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Share Capital

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ABSTRACT: *This paper gives the idea about the raising and maintenance of share capital by companies. How companies raises their capital through issuing shares. It tells us about the different types of shares and how they issue. Share capital is the backbone of the company without it the company cannot achieve its goals.*

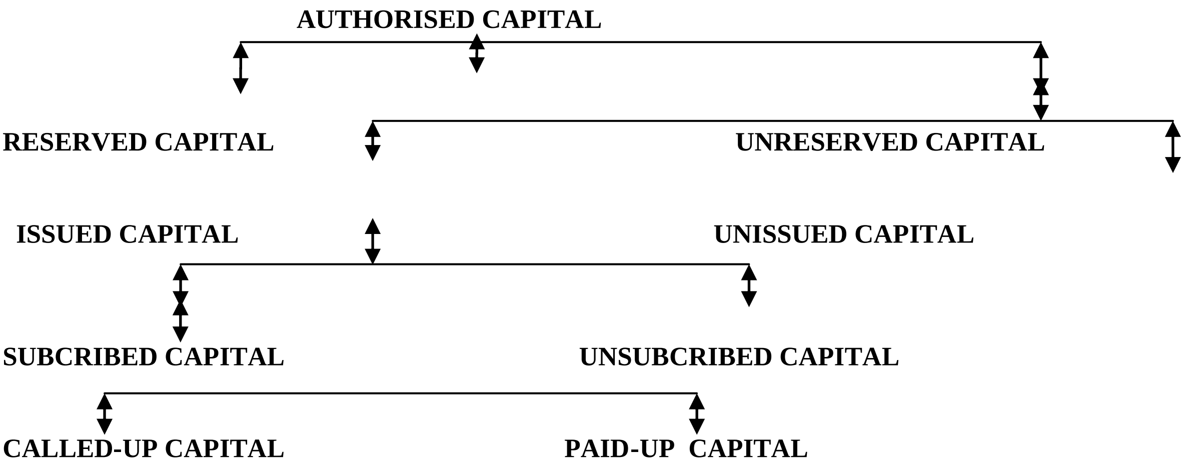
KEYWORDS: *Meaning and types of share capital and shares, issue of share capital, reduction of share capital*

I. MEANING OF SHARE CAPITAL

A joint stock company should have capital in order to finance its activities. Funds raised by issuing shares in return for cash or other considerations . The Memorandum of Association must state the amount of capital with which the company is desired to be registered and the number of shares into which it is to be divided. When total capital of a company is divided into shares, then it is called share capital. It constitutes the basis of the capital structure of a company. In other words, the capital collected by a joint stock company for its business operation is known as share capital.

Types Of Share Capital

Share capital of a company can be divided into the following different categories:



[1] **Authorized, registered, maximum or normal capital**
The maximum amount of capital, which a company is authorized to raise from the public by the issue of shares, is known as authorized capital. It is a capital with which a company is registered, therefore it is also known as registered capital i

[2] **Issued capital**
Generally, a company does not issue its authorized capital to the public for subscription, but issues a part of it. So, issued capital is a part of authorized capital, which is offered to the public for subscription, including shares offered to the vendor for consideration other than cash**.**

[3] **Un-issued capital**

[4] The part of authorized capital not offered for subscription to the public is known as 'un-issued capital'. Such capital can be offered to the public at a later date.

[5] Subscribed Capital
It cannot be said that the entire issued capital will be taken up or subscribed by the public. It may be subscribed in full or in part. The part of issued capital, which is subscribed by the public, is known as subscribe capital

[6] Un-subscribed capital
The part of capital which is not subscribed by the general public is known as un-subscribed capital,

[7] Called-Up Capital
It is that part of subscribed capital, which is called by the company to pay on shares allotted. It is not necessary for the company to call for the entire amount on shares subscribed for by shareholders. The amount, which is not called on subscribed shares, is called **un-called capital.**

[8] Paid-up Capital
It is that part of called up capital, which actually paid by the shareholders. Therefore it is known as real capital of the company. Whenever a particular amount is called and a shareholder fails to pay the amount fully or partially, it is known an **unpaid calls or calls in arrears.**
Paid-up Capital = Called up capital - calls in arrears

[9] Reserve Capital
It is that part of uncalled capital which has been reserved by the company by passing a special resolution to be called only in the event of its liquidation. This capital can not be called up during the existence of the company.It would be available only in the event of liquidation as an additional security to the creditors of the company

Meaning of shareholder: A person who buy the shares of joint stock company is called shareholder.

Joint stock company. : According to **Lord Justice Lindley** "an association of many persons who contribute money or money's worth to a common stock and employed it in some trade or business and who share the profit or loss arising there from. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed it or whom it belongs are members. The portion of capital to which each member is entitled is his share. The shares are always transferable although the right to transfer them may be restricted". From the above definition it is clear that, a company is an incorporated association, which is an **artificial person created by law**, having an independent **legal entity,** with capital divisible into transferable shares carrying limited liability, having a **common seal** and **perpetual succession.**

TYPES OF SHARES

According to **companies Act, 2013** no change in the concept of types of share capital as in 1956 Act.

TYPES OF SHARES

1**.Equity Shares: .**
a. With voting rights; or
b. With differential rights as to dividend, voting or otherwise
b. Fixed payment of dividend

2. Preference shares
a, Having prefencial right over repayment of capital in the event of winding up of company

Both Public and Private companies are continued to be permitted Equity Shares with Differential Rights. Differential rights can be with respect to dividend, voting or otherwise, only if:

- Authorisation by Articles and Shareholders by special resolution.
- Upto 25% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- Track record of 10% dividend payment in last 3 immediate last FYs
- No default in filing Accounts and Annual Return in 5 immediate last FYs
- No default in payment of dividend, debentures, deposit, preference shares, loan from bank/FIs, statutory dues of employees. Principle and Interest/Dividend both
- No default under SEBI, SCRA, FEMA and RBI Act
- Detailed disclosures in Explanatory Statement
- Disclosures in Board Report

Tenure of preference shares : Tenure of Preference Shares continued as **20 years** except for "Infrastructural Projects"Companies having "infrastructural projects" (as defined in Schedule VI) can issue Preference Shares for 20 years but upto 30 years subject to minimum 10% redemption of such preference shares from 21s tyear onward or earlier. If a company is unable to redeem any preference shares or to pay dividend thereon, it may redeem such unredeemable preference shares by further issue of redeemable preference shares equal to the amount due and dividend due thereon subject to–

a) consent of the holders of 3/4th in value of such preference shares; and

b) approval of NCLT(National company Law Tribunal)

- ❖ On issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.
- ❖ No distinction between CRPS (Commulative Redeemable preference shares)and NCRPS i.e. 2 Vs 3 Yrs, in the matter of the voting rights in the event of non-payment of dividend

Types of preference shares

Cumulative preference shares or Non-Cumulative preference shares : In case the company has not been able to pay part or all of the annual dividends because of insufficient profit, the unpaid amount is carried forward to future years and made good when the company has sufficient profit to pay the dividends. These type of shares are called cumulative preference shares. Non-cumulative preference shares are those type of preference shares, which have right to get fixed rate of dividend out of the profits of current year only. They do not carry the right to receive arrears of dividend.

Redeemable preference shares or Irredeemable preference shares : These are preference shares that the company will buy back at an agreed date in the future. They are classified as non-current liabilities in the statement of financial position of a company Irredeemable preference shares are those that will not be bought back by the company. Shareholders will continue to earn dividends as long as profit is earned. They are listed under heading equity in the statement of financial position of a company..

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Participating Preference Shares or Non-participating Preference Shares : Those preference shares, which have right to participate in any surplus profit of the company after paying the equity shareholders, in addition to the fixed rate of their dividend, are called participating preference shares. Those preference shares which do not carry the right of share in excess profits are known as non participating preference shares.

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Convertible Preference Shares or Non-convertible Preference Shares : Those preference shares, which can be converted into equity shares at the option of the holders after a fixed period according to the terms and conditions of their issue, are known as convertible preference shares.which preference shares are not convertible into equity shares are known as non convertible preference shares,

Procedure for issue of shares

(**a) Issue of Prospectus**: Whenever shares are to be issued to the public the company must issue a prospectus. Prospectus means an open invitation to the public to take up the shares of the company thus a private company need not issue prospectus. Even a Public Company issuing it "s shares privately need not issue a prospectus. However, it is required to file a "Statement in lieu of Prospectus" with the register of companies. The Prospectus contains relevant information like names of Directors, terms of issue, etc. It also states the opening date of subscription list, amount payable on application, on allotment & the earliest closing date of the subscription list.

(b) Application of Shares: A person intending to subscribe to the share capital of a company has to submit an application for shares in the prescribed form to the company along with the application money before the last date of the subscription mentioned in the prospectus.

Over Subscription: If the no. of shares applied for is more than the no. of shares offered to the public then that is called as over Subscription.

Under Subscription: If the no. of shares applied for is less than the no. of shares offered to the public then it is called as Under Subscription.

(**c)Allotment of Shares**: After the last date of the receipt of applications is over, the Directors, Proceed with the allotment work. However, a company cannot allot the shares unless the minimum subscription amount mentioned in the prospectus is collected within a stipulated period. The Directors pass resolution in the board meeting for allotment of shares indicating clearly the class & no. of shares allotted with the distinctive numbers. Then Letters of Allotment are sent to the concerned applicants. **Letters of Regret** are sent to those who are not allotted any shares & application money is refunded to them.

Partial Allotment: In partial allotment the company rejects some application totally, refunds their application money & allots the shares to the remaining applicants.

Pro-rata Allotment: When a company makes a pro-rata allotment, it allots shares to all applicants but allots lesser shares then applied for E.g. If a person has applied for three hundred shares he may get two hundred shares.

(d) Calls on Shares: The remaining amount of shares may be collected in installments as laid down in the prospectus. Such installments are called calls on Shares. They may be termed as "Allotment amount, First Call, Second Call, etc."

(e) Calls–in–Arrears: some shareholders may not pay the money due from them. The outstanding amounts are transferred to an account called up as "Calls-in-Arrears" account. The Balance of calls-in-arrears account is deducted from the Called-up capital in the Balance Sheet.

(**f) Calls–in–Advance**: According to sec.92 of the Companies Act, a Company may if so authorized by it "s articles, accept from a shareholder either the whole or part of the amount remaining unpaid on any shares held by them, as Calls in advance. No dividend is paid on such calls in advance. However, interest has to be paid on such calls in advance.

Terms of issue of shares

A limited company may issue the shares on following different terms.

(a) Issue of Shares for Consideration other than cash or for cash or on capitalization of reserves.
(b) Issue of Shares at par i.e. at face value or at nominal value.
(c) Issue of Shares at a Premium i.e. at more than face value.
(d) Issue of Shares at a Discount i.e. at less than the face value.

Issue of shares at a premium : When the shares are issued at a price higher than the nominal value of the shares then it is called as shares issued at a premium. The amount of premium is decided by the board of Directors as per the guide lines issued by SEBI. Such share premium collected by the company is credited to a separate A/c called as **"Securities Premium reserve A/c"**. Although Securities Premium is a profit to the company, it is not a revenue profit, it is treated as **capital profit**, which can be utilized only for the following purposes as per sec. 78 of the Companies Act –
(a Issue of fully paid bonus shares to the existing shareholders.
(b) Writing off the preliminary expenses of the company.
(c) Writing off the expenses of issue or the commission paid or discount allowed on any issue of shares / debentures.
(d) Providing the premium payable on redemption of preference shares or debentures. The company can utilize the security Premium for any other purpose only on obtaining the sanction of the court

Issue of shares at a discount

The Companies Act, permits issue of shares at a discount subject to the following conditions. (sec. 79) –

[1] The issue must be of a class of shares already issued.
[2] Not less than 1 year has at the date of issue elapsed since the date on which the company became entitled to
[3] commence business.
[4] The issue at a discount is authorized by a resolution passed by the company in the general meeting & sanctioned
[5] by the company law board.
[6] The maximum rate of discount must not exceed 10% or such rate as the company law board may permit.
[7] The shares to be issued at a discount must be issued within two months of the sanction by the company law
[8] board or within such extended time as the company law board may allow.

Accounting entries
For receipts of application money
Bank Account Dr.
To Share application Account
(being application money received0

On allotment of shares
First of all application money transferred to share capital account.the entry is
Share application Account Dr.
To Share capital Account
(Being the application money transferred to share capital Account)
Then those are not allotted the shares their application money returned.the entry is
Share application Account Dr.
To Bank Account
(Being application money of shares returned)
On allotment of shares allotment money becomes due. The entry is
Share allotment Account Dr.
Discount on issue of shares Account Dr. (in case of shares issued at a discount)
To Share capital Account
To Security premium reserve Account (in case of shares issued at premium)
(Being allotment money due)

On receipt of allotment money
Bank Account Dr
To Share Allotment Account
(Being allotment money received)

On making the first call due from shareholder
Share First Call Account Dr.
To share Capital Account
(Being the first call money due)

On receipt the first call money
Bank Account Dr.
To Share First call Account
(Being First call money received)

Further Issue of Capital : Preferential Basis Provisions relating to further issue of capital to be applicable to all types of companies Existing shareholders on proportionate basis Apart from existing shareholders , shares may also be offered to employees as ESOP(Employees stock ownership plan) .On the condition of expiry of two years of formation of company OR 1 year from allotment of shares for offer of shares to any person (including existing shares) for cash or other than cash, if Special Resolution passed or Price determined by Registered Valuer

Preferential Offer means: Offer of equity shares, Fully Convertible debentures/partly Convertible Debentures/other security convertible into equity to select person or group of person. Not include PI, Bonus, ESOP, ESPS, Sweat Equity, Depository receipt in India/Abroad. Necessary disclosures in Explanatory Statements as prescribed in rules Allotment be completed within 12 months from the date of SR In case of convertible securities, the price of resultant share be known beforehand. In addition to the above should also comply with conditions laid down in Section 42 of the Act.

Private Placement
- Private Placement to be made through issue of offer letter.
- The offer to be made to maximum 50 persons at a time and not more than to 200 persons in Aggregate (excluding QIB and ESOP), in a Financial Year. Such allotment of shares restricted to 4 in a Financial Year and not more than once in a calendar quarter with a minimum gap of 60 days between any 2 such offers or invitations.
- value of such offer or invitation shall be with an investment size of minimum Rs.50,000 per person.

- ❖ Payment be made by subscriber's Bank Account only. No Cash payment
- ❖ Such allotment of shares can only be transferred to max 20 persons in a Quarter
- ❖ A Special resolution be passed.
- ❖ The offer can be exercised by adressee/offeree
- ❖ Allotment be completed within 60 days from date of receipt of share application otherwise

repay within 15 days from date of completion of 60 days.If unable to pay liable to repay interest @ 12% pa from expiry of 60^{th} day.
Share application be kept in separate bank account and utiliize only for issue of shares else repay is unable to allot If made to more than50 persons or such higher number of persons as may be prescribed shall be deemed to be an offer to the public. Non-compliance to above lead to stringent penalty which may extend to higher of:
• Amount involved in Offer: or
• Rs. Two Crores
Refund the application money within 30 days of order imposing penality

Bonus Share

Issue of Bonus Shares can be made out of:
a. Free reserves; or
b. The securities premium account; or
c. Capital redemption reserve account
Company cannot issue bonus shares by capitalizing revaluation reserves. Decision of issue of Bonus Shares once made by the Board cannot be withdrawn

Bonus Shares can be issued if –
[1] Authorisation by articles of association;
[2] Board and shareholders' approval;
[3] No default in payment of interest or principal on FDs or other debt securities;
[4] No default with respect to payment of statutory dues of employees; and
[5] there being no partly paid-up shares.

No issue of bonus shares in lieu of dividend.
Subscriber to MOA - 2 Months
Further Allotment - 2 Month if physical; and Immediately, if Demat
Transfer/Transmn. - 1 Month from the date of receipt of deed
Debenture - 6 Months from the date of allotment
Further issue of capital ;Preferential Issue of shares to any person Bonus SharesTime limit for Issueor Transfer of Securities Provisions relating to further issue of capital to be applicable to all types of companies.

- Special resolution required by all type of Companies
- Pricing of a Preferential issue of shares to be determined by a Registered Valuer
- Conditions may be prescribed in Rules for preferential issue by companies.
- Share application money has to be paid either through cheque, demand draft orother banking channel is but not in cash

Right shares : Under Sec.94 of Companies Act, A company can issue additional shares at any time by passing an ordinary resolution at its General Meeting. However, under Sec. 81 of that, such additional shares must be 1^{st} offered to the existing equity shareholders in the proportion of the shares already held by them. Such additional shares are called "Rights Shares". Following legal provisions are pertinent inthis regard.

a. The issue should be within the limits of the authorized capital, if not so, then the authorized capital must be
b. increased first suitably.
c. The issue is to be made after two years from the formation of the company or after one year from the first
d. allotment of shares.
e. The shares should be offered to the equity shareholders in proportion to the capital paid-up on their shares.
f. The offer should be made by a written notice specifying the no. of shares offered & the time limit for acceptance
g. which should be atleast 15 days from the date of offer.
h. Unless prohibited by the Articles, the offer should include & specify the power of the shareholder to renounce
(sale) the right shares to others.

i. The shares not taken up by the shareholders can be sold by the Board of Directors in a manner most beneficial to
j. the company.
k. Such right offer need not be made to the existing shareholders, if
[1] A special resolution to that effect is passed by the shareholder in the General Meeting or
[2] An ordinary resolution to that effect is passed and approved from the Central Govt. is obtained for issue of shares

to persons other than the existing shareholders.

Sweat equity shares : Issue of sweat equity shares is governed by the provisions of Section 79A of the Companies Act, 1956. Explanation to the said section defines the expression 'sweat equity shares 'to mean equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know how or making available rights in the nature of intellectual property rights or value additions, by whatever named called. It is therefore, necessary for the issue of sweat equity shares that the concerned employee either provides the know-how, intellectual property rights or other value additions to the company.

Surrender of shares : A shareholder who is not able to pay the call money may surrender it"s shares to the company. The company cancels such surrender shares. Surrender is a voluntary act on the part of the shareholder, whereas Forfeiture is a compulsory act on part of the company. The effect of both surrender & Forfeiture is the same, i.e. cancellation of the shares. The company can accept surrender of shares if permitted by its Articles of Association. The accounting treatment in respect of surrender of shares is same as that of Forfeiture of Shares

Forfeiture of share : Sometimes some shareholders fail to pay the called up amount in full i.e. they do not pay in one or more instalments after the allotment of the shares to them. In such a case either the company can go to the court and file a suit against the defaulting shareholders for recovery of the due amount or can cancel the membership of the defaulting shareholders. In case themembership is cancelled, the amount paid by the defaulting memberstowards share capital stands forfeited, is called 'Forfeiture of Shares.

Reissue of forfeited share : If shares are forfeited the membership of the shareholder stands cancelled and the shares become the property of the company. There after the company has an option of selling such forfeited shares. The sale of forfeited shares is called 'reissue of share

Variation of Shareholders Rights

Buyback of Shares OR Capital Reduction : If variation of rights of one class of shareholders affects the rights of other class of shareholders, the consent of atleast 75% of such other class need to be obtained. Uniform time lag of one yearhas been provided for subsequent buyback be the earlier buyback has been approved by Board orShareholders

. Even Scheme of Compromise, M&A etc.to be in line with Buyback provisions Now possible if default made in payment of deposit, dividend etc. is remedied and a period of 3 years lapsed after such default

•No Reduction if deposit or any or interest thereon is in arrear

•Accounting standards compliance made mandatory or any other requirement of the

Bill duly confirmed by Auditor Certificate filed with NCLT

•Filing of NCLT order with ROC within 30 days

•Notice by NCLT to CG, SEBI and every Creditor..

•Publication of Order of confirmation of CR has been made compulsory

II. CONCLUSION

The main function of the authorized capital of a company is to protect the existing shareholders against possible dilution of their equity interests by the issuing of shares beyond the stipulated limit. The authority therefore given to companies to purchase their own shares has given companies the flexibility to decide on matters directly relating to the share capital of the company.

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