

Share and Share-Capital

Share: Sec-2(46): Share is defined as “an interest having a money value and made up of diverse rights specified under the Articles of Association”

- The shares (or debentures) or other interests of any member in a company shall be movable property, transferable in the manner provided by the Articles of the company.
- **Sec-83:** Each share is to be distinguished by appropriate number.
- **Sec-84:** The share is evidenced by a **Share Certificate**
- **A share in a company creates a bundle of rights and obligations in the hands of the shareholder (Viswanath v East India Distilleries)**
- MOA must state the amount of Share Capital and the division thereof into shares of a fixed amount.

STOCK:

- The term stock may be defined as the aggregate of fully paid up shares of a member merged into one fund of equal value.
- Stock is expressed in terms of money and not in number of shares.
- Stock may be divided into fractions of any amount. Such fractions unlike shares will have no distinct numbers.

Conversion of shares into stock: (Article 36 to 39 of Table-A): A company may, by ordinary resolution

- convert any paid shares into stock ; and
- reconvert any stock into paid up shares.

Transferability : Article 37: The holder of stock may transfer the stock in any fraction.

Rights, Privileges, etc.: Same as shares from which it is converted.

- A Company cannot make an original issue of its stock.
- On conversion into stock, the register of members will show the amount of stock held by each member.

Distinction between Shares and Stock

- A share has a nominal value, whereas stock has no nominal value
- Stock is always fully paid-up, while shares may be partially or fully paid-up.
- Stock is transferable in fraction whereas shares can only be transferred in whole numbers.
- All shares are of equal denominations whereas stock may be of unequal amounts.
- All shares bear distinctive numbers whereas stock doesn't bear any distinctive number
- Shares can be issued directly to public whereas stock can't be. Only fully paid shares can be converted in stock

Types of Shares

- Preference shares
- Equity or ordinary shares

Preference shares : Sec-85(1): have two characteristics:

- They have a preferential right to be paid dividend during the lifetime of the company ; and
- They have a preferential right to the return of capital when the company goes into liquidation.

- Preference shares can be cumulative or non cumulative, redeemable or irredeemable.
- Voting rights of preference share holders:Section 87(2) preference shareholders can vote on the following matters :-
 - Any resolution for winding up of the company
 - Any resolution for reduction or repayment of the share capital
 - Any resolution at any meeting, if dividend on cumulative preference shares remains unpaid for two years at least.

Equity Shares:

- Equity shares, with reference to any company limited by shares, are those which are not preference shares.
- Equity shares do not carry a fixed rate of dividend.
- The holders of equity shares carrying voting rights shall have voting rights in proportion to the paid up equity capital of the company.
- Thus it may issue what are known as deferred shares. As deferred shares are normally held by promoters and directors of the company, they are usually called founders shares.
- They are usually of smaller denomination say 1 rupee each but they are given equal voting rights with equity shares of higher denomination.

Sweat Equity Shares: :

- These are equity shares issued by the company to employees or directors at a discount or for consideration other than cash.
- Sweat equity may be issued for providing technical know how or making intellectual property rights.

Conditions for sweat equity:

- It must be of a class of shares already issued
- Resolution must be passed at the general meeting
- Resolution must specify number of shares, current market price, consideration and the employees or directors to whom the issue is made.
- Not less than one year should have been elapsed since the date on which the company was entitled to commence business

Application and Allotment of Shares

1. General Provision regarding allotment
2. Statutory Provisions regarding allotment

Statutory Provisions

a) When no Public offer is made

b) When Public Offer is made

a) **When no Public Offer is made:**

A public co. can also raise capital by placing the shares privately without inviting public.

Since no public offer is made for shares, there is no need to issue any prospectus

However, a statement in lieu of prospectus is required to be delivered to Registrar of companies atleast three days before the allotment in case of first allotment of shares.

Allotment in contravention of this section will be irregular and voidable at the option of the allottee.

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When Public Offer is made

- 1) First Allotment of Shares
- 2) Subsequent Allotment of Shares
- 3) Allotment of Debentures.

First Allotment of Shares

- 1) Registration of Prospectus: Sec-60(1): on or before the date of publication
- 2) Minimum Subscription: No shares can be allotted until minimum subscription (90%) stated in prospectus has been subscribed and amount payable has been received in cash
- 3) Application Money: Should not be less than 5% of the Nominal value of the share.

Secondly, as per SEBI guidelines, application money cannot be less than Rs.2000/-

4) Opening and Closing of subscription lists: Sec-72(2)::

No allotment shall be made until the beginning of 5th day after the day on which prospectus is issued or on such later day as may be specified in the prospectus.

The allotment in contravention of the provision is valid.

However the company and every officer in default shall be liable to a fine upto Rs.50,000/-

5) Shares & Debentures to be dealt on a Stock

Exchange: Sec-73(1) : Every Company issuing shares/debentures to public by issue of prospectus shall, before such issue, make an application to one or more recognised stock exchanges for enlistment of shares/debentures. [Sec-73(1)]

Any allotment made on pursuance of such prospectus shall be void if the permission is denied by the stock exchange before the expiry of ten weeks from the date of closing of subscription lists.

The company shall forthwith repay all moneys received from the applicants within 8 days.

Failing which company and its officers will be liable to repay the money with interest @ 15% for the period of delay. [Sec-73(2)]

6) All moneys to be kept in Scheduled Bank:

In the event of default the company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs.50,000/-

7) Initial Offer of securities to be in dematerialized form in certain cases:Sec-69B: Every listed public company making initial public offer (IPO) of any security of Rs. 10 Crores or more shall issue the same in dematerialized form.

Application Procedure: On receipt of all the share applications by the company the directors shall proceed with the allotment of shares.

The letters of allotment are issued to the successful applicants and to others the application money is refunded

Subsequent Allotment of Shares: All the provisions related with first allotment would apply except:

- 1) minimum subscription Sec-69(1)
- 2) application money to be deposited in scheduled bank Sec-69(4)

Allotment of Debentures: All statutory provisions regarding first allotment of shares, except:

- 1) minimum subscription Sec-69(1)
- 2) the amount payable on application; [Sec-69(3)]
- 2) application money to be deposited in scheduled bank Sec-69(4)

Calls on Shares

Requisites of Valid Call:

1. According to the provisions of the Act & AOA (Regulation 13 of Table A)
2. Resolution of the Board of Directors:
3. Amount place and time of the call : BOD resolution must specify amount, time and place of payment and to whom the call is to be paid.
4. Notice of call
5. *Bona fide* and for the interest of the company.
6. Uniform basis
7. Time within which shares are to be made fully paid-up;
Within 12 months of date of allotment if size of issue is upto Rs.500 crores
If size of issue is >Rs.500 Crores then not more than 25% amount can't be called up on application, allotment or subsequent calls

8. SEBI Guidelines: Where the shares are listed on a stock exchange SEBI guidelines as regards making calls should be followed.

Share Warrants:

A public Company if authorized by its Articles and with previous approval of Central Govt., with respect to fully paid shares, issue a warrant stating that the bearer is entitled to shares specified therein.

A share warrant is a document issued under the common seal of the company stating that the bearer is entitled to the shares specified therein.

A Share Warrant is a bearer document and is transferable by mere delivery.

A Share Warrant is a negotiable instrument.

The name of the member is to be struck off the register of members.

The annual report must state amount of shares for which warrants issued, number of share warrants issued, number of shares comprised in each warrant

Alteration of Capital

U/s 94 a company limited by shares, if authorised by its Articles, alter the conditions in MOA related with its share capital, by passing an ordinary resolution, in order to:

- (a) increase its share capital by issuing new shares;
- (b) consolidation and divide all or any of its share capital into shares;
- (c) convert all or any of its fully paid-up shares into stock or reconvert stock into fully paid-up shares
- (d) sub divide its shares into shares of smaller amount;
- (e) cancel shares which have not been taken by any person.

Alteration of Capital

- Ordinary resolution only
- Bona fide in the interest of the company.
- Notice to Registrar within 30 days of passing resolution.
- Registrar will make changes in MOA/AOA
- In the event of default, company and every officer will be punishable with a fine upto Rs.500 per day of default (U/s 95)

Similar Notice to registrar:

When company not having share capital increases its membership

Reduction of Share Capital

Reduction without the consent of the Tribunal:

- (a) redeemable preference shares are redeemed in accordance with the provisions of section 80
- (b) unissued shares are canceled
- (c) where shares are forfeited for non-payment of calls
- (d) where there is surrender of shares or gift is made to the company of its own shares.
- (e) The company purchases its own shares u/s77A.
- (f) The Tribunal, u/s 397/398 order purchase of shares of the company by the company

Reduction with the consent of Tribunal:

Sec-100, gives company limited by shares or a company limited by guarantee and having share capital powers to reduce its share capital.

The reduction can only be made;

(I) if authorised by its Articles,

(ii) by passing a Special Resolution,

(iii) confirmed by the Tribunal

(iv) registration of order of Tribunal with Registrar

Liability of members on reduction

-Members' liability is limited to difference, if any, between the amount of the share as fixed and amount paid up.

If the company is unable to pay the claim of creditors who is ignorant of such reduction and who was not entered in the list of creditors;

-Every member will be liable to contribute for the payment of claim, not exceeding amount which would be before such reduction.

-if the company is wound up, the Tribunal on the application of such creditors may settle a list of members so liable to contribute and enforce calls on them as if they were ordinary contributories in a winding up (u/s-104)