

# Partly Paid-Up Shares: Legal Framework and Treatment in Corporate Actions

Partly paid-up shares are a long-standing concept and has been applied by companies in the Indian capital markets for many years. Initially, partly paid-up shares were issued by companies with a dual motive:

1. Companies could enjoy the flexibility of raising funds to meet their amortised / deferred Cash Flow requirements and
2. It facilitated the retail investors to enter the capital market with minimum cash requirements and allowed them a deferment for fully subscribing to the share's ownership.

Nowadays, very few companies issue partly paid equity shares, and the motive for issuing partly paid-up shares has changed from a dual fold approach to a multifold motive. This article combines and explains the treatment of partly paid-up shares while undertaking any corporate action.



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## INTRODUCTION

Companies Act, 2013 permits companies to issue shares either fully paid and / or partly paid. Nowadays, partly paid shares are often used as a tool to match the cash flow requirement of the Company and also assure Investor by facilitating him deferred infusion tagged along to the performance matrix. Therefore, this instrument is gaining popularity among investors and the Company. Companies are also issuing partly paid-up shares as a cash flow management or other strategy.

In designing and issuance of shares or structuring of share capital, companies often resort to various corporate actions like private placement, rights issue, bonus issue, split or consolidation of shares, etc. The compliance officer needs to work on the minutest detail to give justice to all the aspects pertaining to the structuring, designing, compliance and after effects of issuance of partly paid-up Shares.

## PARTLY PAID-UP SHARES

Partly paid-up shares are those where the shareholder has paid only a fraction / portion of the total face value (including

premium, if any) to the company towards subscription and / or call money of the Share. The remainder amount (uncalled capital) is treated as a liability of the shareholder, which the company can “call” (demand) at a later date in the manner as the Board deem fit in compliance with the Shareholder’s approval (wherever required).

**Example 1:** If Face Value of a share is ₹10 – the company might demand ₹4 at the time of application and allotment. The remaining amount i.e. ₹6 becomes the “uncalled capital.”

## ISSUE OF PARTLY PAID-UP SHARES

Companies often issue partly paid-up shares when they have a long-term project that requires capital in phases rather than all at once. This strategic move allows Companies to accept the cash inflow as and when required. It also facilitates the Companies to maintain the Return on Equity Ratio (ROE).

### Advantages and Disadvantages

	Company	Investors
<b>Advantages</b>	<ul style="list-style-type: none"> <li>Funds can be available in a short duration as and when required.</li> <li>Helps to maintain ideal cash flow.</li> </ul>	<ul style="list-style-type: none"> <li>Cash outflow is limited and in deferred manner which helps them participate with a deferred liability.</li> <li>Investors also have an option to opt out, if the company is not achieving the desired milestones.</li> </ul>

<b>Disadvantages</b>	<b>Non-Fulfilment Risk:</b> Investors may not respond to the calls which results into forfeiture of shares and desired cash flow targets may not be achieved. <b>Compliance Cost:</b> The company needs to bear the cost of compliance apportioned to each call event.	Investors are obligated to pay for the calls irrespective of market conditions and their existing commitments (which may result in a lack of liquid cash available). Risk of Forfeiture of shares and confiscation of amounts paid till calls – in case of non-payment.
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## Calls

### The Process of Making a Call

The process typically follows these five key steps:

#### 1. Board's Approval

The power to make a call lies with the Board of Directors (Section 179). However, the Board must comply with the performance parameters (if any) executed in a Shareholders' Agreement.

#### 2. Statutory Treatment with respect to Shares issued at Premium

Shares are issued on a premium and also partly paid:

##### a) Call of Entire Unpaid Amount

The company may call the entire unpaid portion of the face value along with the unpaid securities premium, thereby resulting in the shares becoming fully paid-up.

##### b) Call of Unpaid Amount in Parts

The company may also call the unpaid face value and the unpaid securities premium in parts. For example, out of ₹10/- Face Value, ₹6/- towards face value and ₹4/- towards premium is outstanding (unpaid). In this case Company may call for ₹5/- towards face value and ₹4/- towards premium. Even after such call, ₹1/- (towards face value) can be maintain as unpaid and status of the share remain partly paid.

#### 3. Call Money on Partly paid and Share Premium – Important Legal Aspect

When shares are issued on partly paid basis and on a premium, a practical difficulty arises:

- Can a company demand the entire unpaid face value along with the unpaid premium?
- Can a company demand some portion of the face value and the entire premium amount?
- Can a company demand some portion of the face value and some portion of the premium?

Answer to all the questions above is 'Yes'.

#### 4. Practical Implication

Once the premium amount becomes due pursuant to a call:

Non-payment may attract the same consequences as non-payment of call money, including:

- Interest on calls in arrears, and
- Forfeiture of shares, in compliance with the Articles of Association.

#### Illustrative Example:

Suppose a company issues shares with the following payment structure:

Face Value: ₹10  
Share Premium: ₹400  
Issue Price: ₹410

Payment Terms:

Stage	Amount
Application	₹4
First Call	₹3 + ₹200 premium
Final Call	₹3 + ₹200 premium

If a shareholder fails to pay the First Call, the ₹200 premium due along with that call also becomes part of the call money in arrears.

#### Consequently, the company may:

- Charge interest on the entire unpaid amount, and
- Initiate forfeiture proceedings if permitted under the Articles.

#### 5. Whether Form PAS-3 is required to be filed for Calls?

**No**, Form PAS-3 (Return of Allotment) is not required to be filed when a company collects "call money" on shares that have already been allotted.

The distinction lies in the legal trigger for the form. Here is the breakdown:

- The Trigger for filing Form PAS-3

Under Section 39(4) and Section 42(9) of the Companies Act, 2013, Form PAS-3 is specifically a Return of Allotment. It must be filed only when a company allots new securities.

- Why it isn't filed for Calls

Existing Allotment: When you make a call, you are simply collecting the balance due on shares that were already allotted in the past. Since no "new" allotment is taking place, the requirement to file a return of allotment does not arise.

## TREATMENT OF PARTLY PAID-UP SHARES ON VARIOUS CORPORATE ACTIONS

### 1. Private Placement:

Can a Company issue shares when the company's existing partly paid shares are uncalled?

**Yes**, the Companies Act, 2013 does not expressly prohibit a company from making a fresh private placement merely because existing shareholders have unpaid call money on previously issued shares.

Neither Section 42 nor Section 62 of the Companies Act, 2013 requires that all previously issued shares must be fully paid before undertaking a new private placement.

Therefore, legally a company may proceed with a fresh issue even if earlier shares remain partly paid.

However, Section 42(5) provides that:

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

What does it mean when we mention "Allotment is Completed"?

Completion of allotment does not mean the shares must become fully paid. Once shares are allotted, and Form PAS-3 is filed, then the allotment is considered as completed. It does not depend on the amount of application money received – it is on the event of allotment. The liability of the uncalled sums continues to be payable by the Shareholder as and when Board initiates a Call on those shares.

The objective of issuing partly paid shares has now shifted from providing financial flexibility to investors to utilizing them as an investment instrument in start-up companies.

### 2. Transfer and transmission of partly paid shares:

Partly paid shares can also be transferred (using Form SH-4) pursuant to Section 56 of the Companies Act, 2013. The Act provides for an extra layer of compliance in the case of transfer of partly paid shares.

Since the shares are not fully paid, the Act also transfers the liability of the unpaid amount and ensures that the transferee is aware that the shares are partly paid.

#### a) The Statutory Requirement Section 56(3)

If an application is made by the Transferor (the seller) for the registration of a transfer of partly paid shares, the company cannot register the transfer unless:

- The company gives Notice of the Application to the Transferee in Form SH-5.

- Transferee gives a No Objection Certificate (NOC) for such transfer.

### b) Key Secretarial Implications

- **Liability Shift:** Once the transfer of partly paid shares is registered in the Register of Members (MGT-1), the Transferor is discharged from the liability of unpaid amount, and the Transferee becomes legally responsible and liable for all future calls.
- **Calls in Arrear:** If there are existing "Calls in Arrear" by the transferor (seller) (existing unpaid call), the Board may refuse the transfer under the power given in the Articles of Association (AoA) until the same are cleared.
- **Stamp Duty:** Stamp duty is calculated on the Consideration Amount (the actual price paid), not the face value and irrespective of the partly paid or fully paid.
- **Endorsement:** The Share Certificate must be endorsed to reflect the name of the new holder while clearly mentioning the "Partly Paid" status.

### 3. Rights Issue:

In a Rights Issue, the offer to subscribe is based on the number of shares held, not the amount paid on them. In practice, rights entitlements are usually determined based on the number of shares held by the shareholder, even where shares are partly paid. However, Section 62 technically

refers to proportion of paid-up share capital. This is a common point of confusion, but the distinction is clear:

#### a) Eligibility is per Share, not per Rupee

If a company announces a Rights Issue in the ratio of 1:5 (one new share for every five held), a shareholder holding 100 shares gets 20 rights entitlements—regardless of whether those 100 shares are fully paid (₹10) or partly paid (e.g., ₹5).

The "Rights" attach to the legal ownership of the share entity itself, not the quantum of capital contributed.

#### b) Can the Ratio be Adjusted? (The "Pro-Rata" Exception)

While an entitlement (the right to apply) is usually based on the number of shares, the dividend rights and voting rights on the new shares will eventually be pro-rata.

However, a company can technically create different classes of shares. If the Articles of Association

allows it, the Board could theoretically propose a scheme where the offer is different for different classes, but under Section 62, the standard practice is:

- **The Ratio:** Applied to the total number of equity shares held.
- **The Result:** All shareholders (fully or partly paid) receive the offer in the same proportion.

#### 4. Bonus Issue:

Under Section 63(2)(a), no company can capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares unless its partly paid-up shares, outstanding on the date of allotment, are made fully paid-up.

The company must follow one of two paths regarding its partly paid shares:

**Option A:** Make a Call. The company must make a final call, collect the balance money, and ensure the shares are “fully paid-up” before the record date of the bonus issue.

**Option B:** (Where Different Classes Exist): If the company has issued different classes of shares, and the partly paid shares belong to a separate class, the bonus issue may be structured in respect of the class consisting of fully paid shares only.

However, where the partly paid shares form part of the same class of equity shares, the company must first make such shares fully paid-up before the allotment of bonus shares, either by making a call on the unpaid amount or by capitalising reserves in accordance with the provisions of the Companies Act, 2013.

#### 5. Reduction of Share Capital:

Under Section 66(1)(a), a company limited by shares may, by a special resolution, reduce its share capital in any manner, and in particular, may:

“Extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up.”

##### Practical Scenario:

If a share has a face value of ₹10 (where ₹4 is paid-up and ₹6 is uncalled), the company can apply to the NCLT to:

Extinguish the liability: Reduce the face value from ₹10 to ₹4 which results into the shares become fully paid-up at ₹4, and the shareholder is no longer liable to pay the remaining ₹6.

#### 6. Buyback of Shares:

Company cannot undertake buyback of shares if they are not fully paid up. Section 68 clearly prohibits a Company from buying back the shares unless they

are fully paid. If a Company intends to undertake a buyback activity, then it must make a final call to make the share fully paid and then proceed with the buyback.

#### 7. Declaration of Dividend on Partly Paid Shares:

Declaration and payment of dividend on partly paid shares is primarily governed by the AOA of the Company.

The Pro-Rata Concept (Section 51)

*A company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share.*

If the Articles are silent on the same, the dividend must be paid on the amount paid-up by the shareholder.

##### Illustration:

- Shareholder A holds 1 share of ₹10/- fully paid.
- Shareholder B holds 1 share and ₹5 Paid-up, ₹5 unpaid.
- If the company declares a 10% dividend, Shareholder A receives ₹1.00, while Shareholder B will be entitled only for ₹0.50.

### TREATMENT FOR CALLS IN ADVANCE

- If a shareholder has paid money in advance (amount not yet called by the company), in this case, shareholder is not entitled to dividends on that advance payment. Section 50, provides “Calls in Advance” are treated as a debt the company owes the member (often earning interest) rather than part of the paid-up share capital.

#### Treatment of Calls in Arrear:

If a shareholder owes “call money” which is outstanding:

Deduction or withholding: Most Articles (and Table F) allow the Board to deduct the unpaid call amount (and any interest due) from the dividend payable to that specific shareholder. Company may hold the payment of dividend unless the called amount is paid by the shareholder.

### CONCLUSION

Apart from the above corporate actions, partly paid-up shares also require careful consideration in matters relating to SBO compliance, voting rights, determination of holding-subsidary relationships, oppression and mismanagement, restructuring, FEMA.

### REFERENCE:

- Companies Act, 2013*

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