

Chapter 4 - Share Capital and Debentures

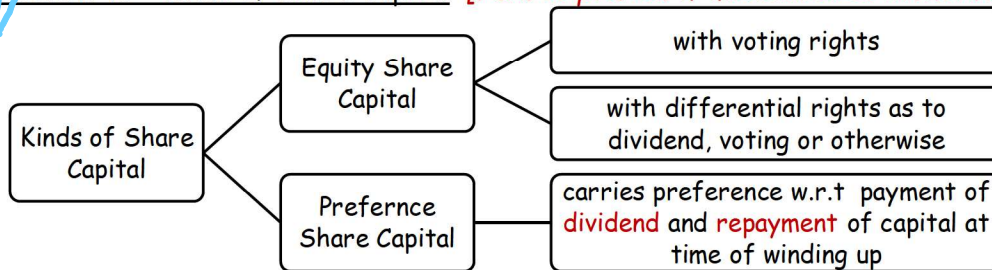
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Key Definitions:

Section 2(84): "Share" means a share in the share capital of a company and includes **stock**.

Section 43 - Kinds of Share Capital [N.A. to pvt. Co. if mentioned so in MoA/AoA, subject to 92/137]

**Explanations:**

- "**Equity share capital**" - w.r.t., any co. limited by shares, means **all share capital** which is **not preference share capital**;
- "**Preference share capital**", w.r.t, any co. limited by shares, means that part of the **issued share capital** of company which **carries** or would carry a **preferential right** w.r.t.:
 - payment of **dividend** (fixed amt or amt calculated at fixed rate)- free or subject to tax
 - repayment**, in the case of a **winding up**, of amount of PUSC.
- Capital** shall be **deemed to be preference capital**, notwithstanding that it is entitled to either or both of the following rights, namely:
 - w.r.t **dividends**, in addition to the preferential rights to amounts as specified above, it has a **right to participate** (fully/limited) **with capital** not entitled to the preferential right aforesaid,
 - that in respect of **capital**, in addition to the preferential right to the **repayment**, on a winding up, it has a right to **participate** (fully/limited), with capital not entitled to such preference

Rule 4 of Cos (Share Capital and Debentures) Rules, 2014 - Equity Shares With Differential Rights:-
 Conditions to issue equity shares with **Differential Rights (DR)**: [A2 VP FD2]

- AoA** authorizes the issue of such shares;
- Such issue is authorized by an **ordinary resolution** passed at **GM**.
If eq. shares are **listed** on RSE - Seek approval through **postal ballot (still OR)**.
- Voting Power (VP)** of shares with DR shall **not be > 74%** of total VP (incl. VP on shares with DR)
- omitted
- Co. has not defaulted in filing **FS and AR** for **3** immediately preceding **FY**
- Co. has no **subsisting** default in:

payment of
declared **dividend**

repayment of matured
deposit + Intt.

Redemption of
pref. shares

Redemption of
debenture + Intt

- Co. has **not defaulted** in:

payment of
dividend on pref.
shares

repayment of **term loan** +
Intt. - PFI/State FI / Sch.
Bank.

Stat. **dues** w.r.t.,
Employee

Default in
crediting amt. in
IEPF to **CG**

Provided that co. may issue DVR on **expiry of 5 years** from end of FY in which default made good.

8. the co. has **not** been **penalized** by Court/Tribunal during last **3 years** of offence under the **RBI Act, 1934** , the **SEBI Act, 1992**, the **SCRA** , 1956, the **FEMA** , 1999 or any other **special Act**

Additional Points:

1. **ES to notice** for GM or Postal Ballot to contain prescribed details about the issue (size of issue)
2. Co. shall **NOT convert** existing ESC with Voting Rights into ESC carrying DVR and **vice versa**
3. Details of such issue to be disclosed in **BOD Report**
4. Holders of Eq. shares with DR shall **enjoy all other rights** such as bonus shares, rights shares etc., which holders of eq. shares are entitled to, subj to DR with which such shares are issued.
5. **Register of Members** u/s 88 to contain relevant particulars of such shares with details of SHs.

Section 44 - Shares/debentures or other interest = **Movable** property + **Transferable** as per AOA

Section 45 - Every share shall be **distinguished** by its **distinctive number** [N.A. in case of depository]

Section 46 - Certificate of Shares

1. Certificate to be **Prima Facie** Evidence of title of such shares: - If such certificate is issued under:
 - a. Common seal, if any or
 - b. Signed by 2 dirs. or a dir. + CS (if co. has a CS)
2. Duplicate certificate may be issued if:
 - a. It is **proved** to have been **lost** or destroyed; or
 - b. has been defaced, **mutilated** or torn + **Surrendered** to company.
3. Details regarding **manner of issue** of certificate/duplicate - As may be **prescribed** (Rule 6)
4. Where share is held in **depository form** - **Record** of depository is **prima facie** evidence of interest of beneficial owner.
5. If Co. issues a **duplicate** certificate of shares with intent to **defraud**:
Co. - Fine - Not less than 5x Face Value of Shares involved | Extend to (10x or Rs. 10 crores WEH)
OID - Liable for action u/s 447

Section 47 - Voting Rights [**N.A. to Private Co. if mentioned so in MoA/AoA, subject to 92 + 137**]

1. Subject to certain provisions of this Act:
 - a. every member holding **ESC**, shall have **right to vote** on **every resolution** placed before co.; and
 - b. his **voting right** on a **poll** shall be in **proportion** to his share in the **paid-up ESC** of the co.
2. Every **member** holding **PSC** shall, in respect of such capital, have a **right to vote only**:
 - a. on resolutions which **directly affect** the rights attached to his preference shares and,
 - b. any resolution for the **winding up** of the company or
 - c. for the **repayment** or reduction of its **EQUITY** or **PSC** and his voting right on a **poll** shall be in **proportion** to his share in the paid-up PSC of the co.

Provided that **proportion** of voting rights of ESH to voting rights of PSH shall be in the **same proportion** as the ESC bears to PSC.

Provided further that where **dividend** in respect of a class of pref. shares has **not** been **paid for 2 years or more**, such class of PSH shall have a **right to vote** on **ALL resolutions** placed before the co.

Section 48 - Variation of Shareholder's Rights

1. How to vary the rights?

Rights attached to shares of any class may be varied with:

- **Consent** in writing of **not less than 3/4th** of issued shares of that class, **or**
- **SR** (at a separate meeting of such class)

if provision for such variation is contained in **AoA/MoA** or in **absence** of such provision, it is **not prohibited** by terms of issue of such shares

If **variation by one** class of SH **affects** rights of any **other class**, consent of **3/4th** of such **other class** of SH shall also be obtained and the provisions of this section shall apply to such variation.

2. Resistance to such variation

- Where holders of **not less than 10%** of issued shares of a class
- did **not consent** to such variation or vote in favor of SR
- they **may** apply to **Tribunal** to have the variation **cancelled**.
- Where such appln is made - Variation shall **not** have **effect until** it is **confirmed** by Tribunal:

Provided that - Such **application** to be made **within 21 days** after date of consent/resolution

3. The **decision** of the **Tribunal** on any application u/ss (2) shall be **binding** on the shareholders.

4. Co. shall, **within 30 days** of the date of order of Tribunal - File a copy thereof with the **Registrar**.

Section 49 - Calls on shares of same class to be made on uniform basis

Where any **calls for further share capital** are made on shares of a class, such calls shall be made on uniform basis on all shares falling under that class (Shares of same nominal value with different PUSC are not said to be in same class)

Section 50 - Company to accept unpaid share capital, although not called up (call in advance)

1. Co. **may**, if so authorized 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.
2. A **member** shall **NOT** be **entitled** to any **voting rights** w.r.t., amt. paid u/ss (1) **until** it is **called up**.

Section 51 - Payment of dividend in proportion to amount Paid-Up.

Co. may, if so authorised by its **articles**, pay dividends in proportion to amount **paid-up** on each share
OTHERWISE - In general, dividend is paid on nominal value

Level up Question (not relevant for exam but for understanding):

Can a company pay dividend on the advance payment received u/s 50 - **No!**

Section 52 - Application of Premiums Received on Issue of Shares

1. Where co. issues shares at premium (cash/otherwise) - **Transfer** such aggregate amount of premium to Securities Premium Account (**SPA**)

Except as provided in this section, provisions relating to **reduction of share capital shall apply** as if the SPA were the PUSC of the company.

2. Application/Utilisation of amount in SPA account:
 - a. towards issue of unissued shares of co. to members as fully paid **bonus** shares
 - b. write off **Preliminary** expenses of the co.
 - c. write off - **Expenses**/Commission paid or discount allowed on issue of shares/debentures of co.
 - d. providing for premium payable on **Redemption** of any redeemable pref. shares/ any debentures
 - e. purchase of its own shares u/s 68 (**Buyback**)

3. Notwithstanding above (1) and (2), in case of such **class** of cos. as may be **prescribed** + whose **FS** comply with prescribed **AS** u/s 133, the SPA shall be utilised for:
 - a. towards issue of unissued shares of co. to members as fully paid **bonus** shares
 - ~~b. write off Preliminary expenses of the co.~~
 - c. write off - **Expenses**/Commission paid/Discount allowed on issue of shares/debentures of co.
 - ~~d. providing for premium payable on Redemption of any redeemable pref. shares/ any debentures~~
 - e. purchase of its own shares u/s 68 (**Buyback**)

Section 53 - Prohibition on Issue of Shares at Discount

1. Except as u/s 54, a company shall **NOT** issue shares at **discount**.
2. Any share issued by a company at a discount price shall be **void**.

Exception - Notwithstanding anything contained above, a co. may **issue shares** at a discount to its **creditors** when its **debt** is converted into **shares** in pursuance of any **statutory resolution plan** or **debt restructuring scheme** in accordance with any guidelines or directions specified by the RBI.

3. Default under this section:
 - Co. and OID - **Fine up to amt. raised** through such issue **or Rs. 5 lakhs**, whichever is **less**, **and**
 - Co. shall also be liable to **refund** such money + Intt. @12% p.a. from **date** of **issue** of such shares

Section 54 - Issue of Sweat Equity Shares (SES) to Directors/Employees

Sweat Equity Shares [Sec 2(88)]

- Such **equity shares** as are issued by a co.
- 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 (**IPRs**) or **value additions**, by whatever name called;

Provisions:

1. Notwithstanding anything contained in sec 53, co. may issue **sweat equity shares (SES)** (of class of shares **already issued**), provided that:
 - a. the issue is authorized by a **SR**

b. Resolution specifies:

(a) No. of shares, (b) Current Mkt Price, (c) Consideration, if any **and** (d) to whom issued

c. If eq. shares are **listed**, such issue is as per **SEBI** Regulations. If not listed, as per **Rules**.

2. Rights, limitations and provisions of equity shares shall be applicable to sweat equity shares too and it shall rank **pari passu** with other ESH.

Rule 8 - Issue of Sweat Equity Shares:

"Employee" means:

(a) a **permanent** employee of the company who has been working **in India or outside India**, or

(b) a **director** of the company, whether a whole time director or not; or

(c) Dir/Employee as per (a) or (b) above of **subsidiary** (India or o/s India) or of **holding** co. of the co.;

"Value additions" means actual or anticipated **economic benefits** derived/to be derived by co. from an **expert** or a **professional** for providing **know-how** or making available **rights** in the nature of **IPRs**, by such person to whom sweat equity is being issued **for which** the **consideration** is **not** paid or **included in the normal remuneration** payable under the contract of employment, in the case of an employee.

Additional Points:

1. Validity of SR = Allotment of sweat eq. shares to be made within 12 months of passing SR

2. Maximum issue size per year:

Co. shall **NOT** issue **SES > 15% of existing PUESC** or issue value of **Rs. 5 crores, WEH**

Provided that, issuance shall not **> 25% of PUESC at any time**

Prov. further that - In case of **Startup** - Issue not **> 50%** of its **PUESC** upto 10 years from incorp.

3. Lock in (i.e., non-transferable) - **3 years** from date of allotment

4. Issue price of SES - To be determined by **Registered Valuer** with proper justification

5. **Valuation** of IPR/Know how/Value Add - By **RV** with a proper report to BoD.

6. Treatment of non-cash consideration in books:

a. Where non-cash consideration is a depreciable/amortizable asset - Carry to **BS** as per **AS**

b. Where clause (a) N.A. - **Expense** as per **AS**

7. Co. to disclose specific details of such issue in **BoD report**

8. Co. to maintain register of SES in **Form SH-3** at RO or such other place decided by BoD

Section 55 - Issue and Redemption of Preference Shares

1. **No** company limited by shares shall **issue** preference shares that are **irredeemable**

2. Co. may, if so authorized by **AoA**, issue preference shares **redeemable** within period **not > 20 years**

Provided that - Co. engaged in setting up and dealing with **infrastructural projects** may issue pref. shares of period **exceeding 20 years but not exceeding 30 years** provided that - **Min. 10%** of such pref. share is **redeemed** each year **from 21st year** at the **option** of PSH

Provided further that:

a. Redemption - Such shares shall be redeemed only out of -

(i) **profits** of the co. available for dividend or

(ii) **proceeds** of **fresh issue** made for purpose of such redemption

- b. Only **fully paid up** preference shares can be **redeemed**
- c. Where such shares are **proposed** to be redeemed **out of profits**, transfer a sum = **Nominal value** of shares to "Capital Redemption Reserve" A/C and provision relating to reduction of SC shall apply as if CRR were PUSC of the company.
- d. In case of prescribed class of co. whose FS comply with AS u/s 133, **premium** on redemption shall be **provided for** out of profits (and not SPA as u/s 52) of company before such redemption
- e. For **other class** of companies, such premiums can be provided for out of **profits or SPA**.

Rule 9 - Issue and Redemption of Preference Shares

1. Co. may, if so authorized by **AoA**, issue preference shares subject to:
 - a. the issue has been authorised by passing **SR** in the **GM**
 - b. at the time of such issue - there is **no subsisting default** in **redemption** of any pref. share or payment of **dividend** due on preference shares.
2. **Register** of members u/s 88 shall contain particulars w.r.t, such pref. SHs
3. If co. **intends** to **list** such pref. shares - Issue preference shares as per **SEBI** regulations
4. **Redemption of PS** - As per terms of issues/as varied after approval.
 - (a) at a fixed time or on the happening of a particular event;
 - (b) any time at the company's option;
 - (c) any time at the shareholder's option

3. Where a company is **not in position to redeem/pay dividend** on any pref. shares, it **may**:
 - with **consent of 3/4th** in value of PSH and
 - approval of **Tribunal** on petition made by it

issue further redeemable preference shares = amount of unredeemed pref. shares + dividend.
On such issue - Unredeemed pref. shares shall be **deemed** to have been **redeemed**.

Provided that **Tribunal shall**, while giving approval, order **redemption forthwith** of pref. shares held by such persons who have **not consented to** issue of further redeemable pref shares.

Note - Issue or redemption of pref. share is **not** = Reduction in SC of co.

4. CRR account may be applied for - **paying up** unissued shares to be issued as fully paid **bonus** shares.

Concept clarity check:

A co. proposes to redeem a pref. share of nominal value Rs. 100 with a premium of Rs. 20 per share. Such redemption was to be made by further issue of pref. shares. Decide the amount to be transferred to CRR? - **Zero! CRR is only needed when amt. is paid out of profit (as you are utilizing dividend money)**

Section 56 - Transfer and Transmission of Securities

1. Company to record transfer of securities
 - Other than transfer between persons both of whose names are entered as beneficial owners in records of depository,
 - co. shall **not** register transfer of securities (or interest of member in case of co. not having SC)
 - a. proper **instrument** of transfer (**Form SH-4**) is duly **stamped, dated** & executed by TOR & TEE
 - b. the instrument **specifies** the name, address and occupation of TEE
 - c. such instrument has been **delivered** to co. by TOR or TEE **within 60 days** of execution along with certificate relating to securities or **letter** of allotment (if no certificate is in existence)

If **instrument** of transfer is **lost/has not been delivered** to co. within prescribed time, co. may **register** on such terms as to **indemnity** as Board may think fit.

In case of **Govt co.**, **instrument** of transfer shall **not** be **required** w.r.t. transfer of **bonds** issued by a Govt. co provided that an **intimation** by TEE specifying name, address and occupation + **Bond certificate** or Letter of Allotment is delivered to the co.

2. Nothing contained u/ss (1) shall prejudice the power of co. to register **TRANSMISSION** of any right to securities by **operation of law** on receipt of **intimation** for the same from any person to whom such right is transmitted (**transferee**) (i.e., transfer instrument not required in case of transmission. Instead, it requires intimation of transmission)

Cases of Transmission:

Death (to Legal Rep)

Insolvency (to resolution professional)

Lunacy (to administrator appointed by Court)

3. Notice to transferee in case of partly paid shares:

- If application is made by **TOR** alone + it is **partly paid** shares, trf to be registered only after
- co. to give **notice (in Form SH -5)** of the application to TEE and
- TEE to give **no objection** to the transfer **within 2 weeks** from receipt of notice.

4. Unless prohibited otherwise, co. to **deliver certificates** of all securities allotted, trfd/transmitted:

In case of:	Within a period of:
Subscribers to MoA	within 2m of incorporation
Any Allotment of its shares	within 2m of allotment
Transfer or transmission	within 1m from date of receipt of transfer instrument or Intimation of Transmission (IOT)
Allotment of debentures	within 6m from date of allotment

Note - where sec are dealt with in a **depository**, co. to intimate details of allotment to depository **immediately** on **allotment**.

5. **Transfer** of any security of a deceased person **made by his LR** shall, **even if the LR is not a holder** thereof, **be valid** as if he had been holder at the time of execution of instrument of transfer.
6. Default in compliance of above provisions - Fine - Co. and OID - Rs. 50,000 [*Amendment*]
7. Without prejudice to any liability under the Depositories Act, 1996, where any **depository** or DP, with an **intention** to **defraud** a person, has **transferred shares**, it shall be **liable u/s 447**.

Difference between Transfer and transmission (just for knowledge)

	Transfer	Transmission
Voluntary?	Yes	No. Operation of Law
Transfer Instrument?	Yes	No. Intimation of Transfer
Consideration	Likely, Yes.	No.

Note - **Forged Transfer** is a **Nullity** and is not legally binding. A company can be forced to delete name of TEE in case of Forgery.

Case - Mr. A is shareholder of RIL. Mr. Chor forged signature of Mr. A and transferred his shares to Mr. B. Mr. B then further transferred the shares to Mr. C and RIL registered such transfer. Discuss the consequences.

Answer -

Co. to restore **ownership** to Mr. A.

Co. to **compensate** genuine buyer (Mr. C) and shall indemnified by Mr. B.

Mr. B, who **indemnified** the co, shall, in turn, chase Mr. Chor.

Exam question:

What if a share certificate is transferred via forgery (Q2 of QB):

- A forged transfer is a **nullity**.
- It does not give the transferee any title to the shares. Similarly any transfer made via such forgery will also **not give a good title** to shares as the title of buyer is only as good as that of seller.
- If a co. acts on a forged transfer & removes name of real owner, then co. is **bound to restore** such name and **pay him any dividends** which he ought to have received (*Barton v. North Staffordshire Railway Co.*)

Section 57 - Punishment for Personation of Shareholder

- If any **person deceitfully personates** as **owner** of any security/interest/share warrant/coupon, **and**
- thereby **obtains** or attempts to obtain any such security or interest or any such share warrant or coupon, **or receives** or attempts to receive **any money due to any such owner**,
- he shall be **punishable** with **imprisonment** - 1 year to 3 years **AND** with **fine** Rs. 1 lakh to Rs. 5 lakhs.

Section 58 - Refusal of registration and appeal against refusal.

Refusal by Private Co:

Where a private co (limited by shares) refuses to register transfer or transmission, it shall:

- **within 30 days of delivery** of instrument of transfer or IOT to the co.
- send **notice** of refusal to TOR and TEE or to person giving IOT
- stating the **reason for refusal** in such notice.

Appeal in case of refusal:

TEE or IOT person may appeal to tribunal:

- **within 30 days** of receipt of notice of refusal
- where no notice of refusal is received, **within 60 days** of delivery of instrument of trf or IOT to co.

Refusal by Public Co:

- Securities of public companies are **freely transferrable**.
- Any contract w.r.t., trf of securities shall be a **valid contract** and enforceable.

In case of refusal by a Public co. without sufficient cause:

If a public co., without sufficient cause refuses to register the transfer of sec. **within 30 days** from date on which instrument of transfer or IOT, is **delivered** to the co., transferee **may** appeal to tribunal:

- **within 60 days** of receipt of notice of refusal
- where no notice of refusal is received, **within 90 days** of delivery of instrument

Order by Tribunal:

After hearing the parties, Tribunal may **either dismiss** the appeal **or** by order:

- a. Direct co. to **register** trf/transmission & co. shall comply **within 10 days** of receipt of such order, or
- b. Direct **rectification** of the register and also direct the co. to **pay damages** to party aggrieved.

Contravention of order of Tribunal - **Imprisonment** - 1 year to 3 years **AND Fine** Rs. 1 lakh to Rs. 5 lakh

Section 59 - Rectification of Register of Members1. Application for Rectification of Register of Member (RoM):

If **without sufficient cause**, the name of any person is:

name is entered into RoM	ommitted from RoM	unnecessary delay in entering/removing name
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Aggrieved person or Any Member may make an application for rectification of RoM to:

- a. Tribunal, or
 - b. Competent court o/s India specified by CG - In case of foreign members or DHs o/s India
2. Tribunal may either dismiss the appeal or by order:
 - a. Direct co. to **register** trf/transmission and co. to comply **within 10 days** of receipt of order, or
 - b. Direct **rectification** of the register and also direct the co. to **pay damages** to party aggrieved.
 3. The sections shall not restrict the holder of the sec. from **transferring** such sec. and any person acquiring such sec. shall be entitled to **Voting Rights**.
 4. Where a trf. is made in contravention of any Law, Tribunal may, on application to it, direct the company or depository to set right the contravention and rectify registers.

Section 61 - Power of Limited Company to Alter its Share Capital

1. A limited co. having a SC may, if so authorised by its AoA, alter its MoA in its **GM** to:
 - a. **increase** its ASC by such amount as it thinks expedient;
 - b. **consolidate & divide** all or any of its SC into shares of a **larger amount** than its existing shares. Provided that **no consolidation** and division which **results** in changes in the **voting %** of **SHs** shall take effect unless it is **approved** by **Tribunal** on an **application** in prescribed manner;
 - 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 resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish amount of its share capital by amt. of the shares so cancelled.
2. The **cancellation** of shares u/ss (1) shall **not** be **deemed** to be a reduction of share capital.

Note - The capital clause of memorandum, if authorised by the articles, shall be altered by passing an **ordinary resolution (and not SR)** as per Section 61 (1) of the Companies Act, 2013.

Section 62 - Further Issue of Share Capital (Right issue/preferential allotment/Right of Pre-emption)

1. Where a co. proposes to increase its subscribed capital, by issue of further shares, such shares shall be offered to -
 - a. Persons who, on the date of such offer, are ESH of the company:
Such offer shall be made in **proportion to PUSC** by sending a letter of offer subject to:
 - i. Offer to be made by **notice** specifying no. of shares offered & limiting time to accept offer. **Time limit** shall be **not < 15** days or days as may be prescribed and shall **not > 30** days. If **not accepted** within time limit - **Deemed declined**.

Note - In Pvt. co (92 + 137) - If 90% of member give consent, then less than 15 days allowed

 - ii. Right to Renounce - **Unless AOA** provides otherwise, the above offer shall be deemed to include right to renounce the shares offered. A statement to this effect is to be included in the offer
 - iii. After expiry of time limit/receipt of intimation declining offer - BoD to dispose such shares in manner **not dis-advantageous** to SH and the company
 - b. Offer to employees - Under **ESOPs** subject to **SR** and prescribed T&C (In case of Pvt co (92+137) - Pass OR instead of SR)
 - c. Offer to any person:

if it is authorised by SR	either for cash or consideration other than cash.	if the prices to be determined by a valuation report by RV
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2. Dispatch of notice referred above: to existing SH
 - Via - **Registered post** or **speed post** or **e mode** or **courier** or other mode having **proof of delivery**
 - at least **3 days** before opening of issue
3. Provision of this section - **N.A.** in case of **conversion** of debenture/loan by way of exercise of option as per terms attached to such debt issued/loan raised. Provided that such an option in the issue of debenture/loan raised was approved by **SR**.
4. Conversion of Debenture issues to Government on T&C as per Govt.:
 - Notwithstanding provision u/ss(3),
 - where any **debentures/loan** has been obtained from any **Government**, and
 - if that Govt. considers it necessary in **public interest** so to do,
 - it may, by **order, direct** that debentures/loans or part thereof shall be **converted** into shares
 - on **terms** as may appear **reasonable** to **Govt.**
 - even if terms of debentures/loan **do not include option** for such conversion.

Provided that where **terms** of such conversion are **not acceptable to co.**, it may, within **60 days** from date of communication of such order, **appeal to Tribunal** for order as NCLT may deem fit.

5. In determining the terms, Govt. shall have due regard to:

Financial Position terms of issue of such debt rate of intt. on such debt/loan Others

6. Effect of Govt passing such order + **No appeal** or where appeal is made has been dismissed, if the order has effect of increasing the ASC:

- the **MoA** stands altered
- ASC** stands increased by amt equal to **value** of shares to which such debt/loan is converted into.

Rule 12 - Issue of **Employee** Stock Options (ESOP)

"Employee" means-

- a permanent employee of the company who has been working in India or outside India; or
- a director of the co., whether whole time or not **but excluding an independent director**; or
- an employee referred in (a) or (b) of a **subsidiary** (India or outside) or of a holding co.

but does not include:

- an employee who is a **promoter** or a person belonging to the promoter group; or
- director** who (himself or vai relative/any BC) holds **more than 10%** of o/s equity shares of the co. In case of Startups - Above 2 exceptions N.A. for **first 10** years.

To issue ESOP:

Listed company - Comply with SEBI Regulations.

Other than listed co, comply with following conditions:

Such issue is approved by way of SR	Co. to make specified disclosure in ES annexed to notice	Co. has freedom to determine "Exercise Price" as per applicable policies
Min. period of 1 year between grant and vesting of options*	Co. has freedom to specify lock in period.	No right to vote /receive dividend unless shares issues on exercise of option.
Options are non-transferrable	Options granted shall not be pledged , hypothecated, etc	No person other than employee entitled to ESOPs.
In case of death - options granted to him shall vest with legal heirs or nominees	In case of permanent incapacity - Option granted to vest on such employees on that day	In case of resignation/termination - option to expire .

* In case of amalgamation - Adjust the period for which shares held in prior co. with min. vesting period. (if you didn't understand this, read the detailed text below or else, skip).

Provided that in a case where options are granted by ABC Ltd. under its ESOP in lieu of options held by the same person under an ESOP in XYZ Ltd, which has merged or amalgamated with ABC Ltd., the period during which the options granted by ABC Ltd. were held by him shall be adjusted against the minimum vesting period required under this clause;

Section 63 - Issue of Bonus Shares

A company may issue **fully paid-up** bonus shares to its **members**, in any manner whatsoever, out of:

Free Reserve

Sec. premium Account

CRR Account

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

Conditions for issuing bonus shares:

No company shall **capitalise its profits or reserves** for issuing fully paid-up bonus shares, **unless:**

Auth. by
AOA

On recommendation of
BoD - Auth in GM

Not defaulted in payment of intt/principal
w.r.t., fixed deposit or debt sec. issued by it

Not defaulted - **Stat**
due of employee

Partly paid up shares
are made fully paid up

Condition prescribed - Bonus once
announced by BoD, cannot be withdrawn

Concept clarity check:

1. Can a company issue bonus out of revaluation reserve after complying with above 6 conditions? - **No!**
2. Bonus shares shall **not** be **issued** in **lieu of dividend**.

Section 64: Notice to be Given to Registrar for Alteration of Share Capital

1. In the following cases:

Alteration of SC u/s 61(1)

Increase in ASC u/s 62(6)

Redemption of pref. shares

Co. shall file a notice (**Form SH - 7**) along with **Altered MoA** to RoC **within 30 days** of such action.

2. Contravention - Co. & OID - Fine of Rs. 500 / day subject to max. Rs. 5 lakhs (Co) or Rs.1 lakh (OID)

Section 65: Not in syllabus

Section 66: Reduction in Share Capital

1. A company **may reduce** its share capital subject to:
 - a. Confirmation by **Tribunal** on application by company, and
 - b. By a **Special Resolution**, and
 - c. Alter MoA by reducing the amt. of SC and no. of shares.

Manner of Reduction in SC:

- i. **Extinguish** or reduce the liability on any shares **not paid up**
- ii. With or without extinguishing or reducing liability on its shares:
 1. **Cancel** any PUSC which is **LOST** or is **unrepresented** by available asset.
 2. **Pay off** any PUSC which is in excess of the wants of the co.

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

2. On receipt of application u/ss (1), the Tribunal shall give a notice thereof to:

CG

RoC

Creditors of co.

SEBI (in case of Listed Co.)

and shall take into consideration the **representation**, if any, made **within 3 months** of such notice. If **no representation** - **Presume** no objection.

3. **Tribunal to order confirming** reduction of SC on T&C as it may deem fit - **Only** when it is satisfied that debt/claim of every **creditors** has been **discharged** or his **consent** is obtained.

Provided that Tribunal shall not sanction unless: **A/C treatment**, proposed by co. **for such reduction** is in **conformity** with **AS u/s 133 + Certificate** by company's **auditor** has been **filed** with **Tribunal**.

4. Order of Tribunal shall be published in manner as directed by Tribunal.
5. Co. to deliver **copy** of **order** to Tribunal **and** of a **minute** approved by Tribunal showing the following with **ROC within 30 days** of receipt. RoC shall register and issue a certificate thereof.

The minute approved by Tribunal shall include the following info:

Amount of SC	No. of shares into which it is to be divided	Amt. of each share	Amt. at the date of registration deemed to be paid up
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6. **Nothing** in this section shall apply to **buy-back** of its own securities by a company u/s 68.
7. A **member**, past or present, shall **not** be **liable** to any **call/contribution** w.r.t, any share held by him **exceeding** [Amount paid up on the share - Amount of share as fixed by the order of reduction].
8. Where the name of a creditor is not entered in the list of creditors by reason of his own ignorance of proceeding for reduction or otherwise **AND** after such reduction, the co. commits a default (Sec 6 of IBC) of his debt;:
- Every member of co. on the date of registration by RoC of order for reduction shall be liable to **contribute to payment of that debt** an amt not > amt he would be liable in case of WUP, **AND**
 - If co. is **wound up**, the Tribunal may, **on application** of such cr. + proof of his ignorance - **Settle a list of person** so liable to contribute and enforce such calls on contributories as if they were ordinary contributories.
9. If any **officer** of the company:
- knowingly **conceals** the name of any creditor entitled to object to the reduction;
 - knowingly **misrepresents** the nature or amount of the debt or claim of any creditor; or
 - abets** or is privy to any such concealment or misrepresentation as aforesaid he shall be liable **under section 447**.

Alteration (sec 61) vs Reduction (sec 66) - Refer QB Q19

Section 67: Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

- No company having SC shall have power to buy its own shares w/o consequent reduction in SC as per this Act
- No **Public co.** shall give any loans, guarantee or any financial assistance for purchase/subsorption of its shares or its holding co.
- Nothing u/ss (2) shall apply to:
 - lending of money by a **banking** company in the ordinary course of its business;

- b. the **provision** by a company of **money** in accordance with any scheme approved by company through **special resolution** for such purchase/subscription if the purchase/subscription for, the shares held by **trustees** for the benefit of the **employees** or such shares held by the employee of the company;
- c. the giving of **loans** by a company to persons in the **employment** of the company other than its directors or KMP, for an **amount** not > their salary or wages for **6 months with** a view to enabling them to purchase or subscribe for fully paid-up shares in co. or its holding company to be held by them by way of BO.

Provided that disclosures in respect of **voting rights not** exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

4. Nothing in this section shall affect the right of a company to **redeem** any preference shares issued by it.
5. **Contravention** → Co. - Rs. 1 lakh to Rs. 25 lakh **and** OID - Jail upto 3 years **and** fine Rs. 1 lakh to 25 lakhs.

Section 68: Power of Company to Purchase its Own Securities ("Buy-back/BB")

This section talks about purchase of own shares or other specified securities (Buy-back). Specified Securities include ESOPs or securities notified by CG.

1. Notwithstanding other provision of the Act, co. may BB out of:

Free Reserve

Sec. premium Account

proceeds of issue of any share/other sec.

Proviso- **No** buy-back of a kind of share/sec. shall be made out of **proceeds of an earlier** issue of the **same kind**.

2. Conditions to be fulfilled prior to BB:

- i. Auth. by **AoA**
- ii. Auth. by **SR** in the **GM**

Note - **SR not needed** where:

- a. **Limit** - buy-back is **<=10%** of total PUESC + FR, **and**
- b. Auth. by **Board** by means of resolution passed at **BM**

- iii. BB is **<=25%** of total PUC + FR

[With respect to BB of equity share in any FY, reference to 25% shall be construed w.r.t., PUESC + FR in that FY]

- iv. **Ratio** → $\frac{\text{Debts (secured + unsecured) owed after BB}}{\text{Paid up Equity Capital + FR}} = \text{Not } > 2 \text{ (or higher ratio by CG)}$

- v. All the shares/sec. for buy-back is **fully paid up**

- vi. If securities are **listed** on RSE - BB as per SEBI Regulations. If not listed, then as per this Act

Proviso - BB shall **NOT** be made **within 1 year** reckoned from date of closure of **preceding** BB

3. The ES of the notice of meeting at which SR is proposed to be passed shall state: [FAST N]

full disclosure of
material Facts;

Necessity for
the buy-back;

securities **intended** to
be purchased;

Amount to be
invested; and

Time-limit for
completion

4. **Time limit** for completion - **Within 1 year** from date of passing SR/BR as the case may be

5. Source of BB: buy-back may be from:

Existing SH on prop. basis

Open Market

Sec. issued to employee (ESOP or sweat shares)

6. **Declaration of Solvency:**

- Before making buy-back, co. to file with **RoC** and **SEBI (only if listed)**,
- a "**Declaration of solvency**" in **Form SH-9**
- **signed** by at least 2 directors (1 MD compulsory).
- verified by an **affidavit** stating BoD has made **full inquiry** into affairs of co. and are of **opinion** that it is capable of **meeting liabilities** + will **not** be rendered **insolvent within 1 year** from date of declaration adopted by BoD.

7. **Post buy-back** - Co. to **extinguish** and physically **destroy** the share so bought back **within 7 days** of **last date** of completion of BB

8. Where a company complete a buy-back - Co. shall **NOT** make **further issue** of shares/sec. of **SAME** kind including allotment u/s 62(1)(a) **within 6m** (except for bonus shares or shares to discharge subsisting obligations such as conversion of warrants, ESOPs, sweat equity or conversion of pref. shares/debentures into equity)

9. Co. to maintain register (in **Form SH-10**) showing:

shares/sec. so
bought back

consideration
paid

Date of cancellation of
sec. so bought back

date of extinguishing/
physically destroying shares

Other
part.

- After completion of buy-back - File return with **RoC** + **SEBI** (if listed) **within 30 days** in **Form SH-11**
- Default under this section → Company and OID - Rs. 1 lakh to Rs. 3 lakhs

Section 69: Transfer of Certain Sums to Capital Redemption Reserve Account

1. Where a co. **purchases** its own shares out of **free reserves** or **SPA**, a **sum** equal to the **nominal value** of shares so purchased shall be transferred to **CRR A/C**
2. Details of such transfer shall be **disclosed** in the **balance sheet**.
3. **CRR A/C** may be **applied** by the company, in issue of **bonus** shares.

Section 70: Prohibition for Buy-Back in Certain Circumstances:

1. No **company** shall directly or indirectly **purchase** its own shares or other specified securities:
 - a. through any **subsidiary** co. including its own subsidiary companies;
 - b. through any **investment company** or group of investment companies; or
 - c. if a **default**, is made by the co., in the **repayment** of **deposits** + interest payment thereon, redemption of **debentures** or **pref.** shares or payment of **dividend** to any shareholder, or repayment of any **term loan** or interest payable thereon to any **banking** company or FI:

Provided that the buy-back is not prohibited, if the default is **remedied** and **3 years** has lapsed after **such default ceased to subsist**.

2. 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, 123, 127 and section 129**.

DEBENTURE (SECTION 71)

Section 2(30) - Debenture:

Debenture includes debenture stock, bonds or **any** other **instrument** of a company **evidencing a debt**, whether constituting a **charge** on the assets of the company **or not**.

Provided that, following instrument shall **not** be treated as debenture:

- a. instruments referred to in Chapter III-D of the RBI Act, 1934; and
- b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company.

Section 71:

1. A co. **may** issue debentures with an **option** to convert such debentures into **shares**, either wholly or partly at time of **redemption**.
Provided that the issue of such convertible debentures shall be approved by a **SR** passed at a **GM**.
2. **No** company shall issue any debentures carrying any **voting rights**.
3. **Secured** debentures may be issued by a company subject to such T&C as may be **prescribed**.

Rule 18 - Issue of Secured Debenture:

1. Redemption period

In case of secured debenture, the date of redemption shall **not > 10 years from date of issue**.

Provided that, in following class of cos, it **may exceed 10 years but not exceeding 30 years**:

Companies engaged in setting up infra projects	Infra finance companies	Infra debt fund NBFC	Co. as may be permitted by CG/RBI/NHB for > 10 years
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2. How will it be secured - Creation of charge:

- Such an issue of debentures shall be **secured**
- by the creation of a **charge** on properties or assets (in favor of **debenture trustee**)
- of **company** or its **subsidiaries** or its **holding co.** or its **associates** companies,
- having **value** which is sufficient for due repayment of the debentures and interest thereon

3. Appointment of debenture trustee:

- **Company** shall appoint debenture trustee ("DT")
- **before issue** of prospectus or letter of offer for subscription of its debentures **and**
- execute a debenture trust deed ("deed") to protect the interest thereon **not later than 60 days** after allotment of debentures

4. Creation of DRR:

- Co. shall create a **Debenture Redemption Reserve (DRR)** account
- out of the **profits** available for distribution as dividend, and
- Amt. credited to DRR account shall **be utilised** only for **redemption** of debentures.

Rule 18:

All India Financial Institutions and Banking companies are generally **not required** to create DRR.

For the companies which are required to create DRR, it shall:

- on or before **30th April** in each year,
- in respect of debentures issued by such co., **invest or deposit**,
- a **sum not less than 15%** of amount of debentures **maturing during the year** (ending 31st March of next year) in any one or more methods of investments or deposits as follows:

deposit with scheduled bank	unencumbered securities of CG/SG	unencumbered securities as per Indian Trust Act	unencumbered bonds of any other cos. notified under Indian Trust Act
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Provided that amount invested or deposited shall not:

- at any time **fall below 15%** of amount of debentures maturing during the year ending on 31st day of March of that year
- be **used** for any purpose other than redemption of debentures maturing during the year

5. No co. shall issue a **prospectus** to the public or to its members (> 500) for subscription of its debentures, **unless** the co. has, **appointed** one or more **debenture trustees**.
(i.e., if offers to public or members (> 500), appoint debenture trustee)

Rule 18: Eligibility of Debenture Trustee?

The co. shall appoint DT after complying with following conditions:

- Name** of DT to be stated in prospectus or letter of offer and in subsequent communications
- Before appointment, **written consent** of DT obtained and statement to that effect included in the letter of offer
- A person shall not be appointed as DT if he:
 - Beneficially holds **shares** in co.
 - is promoter, director or KMP or other officer or **employee** of CASH
 - beneficially entitled to moneys to be **paid by the co.** (other than remuneration as DT)
 - indebted** to CASH or subsidiary of such holding co.
 - furnished **guarantee** in respect of principal debts secured by debentures
 - has **pecuniary** relationship with co. \geq Lower of [2% of Gross T/O or total income or 50 lakhs or higher amount as may be prescribed] in preceding 2 FY or CY
 - Relative** of [promoter or director or KMP] of the company
- Board to fill **casual vacancy** in office of trustee (in case of **resignation**, obtain **written consent** of majority of **DH** prior to filling such vacancy)
- DT may be **removed** if approved by **not less than 3/4th** in value of **DHs**

6. 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.

Rule 18: Meeting of DHs:

Meeting of all the DHs shall be convened by the DT on:

- requisition** in writing signed by DHs holding \geq 1/10th in value of outstanding debentures;
- happening of any **event**, which constitutes **breach**, default or which in the **opinion** of DT **affects** interest of DHs.

7. Any **provision** in trust deed which has the **effect** of exempting DT from **liability for breach of trust** or **indemnifying** him where he fails to due care and diligence - Shall be **void**.

Provided that - **Liability** of DT shall be subject to **exemption** as agreed by - **Majority** of DHs holding **> 3/4th in value** of total debentures.

8. Co. shall pay **interest** and **redeem** debentures as per the **terms** and conditions of their **issue**.

9. Where at any time, **DT** comes to **conclusion** that **assets** of co. are **insufficient**/likely to become insufficient to **discharge** principal amount when it become due, **DT** may **file petition** before **Tribunal**.

Tribunal may, after hearing, impose **restriction** on **further liability** of co. (in interest of DH)

10. If **co. fails** to **redeem debentures** on date of maturity or **fails** to pay **interest** when due, **Tribunal** may, on **application** of DHs or DT, order co. to **redeem** it **forthwith** with payment of principal and interest thereon.

11. A contract with co. to **take up and pay** for any debentures of co. may be enforced by a **decree** for specific performance.

Additional points:

1. As per sec 180(1)(C) - Co. to obtain SR if borrowings exceed 100% of PUSC + FR + SPA
2. Co. to file return of allotment in Form PAS -3 within 30 days of allotment of such debentures