

11/2/11

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## Chapter → 4 Share Capital and Debenture

### # Issue and Redemption of Preference Shares Section 55

① Company cannot issue Irredeemable preference shares.

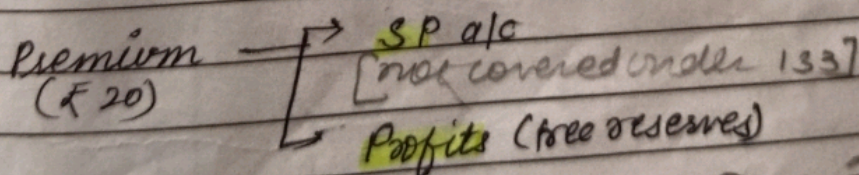
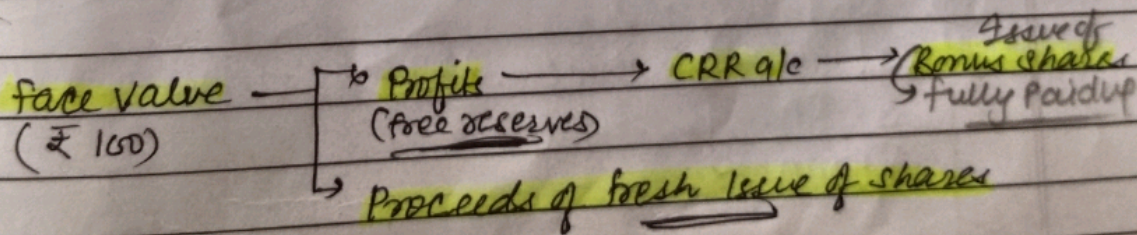
② If authorised by AOA, the company can issue preference shares which will be redeemable within 20 years, by passing a Special Resolution.

③ A company can issue preference shares for a period exceeding 20 years for Infrastructure projects, subject to redemption of 10% from the 21st year. But not more than 30 years.

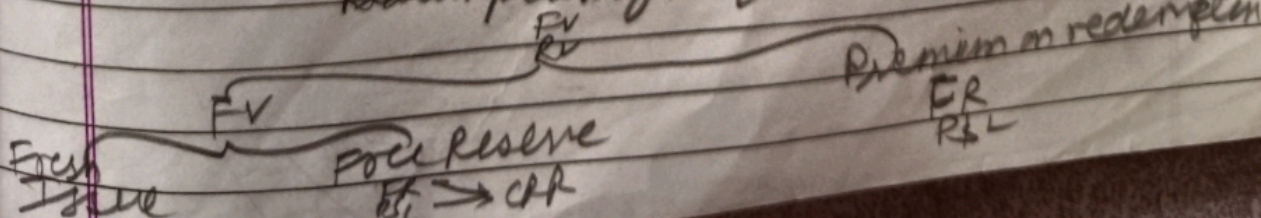
#### ③ Redemption of Preference Shares

FV = Rs 100

Redemption value = ₹120



Redemption of Pref Sh





How to study Chapter 4?

By dividing it into small small parts

Section 49 ✓ 50 ✓ 51 ✓ 52 ✓ 53 ✓ 54 ✓ 55 ✓	Section 43 ✓ 46 ✓ 47 ✓ 48 ✓	Section 56 ✓ 57 ✓ 58 ✓ 59 ✓ <del>60</del>
	Section 61 ✓ read with Sec 13 <del>alter</del> alter. → capital clause	

Section 62 ✓ 63 ✓ 64 ✓ 66 ✓ 67 ✓	Section 68 ✓ 69 ✓ 70 ✓	Section 71
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(Sec 61) Power of limited co to alter share capital →

- ① Increase its authorised capital
- ② Cancellation of shares
- ③ Consolidation its share capital
- ④ subdivide its shares
- ⑤ Convert share into stock & vice versa

diff<sup>n</sup> betw<sup>n</sup> red<sup>n</sup> of cap & cancelling  
Shares pg-4.40



④

If the company is unable to redeem existing preference shares or pay dividend then it may —

(i) with the consent of  $3/4^{\text{th}}$  in value of such preference share and

(ii) with the approval of the Tribunal (NCLT) issue further redeemable preference shares equal to the amount due.

While giving the approval Tribunal shall order to redeem those preference share held by such persons who did not give their consent



# # Kinds of Share Capital Sec 43

Share means small unit in Capital of Co includes Stock  
kinds of share capital

## Equity Shares

## Preference Share

Shares with Differential Voting Rights (DVRs)

Ordinary Shares

That part of the issued share capital of the company which carries a preferential rights with respect to —  
(a) Payment of dividend &  
(b) repayment, in the case of winding up.

### Dividend

### Conversion

### Participation

### Redemption

→ Cumulative

→ Convertible

→ Participative

→ Redeemable

Prof - Exp

Extra div,  
Extra Asset during winding up

company within 10 yrs

→ Non-Cumulative

→ Non-Convertible

→ Non-Participative

→ Non-Redeemable

no concept of div







## # Calls On shares — Uniform Basis Sec 49

BODs have right to call

Calls have to be made on a uniform basis and there should be no differentiation for a given class of shareholders. Same class of shares

## # Calls in Advance Sec 50

121 p/a

- A company can accept calls in advance if authorised in its articles of association.
- There will be no voting rights in respect of advance amount paid.
- repayment — during the winding up (After creditor & before Pref.)

## # Payment of Dividend in proportion of amount paid up Sec 51

- Dividend can be paid in proportion to the amount paid up on each share if authorised by MOA.

## # Securities Premium Application Sec 52

↓  
Companies Covered  
U/s 133

- 1 Bonus shares
- 2 Buy Back
- 3 Writing off expenses / discount on equity shares.

↓  
Others

- 1 Writing off Preliminary expenses
- 2 Bonus Shares
- 3 Writing off discount on shares or debentures
- 4 Premium on redemption of Preference shares
- 5 Buy Back

Preliminary Bonus shares & discount of 2% Premium & Buyback

75



~~Sec 53~~

### # Prohibition on Issue of share at discount Sec 53

A company shall not issue shares at a discount except u/s 54, debt restructuring scheme.

Any share issued at a discount shall be void ab initio.

#### Exceptions Sec 53

- (i) Sweat Equity Shares (Sec 54)
- (ii) In accordance to a strategic debt restructuring scheme.

### # Issue of Sweat Equity Shares Sec 54

Equity shares are issued by Company to its director or employees at discount or for consideration other than cash, for providing their technical knowhow, intellectual property, or some value additions.

Sweaty Equity special resol<sup>n</sup>

- Company - listed - follow SEBI guidelines
- Unlisted - Rule 8 of Companies Act

~~Rights~~ Pro

- Maximum locking period - 3 years
- Maximum shares can be issued as Sweat Equity = 15% PUSC (or) 5 Crs ↑

Startup Co = 50% PUSC

- Special Business - explanatory statement
- Special resol<sup>n</sup> - MGT 14 - ROC - 30 days

market effects → whom price How many shares

Market price

valuation - pro a document



Important

free reserves → General Reserve  
P&CC

# # Buy Back → Sec 68/69/70

## ① Sources of Buy Back

- (i) free Reserves → CRR etc → fully paid up Bonus Shares
- (ii) Securities Premium
- (iii) Proceeds of issue of shares [Diff<sup>n</sup> class shares]

[same class shares issued - Buy Back prohibited]

## ② AOA - power.

## ③ Special reser<sup>m</sup>

max - 25% (PUSC + FR + SPR)

In one financial year Buy Back shall not be more than 25% (PUSC)

## Board reser<sup>m</sup>

10% (PUSC + FR + SPR)

Buy Back shall not be more than 10% (PUSC + FR + SPR)

## ④ After the Buy Back money

$$\frac{D}{E} \neq \frac{2}{1}$$

## ⑤ Before the Buy Back file Declaration of Solvency with ROC/SEBI in form no. SH9

This declaration is signed by 2 Directors (including managing director)

## ⑥ Register of Buy Back → form no. SH10.

## ⑦ After the Buy Back file Return of Buy Back → form no. SH11 → ROC/SEBI within 30 days of completion of Buy Back.

- ①
- ②
- ③
- ④



- ⑧ Securities extinguished within 7 days. — Physical destroy ~~हटाना~~
- ⑨ Cooling Period (same class of securities cannot be allotted within 6 months). → New shares IPO
- ⑩ Prohibition for Buy-Back in certain circumstances  
Sec 70

~~अवसरों पर~~ Directly or Indirectly through  
In the following cases :-

(i) Subsidiary Company

(ii) Investment Company

(iii) Company made a default

(a) Repayment of deposits or interest

(b) ~~Redemption~~ Repayment of debentures

(c) Redemption of Preference Shares

(d) Payment of dividend to shareholders

(e) Repayment of term loan or interest

to financial institutions or Banking Co.

Make  
Cross the  
default  
if  
Sys has  
been  
elapse



Time Period for completion of Buyback is  
12 months [ ~~अवधि~~ declaration — Buyback —  
within 12 months — Buyback complete ]



Renounce - ~~transfer~~ transfer right of Consideration  
 Right Issue - Issue to existing shareholders  
 Accept - Issue to new shareholders  
 Issue of shares

## # Further Issue of Share Capital Sec 62

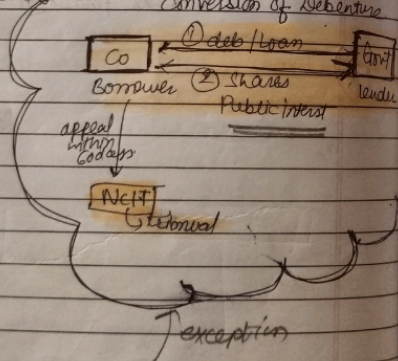
### 62(1)(a) Right Issue

- Right of subscribing shares given to existing equity shareholders in proportion to the share that they have held
- Notice - min - 7 days (cut off) max - 30 days
- However, Part A 99% Members of company
- special resolution
- Right Exercise - Removes the right  
 -> no accepted -> lapse in specified time right

### Sec 62(1)(b) ESOP

- shares given to employees
- special resolution
- Provided ~~Director~~ has not done default in filing of annual Return & financial statements may file or in any year also

### Exception - of Sec 62(1)



- Not by Sec 62(3) Registered post, speed post, electronic means, courier other mode.

### Sec 62(3)

This Sec - Sec 67 will not apply in case you have issued deb which will be converted into shares of Co.

ESOP - Employee Stock Option Plan  
 Employees - right - Issue  
 Reward interest value (ES)

### Sec 62(1)(c) Potential Allotment

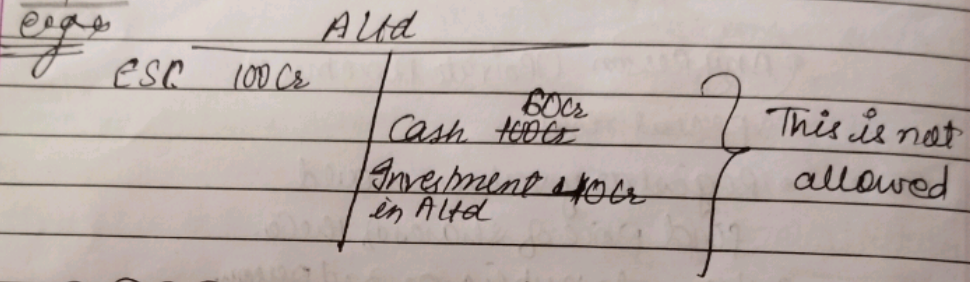
- Any Person (Private Placement)
- special resolution
- Registry value would find price of shares of the Co.
- Issue to public or 3rd person
- consent for cash to other



Vol Vol Vol Vol Vol  
 Vol Vol Vol Vol Vol  
 Important

# Restriction on Purchase by Company or giving of Loans by it for purchase of its shares  
 Sec 67

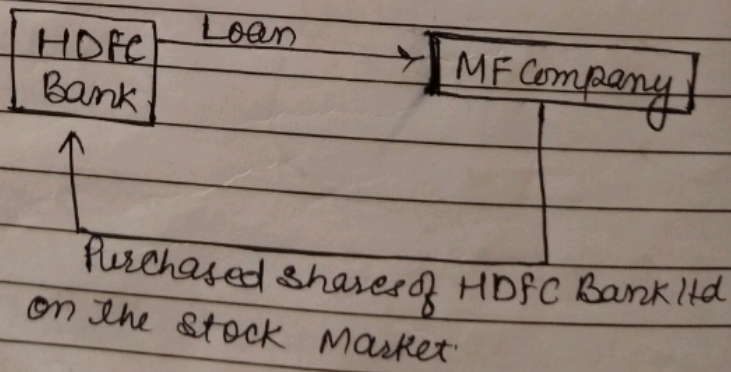
(Public/Private) 67(1)  
 (1) No company shall buy its own shares unless it has followed the provisions of reduction of share capital.



(2) No Public Company shall give directly or indirectly any financial assistance for the purchase of its shares or its holding company.  
 eg →

(3) Exceptions → [Thus, in the following cases, ~~public~~ public company can give financial assistance for purchase of own shares or its holding company shares.]

(a) Lending of money by a banking company in the ordinary course of business.  
 eg →



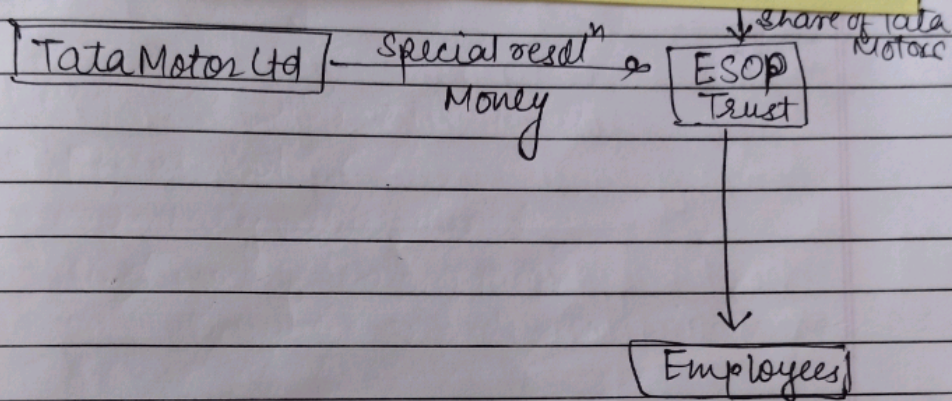
- ②
- ③
- ④



- जो Employee है वो खुद की Company का होना चाहिए नहीं Holding Company को।
- उसकी salary वो उसे 6 months में मिलनी है वसूल ज्यादा का loan नहीं होना चाहिए।
- Shares fully paid up loan charge.

(b) Comparison Scheme for the the held by eog →

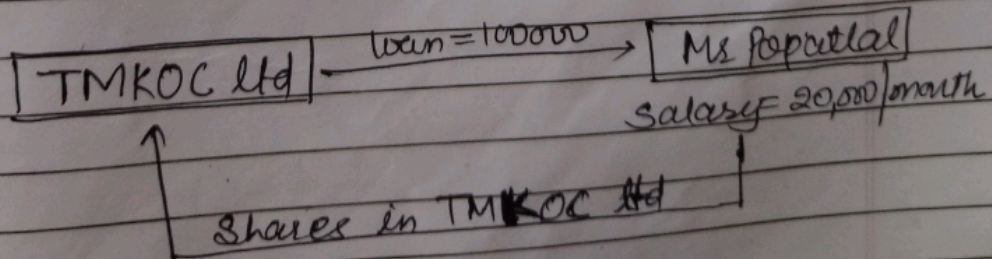
Exceptions (C)  
Explanation in own language



These shares will be given to the employees against ESOP.

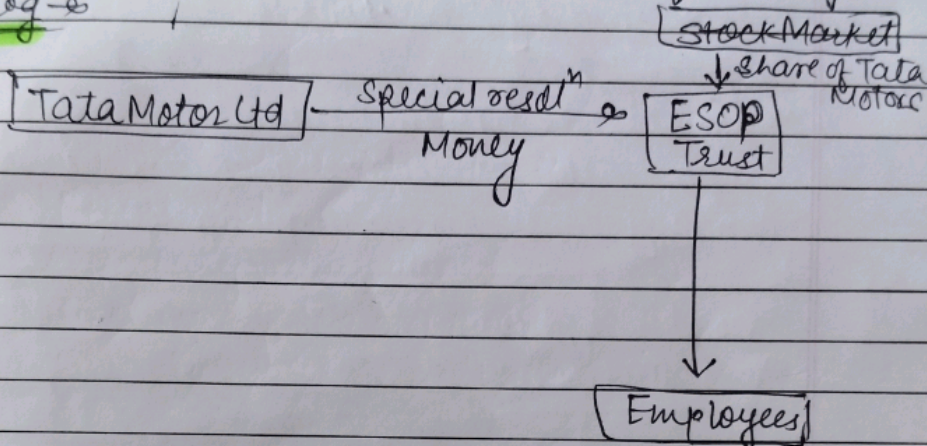
Important  
sh/v/v/v  
⊗ ⊗ ⊗ ⊗ ⊗

(c) Giving of loan by a company to its employees (other than directors / key Managerial Person) for an amount not exceeding his 6 months salary for purchase of fully paid up shares in the company or its holding company.  
eog →





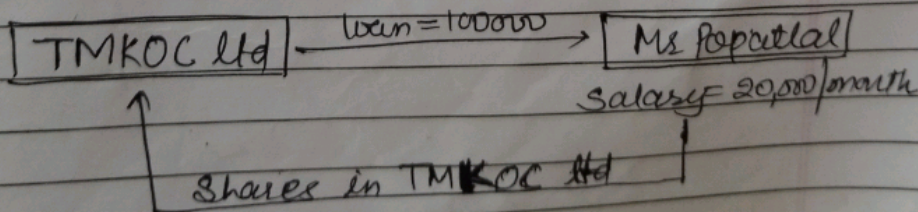
(b) Company can lend money in accordance to a scheme approved by an Special Resolution, for the purchase of its fully paid up shares in the company or its holding company to be held by trustee for the benefit of employees  
 e.g. -



These shares will be given to the employees against ESOP.

Important  
 \* \* \* \* \*

(c) Giving of loan by a company to its employees (other than directors / key managerial person) for an amount not exceeding his 6 months salary for purchase of fully paid up shares in the company or its holding company.  
 e.g. =>





④ Nothing in Sec 67 shall apply for Redemption of Preference share.



# # Certificate of Shares (Sec 46).

Sec 45.

Physical form - shares issued & held

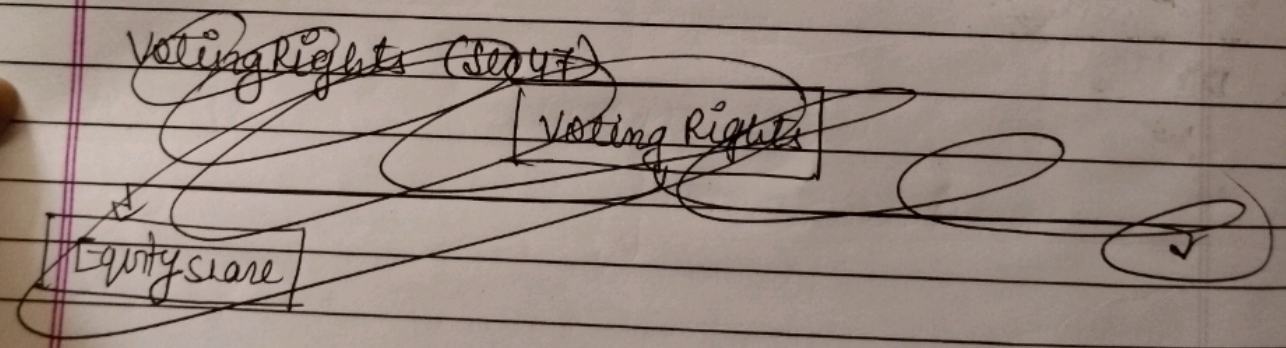
- Common seal (or)
- Signed by 2 directors (or)
- Signed by a director & the CS

Distinctively numbered

\* If share certificate original - defaced, mutilated or torn after surrendering of original certificate the company will renew, duplicate, replace that certificate.

dematerialised form.

\* Prima facie





# # Voting Rights (Sec 47)

voting Rights

Equity share

Preference share  
(in proportion of paid up capital)

one every 2000<sup>+</sup>  
placed before the Co

Normal

DVRs

In proportion of  
paid up capital  
Share of 1000

As defined in  
Article / Term  
of issue

1 member = 1 vote  
By way of poll  
1 share = 1 vote

Dividend not  
paid for 2 yrs  
or more

winding  
up

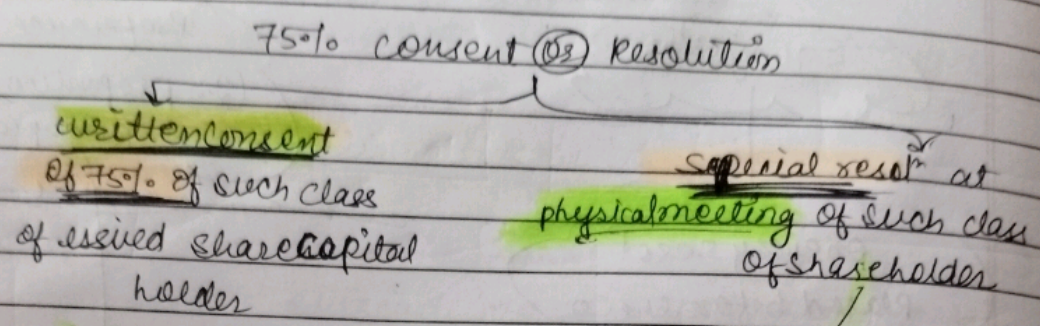
directly  
affecting  
interest

red<sup>n</sup> of  
share  
capital

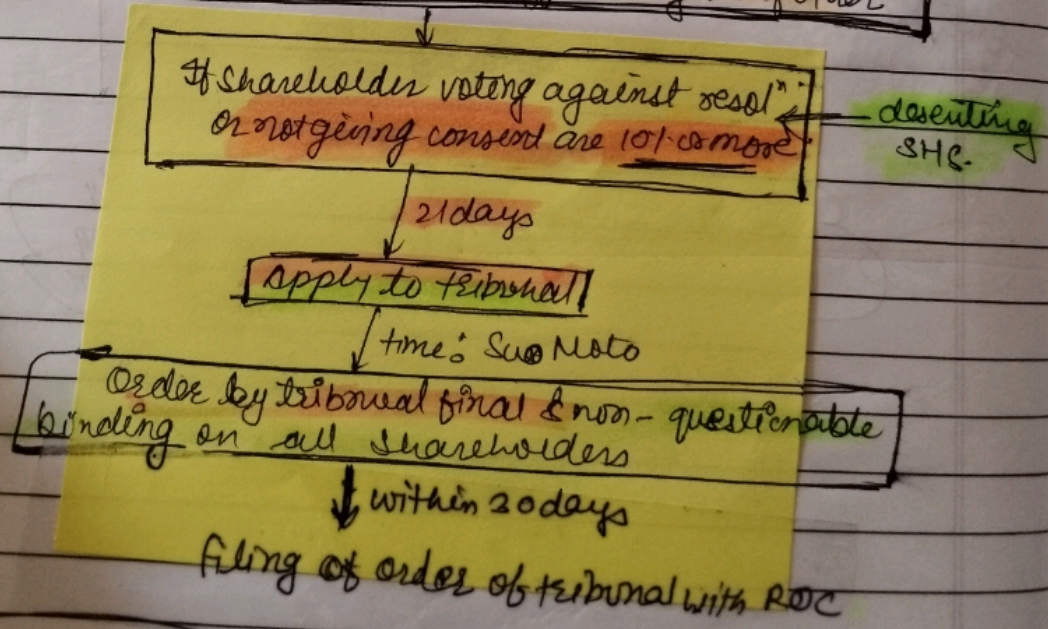


# # Variation of Shareholders Rights (Sec 48)

↳ change



- ① Authorised by MOA & AOA
- ② If not authorised by MOA (or) AOA then must not be prohibited by terms of issue of such class.
- ③ If variation affects rights of other



## Conteavention & Penalties

Company  
25000 to 50000

Jail upto 6 months

Officers in default  
25000 to 50000

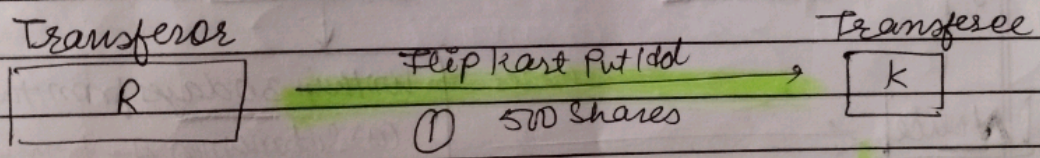


#

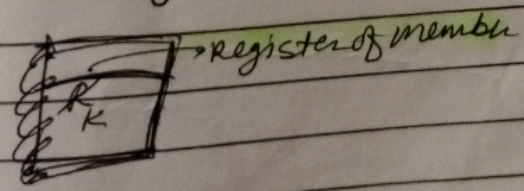
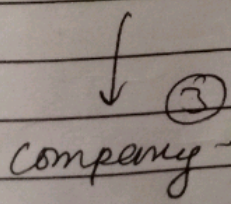
Transfer & transmission of securities or interest of member in company (sec 56)

Transfer	Transmission
<ul style="list-style-type: none"> <li>Voluntary</li> </ul>	<ul style="list-style-type: none"> <li>operation of law</li> </ul>
<ul style="list-style-type: none"> <li>SH4 (✓)</li> <li>Sale, Purchase (✓)</li> </ul>	<ul style="list-style-type: none"> <li>SH4 (✗)</li> <li>Death, Insolvency, Insanity               <ul style="list-style-type: none"> <li>↓</li> <li>Legal Representative      or      Liquidator official assignee</li> <li>↓</li> <li>administrator appointed by court</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>Consideration (✓)</li> <li>Stamp duty (✓)</li> </ul>	<ul style="list-style-type: none"> <li>Consideration (✗)</li> <li>Stamp duty (✗)</li> </ul>

Share transfer form deed



- ② (a) SH4 (share transfer deed) 60 days  
(b) Share Certificate



- ④
- New share Certificate within 1 month (transfer)

- debenture allot (6 months)
- share allot (2 months)
- incorporate subscribers post incorporation 2 months







\* Time period to file an appeal to tribunal by the person giving transfer deed or intimation of transmission

When company gives notice to that person within 30 days of date of submission

When company does not give notice to the person within 30 days of date of submission

Appeal

Appeal

within 30 days (in case of Private)

within 60 days (in case of Public)

of receipt of notice

within 60 (60+30) days Private

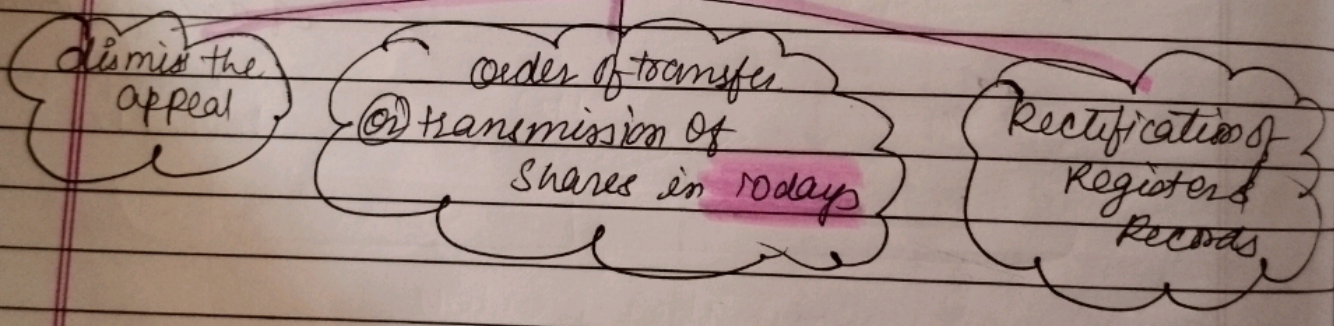
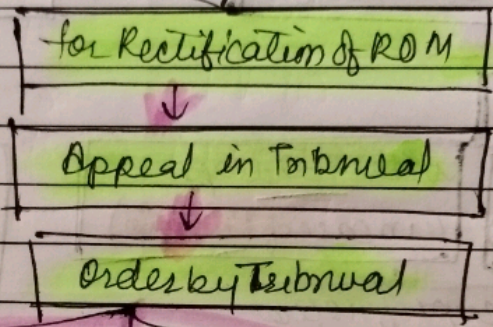
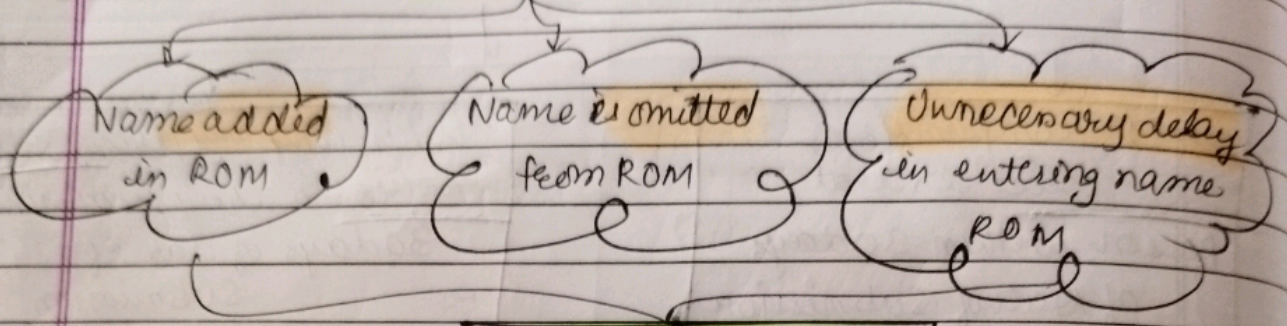
within 90 (30+60) days Public

of date of submission



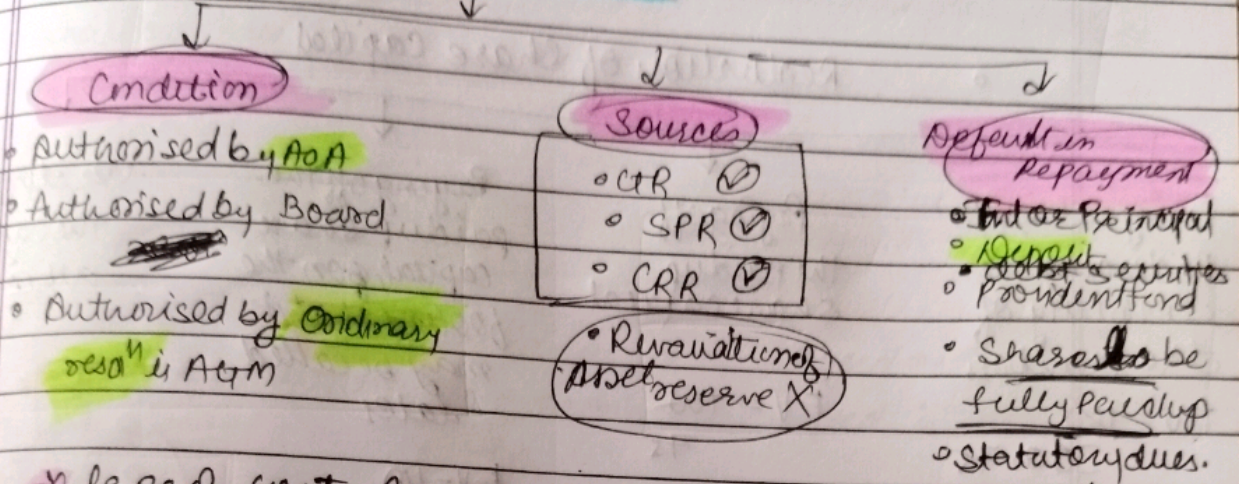
# # Rectification of Register of Members (ROM) (Sec 59)

If without sufficient cause



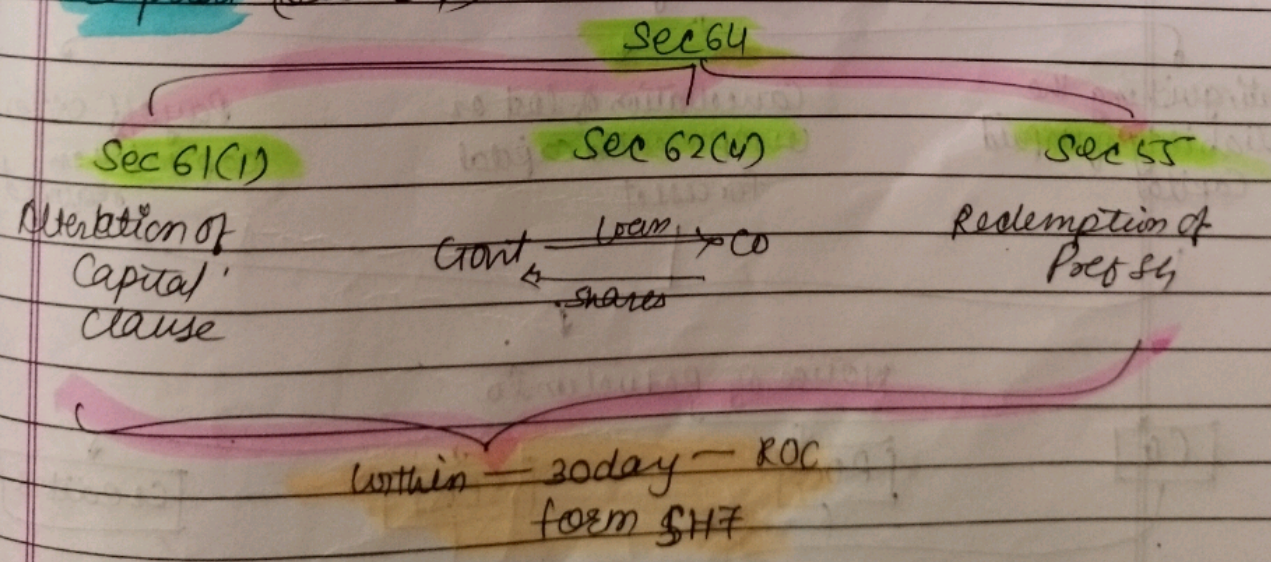


# # Issue of Bonus Shares (Sec 63)



- \* free of cost to all the existing Eq shareholders.
- \* Can't issue Bonus share in lieu of dividend

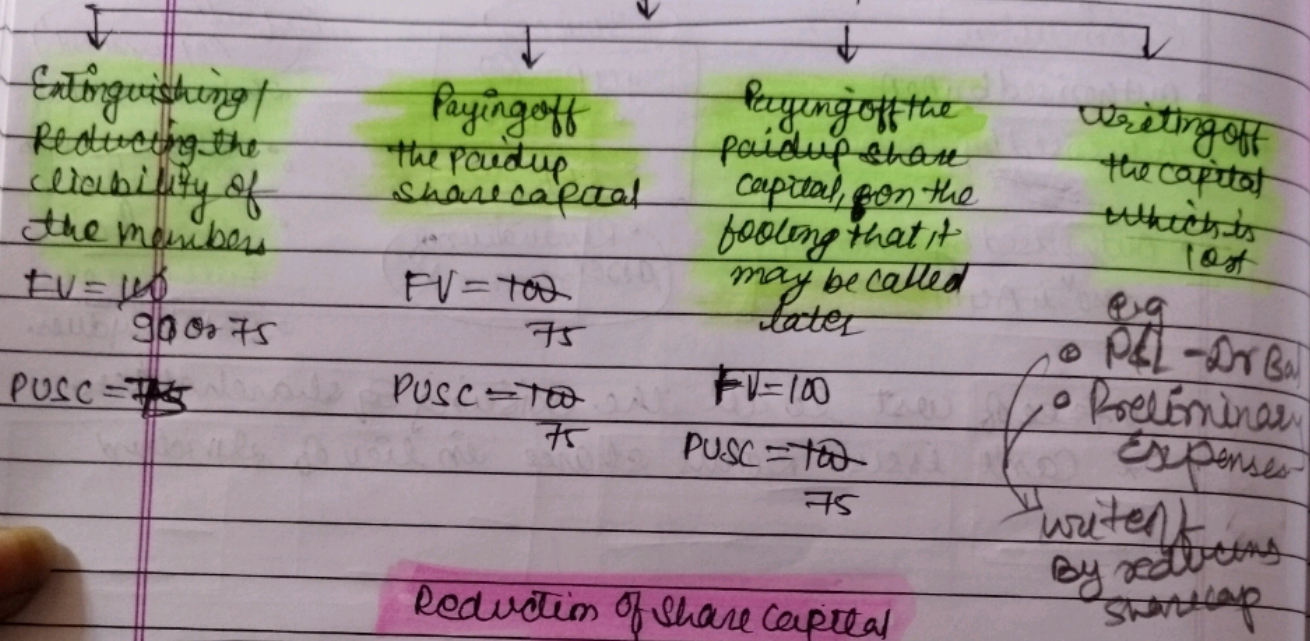
# # Notice to be given to registrar for Alteration of share capital (Sec 64)



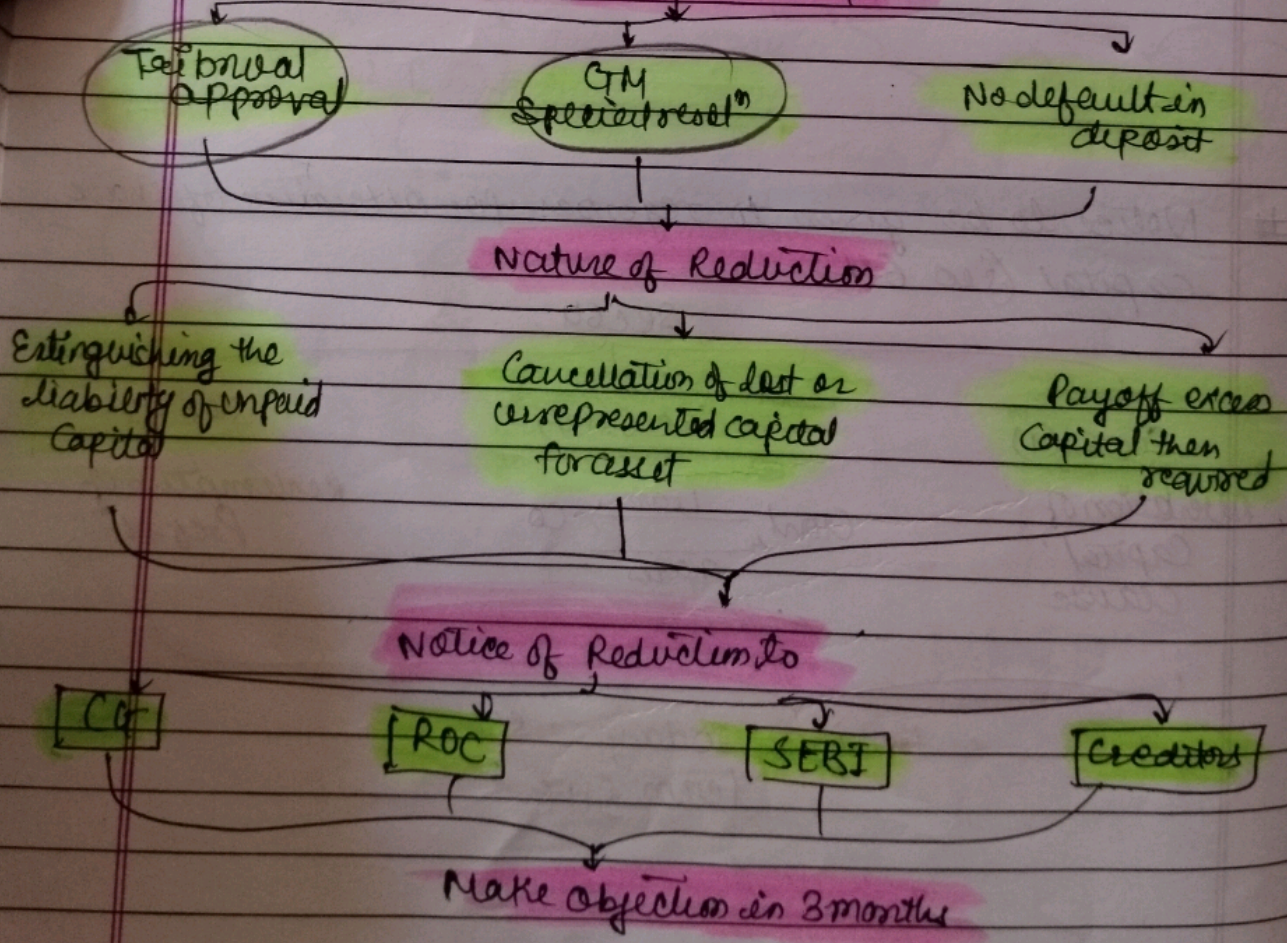


## # Reduction of Share Capital (Sec 66)

### Reduction of Share Capital



### Reduction of Share Capital





If objection made in 3 months, Tribunal shall consider the objection & stop or continue the redemption of capital

If no objection is made, Tribunal can pass order to continue with the redemption of capital

Either debt of all creditors is discharged or consent of those whose debt doesn't discharged is obtained by Co.

o Reduced in the name.