



Date: 25 Feb, 2021

**VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

Faculty: Mrs. Sonali Shah

CHAPTER 4: SHARE CAPITAL AND DEBENTURES

Section 43 to Section 72

[Exclusions: S. 44, 45, 60, 65, 72] read with the *Companies (Share Capital & Debentures) Rules, 2014*

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

Types of PS

On the basis of dividend

On the basis of convertibility

On the basis of redeemability

Cumulative

Non –
cumulative

Participatory

Non
Participatory

Convertible

Non-
Convertible

Redeemable

Ir-
redeemable
(cant be
issued)

TYPES OF PREFERENCE SHARES

Convertible and Non Convertible

- **Convertible shares** possess an option or right whereby they can be converted into an ordinary equity share at some agreed terms and conditions.
- **Non-convertible shares** simply does not have this option but has all other normal characteristics of a preference share.

Redeemable and Irredeemable

- **Redeemable preference share** has a maturity date on which date the company will repay the capital amount to the preference shareholders and discontinue the dividend payment.
- **Irredeemable preference shares** does not have any maturity date. The dividend of these shares is fixed.

Participating and Non Participating

- **Participating preference shares** has an additional benefit of participating in profits of the company apart from the fixed dividend.
- Other preference shares who do not participate are called **non participating preference shares**

Cumulative and Non Cumulative

- **Cumulative Shares** - The dividends are accumulated and therefore paid before anything paid to equity shareholders.
- **Non – Cumulative** - If company does not pay dividend in current year, claim of preference shareholder is lost to that extent.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(i) Company to issue only Redeemable Preference Shares: A company limited by shares shall not issue any preference shares which are irredeemable.

(ii) Term of preference share:

- 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.
- **Exception:**
 - Such preference shares are issued for infrastructure projects as specified under schedule VI for a period exceeding twenty years but not exceeding thirty years. (Rule 10)
 - The company shall redeem, at the option of such PSH, 10% of such preference shares beginning 21st year onwards or earlier, on proportionate basis.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

According to Rule 9 (1) of the Companies (Share Capital and Debentures) Rules, 2014, **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)

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(iv) Preference Shares to be redeemed out of the Profits only(sources of redemption) : 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.

(v) Only fully paid Preference Shares are to be redeemed: No such shares shall be redeemed unless they are fully paid.

(vi) 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.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

(vii) 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.

The 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.

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.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

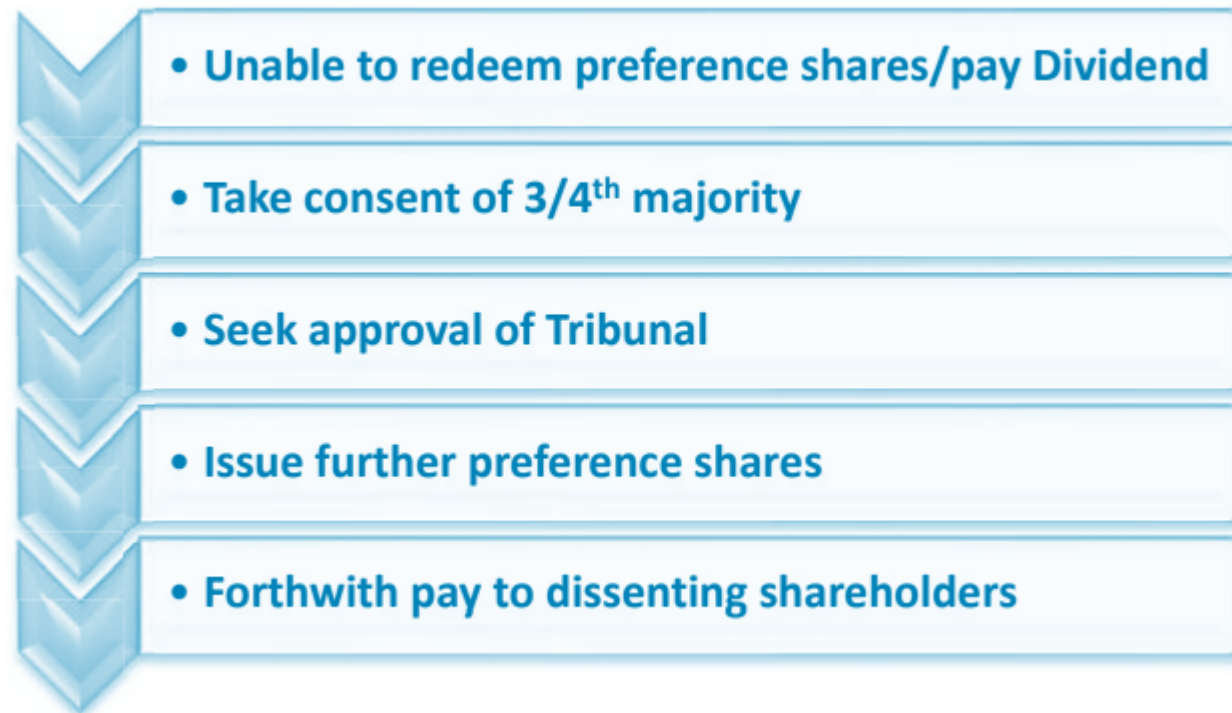
(viii) Issue of further Redeemable Preference Shares if a Company is unable to redeem existing preference shares or pay dividend: According to Section 55 (3), where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of 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, and
- 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.

PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

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.



PREFERENCE SHARE ISSUE AND REDEMPTION [SECTION 55]

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.

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.

TRANSFER AND TRANSMISSION OF SECURITIES [S.56 to 59]

Transfer of Shares

- Transfer of shares is a voluntary act that takes place by way of contract between transferor and transferee.
- Transfer deed is executed in transfer of shares.
- Liabilities of transferor cease on the completion of transfer.
- Stamp duty is involved under transfer and payable on the market value of shares.

Transmission of Share: Transmission of shares is a process by operation of law where under the Shares are registered in a Company in the name of deceased person or an insolvent person are registered in the name of his legal heirs by the Company on proof of death or insolvency as the case may be.

TRANSFER AND TRANSMISSION OF SECURITIES [S.56 to 59]

Basis for Comparison	Transfer of shares	Transmission of shares
Meaning	Transfer of shares refers to the transfer of title to shares, voluntarily, by one party to another.	Transmission of shares means the transfer of title to shares by the operation of law.
Affected by	The deliberate act of parties.	Insolvency, death, inheritance or lunacy of the member.
Initiated by	Transferor and transferee	Legal heir or receiver
Consideration	Adequate consideration must be there.	No consideration is paid.
Execution of valid transfer deed	Yes	No
Liability	Liabilities of transferor cease on the completion of the transfer.	Original liability of shares continues to exist.
Stamp duty	Payable on the market value of shares.	No need to pay.

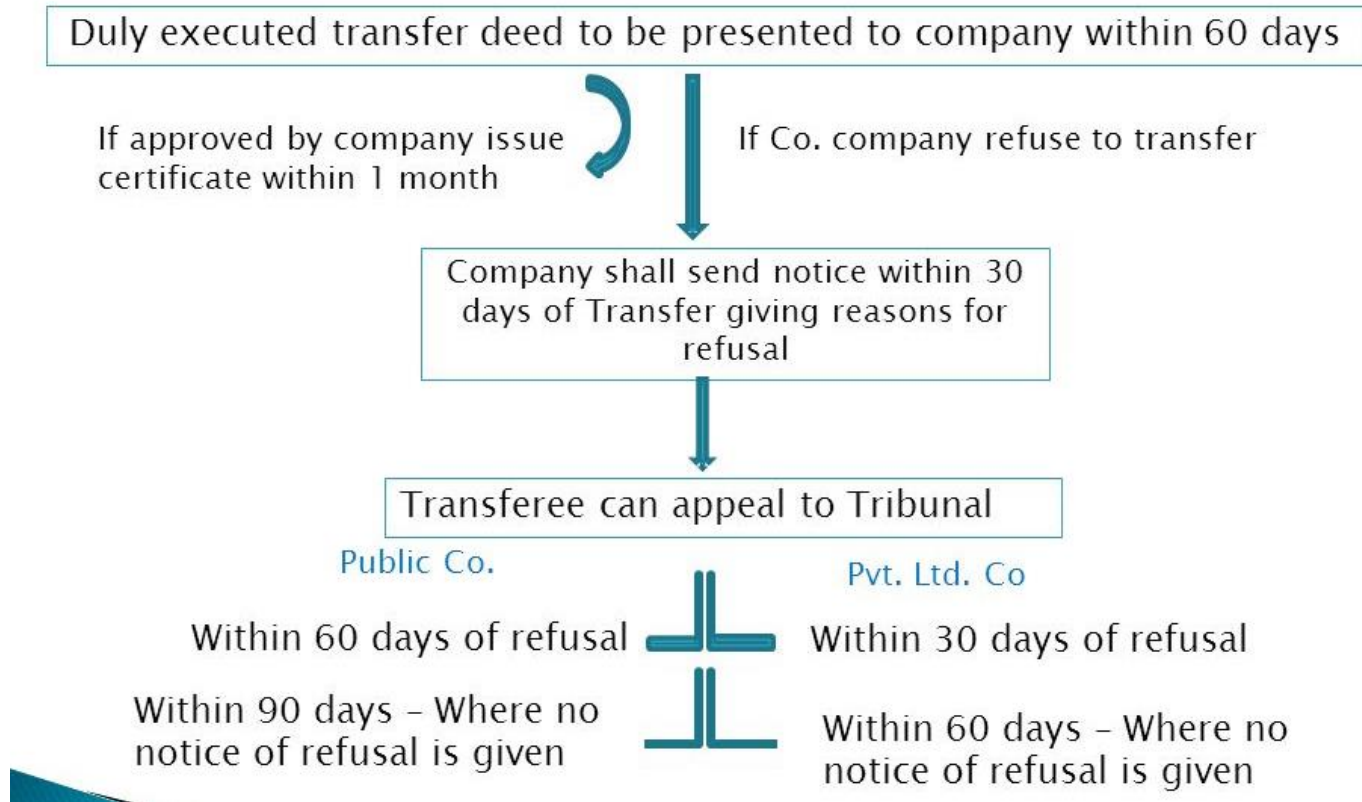
Source: Surbhi S., 2015

TRANSFER OF SECURITIES

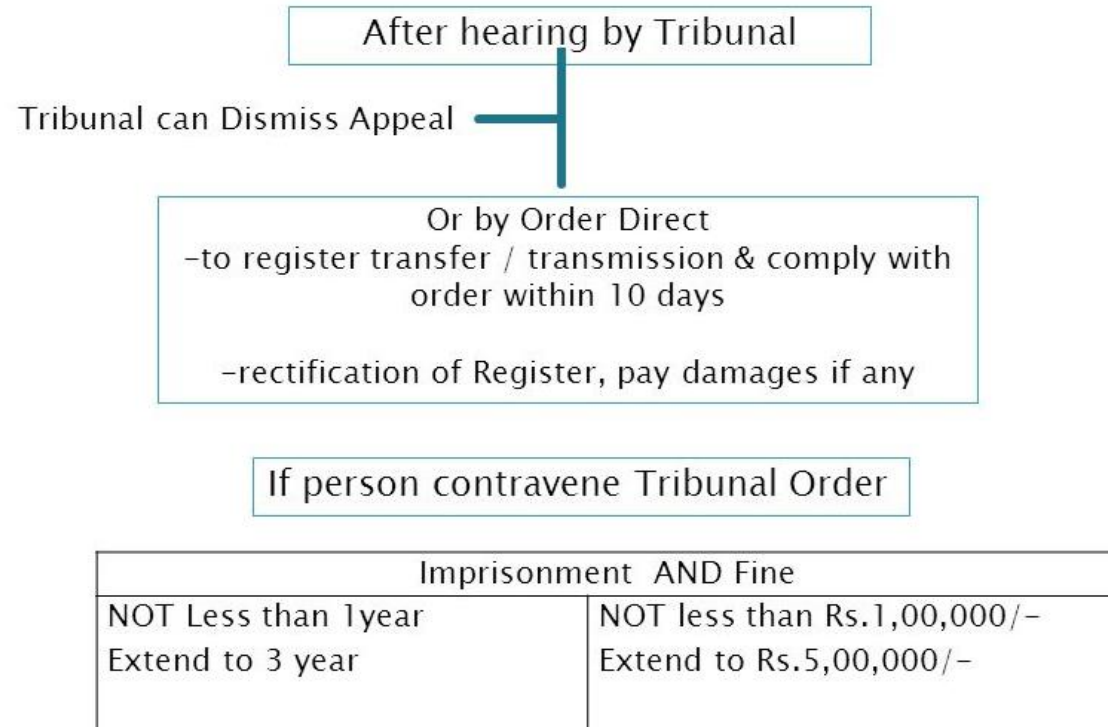
As per Section 56 of the Companies Act, 2013 read with Rule 11 of Companies (Share Capital & Debenture) Rules, 2014

- 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 form SH-4, duly stamped, dated and executed by or on behalf of the transferor and 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 and 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.

PROCEDURE FOR TRANSFER OF SHARES



PROCEDURE FOR TRANSFER OF SHARES



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.**

Note: Instrument of Transfer not required in case of Bonds issued by a Government Company provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond



Procedure for transfer of partly paid shares: According to Section 56 (3) read with rule 11 (3) of the Companies (Share Capital and Debentures) Rules, 2014 , where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, 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.

TRANSMISSION OF SHARES

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 share.

Cases of Transmission: In the following cases, transmission of shares shall take place:

- **(a) Death:** When a shareholder expires, his shares need to be transmitted to his legal representative.
- **(b) Insolvency:** When a shareholder becomes insolvent, his shares are to be transmitted to his Official Receiver.
- **(c) Lunacy:** When a shareholder becomes lunatic, his shares are to be transmitted to his administrator appointed by the Court

TIME PERIOD FOR DELIVERY OF CERTIFICATES

Section 56 (4) provides 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 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.

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

Transfer of Security of the Deceased Person by his Legal Representative:

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.

PUNISHMENT FOR DEFAULT of S. 56

AS PER SECTION 56 (6), WHERE ANY DEFAULT IS MADE IN COMPLYING WITH THE PROVISIONS OF SUB-SECTIONS (1) TO (5), THE PUNISHMENT SHALL BE AS UNDER:

company: It shall be punishable with fine varying from 25,000 rupees to 5 lakh rupees

every officer of the company who is in default: He shall be punishable with minimum fine of 10,000 rupees and maximum of one lakh rupees.

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?

At the same time, the transferor who is the real owner continues to be the shareholder. The original owner of those shares can apply to the company and get his name restored on register of members.

FORGED TRANSFER

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?

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.

PUNISHMENT FOR PERSONATION OF SHAREHOLDER [S. 57]

If any person **deceitfully personates**—

- ◆ as an owner of any security or interest in a company, or
- ◆ 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,

a. imprisonment for a term which shall not be less than one year but which may extend to three years **and**

b. with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

*(1) If a **private company limited by shares** refuses, whether in pursuance of any power of the company under its articles or otherwise, **to register the transfer of, or the transmission** by operation of law of the right to, any securities or interest of a member in the company, **it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.***

(2) Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable: Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

*(3) The transferee may appeal to the Tribunal against the refusal within a period of **thirty days from the date of receipt** of the notice or in case **no notice** has been sent by the company, within a period of **sixty days from the date** on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.*

*(4) 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 or the intimation of transmission, as the case may be, is delivered to the company, **the transferee may, within a period of sixty days** of such refusal or where **no intimation** has been received from the company, within **ninety days** of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.*

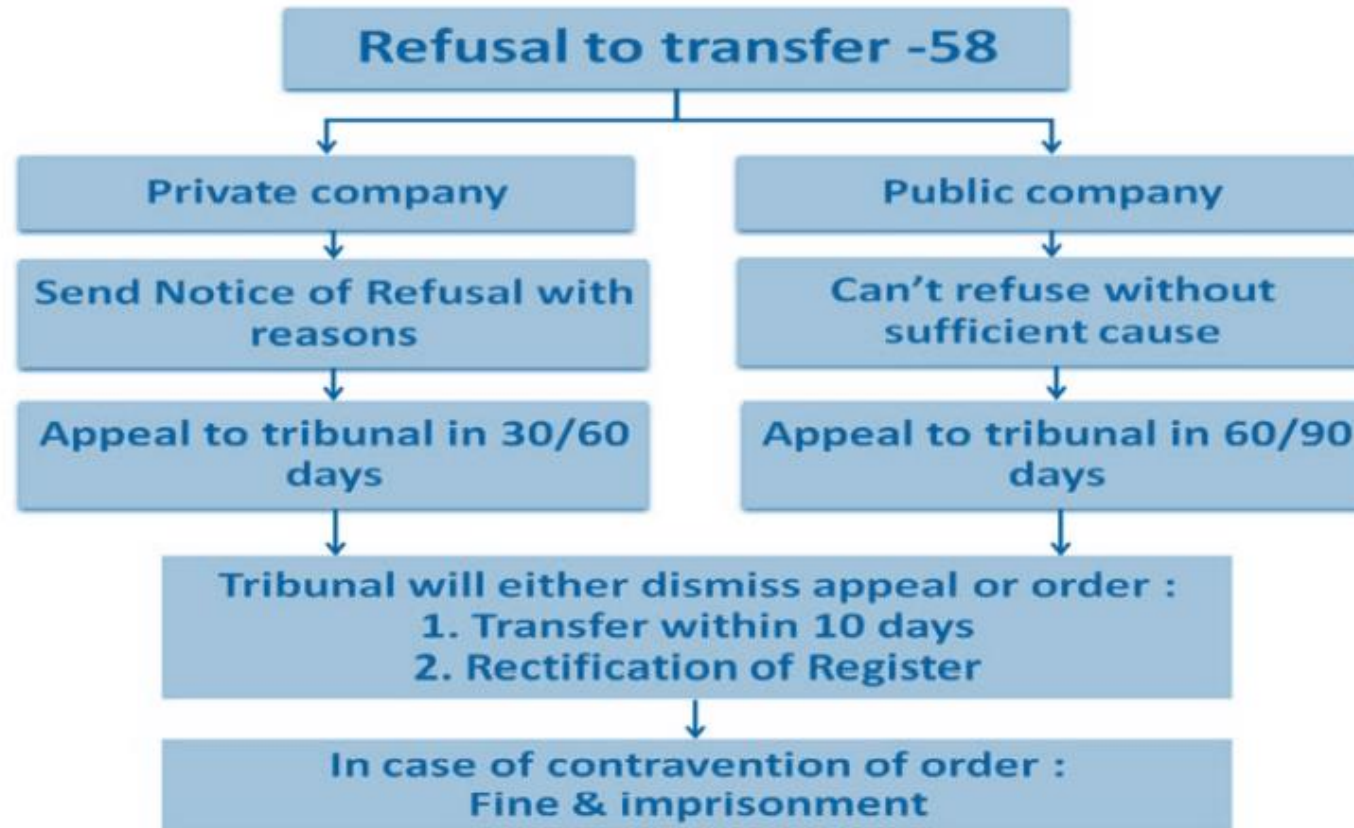
REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

*(5) The Tribunal, while dealing with an appeal made under sub-section (3) or subsection (4), 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.***

*(6) If a **person contravenes the order of the Tribunal** under this section, he 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.*

REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]



REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

In the matter of *Messer Holdings Limited vs. Shyam Madanmohan Ruia & Others MANU/MH/0998/2010*, the Hon'ble Bombay High Court held that any contract or arrangement between two or more persons with respect to transfer of securities can be enforced like any other contract and does not impede the free transferability of shares at all. In view of the above, any restriction on transfer of shares under the shareholders agreement as executed amongst the shareholders shall be valid and binding as a 'contract' inter-se the shareholders. If any public company is also being made party to such shareholders agreement, then such contract will also be enforceable against the public company like any other contract and in case of breach of such contract by any party, the aggrieved party may avail such legal remedies as available in case of such 'breach of contract' including the specific performance of such contract under the Specific Relief Act, 1963.

REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

The Supreme Court of India in *Mackintosh Burn Limited v. Sarkar and Chowdhury Enterprises Private Limited*, (2018) 5 SCC 575 (**Mackintosh Case**). In this case the Supreme Court held that the registration of a share transfer may not only be refused on the ground of it resulting in a violation of any law but also for any other sufficient cause.

The Mackintosh Case involved an unlisted public company, which had refused to register a transfer of shares to its competitor. Here the Supreme Court noted “...*The Company Law Board, it appears, was of the view that the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression “without sufficient cause” used in section 58(4), it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient case. Conflict of interest in a given situation can also be a cause...”*”

RECTIFICATION OF REGISTER OF MEMBERS [SECTION 59]

(1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, 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, 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.

RECTIFICATION OF REGISTER OF MEMBERS [SECTION 59]

*(2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, **either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten 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) The provisions of this section **shall not restrict the right of a holder of securities, to transfer such securities** and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.*

RECTIFICATION OF REGISTER OF MEMBERS [SECTION 59]

*(4) Where the **transfer of securities is in contravention** of any of the provisions of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 or this Act 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.*

RECTIFICATION OF REGISTER OF MEMBERS [SECTION 59]

(5) If any default is made in complying with the order of the Tribunal under this section,

- the **company shall be punishable** with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and*
- **every officer of the company** who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.*

ALTERATION OF SHARE CAPITAL

SECTION 61- 68

POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL [SECTION 61]

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.

POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL [SECTION 61]

- (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.

POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL [SECTION 61]

. (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 form SH-7 along with an altered memorandum

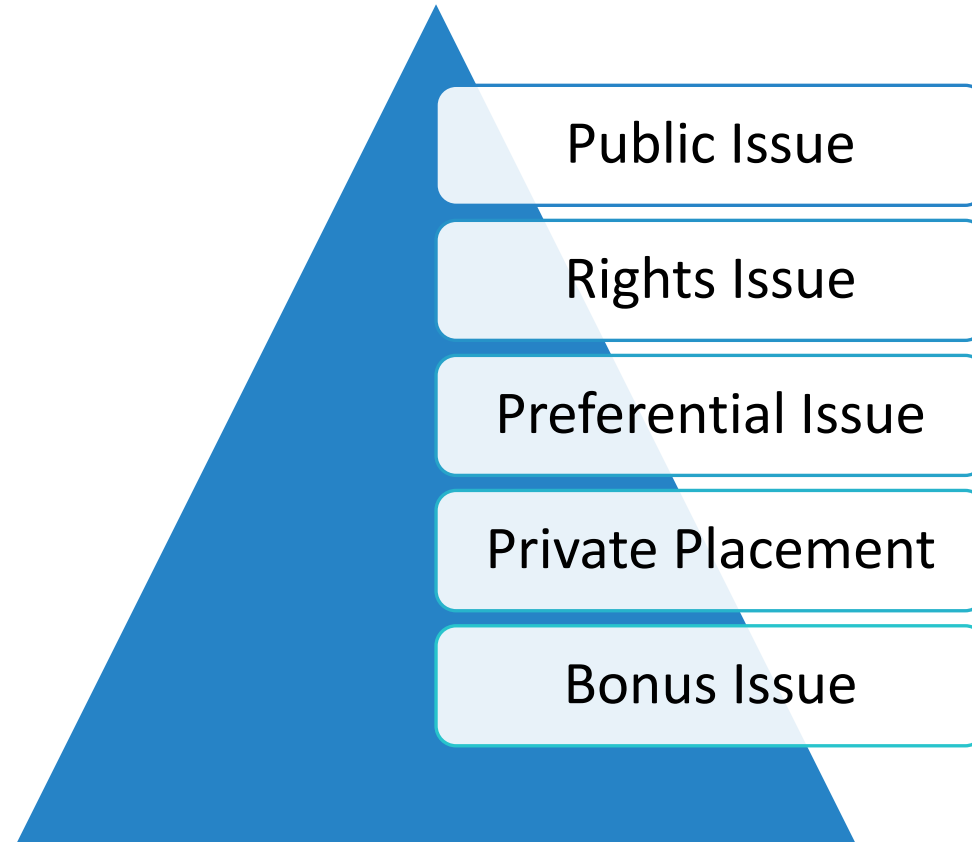
POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL [SECTION 61]

Requirements of alteration of capital:

- a. Authorisation in AOA
- B. OR to be passed at GM
- C. Notice of alteration of share capital to be given to ROC [s.64]
 - Within 30 days
 - In form Sh-7
 - Along with copy of altered memorandum.

where any company fails to submit the notice of alteration to ROC such company rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees which ever is less.

MODES OF RAISING CAPITAL UNDER COMPANIES ACT, 2013



FURTHER ISSUE OF SHARE CAPITAL- SCOPE OF S. 62



Sec 62 (1) (a) - Rights issue of shares to all existing equity shareholders.

Sec 62 (1) (b) – Issue of shares to employees under a scheme of Employee Stock Option

Sec 62(1) (c) – Issue of shares or securities on preferential basis

FURTHER ISSUE OF SHARES – RIGHTS ISSUE [S.62(1)(a)]

(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, 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:—*
 - *(i) 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;*

FURTHER ISSUE OF SHARES- RIGHTS ISSUE

- (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;*

FURTHER ISSUE OF SHARES- RIGHTS ISSUE

(2) 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.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

(b) to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed; *[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]*

or

(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.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

As per **Section 2(37)**, the term '**employees' stock option'** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a predetermined price.

In case an unlisted company 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.

A listed company while issuing shares under ESOP Scheme shall follow the provisions of SEBI (Share Based Employee Benefits) Regulations, 2014

FURTHER ISSUE OF SHARE CAPITAL- ESOP

Provisions contained in Rule 12 of the Companies (Share Capital and Debenture) rules 2014, w.r.t ESOP.

Rule 12 reads as **A company, other than a listed company**, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:

(1) the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a **special resolution** '.

Note: 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.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

. Explanation: For the purposes of clause (b) of sub-section (1) of section 62 and this rule **“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 clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-

FURTHER ISSUE OF SHARE CAPITAL- ESOP

- (i) an employee who is a promoter or a person belonging to the promoter group; or
- (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

However, the above conditions provided in Rule 12(c) are not applicable to a start-up company for a period of 10 years from the date of its incorporation or registration.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

(2) The company shall make the **following disclosures in the explanatory statement** annexed to the notice for passing of the resolution-

- (a) the total number of stock options to be granted;
- (b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
- (c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
- (d) the requirements of vesting and period of vesting;
- (e) the maximum period within which the options shall be vested;

FURTHER ISSUE OF SHARE CAPITAL- ESOP

- (f) the exercise price or the formula for arriving at the same;
- (g) the exercise period and process of exercise;
- (h) the Lock-in period, if any ;
- (i) the maximum number of options to be granted per employee and in aggregate;
- (j) the method which the company shall use to value its options;
- (k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
- (l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
- (m) a statement to the effect that the company shall comply with the applicable accounting standards

FURTHER ISSUE OF SHARE CAPITAL- ESOP

According to Rule 12 (3),The companies granting option to their employees pursuant to ESOPs Scheme can 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;

FURTHER ISSUE OF SHARE CAPITAL- ESOP

(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.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

(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.

FURTHER ISSUE OF SHARE CAPITAL- ESOP

(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 and conditions under the scheme granting such options as approved by the Board.

FURTHER ISSUE OF SHARES

Allotment of Shares on account of conversion of loans or debentures into shares:

According to Section 62(3);

(3) Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

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.

FURTHER ISSUE OF SHARES

Allotment of Shares on account of conversion of loans or debentures into shares consequent upon the order of government:

Section 62(4) read as:

(4) Notwithstanding anything contained in sub-section (3), 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:

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.

FURTHER ISSUE OF SHARES

*(5) In determining **the terms and conditions of conversion** under sub-section (4), 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) 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 under sub-section (4) 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.

FURTHER ISSUE OF SHARES

Example : 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.

ISSUE OF BONUS SHARE

A **bonus issue**, also known as a scrip **issue** or a capitalization **issue**, is an offer of free additional **shares** to existing shareholders. A company may decide to distribute further **shares** as an alternative to increasing the dividend payout.

Example: For example when a company offers 1:5 bonus shares, it means a share holder will get 1 free share for 5 shares. So if an investor holds 100 shares at the time of bonus then they will become 120 shares.

Section 63 of the Companies Act, 2013 prescribes the condition and the manner of issue of fully paid-up bonus shares by a company to its members.

COMPANY	Bonus Ratio	DATE		
		Announcement	Record	Ex-Bonus
Sacheta Metals	1:100	16-01-2021	09-03-2021	08-03-2021
Quint Digital	1:1	20-01-2021	03-03-2021	02-03-2021
NAKODA GROUP OF	5:8	21-01-2021	26-02-2021	25-02-2021
United Polyfab	2:1	09-01-2021	18-02-2021	17-02-2021
ASM Tech	1:1	30-12-2020	19-02-2021	17-02-2021
KNR Construct	1:1	18-12-2020	04-02-2021	03-02-2021
Ganga Forging	1:3	27-11-2020	12-01-2021	11-01-2021
Silgo Retail	1:4	28-11-2020	08-01-2021	07-01-2021

ISSUE OF BONUS SHARE

Section 63 reads as:

(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:*

*Provided that no issue of bonus shares shall be **made by capitalising reserves created by the revaluation of assets.***

(2) No company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), 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 may be prescribed.

(3) The bonus shares shall not be issued in lieu of dividend.

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.

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

NOTICE TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL ETC [S.64]

When is notice required: The company shall give notice to the ROC in case of :

- Alteration of share capital u/s 61
- Increased in the authorised share capital consequent to the order of the Govt. as per s. 62
- Redemption of preference shares.

The notice to be given to the ROC within 30 days in form SH-7 along with altered memorandum.

Default: *where any company fails to submit the notice of alteration to ROC such company rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees which ever is less.*

REDUCTION OF SHARE CAPITAL[S.66]

The Reduction of Share Capital means reduction of issued, subscribed and paid up share capital of the company.

Section 66 of [Companies Act, 2013](#), lays down and discusses the nitty gritty with respect to reduction of share capital of a company.

A reduction of share capital is unlawful except when sanctioned by the tribunal. The share capital of the company is the only security that the creditors rely on as any reduction of this share capital diminishes the fund out of which they are to be paid, and hence is closely guarded. But section 66 of the Act, 2013 gives closely fenced power for reduction of share capital, for general necessity.

REDUCTION OF SHARE CAPITAL[S.66]

NEED FOR REDUCTION IN SHARE CAPITAL:

- Accumulated business losses,
- assets of reduced or doubtful value like unsound investments proving bad or
- having paidup capital in excess of the requirements of the company or
- surplus capital which cannot be employed gainfully.

REDUCTION OF SHARE CAPITAL [S.66]

Section 66 reads as:

*(1) 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,--*
 - *(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or*
 - *(ii) 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:*

REDUCTION OF SHARE CAPITAL[S.66]

Example: In respect of a share of ` 10, a company has called only ` 6 per share and the same has been paid by all the shareholders. The company resolves to reduce the nominal value of shares to Rs. 6, the members will not be required to pay the balance, Rs. 4 per share.- Extinguishing liability in respect of share capital not paidup

However, if the company passes a resolution to reduce the nominal value to 7 per share, the members will not be required to pay Rs.3.- Reducing the liability in respect of share capital not paidup.

EXAMPLE: A company's paid up capital is 10,000 equity shares of Rs. 10 each, fully paid up. The company has accumulated losses amounting to Rs. 80,000 which it may write off against capital. If the liability is extinguished, the share capital shall consist of 10,000 shares at Rs. 2 each, fully paid. If the liability is not extinguished, the share capital shall consist of 10,000 shares of RS. 10, each, Rs. 2 paid up. [Cancellation of lost paid up capital]

REDUCTION OF SHARE CAPITAL[S.66]

Example [Paying off excess paid up capital]: A company has 10,000 equity shares of Rs.10 each fully paid up. The company finds that the available funds are in excess of the needs of the company. The company may return back a portion of paid up share capital, say Rs. 3 on every share. IF the liability, is extinguished, the share capital of the company shall consist of 10,000 equity shares of RS. 7 fully paid up. If the liability is not extinguished, the share capital shall consist of 10,000 equity shares of Rs.10 each, Rs. 7 fully paid up.

REDUCTION OF SHARE CAPITAL[S.66]

*Provided that **no such reduction shall be made if the company is in arrears in the repayment of any deposits** accepted by it, either before or after the commencement of this Act, or the interest payable thereon.*

(2) The Tribunal shall give notice of every application made to it under subsection (1) to the Central Government [power delegated to RD], Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

*Provided that where **no representation** has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be **presumed that they have no objection to the reduction.***

REDUCTION OF SHARE CAPITAL[S.66]

(3) 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:

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

REDUCTION OF SHARE CAPITAL[S.66]

*(4) 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) 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 thirty days of the receipt** of the copy of the order, who shall register the same and issue a certificate to that effect.*

REDUCTION OF SHARE CAPITAL [S.66]

(6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

(7) 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.

REDUCTION OF SHARE CAPITAL[S.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 (31 of 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.

REDUCTION OF SHARE CAPITAL [S.66]

9) Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

(10) 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.*

(11) if a company fails to comply with the provisions of sub-section (4) [failure to publish the order], it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

RESTRICTION ON PURCHASE BY COMPANY OR GIVING LOANS BY IT FOR PURCHASE OF ITS SHARES [S.67]

(1) 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.

(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

RESTRICTION ON PURCHASE BY COMPANY OR GIVING LOANS BY IT FOR PURCHASE OF ITS SHARES [S.67]

(3) Nothing in sub-section (2) shall apply to—

- (a) the lending of money by a banking company in the ordinary course of its business;*
- (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance 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:*

RESTRICTION ON PURCHASE BY COMPANY OR GIVING LOANS BY IT FOR PURCHASE OF ITS SHARES [S.67]

Provided that 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) Nothing in this section shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

(5) If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default 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 twentyfive lakh rupees.

RESTRICTION ON PURCHASE BY COMPANY OR GIVING LOANS BY IT FOR PURCHASE OF ITS SHARES [S.67]

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

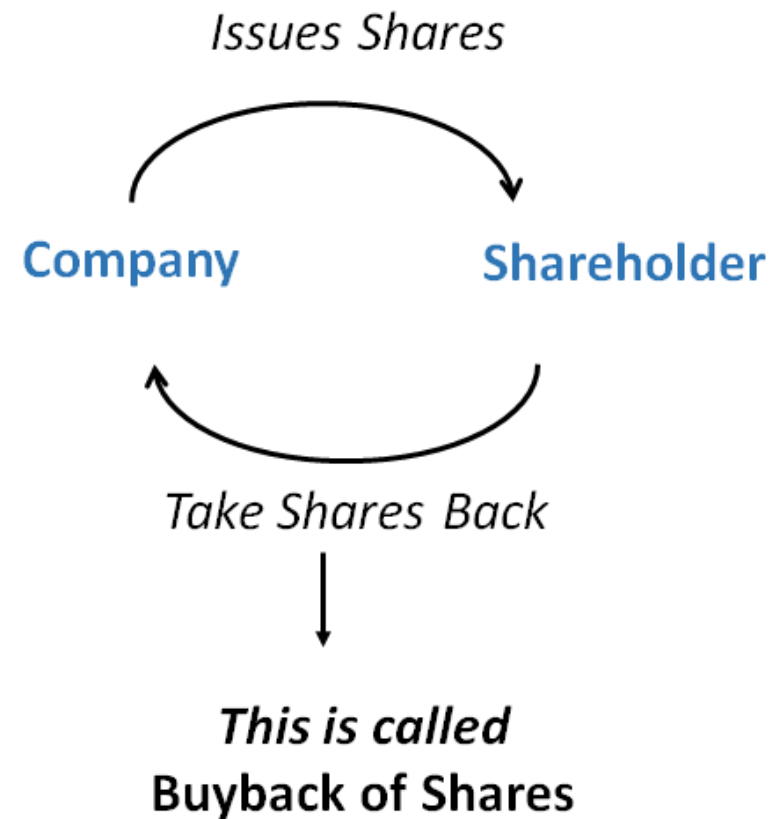
(c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

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)

BUYBACK OF SECURITIES

The term buy back is not defined under Companies Act, 2013.

In general, Buy-Back of securities means 'purchasing own shares or other specified securities of the company from its existing shareholders to extinguish/reduce the outstanding shares or securities'. It is one of the modes of capital restructuring with no intervention of Tribunal.



For Unlisted
public and
private
companies

- Section 68, 69 and 70 of Companies Act , 2013
- Rule 17 of Companies (Share capital and Debentures) Rules, 2014

For listed
companies

- Section 68, 69 and 70 of Companies Act , 2013
- Rule 17 of Companies (Share capital and Debentures) Rules, 2014
- Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 and Securities and Exchange Board of India (Buy-back of Securities) (Amendment) Regulations, 2013

SOURCES OF BUY BACK

As per the Section 68 (1) of the Companies Act, 2013 buy-back can be made only out of:

- Free reserves
- Security premium account
- The proceeds out of fresh issue of shares or other specified securities

However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

CONDITIONS FOR BUYBACK

1. Articles must authorise buyback.
2. Special Resolution needs to be passed in the General Meeting for the buy back, but if the buy-back is upto 10% of the aggregate of paid up equity capital and free reserves, then a Resolution at Board Meeting need to be passed .
3. The buy back of equity shares in a FY shall not exceed 25% of its paid up equity share capital in that FY.

CONDITIONS FOR BUYBACK

4. Maximum amount of Shares that can be bought back in a financial year is twenty-five percent of paid up capital and free reserves (where paid up share capital includes equity share capital and preference share capital; & free reserves includes securities premium).
5. Post buy-back debt-equity ratio cannot exceed 2:1.
6. Only fully paid up shares can be brought back in a financial year.
7. Notice of GM in which SR is to be passed shall be accompanied by an explanatory statement, stating
 - a. All material facts;
 - b. Necessity for 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.

CONDITIONS FOR BUYBACK

8. **Time Limit for completion of buyback:** The buy-back should be completed **within a period of one year** from the date of passing of Special Resolution or Board Resolution, as the case may be.

9. No new offer of buy-back should be made by a company within a period of one year from the date of the closure of the preceding offer of buy-back

10. Whose securities are to be purchased under buyback:



CONDITIONS FOR BUYBACK

11. Declaration of solvency: A declaration of solvency has to be filed by the company to the Registrar and SEBI before the buy-back is proposed. No declaration of solvency shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognized stock exchange [subsection (6)].

As per rule rule 17(3) declaration of solvency should be filed in the Form No. SH.9 along with the fee and signed by at least two directors of the company, one of whom shall be the managing director, if any, and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board as specified in the said Form.

CONDITIONS FOR BUYBACK

12. 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 seven days of the last date of completion of buy-back.

13. 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 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.

CONDITIONS FOR BUYBACK

14. **FILING OF RETURN:** a return in has to be filed with RoC and SEBI within 30 days of completion [sub-section (10)]. As per rule 17(13) The company, after the completion of the buy-back shall file with the Registrar, and in case of a listed company with the Registrar and the Securities AND Exchange Board of India, a return in the FORM NO. SH.11 along with the fee.

15. **Register of Buy Back:** Section 68 (9) requires that where a company buysback its shares or other specified securities under this section, it shall maintain a register of the shares in form SH-10 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.

PENALTY FOR DEFAULT

16. 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: •

- **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 imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

TRANSFER TO AND APPLICATION OF CAPITAL REDEMPTION RESERVE ACCOUNT(SECTION 69):

When a company purchases (BUYS BACK) its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the CAPITAL REDEMPTION RESERVE ACCOUNT. 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. The details of transfer to CRR shall be disclosed in the Balance Sheet

PROHIBITION ON BUYBACK [S.70]

1. No company shall directly or indirectly purchase its own shares:-
 - a) Through any subsidiary company including its own subsidiary companies;
 - b) Through any investment company
 - c) If a default, is made by the company, in the repayment of deposits interest payment thereon, the 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 institution or banking company:

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

PROHIBITION ON BUYBACK [S.70]

2. No company shall, directly or indirectly, purchase its own shares in case such company has not complied with the provisions of Section:-

- 92 Annual Return,
- 123(Declaration of Dividend),
- 127(punishment for failure to distribute dividend) and
- 129(Financial Statement).

DEBENTURES

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.

CHARACTERISTICS 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. A debenture is the smallest unit of a sizeable amount of loan.
 - The company pays periodic interest on the amount raised by issuing debentures till they are fully redeemed..
 - The company pays periodic interest on the amount raised by issuing debentures till they are fully redeemed..

CHARACTERISTICS OF DEBENTURES

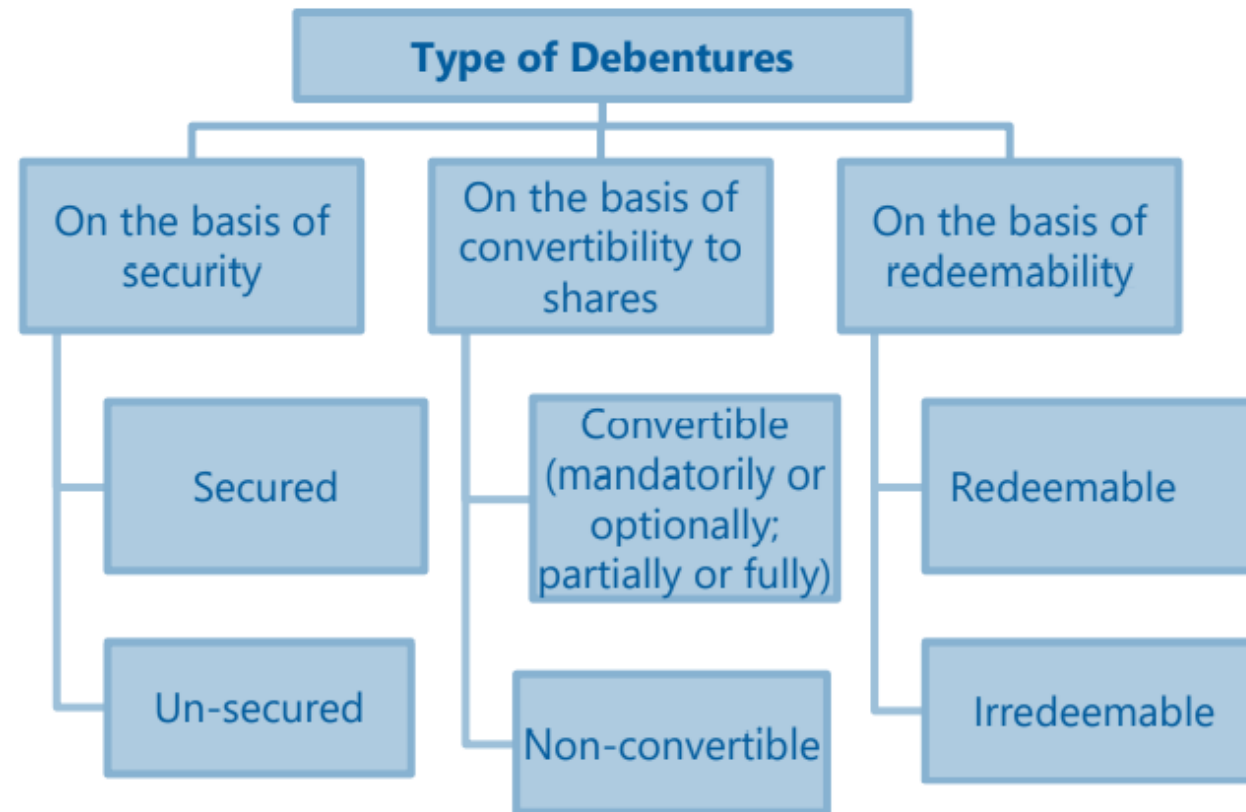
Example: The name '10% Debentures' indicates that the company shall pay interest at the rate of 10% on the outstanding amount till maturity of such debentures.

- 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.
- 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.

CHARACTERISTICS OF DEBENTURES

- As per the terms of the issue of debentures, they may be redeemed (i.e. repaid) at the end of full term or in instalments, say yearly or bi-yearly or any other period like in two instalments.
- The terms of issue may also provide for conversion of debentures at maturity into equity shares at the option of the debenture holders.
 - 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.

TYPES OF DEBENTURE



LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

- 1. Issue of convertible debentures:** Acc. To S.71 (1) a company may issue debentures with an option to convert them (partly or wholly) into shares, provides such issue is approved by passing SR in GM.
- 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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

Rule 18 of Share capital and debenture rules, prescribes the following condition:

(a) Date of redemption of secured debentures shall not exceed **ten 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 thirty 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 ten tears.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(c) Secured debenture 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) 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 sixty days after the allotment of the debentures, it shall execute a debenture trust deed (Form SH-12) to protect the interest of the debenture holders.

(e) The security for the debentures by way of a charge or mortgage shall be created by the company in favour of the debenture trustee.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

4. DRR (Debt redemption reserve) Account: It is mandatory for every company issuing Debentures to create DRR out of the profits available for distribution of dividend. The amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Rule 18 for Creation of DRR:

- A. All India financial institutions and banking companies(whether by way of public issue of debentures or by way of private placement)- DRR not required
- B. Other financial institutions- DRR created by complying with same requirement as are applicable to NBFC
- C. Listed Companies- DRR not required in case of public issue of debentures for NBFC & other listed co.
- D. Pvt. Placement of debentures by unlisted co which are NBFC regd with RBI or Housing finance Co registered with NHB- DRR not needed
- E. Other unlisted companies- DRR created for an amount equal to 10% value of outstanding debentures

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

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.

(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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(11) Default in compliance with Order of the Tribunal: According to Section 71 (11), if any default is made in complying with the order of the Tribunal under this section, **every officer of the company who is in default** shall be punishable as under:

- with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

(12) 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.

LEGAL PROVISIONS WITH RESPECT TO DEBENTURES [S.71]

(13) 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.

(14) 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.



THANK YOU