

COMPANIES ACT, 2013

**SHARE CAPITAL
AND
DEBENTURES**



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

SHARE CAPITAL AND DEBENTURES

1. INTRODUCTION

Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The share capital may be altered or increased, subject to certain conditions. A company's share capital may be divided into small shares of different classes. The different classes of share capital and the rights attached to these classes are different.

2. NATURE OF SHARES

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) "share" means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Share, debentures or other interest of any member in a company shall be movable property. It shall be transferable in any manner provided for in the articles of association of the company. A member may transfer any "other interest" in the company in the manner provided in the articles. For example rights attached to a member in a guarantee company such as membership interest, suspension of membership or assignment of interest may be made transferable by making a provision in the Articles of the company.

3 TYPES OF SHARE CAPITAL

A. *Equity Share Capital*

Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:

- (a) equity share capital—
 - (i) with voting rights; or

- (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital:

“Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital. As per section 43 (a) equity share capital may be divided on the basis of voting rights and differential rights(DVR) as to dividend, voting rights or otherwise according to the rules.

A DVR share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in voting rights can be achieved by reducing the degree of voting power. It is ideal for long term investors, typically small investors who seek higher dividend and are not necessarily interested in taking a voting position.

The Companies (Share Capital and Debentures) Rules, 2014 (hereinafter referred to as Rules) provide that no company whether it is unlisted, listed or a public company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

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

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

- (c) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the company having consistent track record of distributable profits for the last three years;
- (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- (f) the company has no subsisting default in the payment of a

declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

- (g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;
- (h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

The Rules as aforesaid clearly state that the company shall issue DVR shares only after approval from shareholder by passing a ordinary resolution. It further provides that a listed company where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.

The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 or of a postal ballot pursuant to section 110 shall contain the following particulars:

- (a) the total number of shares to be issued with differential rights;
- (b) the details of the differential rights;
- (c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the reasons or justification for the issue;
- (e) the price at which such shares are proposed to be issued either at par or at premium;
- (f) the basis on which the price has been arrived at;

- (g) (i) in case of private placement or preferential issue –
 - (a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;
 - (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
- (ii) in case of public issue – reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
- (h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
- (i) the scale or proportion in which the voting rights of such class or type of shares shall vary;
- (j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
- (k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;
- (l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

The Rules further provide that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

According to the Rules the Board's Report for the financial year in which the issue of equity shares with differential rights was completed shall include the following details with respect to DVR shares:

- (a) total number of shares allotted with differential rights;
- (b) details of the differential rights relating to voting rights and dividends;
- (c) the percentage of the shares with differential rights to the

total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

- (d) price at which such shares have been issued;
- (e) particulars of promoters, directors or key managerial personnel to whom such shares are issued;
- (f) change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
- (g) diluted Earning Per Share pursuant to the issue of such each class of shares, calculated in accordance with the applicable accounting standards;
- (h) pre and post issue shareholding pattern along with voting rights in the same specified format as given in explanatory statement.

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

The company issuing equity shares with differential rights, shall ensure that the Register of Members contains all the relevant particulars of the shares so issued along-with details of the shareholders.

B. Preference Share Capital

The other type of share capital is the "Preference share capital". According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However 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.

With reference to any company limited by shares, Preference share capital means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

- (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and

- (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

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

4 SHARE CERTIFICATE

Every share in a company having share capital shall be distinguished by distinctive number. This section does not apply to shares held by a person as a beneficial owner in depository.

Section 46 of the Act declares that a certificate, issued by the company under the common seal of the company shall be prima facie evidence of the title of the person to such shares. Such certificate shall specify the shares held by any person. Where the shares are held in dematerialised form the record of the depository is the prima facie evidence of the interest of the beneficial owner.

Section 56 sub clause 4 provides that 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—

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment, in the case of any allotment of any of its shares.

The manner of issuance of a certificate of shares or the duplicate

thereof, the form of such certificate, the particulars to be entered in the register of members are prescribed under Rules.

The manner of issuance of a certificate of shares the rules provide that no certificate of any share or shares held in the company shall be issued, except:

- (a) in pursuance of a resolution passed by the Board; and
- (b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

Every certificate of share or shares shall be in Form No. SH-1 or as near thereto as possible and shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid-up thereon.

The rules further provide that every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by:

- (a) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and
- (b) the secretary or any person authorized by the Board for the purpose. Where a Company Secretary is appointed under the provisions of law, he shall be authorized for the purpose of this rule.

In companies wherein a Company Secretary is appointed under the provisions of the Act, he shall deemed to be authorised for the purpose of this rule. If the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director.

Further in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the

Company Secretary, or any other person authorized by the Board for the purpose.

A director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

Particulars of every share certificate issued shall be entered in the Register of Members along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

Issuance of Duplicate Certificate

As for the duplicate certificate of shares section 56 provides that the same may be issued, if original certificate —

- (a) is proved to have been lost or destroyed; or
- (b) has been defaced, mutilated or torn and is surrendered to the company.

As for the manner of issuance of a duplicate certificate of shares the rules provide:

- (A) no certificate of any share or shares shall be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the cages on the reverse for recording transfers have been duly utilized, unless the certificate in lieu of which it is issued is surrendered to the company.

The company may charge such fee as the Board thinks fit, not exceeding twenty rupees per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out.

Where a certificate is issued in any of the aforesaid circumstances, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government.

A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered, in the manner of issuance of original share certificates discussed above.

- (B) The rules provide that no duplicate share certificate shall be issued in lieu of those that are lost or destroyed, without the prior consent of the Board or without payment of such fees as the Board thinks fit, not exceeding rupees fifty per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced.

Where a certificate is issued in any of the aforesaid circumstances it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is “duplicate issued in lieu of share certificate No.....”. Further, the word “duplicate” shall be stamped or printed prominently on the face of the share certificate.

The Duplicate Share Certificates shall be issued:

- in case unlisted companies, within a period of three months.
- in case of listed companies, within fifteen days, from the date of submission of complete documents with the company.

Particulars of every share certificate issued shall be recorded in a Register of Renewed and Duplicate Share Certificates. Such register shall be maintained in Form No. SH-2 indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the “Remarks” column.

Such register shall be kept at the registered office of the company or at such other place where the Register of Members is kept. The register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorized by the Board for purposes of sealing and signing the share certificate.

Maintenance of share certificate forms and related books and documents

- (A) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board. The blank form shall be consecutively machine-numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may authorize for the purpose; and the company secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.
- (B) The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates, namely:—
 - (a) the committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or
 - (b) where the company has no company secretary, a Director specifically authorised by the Board for such purpose.
- (C) All books shall be preserved in good order for not less than thirty years and in case of disputed cases, shall be preserved permanently, and all certificates surrendered to a company shall immediately be defaced by stamping or printing the word “cancelled” in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf.

Nothing in this sub-rule shall apply to cancellation of the certificates of securities, under sub-section (2) of section 6 of the Depositories Act, 1996 (22 of 1996), when such certificates are cancelled in accordance with sub-regulation (5) of regulation 54 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, made under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 25 of the Depositories Act, 1996 (22 of 1996).

Related Penal Provision

The Act has provides for stringent penal provisions. If a company issues duplicate shares with an intention to defraud public, the company shall be punishable with a fine which will range from five times and ten times of the face value of the shares or Rs. 10 crore whichever is higher and every officer in default shall be liable for action for fraud under section 447.

As per Section 447 of the -Act any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

For the purpose of this section,

- (i) "fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

5 VOTING RIGHTS

Section 47 of the Act provides that every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

In case of member of a company limited by shares and holding preference share capital, shall have a right to vote only on

- resolutions placed before the company which directly affect the rights attached to his preference shares and,

- any resolution for the winding up of the company or
- for the repayment or reduction of its share capital.

Voting right of holder of preference share capital shall be in proportion to his share in the paid-up preference share capital of the company. The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

Preference shareholders are entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such class of preference shares are in arrears for a period of two years or more.

6 CALLS, FORFEITURE & REISSUANCE

Calls

According to section 49 of the Act, where any calls for further share capital are made on the shares of a class, such call shall be made on a uniform basis on all shares falling under that class. There cannot be any discrimination between shareholders of the same class as regards amount and time of repayment of call.

Usually articles of association provide for the manner in which the unpaid amount on shares. The pattern followed in this case is similar to as given in schedule I Table F provision 13 to 18. These provisions are as under:

13. (i) The Board may, from time to time, make calls upon the members in respect of any monies unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times:

Provided that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.
- (ii) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.
- (iii) A call may be revoked or postponed at the discretion of the Board.

14. A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.
15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.
16. (i) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at ten per cent per annum or at such lower rate, if any, as the Board may determine.
(ii) The Board shall be at liberty to waive payment of any such interest wholly or in part.
17. (i) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.
(ii) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.
18. The Board—
 - (a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the monies uncalled and unpaid upon any shares held by him; and
 - (b) upon all or any of the monies so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, twelve per cent per annum, as may be agreed upon between the Board and the member paying the sum in advance.

According to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 if the issuer proposes to

receive subscription monies in calls, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue. If any allottee fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

Further it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency.

According to section 50 of the Act if a company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up.

A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him in advance until that amount has been called up.

A company if authorised by its articles may pay dividends in proportion to the amount paid-up on each share. In the case of preference shares, dividend shall be paid on fixed rate. In case of equity shares, dividend may be paid according to amount paid-up on the shares.(Section 51)

FORFEITURE OF SHARES

The provision with regard to forfeiture of shares is contained in Table F (Articles of Association of Company Limited by Shares). Provisions under Table F of the schedule I relating to forfeiture of shares are as under:

28. If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.
29. The notice aforesaid shall—
 - (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on

or before which the payment required by the notice is to be made; and

- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made shall be liable to be forfeited.
30. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
31. (i) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.
- (ii) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.
32. (i) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all monies which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.
- (ii) The liability of such person shall cease if and when the company shall have received payment in full of all such monies in respect of the shares.
33. (i) A duly verified declaration in writing that the declarant is a director, the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share;
- (ii) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of;
- (iii) The transferee shall thereupon be registered as the holder of the share; and
- (iv) The transferee shall not be bound to see to the application

of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

34. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

According to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the issuer company needs to call all the outstanding subscription money within one year of allotment and if any allottee fails to pay the call money within the twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be forfeited.

The company derives its authority to forfeit shares through the Articles. Where the articles provide for forfeiture of shares with respect to manner of forfeiting shares, the company must comply with the same or else forfeiture shall be void.

REISSUANCE OF SHARES

Shares forfeited by a company may either be cancelled or reissued to another person at the discretion of the Board. Reissue of forfeited shares is a sale of shares and it does not amount to an allotment. According to Secretarial Standard on Forfeiture of Shares the directors would fix a price for the forfeited share that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture.

In the case of a company whose shares are listed in a recognized stock exchange, re-issue of forfeited shares shall be as per Guidelines for Preferential Issue of the Securities and Exchange Board of India and the listing agreement.

7 VARIATION OF SHAREHOLDERS' RIGHTS : (Section 48 yet to be notified)

Section 48 of the Act provides that where share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied---

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or

- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Such variation of rights of shares of particular class shall be made in either of the following ways:

- with the consent in writing of the holders of not less than three-fourths of the issued shares of that class; or;
- by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class

Where variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled. Such application shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Under above circumstance, the variation shall not have effect unless and until it is confirmed by the Tribunal. The decision of the Tribunal on the application shall be binding on the shareholders. The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand 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 six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

8 ISSUE OF SHARES

(A) Issue of Shares at Premium

Where a company issues shares at a premium, whether for cash

or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account". The provisions of this Act relating to reduction of share capital of a company shall, except as provided in section 52, apply as if the securities premium account were the paid-up share capital of the company. (Section 52)

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

Certain 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, can utilise securities premium account only for the following purposes:-

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- (b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- (c) for the purchase of its own shares or other securities under section 68.

(B) Issue of Shares at Discount

A company under section 53 of the Act has been prohibited to issue shares at discount, except in case of issue of sweat equity shares. Any share issued by a company at a discounted price shall be void.

Where a company contravenes the provisions of 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 who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(C) *Issue of Sweat Equity Shares*

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

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

The rules have defined ‘value additions’ to mean actual or anticipated economic benefits derived or to be derived by the company from an expert and/or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in-

- (a) the normal remuneration payable under the contract of employment, in the case of an employee; and/or
- (b) monetary consideration payable under any other contract, in the case of non-employee.

According to section 54 an unlisted company may issue sweat equity shares of a class of shares which has already been issued. The company shall satisfy the following conditions, namely:—

- (a) the issue is authorised by a special resolution passed by the company;
- (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and

- (d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

SEBI (Issue of Sweat Equity) Regulations, 2002 shall be applicable to all the listed companies, in all other cases rules shall be applicable.

Under rules an unlisted company shall not issue sweat equity shares unless the issue is authorized by a special resolution passed by the company in general meeting.

The rules for the purposes of sweat equity has defined 'Employee' so as to mean (a) a permanent employee of the company who has been working in India or outside India, for at least the last one year; or (b) a director of the company, whether a whole time director or not; or (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

Explanatory Statement : As mentioned earlier, special resolution shall be passed for the purpose of issue of sweat equity share, the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following particulars:

- (a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;
- (b) the reasons/justification for the issue;
- (c) the class of shares under which sweat equity shares are intended to be issued;
- (d) the total number of shares to be issued as sweat equity;
- (e) the class or classes of directors or employees to whom such equity shares are to be issued;
- (f) principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;
- (g) time period of association of such person with the company;
- (h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;
- (i) the price at which the sweat equity shares are proposed to be issued;

- (j) the consideration including consideration other than cash, if any to be received for the sweat equity;
- (k) ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how is it proposed to be dealt with;
- (l) a statement to the effect that the company shall conform to the applicable accounting standards; and
- (m) diluted Earning Per Share pursuant to the issue of sweat equity securities, calculated in accordance with the applicable accounting standards.

Validity: The special resolution authorizing the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

Maximum extent of Issue: The company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of sweat equity shares in the Company shall not exceed 25% of the paid up equity capital of the Company at any time.

Lock in period: Sweat equity shares issued to directors or employees shall be locked in/non transferable for a period of three years from the date of allotment. The fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

Valuation: The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation. The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation. A copy of the valuation report obtained in both the above cases shall be sent to the share holders with the notice of the general meeting.

Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company: (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company

in accordance with the accounting standards; or (b) where clause (a) is not applicable, it shall be expensed as provided in the accounting standards.

Part of managerial remuneration: The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act if the following conditions are fulfilled: (a) the sweat equity shares are issued to any director or manager; and (b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

Disclosure in Directors' Report: The Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares:

- (a) Class of director/ employee to whom sweat equity shares were issued;
- (b) Class of shares issued as Sweat Equity Shares;
- (c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- (d) the reasons/justification for the issue;
- (e) Principal terms and conditions for issue of sweat equity shares, including pricing formula;
- (f) the total number of shares arising as a result of issue of sweat equity shares;

- (g) percentage of the sweat equity shares of the total post issued and paid up share capital;
- (h) consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- (i) diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

Register: A Register of Sweat Equity Shares shall be maintained by the company in Form No. SH-3 and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54. The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide. Entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.

(D) Issue and Redemption of Preference Shares

According to section 55 of the Act, company limited by shares cannot issue any preference shares which are irredeemable. However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

According to the Rules a company having a share capital may, if so authorised by its articles, may issue preference shares subject to the following conditions, namely:-

- (a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company;
- (b) the company, at the time of such issue of preference shares, has no 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.

Under the rules a company issuing preference shares shall set out in the resolution, following

- (a) the priority with respect to payment of dividend or repayment of capital vis-a-vis equity shares;
- (b) the participation in surplus fund;

- (c) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;
- (d) the payment of dividend on cumulative or non-cumulative basis;
- (e) the conversion of preference shares into equity shares;
- (f) the voting rights;
- (g) the redemption of preference shares.

The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall, inter-alia, provide the complete material facts concerned with and relevant to the issue of such shares, including-

- (a) the size of the issue and number of preference shares to be issued and nominal value of each share;
- (b) the nature of such shares i.e. cumulative or non - cumulative, participating or non - participating , convertible or non - convertible;
- (c) the objectives of the issue;
- (d) the manner of issue of shares;
- (e) the price at which such shares are proposed to be issued;
- (f) the basis on which the price has been arrived at;
- (g) the terms of issue, including terms and rate of dividend on each share, etc.;
- (h) the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
- (i) the manner and modes of redemption;
- (j) the current shareholding pattern of the company;
- (k) the expected dilution in equity share capital upon conversion of preference shares.

The company issuing preference shares shall incorporate the particulars in respect of such preference share holder(s) in the Register of Members maintained under section 88. Further a company intending to list its preference shares on a recognized stock exchange

shall issue such shares in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

A company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:-

- (a) at a fixed time or on the happening of a particular event;
- (b) any time at the company's option; or
- (c) any time at the shareholder's option.

Issue and redemption of preference shares by company in infrastructural projects.- A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

"Infrastructure Projects" have been covered defined under Schedule VI of the Act.

Conditions for redemption

Preference shares can be redeemed under following conditions:

- Redemption can be made in any of the two procedures i.e. either 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.
- Preference shares shall be redeemed only when they are fully paid up.
- In case the company proposes redemption of shares 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 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.

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.

- Certain class of companies as may be prescribed and whose financial statements comply with the accounting standards prescribed under section 133, for such class of companies, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed. For other companies 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.

Inability to redeem (Sub-section 3 of Section 55) (Yet not notified)

There may be a situation 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). Under such circumstance a company 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.

The Tribunal shall while giving approval order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.

It has been clarified that the issue of further redeemable preference shares or the redemption of preference shares under shall not be deemed to be an increase or, a reduction, in the share capital of the company.

(E) Issue of Bonus Shares

Section 63 of the Act 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:

The section specifically clarifies that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets. The bonus shares shall not be issued in lieu of dividend.

Conditions for issue: No company shall issue fully paid-up bonus shares unless—

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

Under the rules no company which has once announced the decision of its Board recommending a bonus issue, can subsequently withdraw the same.

(F) Further Issue of Capital

Eligibility: According to section 62(1) of the Act 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 to the following:

- (a) 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. The offer shall be made by notice specifying the number of shares offered. The offer shall be open for a period not being less than fifteen days and not exceeding thirty days from the date of the offer. If the offer is not accepted within the period it shall be deemed to have been declined.

Further, 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 shall contain a statement of this right. Hence a company may restrict the right of renunciation by its Articles.

It has been clarified that 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 disadvantageous to the shareholders and the company

The notice mentioned aforesaid shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.

- (b) employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed.
- (c) 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 such conditions as may be prescribed.

Under the rules a company may if authorized by a special resolution passed in a general meeting, issue shares in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62. Such issue on preferential basis should also comply with conditions laid down in section 42 of the Act (private placement):

The price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Under the rules 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

“Shares or other securities” means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the SEBI, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements:-

- (a) the issue is authorized by its articles of association;
- (b) the issue has been authorized by a special resolution of the members;
- (c) securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.

The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

- (i) the objects of the issue;
- (ii) the total number of shares or other securities to be issued;
- (iii) the price or price band at/within which the allotment is proposed;
- (iv) basis on which the price has been arrived at along with report of the registered valuer;
- (v) relevant date with reference to which the price has been arrived at;
- (vi) the class or classes of persons to whom the allotment is proposed to be made;
- (vii) intention of promoters, directors or key managerial personnel to subscribe to the offer;
- (viii) the proposed time within which the allotment shall be completed;
- (ix) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- (x) the change in control, if any, in the company that would occur consequent to the preferential offer;
- (xi) the number of persons to whom allotment on preferential

- basis have already been made during the year, in terms of number of securities as well as price;
- (xii) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
 - (xiii) Pre issue and post issue shareholding pattern of the company in the format specified in the Rules.

Completion Period: the allotment of securities on a preferential basis made pursuant to the special resolution passed are required to be completed within a period of twelve months from the date of passing of the special resolution. Where the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

Rights of Convertible Securities: The section provides that nothing in this section (Section 62) 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. It is essential 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.

As per Section 62 (4)* Where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

In terms of proviso, 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.

In terms of Section 62(5)*, in all the circumstances the Government shall have due regard to the financial position of the

* sub-sections not notified

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.

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

Determination of Price: the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer.

Where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act.

Further where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

The preferential offer of shares made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-

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

9 TRANSFER, TRANSMISSION

The scope of transfer of securities have been widened under section 56 of the Act to include all the securities of the company and

* sub-sections not notified

the interest of a member in the company in the case of a company not having no share capital.

General Condition: The section provides that a company shall not register a transfer of securities, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed. Such form shall be

- duly stamped,
- dated and executed by or on behalf of the transferor and the transferee, and
- specify the name, address and occupation, if any, of the transferee.

Under the rules an instrument of transfer of securities held in physical form shall be in Form No. SH-4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution. In the case of a company having no share capital, the provisions aforesaid rule shall apply to the interest of the member in the company.

Time period: Aforesaid form shall be delivered to the company by the transferor or the transferee within a period of sixty 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.

Loss of instrument: Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period i.e. within sixty days from date of execution, the company may register the transfer on such terms as to indemnity as the Board may think fit.

Partly paid up Shares: The section provides that where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice.

According to Rules a company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH.5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

Transmission of shares: On receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted the company shall exercise its power to register the same. Further the section provides that 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.

Delivery of securities: The Company shall deliver the certificates of all securities transferred or transmitted within a period of one month from the date of receipt by the company of the instrument of transfer or, of the intimation of transmission.

Further the section provides 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.

Penal Provisions: The company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Refusal of Registration

Private Company

Section 58 of the Companies Act, 2014 in case a private company limited by shares refuses, to register the transfer of, or the transmission, 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.

Appeal: 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.

Public Company

The securities or other interest of any member in a public company shall be freely transferable subject to the provision that any

contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.

Where 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, 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.

Power of Tribunal: The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

Penal Provision : 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.

Rectification of Register of Members

Under section 88 of the Act every company is required to maintain a register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India. Further the section provides that for all the purposes of this Act the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index.

Section 59 of the Act provides that there may be a case where the name of any person is entered in the register of members of a company, or is omitted therefrom, without sufficient cause, or a default is made, or unnecessary delay takes place in entering in the register. Under this case 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.

The Tribunal may, after hearing the parties to the appeal by order either—

1. dismiss the appeal or;
2. 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;
3. 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.

These provisions 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.

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.

Penal Provision: If any default is made in complying with the order of the Tribunal 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.

10. ALTERATION OF CAPITAL

(A) Power of limited company to alter its share capital

According to section 61 of the Act a limited company having a share capital derives its power to alter its share capital through its articles of association. As per the section the company may 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. The proviso to Section 61(1)(b) clarifies that 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 (This proviso not notified).
- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be a reduction of share capital.

According to section 64, where—

- (a) a company alters its share capital in any manner specified in sub-section (1) of section 61;
- (b) an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
- (c) a company redeems any redeemable preference shares, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

Where the company and any officer of the company who is in default contravenes it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

(B) Buyback of Securities

According to Section 68(1) of Act a company whether public or

private, may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of any shares or other specified securities.

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

Thus, the company must have at the time of buy-back, sufficient balance in any one or more of these accounts to accommodate the total value of the buy-back.

“Specified securities” as referred to in the explanation to the section includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

“Free reserves” as referred to in the explanation includes securities premium account.

Authorisation: The primary requirement is that the articles of association of the company should authorise buyback. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back. Buy-back can be made with the approval of the Board of directors at a meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy back. In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

Quantum:

- (a) Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company and such buy back has to be authorized by the board by means of a resolution passed at the meeting.
- (b) Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company. In respect of any financial year, the shareholders can approve by special resolution upto 25% of total equity capital in that year.

Post buy-back debt-equity ratio: The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves i.e the

ratio shall not exceed 2:1. However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

All the shares or other specified securities for buy-back are to be fully paid-up.

Buyback by listed/unlisted companies:

- The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
- The buy-back in respect of shares or other specified securities other than listed securities is in accordance with such rules made under Chapter IV of the Act.

Time gap:

No offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

Explanatory statement:

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

- (a) a full and complete disclosure of all material facts;
- (b) the necessity for the buy-back;
- (c) the class of shares or securities intended to be purchased under the buy-back;
- (d) the amount to be invested under the buy-back; and
- (e) the time-limit for completion of buy-back.

Additionally the rules provide for following disclosures in explanatory statement with respect to private companies and unlisted public companies:

- (a) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;
- (b) the objective of the buy-back;
- (c) the class of shares or other securities intended to be purchased under the buy-back;

- (d) the number of securities that the company proposes to buy-back;
- (e) the method to be adopted for the buy-back;
- (f) the price at which the buy-back of shares or other securities shall be made;
- (g) the basis of arriving at the buy-back price;
- (h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- (i) the time-limit for the completion of buy-back;
- (j)
 - (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;
 - (ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
 - (iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date;
- (k) if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back –
 - (i) the quantum of shares proposed to be tendered;
 - (ii) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
- (l) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

- (m) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
- (i) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
 - (ii) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
 - (iii) the directors have taken into account the liabilities (including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013
- (n) a report addressed to the Board of directors by the company's auditors stating that-
- (i) they have inquired into the company's state of affairs;
 - (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;
 - (iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and
 - (iv) the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

Procedure: According to the rules the company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No.SH-8, along with the fee as prescribed. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less

than two directors of the company, one of whom shall be the managing director, where there is one.

Filing Declaration of Solvency with SEBI/ROC: When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board (in case of listed companies), a declaration of solvency in Form SH-9 signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit as specified in said form.

Dispatch of letter of Offer: The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

Validity: The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer.

Acceptance on proportional basis: In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

Time limit for verification: The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.

Separate Account: The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back.

Payment of consideration/returning of share certificates: The company shall within seven days of the time limit of verification:

- (a) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted, or

- (b) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance .

The rules further provide that the company shall ensure that—

- (a) the letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document;
- (b) the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments;
- (c) the company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;
- (d) the company shall not withdraw the offer once it has announced the offer to the shareholders;
- (e) the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and
- (f) the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

Time limit for completion of buyback

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

Methods of buy-back

The buy-back may be—

- (a) from the existing shareholders or security holders on a proportionate basis;
- (b) from the open market;
- (c) by purchasing the securities issued to employees of the

company pursuant to a scheme of stock option or sweat equity.

Extinguishment of securities bought back:

When a company buys back its own shares 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.

Prohibition of further issue of shares or securities:

When a company completes a buy-back of its shares or other specified securities it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a 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.

Register of buy-back:

When a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

According to the rules the register of shares or securities bought-back shall be maintained in Form SH-10, at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

Return of buyback:

A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board (in case of listed companies) a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

The company shall file with the Registrar, and in case of a listed company with the Registrar and the SEBI, a return in the Form No.

SH-11 along with the 'fee'. There shall be annexed to the return filed with the Registrar in Form No. SH-11, a certificate in Form No. SH-15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and rules made thereunder.

Penal Provisions: If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the company 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 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: When a company purchases 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 and details of such transfer shall be disclosed in the balance sheet. 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.

Circumstances prohibits buy-back: Under Section 70, no company shall directly or indirectly purchase its own shares or other specified securities—

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial 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.

No company shall, directly or indirectly, purchase its own shares

or other specified securities in case such company has not complied with the provisions of sections 92(Annual Return), 123(Declaration of Dividend), 127(punishment for failure to distribute dividend) and section 129(Financial Statement).

11. DEBENTURES

Section 71 of the Act enables that a company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. The issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting. The section prohibits issue of debentures carrying voting rights.

A company may issue secured debentures subject to such terms and conditions as may be prescribed.

The rules in this regard provide that no company shall issue secured debentures unless it complies with the following conditions:

- (a) an issue of secured debentures may be made, provided the date of its redemption shall not exceed 10 years from the date of issue. A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;
- (b) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders ; and
- (d) security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on-
 - (i) any specific movable property of the company (not being in the nature of pledge), and/or
 - (ii) any specific immovable property wherever situate, or any interest therein.

The section provides that no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company

has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. In simple terms the company shall not issue prospectus to more than 500 hundred persons without appointing debenture trustee.

In this regard the Rules provide thus:

The company shall appoint debenture trustees after complying with the following conditions:

- (a) The names of the debenture trustees shall be stated in the prospectus or letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders.
- (b) Before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.
- (c) No person shall be appointed as a debenture trustee, if he-
 - (i) beneficially holds shares in the company;
 - (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
 - (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
 - (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
 - (vi) has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
 - (vii) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel

- (d) The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act. Where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.
- (e) Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

The section provides 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. The Rules provide it shall be the duty of every debenture trustee to-

- (a) satisfy himself that the prospectus or letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;
- (b) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;
- (c) call for periodical status/performance reports from the company;
- (d) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee therefor;
- (e) appoint a nominee director on the Board of the company in the event of:
 - (i) two consecutive defaults in payment of interest to the debenture holders; or
 - (ii) default in creation of security for debentures; or
 - (iii) default in redemption of debentures.
- (f) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;
- (g) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

- (h) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;
- (i) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;
- (j) do such acts as are necessary in the event the security becomes enforceable;
- (k) call for reports on the utilization of funds raised by the issue of debentures;
- (l) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;
- (m) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;
- (n) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

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. 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.

The Rules with respect to trust deed provide that:

- (a) A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and
- (b) A copy of the trust deed shall be forwarded to any member

or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

With respect to meeting of debenture holder the rules provides thus:

The meeting of all the debenture holders shall be convened by the debenture trustee on-

- (a) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;
- (b) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

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. The rules provide that a trust deed in Form No. SH-12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures in other cases.

It has been provided in the Rules that the provisions relating to debenture trustees, shall not be applicable to the public offer of debentures.

Redemption of Debentures:

Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The Rules with regard to debenture redemption reserve account provide that the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

- (a) Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;
- (b) Company shall create Debenture Redemption Reserve equivalent to at least 50% of the amount raised through the debenture issue before debenture redemption commences.

- (c) Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent of the amount of its debentures maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods:-
- (i) In deposits with any scheduled bank, free from any charge or lien;
 - (ii) In unencumbered securities of the Central Government or of any State Government;
 - (iii) In unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of Section 20 of the Indian Trusts Act, 1882;
 - (iv) In unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trusts Act, 1882.

The amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above, provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen percent of the amount of the debentures maturing during the year ending on 31st day of March of that year.

- (d) In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (e) The amount credited to the Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.

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 (This sub-section not notified)

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.

Penal Provisions: If any default is made in complying with the order of the Tribunal, every officer of the company who is in default shall be punishable 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 (This subsection not notified).

12. NOMINATION

Section 72 of the Act enables every security holder to appoint a nominee who shall be the owner of the instrument in the event of death of the holder or the joint holder unless the nomination is varied or cancelled. The section provides that every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

Where the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

According to the rules any holder of securities of a company may, at any time, nominate, in Form No. SH-13, any person as his nominee in whom the securities shall vest in the event of his death. Following steps shall be ensured:

- On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.
- Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No. SH-13 any person as nominee.
- The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.
- In the event of death of the holder of securities or where the shares or debentures are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production

of such evidence as may be required by the Board, elect, either-

- (a) to register himself as holder of the shares or debentures;
or
 - (b) to transfer the shares or debentures, as the deceased holder could have done.
- If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).
 - All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.
 - A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company. The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of

the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH-14. The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Further where the nominee is a minor, the holder of the shares or debentures, making the nomination, may appoint a person in Form No. SH-17 who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

13. CONCLUSION

With the provisions relating to issue of securities in the Act, the regulators have tried to rationalise the activities of the unlisted companies in comparison to the listed companies. Most of the provisions in the Chapter remain the same with strong enforcement tool i.e. stricter penal provision. In this chapter we see lot of consolidation of the sections with a rationalised approach.
