.

PROCEDURE:

1. Authority- AOA.
2. BM for: issuing the notice of GM.
3. listed Co.: intimate SE about outcome- within 30 min of the completion of the BM.
4. GM-OR (or) through Postal Ballot.
5. After allotment, file Form PAS-3 - within 30 days with the Registrar.
6. Listed co.: send copies of the notice & proceedings of GM- to SE within 24 hours.
7. Entries in the ROM.
8. Shares in Demat form - inform depositories -for credit to the respective accounts.

ISSUE OF SWEAT EQUITY SHARES (SECTION 54)

MEANING:

- ❖ Issued to:
 1. Directors- whole time director or not or
 2. Employees- permanent employee- in India or outside India.
 3. Employee/director of a subsidiary or holding co- in India or outside India.
- ❖ At a discount or for consideration other than cash .
- ❖ For -know-how; rights in the nature of IPR or value additions.

CONDITIONS:

- ❖ GM-SR; valid for- 12 months.
- ❖ Explanatory statement - to be attached to notice .
- ❖ Issue < 15% of the existing paid up equity sh cap or the shares -value of Rs. 5cr, whichever is higher- (in a year)
25% of the paid up equity capital – (at anytime.)
For a start-up company < 50% of its paid up cap up to 10 years from the date of its incorporation or registration. (w.e.f 5th June 2020)
- ❖ Price - determined by a registered valuer.
- ❖ Register - Form SH3.
- ❖ Comply with SEBI rules (Listed co.) or company rules.
- ❖ Holders shall rank pari passu with other eq shareholders.
- ❖ Lock in period - 3 years from the date of allotment.

ISSUE & REDEMPTION OF PREFERENCE SHARES (SECTION 55)

CONDITIONS:

- Authority in articles.
- GM-SR.
- Shall be issued for Max. 20 years.
Exception: infrastructure companies: Max 30 years,
Condition: redemption of min of 10% per year beginning from 21st year on a proportionate basis.
- Can be redeemed: only when fully paid.
- Redeemed - out of the profits or proceeds of fresh issue.
- A sum = nominal value of shares so redeemed - transferred to CRR.
- Premium – be paid out of SPA
- If not able to redeem: permission of shareholders (3/4th in value) + approval of the tribunal- issue equal amount of redeemable preference shares. (the unredeemed preference shares shall be deemed to have been redeemed).
- Entries in the ROM.

PROCEDURE:

1. Authority in AOA. if not, amend it.
2. No subsisting defaults in redemption or in payment of dividend on Pref sh.
3. Issue notice of GM - with the explanatory statement.
4. Listed Co.- intimate SE- at least 2 WD in advance of the date of BM.
5. GM-SR; file with- registrar Form MGT-14 -within 30 days
6. Return of allotment - Form PAS-3- Within 30 days of allotment
7. Update the ROM.
8. Issue share certificate- within 2 months
9. Intimate -to Depository on allotment - details of allotment
10. Redemption only on the terms on which they were issued or as varied.
11. Redemption:
 - affixed time or happening of a event
 - at company's option
 - at shareholders option
12. The notice of redemption – in Form SH-7 with altered MOA- within 30 days of redemption- with registrar.

FURTHER ISSUE OF SHARES (SECTION 62)

- ❖ Offer to other than the existing shareholders
- ❖ **Conditions:**
 1. GM-SR
 2. To obtain valuation report from registered valuer - to determine the value shares.
- ❖ **Exceptions**
 1. NA in case of conversion of loans or debentures into share.
 2. In the public interest, if govt- issued directions - for conversions of deb or loans obtained from any govt into the shares.

RIGHTS ISSUE OF SHARES (SECTION 62)

- Offered to the existing shareholders on proportionate basis.
- Letter of offer - at least 3 days before the issue opens.
- Remain open for a min 7 days and max 30 days.
Pvt co.: if 90% of the members gives consent (in writing or electronic mode), time for acceptance- be less than 15 days.
- Shareholders may: accept, refuse or renounce (if provided by AOA)
- No reply = denial.

PROCEDURE

1. To check – if it results in increase of authorized capital.
2. Yes, call BM- to approve notice of GM; pass SR to amend MOM/AOA .
3. GM-SR.
4. Notice: through - atleast 3 days before the opening of the issue.
5. Pvt co: 90% of members- give their consent in writing or in electronic mode, the lesser period shall apply.
6. Accept offer: Min 15 days; Max- 30 days from the date of the offer.
7. Check - copy of form SH7, MGT14 filed with ROC.
8. If declined by existing shareholder- can be disposed off - in manner not disadvantageous to the shareholders and the co.
9. Return of allotment in Form PAS-3- Within 30 days of allotment
10. Issue share certificate- within 2 months from the date of allotment.
11. Intimate -to Depository on allotment - details of allotment.

BONUS ISSUE OF SHARES [SECTION 63]

MEANING:

- ❖ Capitalization of profit (largely accumulated distributable profit) by issuing fully-paid bonus shares in proportion to their entitlements.
- ❖ Free of cost. Not taxable income.

SOURCES:

1. Free reserves;
2. SPA; or
3. CRR

ADVANTAGES

Fund flow - not affected.

Market value – comes down to their nominal value.

Market value of the members' shareholdings- increases

Bonus share – Not an income, Not taxable

Paid-up share capital- increases

CONDITIONS

- Authority in AOA
- On recommendation of the Board, Authorised in GM
- No default in payment of interest or principal
- No default in respect of the payment of statutory dues
- Shares shall be fully paid-up;
- Not be issued in lieu of dividend.
- Once announced by board, shall not subsequently withdraw.

BONUS ISSUE OF SHARES [SECTION 63]

PROCEDURE:

1. Authority in AOA.
2. If it increases authorized capital- alter MOA/AOA
3. Listed co.: prior intimation to SE- at least 2 WD in advance of the date of BM (excl. the date of intimation and the date of the meeting)
4. Hold BM
5. Ensure issue- made out of free reserves or SPA or CRR.
6. Ensure -reserves created -revaluation of assets are not capitalized.
7. No default in repayment of debts or statutory dues.
8. Issue is not in lieu of dividend.
9. Once announced- cannot be withdrawn
10. Partly paid-up shares- to be made fully paid-up before issue
11. GM- SR.
12. File Form MGT-14 with the Registrar within 30 along with the altered AOA.
13. Return of allotment in Form PAS-3- Within 30 days of allotment
14. Issue share certificate- within 2 months from the date of allotment.
15. Intimate -to Depository on allotment - details of allotment
16. Listed co- shall comply with SEBI Regulations.

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

- Right or an option given- to directors, officers or employees
- To purchase or to subscribe for the shares
- At future pre-determined prices

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- Permanent employee of co, holding or sub co. - in or outside India. Except : Who is promoter or Part of promoter group or director(himself/relative/through body corp.) Holds > 10% Total equity share capital
- Director -other than an independent director.
- For start up co. above condition does not apply up to 10 years

REQUIREMENTS:

- GM-SR: For issue, For any variation or change in scheme, Issue exceeds 1% of the issued capital in any year.
- Lock in period: Specified by company
- ESOP: certificate from the Auditors - be placed at the AGM stating -scheme implemented as per the guidelines.
- ESOPS: no such certificate required.
- Options shall not carry right of dividend or interest
- Option granted - not transferable.
- Options- cannot be pledged, hypothecated, mortgaged.
- Only employee to whom the options are granted shall be entitled to exercise.
- Death of employee while in employment- options granted shall vest- to legal heirs or its nominees.
- Permanent incapacity while in employment- options granted -shall vest in him.
- Resignation or termination of employment- options not vested as on that day shall expire.
Except: he can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and condition.
- To maintain a register -form SH-6

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

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DEFINITIONS

Grant Date:

Eligible employees or directors is determined & an offer is given.

Vesting Date:

Eligible persons have a right to reply & the company vests the said no. of options in their favour

Exercise Date:

The employees have a right to exercise the options granted to them.

1. Hold a BM to approve the notice of GM.
2. GM-SR; Pvt. Co.: OR.
3. Approval of shareholders - separate resolution shall be obtained -
 - (a) Grant of option to employees.
 - (b) Grant of option to identified employees, during any 1 year, equal to or exceeding 1% of the issued cap.
4. Min gap of 1 year between grant date and vesting date.
5. Options granted – not transferable.
6. Maintain a Register of ESOP in Form No. SH.6 -at the registered office or such other place as the Board may decide.
7. Within 30 days of allotment file- the Return of allotment in Form PAS-3.
8. Share certificates to be delivered within 2 months.
9. Intimate -details of allotment- to Depository on allotment.
10. Listed co,- comply with SEBI Regulations.

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

Issue of shares or other securities, to any selected person/ group of persons on a preferential basis

PROCEDURE:

CONDITIONS:

1. Authority in AOA.
2. GM-SR.
3. All the equity shares by allottees – in dematerialized form.
4. Conditions for continuous listing shall be complied.
5. Obtain PAN of the proposed allottees.
6. Allotment of securities- within a period of twelve months from - passing of the SR.
If not, another SR shall be passed.
7. Price - determined on the basis of valuation report of a registered valuer.
8. The valuation of consideration –by registered valuer.

1. Authority in AOA. If not, alter.
2. Hold BM to approve the notice of GM.
3. GM-SR.
4. File MGT-14- within 30 days.
5. Allotment of securities - within 12 months from SR.
6. Price - determined on the basis of valuation report of a registered valuer.
7. File with - Return of allotment in Form PAS3 within 30 days.
8. Share certificates to be delivered within 2 months.
9. Intimate -details of allotment- to Depository on allotment.

CANCELLATION OF SHARE CAPITAL

1. Diminution of Share Capital of unsubscribed part of capital.
2. By OR.
3. Not reduction of share capital.

Modes:

1. Redemption of Redeemable preference shares.
2. Purchase of shares of a member- by co.- on an order of the Tribunal.
3. Buy Back of shares.
4. Surrender of shares.
5. Forfeiture of shares.

SURRENDER OF SHARES

- ❖ Companies Act- does not contain provision.
- ❖ No restriction- depends- upon AOA.
- ❖ Shall tantamount to cancellation of share capital.

REDUCTION OF SHARE CAPITAL [SECTION 66]

1. GM-SR + order of the tribunal.
2. Listed Co.: Tribunal – to give notice for reduction - to CG, ROC, Auditors, and SEBI.
3. Authorities- within 3 months from -date of such notice – to send representations, if any.
4. If Tribunal satisfied: that debt or claim of every creditor been discharged or NOC is obtained- issue order for reduction.
5. The order – shall be published - as the Tribunal may direct.
6. The certified copy of the order - filed with the Registrar- within 30 days of its receipt.
7. Registrar – to issue necessary certificate - shall be a conclusive proof - that capital stands redirect.

MODES OF REDUCTION OF SHARE CAPITAL UNDER COMPANIES ACT, 2013

1. Reduce or extinguish the liability on its shares – which is not paid up.
2. Either with or without extinguishing or reducing liability on its shares- cancel any paid up share capital which is lost or unrepresented by available assets, or
3. Either with or without extinguishing or reducing liability on its shares- pay of paid up share capital which is in excess of the company where the shares are fully paid-up.

BUY BACK OF SECURITIES (SECTION 68)

Co. buys its own shares and extinguishes the same before the name of the company is entered in its ROM.

AUTHORITY

1. AOA
2. BM- BR and/or GM- SR- depending on the quantum.
3. Listed Co: approval of shareholders - by postal ballot.

Prohibition on further issue of securities:

On issue of Same kind of shares – within 6 months (except Bonus)

SOURCES

1. Free reserves; or
2. SPA; or
3. Proceeds of any shares or other specified securities.

ADVANTAGES

- Alternative mode of reduction, without approval of the Court/NCLT,
- To improve the EPS;
- To improve return on capital, return on NW and enhance the long-term shareholders value;
- To provide exit route to shareholders - when shares are undervalued or thinly traded;
- To enhance consolidation;
- To prevent unwelcome takeover bids;
- To return surplus cash to shareholders;
- To achieve optimum capital structure;
- To support share price - during sluggish market condition;
- To serve the equity more efficiently.

C O N D I T I O N S

- Post Buy back debt equity ratio:
- Govt. NBF/ HFI-6:1.
- Other- 2:1
- Sec. shall be Fully paid up.
- Declaration of solvency- Signed by 2 directors (including MD)- in from SH-9 & Verified by affidavit.

BUY BACK OF SECURITIES (SECTION 68)

FILLING OF LETTER OF OFFER

- If authorised by SR- Before buy back- file letter of offer - Form SH 8 + Fees
- Dated and signed by atleast 2 directors (1-MD, if any)

TIME PERIOD FOR OFFER

- Min 15 days; Max 30 days from dispatch letter of offer
If all members agree- may be less than 15 days
- Buy back- completed within 1 year from approval (shareholder/BOD)

Dispatch of letter of offer:

Within 21 days from filling with ROC

Extinguishment:

Within 7 days from completion

METHODS

- ❖ Open Market
- ❖ Existing shareholders- on proportionate Basis
- ❖ Purchasing -shares issued to employees under ESOP/ Sweat

RETURN OF BUY BACK

File with - Registrar and SEBI, - within 30 days of completion- Form No. SH.11, a certificate in Form No SH.15 signed by 2 directors (including MD).

QUANTUM

- ❑ BOD can approve: 10% of total paid up equity capital and Free reserve
- ❑ Shareholders by SR: 25% of total paid up capital and Free Reserve (in case of buy back of equity shares the limit of 25% - shall be construed as **25%** of Equity paid up capital.)
- ❑ In FY, Shareholders by SR: 25% of total equity capital

PROHIBITION

Shall not directly or indirectly purchase its own shares or other specified securities:
- through any sub co. incl. its own sub. co;
- through any investment co or group of investment co.

Consideration of financial statements : for calculating the limits:

- Last Audited
- Unaudited if:
- Audited are older than six months from date of offer &
- Limited review

PRIVATE PLACEMENT AND PROSPECTUS

PRIVATE PLACEMENT OF SECURITIES [SECTION 42]

- Means offer- to selected group of persons, to subscribe to the securities
For making an invitation,
Identified by the Board (referred to as "Identified Persons")
- Offer made- Max. 50 in No.
Excludes: QIB & Employees- Whom shares are allotted under ESOP scheme in a FY
- Offer letter - made to- Identified Persons -accompanied by an application form- within 30 days of recording names of such invitees. Do not carry any right of renunciation.
- Not allowed to advertise.
- GM-SR. In case if its to QIBs, then SR only once during the year and not everytime
- Monies collected- kept in separate bank account & collected - by way of cheques.
- File offer letter - Form PAS-4 with ROC within 30 days from the date of circulation of offer letter.
- Records of offer - Form PAS-5.
- Allotment -within 60 days from receipt of app. If not, repay money -within 15 days
Fails to do so, repay that money + interest - 12% p.a from the expiry of the 60th day.
- Return of Allotment - Form PAS-3 -within 15 days of allotment.
- Cannot utilise this monies- unless allotment made & the return of allotment is filed
- NA: to NBFC and Housing Finance Company.
- In Debt issue- if the amount to be raised does not exceed the limit as per Sec 180(1)(c)- BR is adequate.
- In non-convertible debentures: amount to be raised - exceeds the limit as per Sec 180(1)(c)- company passes a previous SR only once in a year for all the offers – sufficient.
- Sub-rule (2) to Rule 14 – offer/invitation- Max 200 - aggregate in a FY.
Exclude: Excludes: QIB & Employees- Whom shares are allotted under ESOP scheme
(restrictions would be reckoned individually for each kind of security i.e. equity share, preference share or debenture.)

PROSPECTUS [SECTION 2(70)]

MEANING

Doc. described or issued as prospectus- involving offers from public- for subscription or purchase of any securities- of body corporate.

It Includes: RHP, SHP, Notice, Circular, Advt., Other Document

CONTENT

It shall not be issued - unless on or before the date of its publication, a copy -signed by every director/proposed director or authorized attorney -delivered to the Registrar for filing
-shall not include a statement - by an expert. Except: he is a person- not, engaged or interested in the company + given his written copy of the prospectus - delivered to the Registrar for filing

CONDITIONS

- invitation to the public.
- invitation -by or on behalf of the company.
- It must be to subscribe for any securities

PROSPECTUS

SHELF PROSPECTUS

Applicability : Banking Co. Financial Inst.



Prospectus when issued once- not required to issue any other offer document for one or more issue for a certain period.



Validity not more than 1 year from opening of 1st Offer.



Just file an information memorandum (PAS – 2) - within one 1 prior to the issue subsequent offer



For intimating changes.

RED HERRING PROSPECTUS

Public Issue : Book Building method



Does not include details as to - price and quantum.



Filing – 3 days before opening of the subscription list.



Same obligation as that of prospectus

ABRIDGED PROSPECTUS

Prospectus containing such information as specified by SEBI



Attached with app form



Not Required:
- Offer not made to public
Underwriting agreements
Further public offer
Offer to existing members, debenture holder

Information:

True and only true
No misleading, incorrect information
No material information shall be concealed



Directors – Civil and Criminal prosecution

GOLDEN
RULE/
LEGACY

OFFER FOR SALE

- Public Offer- includes offer for sale (OFS) - to the public by an existing shareholder- through issue of a prospectus.
- Invitation to the general public - to purchase - through an intermediary(issuing house or a merchant bank.)
- Company -allot shares/ debentures - to an Issue house & issue house -makes an OFS to the public.
- All rules and disclosures as applicable to a prospectus shall apply.

CONDITIONS:

Shall be made within 6 months after the allotment or agreement to allot; or at the date when the offer was made, the whole consideration to be received -had not been received by it.

SIGNING:

Company- by 2 directors and Firm - by not less than one-half of the partners.

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

Members -
consultation with
BOD- can offer the
whole /a part of
their holdings -to the
public.

The document by
which the OFS
issued to the public-
deemed to be a
prospectus.

All laws and rules -
of the prospectus -
apply.

CONCEPT OF ISSUE AND ALLOTMENT

Company- public/private may issue securities:
- to public through prospectus called as public offer (applicable- only to public company) or
- through private placement or
- through a rights issue or a bonus issue.

CONDITIONS OF ALLOTMENT

- ❖ Authority: by BOD or a committee.
- ❖ Reasonable time. Securities must be issued within a period of 2 months from the date of allotment.
- ❖ Absolute and Unconditional.
- ❖ Communicated- by Posting of letter of allotment or allotment advice
- ❖ Against the application.
- ❖ Not in contravention of any law.
- ❖ No allotment, until min subscription (atleast 90% of the total issue) is received.
- ❖ Application money – at least 5% of nominal value – shall be received within 30 days from the issue of prospectus or as prescribed by SEBI.
- ❖ If not received- returned within 15 days from the closure of issue or else - interest @ 15% p.a.
- ❖ A return of allotment -Form PAS-3 within 30 days.

“Securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

includes:

- Shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in any incorporated co/ other body corporate.
- Derivative.
- Units or other instrument - by CIS/ MFS
- Government securities.
- Security receipt- as in SARFAESI Act, 2002.
- other instruments as declared by CG
- Rights or interests in securities.
- Any certificate or instrument - issued to an investor - which possesses any debt/receivable, including mortgage debt.

ISSUE OF SHARE CERTIFICATES



Certificate issued to the members - under its common seal – specifying: no. of shares held & amt paid per share.

Each share -have a distinctive number.

Requires BM-BR

Issued in Form SH-1 -bear the name – of member

Issued under the common seal

Signed by at least 2 directors or by director & CS (if any)

OPC: signed by 1 director & authenticated by either a CS or person authorized by the Board

Particulars – to be entered in the ROM.

ISSUE OF DUPLICATE SHARE CERTIFICATE

- Issued if: Lost, Destroyed, Defaced – Mutilated, Torn & Surrender to co.
- Prior consent of board.
- Documents to be submitted:
 1. Copy of a FIR
 2. Indemnity Bond
 3. Affidavit
 4. Copy of newspaper advertisement(if provided by the AOA).
 5. An application in writing.
- fee- Max Rs. 50.
- Listed Co.: shall be issued within 45 days.
- Unlisted companies: within 3 months.
- Register - in Form SH2 - Maintained- permanently - kept in the custody – CS/ authorized person.
- The new certificate bear- mark duplicate share certificate in lieu of original certificate
- Fraudulent issue by company (Sec 447)
Co.– Fine- Min.: 5 times of face value; **Max:** 10 times of face value **OR** Rs.10 cr (Whichever is higher)
Officer in default -- liable for action of fraud- u/s 447.

TIME FOR ISSUE OF SECURITY CERTIFICATES

Subscription

Within 2 months from the DOI and subscription.

Allotment

Within 2 months from the date of allotment.

Transfer/ Transmission of shares

Within 30 days from the date of receipt of app.

Allotment of debentures

Within 6 months from the date of allotment.

LEGAL EFFECTS OF A SHARE CERTIFICATE

Estoppel as to Title

The one whose name is mentioned- shall claim ownership.

Estoppel as to Payment

Once the share is fully paid up- co. cannot claim further money from those shares.

SIGNIFICANCE OF SHARE CERTIFICATE

- ❖ Prime facie evidence of title.
- ❖ Person acting on the good faith of the certificate - can compel the co. to pay compensation -for any damage caused – for any misstatement.
- ❖ Documentary evidence of title and declaration - that person is a shareholder.

WHETHER SHARE CERTIFICATE IS AN OFFICIAL PUBLICATION?

- Shares are movable/ transferable - provided in the articles.
- Certificate signifies ownership & are certificates of title
- But are not publications in the nature of- prospectus, B&S, P&L, notice or advertisement.
- Therefore, Not an official publication.

SPLIT CERTIFICATE

a separate certificate claimed by a shareholder for a portion of his holding. The advantages: benefit - small lots and the right to multiply the certificates.

PUNISHMENT FOR PERSONATION OF SHAREHOLDERS

Imprisonment – Min. 1year; Max. 3 years and Fine – Min. ₹1 lakh; Max:₹5 lakh.

TRANSFER OF SHARES

It means transfer of ownership.
Inter vivo i.e. between two living persons.

TRANSFER OF SHARES OF A PRIVATE LIMITED CO.

INSTRUMENT OF TRANSFER

1. Application- in form SH – 4 + the share certificate.
2. Form- duly stamped, signed, executed & dated by the transferor & the transferee & shall be delivered to co.- within 60 days from the date of execution.
3. To register the transfer: in case of partly paid shares- co- to give notice in Form SH-5- to the transferee & obtain NOC within 2 weeks from the date of application of transfer.
4. Company- to deliver the certificates securities allotted, transferred or transmitted- within 1 month from the date of receipt of instrument by the company.

- Shares of a public co.- freely transferable
- Companies Act - restricts the right to transfer but does not prohibit. It is subjected to restrictions contained in the articles.
- Restriction is generally placed by using following two methods:
 1. **Right of pre-emption:**
If a member wishes to sell his shares- first it shall be offered to other existing members
At a price determined- by directors / auditor / by the use of formula set out in the articles.
If no existing member is determined to acquire shares- then it can be transferred to the proposed transferee.
 2. **Powers of directors to refuse registration of transfer of shares:** It shall be specified in the articles & be exercised by the Board in good faith.

TRANSFER OF SHARES TO A MINOR

- ❖ Since a minor cannot enter into a contract or agreement (not competent to contract) except through a guardian- his name cannot be entered in the ROM and cannot become a member.
- ❖ Though the transfer deed can be executed by a minor through his natural guardian as transferee.

RIGHTS OF TRANSFEREE

- Right to Dividend, Bonus and Rights shares.
- Dividend to transferee after the transfer.

BLANK TRANSFERS

When the transferor signs the transfer form without filling in the name of the transferee and the date of execution and hands over such transfer deed along with the share certificate to the transferee

Done in the case of: pledging, where shares are kept with the lender as a form of security.

Does not result into transfer of ownership unless executed and registered

FORGED TRANSFER

It is a nullity (null & void)
no ownership of shares is transferred

- ❑- Original owner of those shares can apply to get his name restored.
- 1.- The company is liable to compensate – for further sells to an innocent purchaser.
- Co. suffers losses- can Recover from person who did such forged transfer.

RECTIFICATION OF REGISTER OF MEMBERS (SECTION 59)

- ❖ If the name of person - wrongly entered or omitted from ROM.
- ❖ Person aggrieved/member/Company - appeal in prescribed form, to the Tribunal, or to a competent court outside India(foreign members)- specified by the CG.
- ❖ Within 10 days tribunal after hearing parties- Dismiss the appeal OR Order to redirect the register.

Case Law on Refusal of Transfer

Bajaj Auto Ltd V/s N.K. Firodia

- Court Held: when directors refuse a share transfer- they should act in the paramount interest of the co. as well as in the general interest of shareholders
- Further, if articles permit, to refuse share transfer without stating reasons, court will not make an unfavourable interference.
- It will be assumed that directors have acted bonafide and aggrieved party has to prove the same by evidence.
- Three basis to determine whether the directors acted reasonably:
 1. Whether the directors acted in the interest of the company;
 2. Whether they acted on a wrong principle; and
 3. Whether they acted for collateral purpose.

STATUTORY REMEDY AGAINST REFUSAL (SECTION 58):

- Transferor or transferee - to appeal to the Tribunal – within 2 months of the receipt of the notice.
- If no notice- then within 4 months from the date on which the instrument of transfer was delivered.
- Tribunal - within 10 days after hearing the parties - dismiss or order transfer or transmission.
- Person contravenes the order-
Imprisonment: Min.1 year; Max. 3 years and
Fine: Min. ₹ 1 Lakh; Max ₹ 5 Lakh.

Registration of transfer/ Transmission

Public

- Within 30 days from date of notice.
- Within 60 days from date of delivery of instrument.

Private

- Within 60 days from date of notice.
- Within 90 days from date of delivery of instrument.

STAMP DUTY ON TRANSFER OF SHARES

- @ the rate of 0.25% on Rs 100

STAMP DUTY ON TRANSFER OF DEBENTURES

- Place of execution of transfer
- Place of registered office
- (Whichever is higher)



- Stamp affixed - not be considered as duly stamped unless cancelled.
- If not sufficiently stamped not properly cancelled- Company under no obligation to transfer.
- POINTING OUT INSUFFICIENCY OF STAMPS:** Pointing out error within 1 year from date of execution.

DEATH OF TRANSFEROR OR TRANSFEREE BEFORE THE DATE OF REGISTRATION

Transferor dies

- ❖ Company has no notice - register the transfer.
- ❖ Has notice - not to register until the legal representative of the transferor has been referred to.

Transferee dies

- ❖ Company has notice - cannot be registered. With consent of - transferor and the legal representatives, the transfer may be registered in the names of the later. if there is a dispute, an order of Court will have to be insisted upon.

TRANSMISSION OF SHARES



Operation of Law

Death

Legal heirs /
nominee

Succession
certificate

Insolvency

Official
assignee /
receiver

Letter of
probate

Partly paid

Disclaim

Fully paid

Subject to
mortgage /
encumbrance

Get himself registered as
shareholder dispose
them

No document is required to
be executed

Depends on MOA / AOA

TRANSMISSION OF SHARES TO A WIDOW

Deceased husband



Legal representative : widow



If no succession certificate , letter of probate etc.

Director may consider and transmit shares by obtaining an indemnity bond
Provided : Authorised by AOA

TRANSMISSION OF JOINT HOLDINGS

- ❖ If articles provide- that survivor shall be the only person to be recognised by the company- then the shares shall not be issued in favour of the legal heir.
- ❖ No such provision: The legal representatives are entitled to the shares and the company must accept the evidence of succession.

CERTIFICATION OF TRANSFER

Sells only a part of shares (not all)



When certificate is not handed to buyer- Shares certificate + Instrument of Transfer - lodged at registered office by transferor



Company retains certificate



Endorses as "Certificate lodged"



Returns to transferor



Transferor sends to transferee



Transferee applies to registration in company



Company cancels original certificate



Issue two new certificate

- Transferor- for shares which he continues to own
- Transferee- for shares he purchased

TRANSPOSITION OF SHARES

Changing the order of the names of the joint holders.
done for: purpose of receiving dividend.

TRANSFER	TRANSMISSION
Voluntary	Operation of law
Consideration	No Consideration
Intention to sell	Death, Insolvency, Incapacity
Requires valid instrument of transfer	No transfer instrument is required

LIEN	FORFEITURE
Exercised even when dues are there on other accounts.	Exercised for amounts due on shares only.
Security for debt and is to be retained till the debt is repaid in full.	Penalty clause to enforce the payment of money due on shares in time.
Enforced by sale of shares.	Act of depriving the shareholder of his rights.
Doesn't result into reduction of share capital, since shares are sold to recover the amount.	May reduce the capital, if the forfeited shares are not sold or re-issued.
Surplus made out of the sale proceeds -returned to the member.	Member can't claim refund of money.

DEPOSITORIES

DEFINITION AND MEANING OF DEPOSITORY

- ❖ A company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under Section 12 (1A) of the SEBI Act, 1992”.
- ❖ 2 Depositories in the market i.e., NSDL and CDSL)
- ❖ The name of the depository shall appear in the Register of the Issuer (i.e. the company), as the registered owner of the securities.
- ❖ Have right to affect the transfer but do not have voting and other rights.

DEFINITION AND MEANING OF DEPOSITORY PARTICIPANT

- ❑ Agent of the depository and is an interface between the depository and the investor.
- ❑ E.g. financial institutions, banks, custodians, stock brokers etc.

INTRODUCTION

- Organization where the securities of an investor are held in the electronic form through DP.
- Investor wants to utilize - services offered by a Depository, he has to open a beneficiary account with the Depository through a DP.
- The investor can open a/c with one or more DPs.
- When a person buys any security in the depository mode, the buyer - become owner of the security within a day of settlement being made / completed.

ADVANTAGE OF HOLDING SECURITIES IN THE ELECTRONIC MODE

1. Faster delivery and fund settlement.
2. No odd lot–trading is possible in any lot.
3. Eliminates risks - loss, theft, forgery etc.
4. Eliminates handling of large volumes of paper.
5. Facilitates pledge and hypothecation.

DEPOSITORIES

DEMATERIALIZATION (CONVERSION OF PHYSICAL SHARES INTO ELECTRONIC SHARES)

1. Submit dematerialization request form (DRF) + share certificates.
2. Deface share certificates as “surrendered for dematerialization”.
3. DP electronically transmits DRF to the depository.
4. DP sends the share certificates and physical DRF to the RTA/ Company.
5. Depository electronically transmits the Demat request and confirms to DP.
6. RTA/ Company checks authenticity of request and confirms to Depository.
7. Depository confirms dematerialization request to DP.
8. Investor’s account with DP is credited.
9. DP sends Statement of Transaction to the investor.

REMATERIALISATION (CONVERSION OF ELECTRONIC SHARES INTO PHYSICAL SHARES)

1. The beneficial owner sends the request in rematerialisation request form (RRF) to DP.
2. DP intimates the Depository.
3. Depository confirms the rematerialisation request to the RTA/ Company.
4. RTA/ Company updates account and prints certificates and confirm the Depository.
5. Depository updates account and downloads the details to DP.
6. RTA/ Company dispatches the certificates to the holder.
7. DP sends the intimation to its client.

OPENING A BENEFICIARY A/c

1. Fill up account opening form and submits photographs of each signatory.
2. PAN number to be provided
3. Signs agreement with DP.
4. DP intimates Account No.
5. The A/c no. has to be quoted by the investor, every time that he corresponds with the DP.

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CS Vikas Vohra, Founder - YES Academy

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

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

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

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