SHARE CAPITAL

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1. Issue and Allotment of Shares

New Shareholders can be introduced to a company in 2 main ways, the allotment of shares and the transfer of shares. In their basic form, allotment and transfers are a simple procedure, however it is important to understand the basic requirements as these are the important part of more complex transactions like Share for Share Exchanges and Share for Undertaking.

A share can be described as an intangible accumulation of rights, interests and obligations. The reason companies issue shares is to allow the company raise funds to carry out its activities and make a return for its members. It also allows the ownership to change in a company.

Different share classes may have different rights so it is very important to review the articles of association to understand the rights attached to the shares. Ordinary shares usually have the following rights:

- A right to attend and vote at general meetings
- A right to a proportion of the profits of a company – dividend
- A right to the capital surplus on winding up
- A right to notice & information from Company

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Allotment of Shares

The allotment of shares is the issuing of new shares to the existing shareholders or to third parties. The Directors of a Company may allot shares in the capital of the Company, if they have the authority to do so. Some examples where allotment of shares may be used are as follows:

- To raise money for the Company
- To introduce new investors such as BES investors
- To allow Enterprise Ireland or Enterprise Board Investors
- To convert loans to share capital
- To introduce a golden share
- To put in place a group structure
- To fund a redemption of shares
- To implement a bonus issue of shares

Directors may not allot shares unless they have the power to do so. The Directors power to allot shares expires 5 years from the date of incorporation or 5 years from the last renewal of the power to allot. If the authority to allot shares has not been renewed in the last 5 years then it should be renewed prior to any proposed allotment. This can be renewed by the Members passing an Ordinary Resolution prior to the allotment.

A company must have sufficient unissued authorised share capital before new shares may be allotted by the Directors. If the Company does not have sufficient unissued share capital or is setting up a new share class this must be approved by the members passing a special resolution.

The Memorandum and Articles of Association and any shareholder agreements should be reviewed for regulations on pre-emption rights, unissued share capital and other provisions that may affect the allotment of shares. The shares may be allotted for cash, non-cash and may be allotted at a premium.

The new shareholders must apply for shares to be allotted to them, the Directors must approve the allotment of shares, write up the Register of Allotments and Register of Members and file the form B5 with the CRO. New share certificates should be issued to the new shareholders.

Transfer of Shares

Shareholders have the ability to transfer their shares to existing shareholders or third parties. This allows shareholders to sell their shares or for companies to be bought and sold. Some examples where we have used transfer of shares are as follows:

- Shareholder wants to transfer shares to existing shareholders
- Shareholder wants to exit company by transferring to existing or third parties
- Succession Planning (transferring shares to spouse or siblings)
- Share for Share Exchange
- Company Takeover
- Company Restructuring or putting a group in place

In a Private Limited Company, Directors have right to refuse any transfer of shares once the reasons are in the best interests of the company and are not oppressing any shareholder rights.

The Memorandum and Articles of Association and any Shareholders Agreements should be reviewed prior to any transfer for any restrictions on the transfer of shares.

A transfer of shares must be approved by the Directors and the appropriate stamp duty paid to the Revenue Commissioners. Stamp duty is calculated at 1% of the total consideration paid or the market value for the shares. If the value of the consideration or the market value of the shares is less than €1,000, the stock transfer form does not have to be stamped.

Stamp duty must be calculated and paid using Revenue's ROS system. Once the appropriate stamp duty is paid, the Revenue will issue a stamping certificate which must be provided to the Company as proof that the appropriate stamp duty has been paid.

The Company should then write up the Register of Members and Register of Transfers and issue a new share certificate.

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2. Rules Regarding Allotment of Shares

The following rules regarding allotment of shares are noted:

I. Application Form

A prospectus is an invitation to the public to purchase shares. Naturally, the intending purchaser has to apply in a prescribed form (given in the prospectus) for the purpose which is known as 'application form'.

Needless to mention that the prospectus fixes the time when the application will be opened and the allotment will be made. Letter of allotment should be sent to the applicant of shares after the allotment is made.

II. Offer and Acceptance

We know that membership of a company after purchasing shares is nothing but a contract. The application form which is given by the members is the 'offer' and allotment by directors is the 'acceptance' of that 'offer' and, similarly, the notice of acceptance which is sent is the 'acceptance of the offer.'

III. Conditional offer and Acceptance for 'Offer'

Usually, the conditions are printed in the application form, e.g., in case of over-subscription of shares, shares will be allotted on pro-rata basis etc. Conditions for acceptance is practically invalid.

IV. Proper Authority

It should be remembered that allotment of shares should always be made by the proper authority e.g., by the board of directors, and allotment made without proper authority is void. Although allotment can be delegated to some persons if the Articles so provide.

V. Reasonable Time

After receiving the application form allotment should be made as soon as possible by the directors i.e., within a reasonable time. Otherwise, applications for 'offer' will be revoked if such reasonable time expires.

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VI. Fictitious Name

Sec. 68A states that any person who

i. Makes in a fictitious name for acquiring or subscribing for any share; or,
ii. induces a company to allot, register any transfer of shares to him or any other person in a fictitious name shall be punishable by imprisonment up to 5 years.

The following restrictions have been prescribed by the Companies Act regarding allotment of shares:

I. **Minimum Subscription:** Sec. 69(1) states that no allotment can be made by the company until the minimum subscription has been received.
II. **Application Money:** Sec. 69(3), however, lays down that the amount payable on each share with the application form must not be less than 5% of the nominal value of the shares.
III. **Money to be Deposited in a Scheduled Bank:** Sec. 69(4) states that money received from the applicants must be deposited in a Scheduled Bank until the certificate to commence business has been obtained or until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company.
IV. **Returns of Money:** Sec. 69(5) states that if the minimum subscription has not been raised or if the allotment could not be made within 120 days from the date of publication of the prospectus, the directors must return the money received from the applicants. If the money is refunded within 130 days no interest is payable, beyond which the directors are liable to pay interest @ 6% p.a. from the 130th day to the day of repayment.
V. **Statement in lieu of Prospectus:** Sec. 70 of the Companies Act states that a public company which has not issued any prospectus must deliver to the Registrar for registration a statement in lieu of prospectus signed by every director or proposed director or his agent in the form prescribed in Schedule III of the Act, at least 3 days before the first allotment of shares.
VI. **Opening of the Subscription List:** Sec. 72 lays down that no allotment can be made until the beginning of the 5th day after the publication of the prospectus or such later time as may be prescribed for the purposes in the prospectus.
VII. **Revocation of Application:** Application for shares cannot be revoked until after the expiration of the 5th day after the time of opening of the subscription list except in one case, i.e. if any responsible person gives public notice of withdrawal of the consent to the issue of the prospectus, any applicant can revoke his application.

The following consequences are to be made if the allotment is made in contravention of Sees. 69, 70 and 73, stated earlier:

I. **Option:** See. 71(1) and (2) states that the allotment becomes voidable at the option of the shareholders. The option to avoid the contract must be exercised within 2 months of holding the statutory meeting or where no statutory meeting is held or where the

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allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment. The same can be exercised even if the company is in course of liquidation.

II. **Compensation:** Sec. 71(3) lays down that if any director knowingly or wilfully contravenes the rules or authorizes the contravention, he is liable to pay compensation to the shareholders concerned for any loss or damage suffered by him. But the suit for compensation must be filed within 2 years from the date of allotment.

III. **Fine:** Sec. 72(3) states that the validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section, but,, in the event of any such contravention, the company, a fid every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 5,000.

IV. **Void:** If any allotment is made in violation of Sec. 73, the same is treated as void.

According to Sec. 75 of the Companies Act, a company having a share capital (whether public or private) must file with the Registrar a return of the allotment within 30 days after making such allotment of shares giving full particulars of allotment made, such as:

i. The number and the nominal amount of the shares allotted;
ii. The names, addresses and occupations of the allottees; and
iii. The amount paid or payable on each share.

If any shares (other than bonus shares) are allotted as partly paid-up or fully paid-up (other than cash) the company must produce for the inspection of the registrar:

i. A contract in writing constituting the title of the allottee to the shares;
ii. The contract of sale or for services or other consideration for which the allotment was made; and
iii. file with the Registrar—(a) copies or the contract (mentioned above) and (b) a return stating the number and nominal amount of the share so allotted.

While allotting bonus shares, the return should state the names, addresses and occupations of the allottee, in addition to the number and nominal amount of the shares constituted in allotment together with a copy of the resolution authorising the issues of such shares.

It should be remembered that no return need be filed relating to the issues and allotment of shares which the company had forfeited for non-payment of calls. Re-issue of forfeited shares is not an allotment within the meaning of Sec. 75(1).

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3. **Issue of Shares at Premium and at Discount**

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

1. Issue of Shares for Consideration other than cash or for cash or on capitalization of reserves.
2. Issue of Shares at par i.e. at face value or at nominal value.
3. Issue of Shares at Premium i.e. at more than face value.
4. Issue of Shares at Discount i.e. at less than the face value.

Issue of Shares at 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. Please note that the Securities Premium is a profit to the company, but it is not a revenue profit, it is treated as Capital Profit, which can be utilized only for the following purposes:

- Issue of fully paid bonus shares to the existing shareholders.
- Writing off the preliminary expenses of the company.
- Writing off the expenses of issue or the commission paid or discount allowed on any issue of shares / debentures.
- 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 can issue the shares at a discount subject to the following conditions:

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 commence business.
3. The issue at a discount is authorized by a resolution passed by the company in the general meeting & sanctioned by the company law board.
4. The maximum rate of discount must not exceed 10% or such rate as the company law board may permit.
5. The shares to be issued at a discount must be issued within two months of the sanction by the company law board or within such extended time as the company law board may allow.

4. **Provisions of companies act relating to issue and allotment of shares**

1. A public company must file a prospectus or statement in lieu of prospectus, inviting offers from the public for the purchase of shares in the company.

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2. After studying the prospectus, the public applies for shares of the company in the printed prescribed forms. The company can ask for the issue price of the share to be paid in full along with the application or it can be payable in instalments as share application money, share allotment money, share first call, share second call and so on. The amount payable as application money must be at least 5 percent of the nominal amount of the share.
3. No allotment of shares can be made unless the 'Minimum Subscription' as given in the prospectus had been subscribed or applied for. Minimum Subscription is the minimum amount which, in the estimate of the directors, is required to run the business. It has to be stated in the prospectus.
4. The amount of share application money must be deposited in a bank. It can be operated by the company only after getting the certificate of commencement.
5. If the minimum subscription amount of 90% of the issue was not achieved by the company within 60 days from the date of closure of the issue, the company has to refund the entire subscription amount immediately. For any delay beyond 78 days, the company has to pay an interest of 6% per annum.

After allotment, the directors can call upon the shareholders to pay the full amount due on shares in one or more instalments as mentioned in the prospectus. The articles of a company usually contain provisions regarding calls. If there is no such provision in the Articles, the following provisions shall apply:

i. No call shall be for more than 25% of the nominal value of each share.

ii. Interval between any two calls should not be less than one month.

iii. At least 14 days' notice must be given to each member for a call specifying the amount, date and place of payment.

iv. Call should be made on a uniform basis on the entire body of shareholders falling under the same class.

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5. Classes of Shares

A share of a company is one of the units into which the capital of a company is divided. So if the total capital of a company is 5 lakhs, and such capital is divided into 5000 units of Rs 100/- each, then this one unit of amount 100 is a share of the company.

Thus a share is the basis of ownership of the company. And the person who holds such shares and is thus a member of the company is known as a shareholder.

Now the Articles of Association will contain some essential information about shares and share capital, like the classes of shares to be prescribed. In all, there are two types of shares a company can allot according to the Companies Act 2013. They have different natures, rights, and obligations.

Preference Shares

A preference share is one which carries two exclusive preferential rights over the other type of shares, i.e. equity shares. These two special conditions of preference shares are

- A preferential right with respect to the dividends declared by a company. Such dividends can be at a fixed rate on the nominal value of the shares held by them. So the dividend is first paid to preference shareholders before equity shareholders.
- Preferential right when it comes to repayment of capital in case of liquidation of the company. This means that the preference shareholders get paid out earlier than the equity shareholders.

Other than these two rights, preference shares are similar to equity shares. The holders of preference shares can vote in any matters directly affecting their rights or obligations.

Preference shares can actually be of various types as well. They can be redeemable or irredeemable. They can be participating (participate in further profits after a dividend is paid out) or non-participating. And they may be cumulative (arrears in demand will cumulate) or non-cumulative.

Equity Shares

Equity share is a share that is simply not a preference share. So shares that do not enjoy any preferential rights are thus equity shares. They only enjoy equity, i.e. ownership in the company.

The dividend given to equity shareholders is not fixed. It is decided by the Board of Directors according to the financial performance of the company. And if in a given year no dividend can be declared, the shareholders lose the dividend for that year, it does not cumulate.

Equity shareholders also have proportional voting rights according to the paid-up capital of the company. Essentially it is one share one vote system. A company cannot issue non-voting equity shares, they are illegal. All equity shares must come with full voting rights.

6. **Share Certificate**

A share Certificate refers to a document which is issued by a company evidencing that a person named in such certificate is the owner of the shares of Company as stated in the share certificate. The Indian Companies Act mandates companies for issuing share certificates post their incorporation.

Details to be provided in a share certificate

Every share certificate issued in India should contain the below mentioned:

1. Name of issuing Company

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2. CIN no. (Corporate Identification Number) of such Company
3. Address of the company's registered office
4. Name of owners of such shares
5. Folio number of member
6. Number of shares which is represented by such share certificate
7. An amount which is paid on such shares
8. Distinct number of the shares

The timeframe for issuing share certificates

After the incorporation of the company, the company needs to issue the share certificates within two months from incorporation date. Where additional shares are allotted to the new or existing shareholders, the share certificates should be issued within two months from allotment date.

In a case related to the share transfers, the share certificates should be issued to transferees within a period of one month of receipt of the instrument of transfer by such Company.

Procedures for issuing share certificates

Board Meeting & Allotment of shares

A board meeting is called for deciding about allotment of shares. The board of directors assigns a committee of directors known as allotment committee. The allotment committee would then decide about allotment of shares.

Once allotment committee provides its report with respect to allotment of shares, the Board then approves such report and then passes the resolution for allotting shares to the respective applicants.

Once shares are allotted by the allotment committee, the company secretary sends the letters of allotment to the respective members. The allotment letter refers to a letter that notifies the applicant that the company has allotted a certain number of shares to him. This letter of allotment is considered as the share certificate till issuance of the final certificate.

Register of members

The company secretary then prepares a Register of members from the lists of application received and allotment sheets. Register of member provides information about the shareholders and details of the shares which are allotted to them.

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Preparing and Printing Share Certificates

The company secretary must arrange the form of the share certificate according to the form suggested by the Articles of Association. The secretary must get the form printed together with all the required details as per the provisions of the governing law. The secretary needs to fill all the details in share certificate with help of the application register and allotment sheets.

The secretary also needs to ensure that the share certificate is signed by two directors of the company. The secretary needs to sign the share certificate. The secretary also needs to ensure that the company's seal and revenue stamp is affixed on each of the share certificates. Once certificates are in order, a board meeting is called for passing the resolution for issuing share certificates.

Intimation and dispatch of share certificate

The company secretary needs to inform all the shareholders that share certificates are ready and would be delivered in exchange of allotment letters and bankers receipt confirming payment of the allotment money. A public notice should be issued for the general information of the members.

Members who surrender their allotment letters, share certificate are dispatched by the registered post to them. The local shareholders as per their preference can also collect the share certificates personally from company's registered office or from agency appointed for dispatching the share certificates.

Penalty for breach

Where a company makes any default in complying with provisions relating to issue of share certificates, such company would be punishable with a fine that wouldn't be less than INR 25,000 but could extend to INR 5,00,000 and every defaulting officer of such company would be punishable with a fine that wouldn't be less than INR 10,000 but could extend to INR 1,00,000.

7. Forfeiture and Surrender of Shares

Forfeiture of Shares

Forfeiture of shares is a process where the company forfeits the shares of a member or shareholder who fails to pay the call on shares or instalments of the issue price of his shares within a certain period of time after they fall due. In other words, when the shareholder fails to pay the full amount of share which he agreed to pay in instalments the company can cancel his shares.

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When the shares are issued by the company, generally the shareholders are not asked to pay the whole amount of share at once. It happens in instalments. The company makes these calls on shares when it requires further capital.

The company may call up the unpaid money from the shareholders when it is needed from time to time. The board of directors are required to pass a resolution for making a call on shares. The articles of the company should contain the provisions regarding this call on shares and if nothing is mentioned in the articles then Regulations 13-18 of table F of Schedule I of Companies Act, 2013, will apply.

Those provisions provide that:

1. the amount called must be not more than one-fourth of the face value of share;
2. the dates of two consecutive calls must differ by at least a month;
3. a minimum of fourteen days' notice must be given to members;
4. the notice has to mention the time, place and amount of the call on shares.

Generally, the company will give 14 days' notice to the shareholder and after 14 days if the shareholder is not willing to pay the money due to the company will forfeit the shares of that shareholder.

The relationship between shareholder and company

Now if we look at the relationship between a shareholder and the company, it is a contractual relationship. The shareholder applies for an offer from the company and gets shares allotted. This process is nothing but the shareholder entering into a contract with the company as the offer and acceptance along with some consideration become a valid contract between him and the company. This contract makes it binding upon the shareholder to pay-up the amount due on the issue price of the share when company calls for it through the call on shares.

So the non-payment of call on shares amounts to a breach of contract by the shareholder, and therefore as per the terms and conditions of the issue of shares and after allowing the shareholder prescribed time and opportunity, if he still fails to pay the money due, the company can forfeit the shares of that shareholder. Shares which are forfeited will no longer remain the shares of that shareholder. The money paid by that shareholder is also not refundable by the company.

What happens after the shares are forfeited?

After the shares are forfeited, they may be either disposed of or they may be reissued to some other person. The only condition in reissuing the forfeited shares is that the price which will be fixed by the company for reissue of the forfeited share (i.e., the price of the reissued share + amount paid by the former owner of the share) should not be less than the face value of the share. This is done to ensure that the shares are not allotted at a discount.

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If the previous shareholder (whose shares has been forfeited) requests the company to cancel the forfeiture, the board of directors can at any point before the reissue or disposal of such shares can cancel the forfeiture of shares in terms as the board thinks fit. For this, the board of directors has to pass a resolution to cancel the forfeiture.

Illustration

Pilot Ltd. has issued 1,00,000 equity shares of face value of Rs. 1000 each. The company set up its amount on the share as Rs. 100 at the time of application, Rs. 200 at the time of allotment, Rs. 300 per share on making the first call, and Rs. 40 on the final call.

Mr. Manoj has been allotted 400 shares by the company and while the final call of Rs. 400 is made by the company he was unable to pay the money for that final call. The company gave prescribed time period and notice to Manoj and even after that he failed to pay the money.

Now the company can forfeit the shares of Manoj and he ceases to be a member of the company and loses all rights on the shares he held.

Now Pilot Ltd. decided to reissue the forfeited shares to Mr. Rishvik and the minimum price at which the shares can be issued should not be less than Rs. 400. This is because the amount of money paid by Manoj (previous holder) is Rs. 600 and the face value of the share is Rs. 1000. Hence Rs.600 + Rs.400 will amount to 1000 and any amount which is less than Rs. 400 will amount to issuing the shares at a discount which is prohibited under section 53 of Companies Act,2013.

Now if Mr. Manoj comes and pleads with the company to cancel the forfeiture of shares after the reissue of the forfeited shares to Mr. Rishvik. This cannot happen because the board of directors has the power to cancel the forfeiture only before the disposal or reissue of shares as per regulation 31(2) of Table F, Schedule I of Companies Act, 2013.

<ins>**Procedure for forfeiture of shares**</ins>

Forfeiture of shares is a serious step since it involves in depriving a person of his property as a penalty of some act or omission. Accordingly, shares of members cannot be forfeited unless the articles of the company confer such power on the directors. The forfeiture of a share should happen only for the non-payment of the call on shares by the members and in accordance with articles of the company. But forfeiture can also be made for any other reasons which are specified in the articles of the company. Companies normally have their own rules and regulations regarding the forfeiture of shares and in case if those provisions are not present then the Regulations 28-34 of Table F of Schedule 1 of Companies Act, 2013 will apply.

The following is the procedure:

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- ***In accordance with articles***

Forfeiture of shares must be in accordance with the provisions contained in the articles of the company to be treated as valid forfeiture. The power of forfeiture of shares must be exercised *bona fide* and in the interest of the company. Thus, where the articles of the company authorize the directors to forfeit the shares of a shareholder, who commences an action against the company or the directors, by making a payment of the full amount of his shares, was held that such a clause was invalid as it was against the rights of a shareholder [**Hope v. International Finance Society (1876) 4 Ch. D. 598**]

- ***Proper notice***

A proper notice under the authority of board must be served on the defaulting shareholder. The notice should mention that the shareholder has to pay the amount on a day specified which would not be earlier than fourteen days from the date of notice served. This is provided under Regulation 29 of Table F. the notice should also mention that in the event of non-payment, the shares will be liable to be forfeited.

The objective of sending the notice is to give the defaulting shareholder an opportunity to pay the call money, interest and any other expenses and hence notice should disclose enough information with particulars to the shareholder.

"A proper notice is a condition precedent to the forfeiture of shares and even the slightest defect in the notice will invalidate the forfeiture". [**Public Passenger Services Ltd. v. M.A. Khader [1996]**]

A notice sent for forfeiture by registered post was returned unserved, the forfeiture will be held invalid" [**Promiela Bansali v. Wearwell Cycle Co. Ltd. [1978] 48 Comp. Cas. 202 (Delhi)**.]

A notice sent to the holder of a partly paid share after his death is not a proper notice. Notice in this kind of situations is to be sent to the legal heir [**George Mathai Noorani v. Federal Bank Ltd. [2007] 76 SCL 528 (CLB).**]

- ***Resolution for forfeiture***

If the defaulting shareholder does not pay the amount within the specified period mentioned in the notice properly served to him, the directors of the company may pass a resolution forfeiting the shares under regulation 30 of Table F. in the absence of such resolution the forfeiture shall be invalid unless the notice of forfeiture incorporates the resolution of forfeiture as well. For example, the notice may state that in the event of default the shares shall be deemed to have been forfeited.

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Effects of forfeiture

Cessation of membership

A person whose shares have been forfeited ceases to be a member in respect of forfeited shares. This is provided under regulation 32(1) of Table F of schedule 1 of Companies Act, 2013.

Cessation of liability

The liability of a person whose shares have been forfeited comes to an end when the company receives the payment in full of all such money in respect of shares forfeited. This is provided in Regulation 32(2) of Table F.

However, notwithstanding the forfeiture of shares, shareholder remains liable to pay to the company all money which, at the date of forfeiture, were payable by him to the company in respect of forfeited shares. Thus, the liability of unpaid calls remains even after the forfeiture of shares.

Liability as past member

The liability of a former shareholder remains as a liability of a past member to pay calls if liquidation of the company takes place within one year of the forfeiture.

Forfeited shares become company's property

The forfeited shares become the property of the company on forfeiture. Accordingly, these may be re-issued or otherwise disposed of on such terms an in such manner which the board of directors thinks fit. This provided under Regulation 31(1) of Table F.

In the same Regulation clause (2) provides that at any point of time before a sale or disposal of forfeited shares the board may cancel the forfeiture of shares in terms as they think fit.

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Surrender of Shares

Surrender of **shares** means the return of shares by the shareholder to the company for cancellation. Holder in this case voluntarily abandons all his shares in favour of the company. A mere refusal to take up newly issued shares, to which a shareholder is entitled to, is not a surrender of shares. The power to accept surrender of shares cannot be exercised by a company unless expressly given by the Articles of Association.

But no shares can, in any case, be surrendered to the company in consideration of the payment of money or money's worth by the company. Such a surrender shall be ultra-vires the company since it would amount to purchase by the company of its own shares. There are only two cases where surrender of shares will be valid provided its acceptance by the company is authorised by the Articles of Association:

1. When shares are surrendered in exchange of the new shares of the same nominal value. There would be no reduction of share capital in such a case; and
2. When shares are surrendered as a short cut to forfeiture of shares when all the circumstances for forfeiture have arisen. Reduction of capital in such a case shall be valid.

Provisions in the articles, for the acceptance of surrender of shares in all other cases except the above two, will be void.

A member validly surrendering his shares to the company can nevertheless be held liable as a list B contributory in the event of winding up of the company within twelve months of his surrender of shares. Court may order for the restoration of the plaintiff's name in the Register of Members after lapse of any number of years if the surrender of shares is proved to be illegal and provided that the shares have not been reissued in the meantime or otherwise dealt with by the company.

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Difference between Forfeiture of Shares and Surrender of Shares

S.No.	**Basis**	**Forfeiture of Shares**	**Surrender of Shares**
1.	*Meaning*	It means compulsory termination of membership by confiscating (take away) shares.	It is return of shares voluntarily by the member to the company.
2.	*Purpose*	Forfeiture takes place because of non-payment of call money on the due date.	Surrender takes place due to the inability of a shareholder to pay the call money.
3.	*Action*	Compulsory action.	Voluntary action.
4.	*Nature*	Forfeiture is done in case of partly paid shares.	Surrender is done in case of fully or partly paid shares.
5.	*Procedure*	Lengthy in case of forfeiture of shares.	Easy and simply to surrender.
6.	*Initiative*	Company is taking the initiative.	Initiative is taken by shareholder.
7.	*Time Required*	Forfeiture requires longer time.	Surrender requires limited time.
8.	*Effect*	Forfeiture affects the reputation of a shareholder, as it is a penal action by the company.	Surrender of shares does not affect the reputation of the shareholder, as it is his own voluntary action.

8. Transfer & Transmission of Shares

Shares are like any other goods. A purchaser gets no better title than the seller.

The capital of a company is divided into a number of undividable units of a present amount called 'shares'. The Supreme Court of India in **CIT v. Standard Vacuum Oil Co.**, observed, that a share is an interest measured by a sum of money and made up of diverse rights conferred on it. It implies the existence of some person entitled to the rights, which are rights in action as distinct from rights in possession, and until the share is issued the person does not exist.

Transferability is an important feature of a share in a company registered under the Companies Act, from which emanates another feature of a company- perpetual succession. It endows a company with perpetual and uninterrupted existence. Upon incorporation, a company acquires its own independent legal personality and legal entity in the company. Section 82 states that the share shall be a movable property and transferable in a manner provided by the articles of the company. It has, however, been consistently held by the courts that subject to restrictions imposed by the articles, a shareholder is free to transfer shares to a person of his own choice and that the articles cannot put a complete ban or unreasonable restriction on the transfer. While shares in a private company are not freely transferable and are subject to the restrictions imposed by the articles of the company, shares in a public company are freely transferable. There are different types of transfer such as transfer of share by gifts, in case of joint holdings and transfer in private companies.

Transfer of shares is a transaction resulting in a change of share ownership. A shareholder, whether in public or private company, has a property in his share which he has a right to dispose of, subject only to any express restriction which may be found in the articles of the company.

Transmission is the automatic process; when a shareholder dies, his shares immediately pass to the personal representatives or, if a member is declared bankrupt, their shares will vest in the trustee in bankruptcy.

The Depositories Act, 1996 provides for an alternate mode of effecting transfer of shares. Investors have the choice of continuing with the existing share certificates (i.e., in physical form) and adopt the existing mode of effecting their transfer. Every depository is registered with the SEBI and receives a certificate of commencement of business on fulfillment of such conditions. Upon entry into the system, share certificates belonging to the investor will be dematerialized and their names entered in the books of participants as beneficial owners. The investor's names in register of companies concerned will be replaced by the name of the depository as the registered owner of the securities. The investors will, however, continue to enjoy the economic benefits from the shares as well as voting rights on the shares concerned.

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Transfer of Shares

"When joint stock companies are established, the great object was that the shares should be capable of being easily transferred."

One of the most important features of a Company is that its shares are transferable. Rights of a shareholder to transfer his share are always subject to provisions in Articles of Association. Upon incorporation a company acquires its own independent legal personality and distinct entity, and its shareholders acquire the right to hold and transfer shares. A Company limited by guarantee and having no share capital, no transfer of share is involved as there are

no shares to transfer. A member of such a company may transfer his 'interest' as per section 82 that allows for transfer of shares or 'other interest.'

Need for an instrument of transfer

Shares are moveable goods. The ownership of moveable goods may be transferred by delivery of possession, but as per section 36 there is a contractual relationship between the members and the company. When shares are transferred the contractual relationship is assigned to the transferee which requires an instrument of transfer. Transferring a share involves a series of steps, first an agreement to sell, then execution of a deed of transfer and finally registration of the transfer. Section 108 lays down the procedure for transfer.

Procedure for transfer of Shares

1. Instrument of transfer must be executed by both transferor and transferee.
2. It must be duly stamped.
3. It must be delivered to the company along with certificate relating to shares transferred.
4. Must be in the prescribed form and presented to prescribed authority.

Section 108 requires the transfer to be in a proper instrument of transfer known as 'Share Transfer Form' which is required to be presented to the Registrar of Companies before it is signed and filled up by the transferor. Any instrument of transfer which is not in conformity with these provisions shall not be accepted by the company. In cases of hardship the Central Government may extend the period of time. The transferee becomes a member of a company only when the transfer is registered by the company.

In **Prafulla Kumar Rout v. Orient Engg. Works (P.) Ltd.** it was observed that all that section 108 requires is that before delivery, the stamps should be affixed. However, in **Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.**, the Kerala High Court observed that instrument is unstamped if the it is not properly executed. Cancellation of the stamps by the staff of the company does not make the transfer instrument duly stamped. Provisions of Section 108 are inapplicable to transfer where transferee or transferor are entitled as beneficial owners in the records of depository.

Demat Shares

In the case of fresh issue (IPO), the investor would indicate his choice in the application form, if he opts to hold the security in the depository mode, commonly known as 'demat' mode. An investor, who opts for a depository mode may at any time, opt to choose out of it and claim share certificate from the company by substituting his name as the registered owner in the place of the depository. Ownership changes in the depository system will be made automatically on the basis of delivery vs. payment. The provisions of section 108 are inapplicable to transfer where transferee and transferor are entered as beneficial owners in records of depository.

Under the depository system securities may be dematerialized that may be transferred by recording entries in a depository. SEBI (Disclosure and Investor Protection) Guidelines,

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2000 stipulates that no company shall make public or offer sale of securities unless it enters into an agreement with the depository or gives an option to its shareholders to hold securities in dematerialized form no stamp duty is charged.

Where there is an immediate and unconditional transfer of shares with stipulation for determination of consideration for transfer to be mutually agreed on in future, it cannot not be said that agreement for transfer of shares was conditional on determination of price of shares. Forgery does not confer any title because it is not merely an absence of free consent but there is no consent at all.

Time Limit

As per section 113, a company is required, within 2 months after the application for transfer, to deliver the share certificates duly transferred. In Re, Reliance Industries Ltd. the company failed to deliver shares within the prescribed time of 2 months. CLB fined the company and share transfer agents. The default under section 113 is a continuing offence and, therefore, shall not be subject to limitation.

Board of Directors- Power of refusal

Where the Articles of Association of a Company give power to the Board to refuse registration of a transfer of shares, such power must be exercised by a resolution of the Board. The Board may refuse to register the transfer as long as they are acting in the interests of the Company, but if they exercise their discretion to refuse malafide, i.e. they act oppressively or corruptly, the Court will now interfere and order registration.

Articles of Association of a company may be specific and empower the Board of Directors to refuse to register transfers on certain specific grounds. Thus, where Articles of Association of a company contain a provision to the effect that no share shall be transferred to an outsider if any member of the Company was willing to purchase the same at fair price to be determined by the directors, and transfer to an outsider shall be allowed only when the Board of Directors was unable to find a willing member within a stipulated period; the directors having offered to purchase those shares, the question of registering shares in favour of an outsider not arise. The refusal to register transfer of shares on the ground that the transferor had been indulging in acts which were against the interests of the company is not right. As per section 111 if a Company refuses to register the transfer of shares, within 2 months from the date of lodging the instrument of transfer, send notice of refusal to the transferor or transferee giving reasons. Court on appeal may direct the registration of the transfer.

In **Hemanigiri Finance & Leasing (P.) Ltd v. Tamilnad Mercantile Bank Ltd.**, the Tribunal held that there is no blanket authority available to a company to refuse registration of transfer, even if Articles provide absolute discretion. When the Articles do not provide for any powers for refusal, the company cannot refuse.

In case of refusal, on appeal to the Tribunal, it is always for the party assailing the decision of the Board of Directors to demonstrate that such decision suffers from unsustainable reasons. The Tribunal while dealing with an appeal against refusal may, after hearing the parties, either

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dismiss the appeal or, by order, direct that the transfer shall be registered by the Company and the company shall comply with such order within 10 days of the receipt of the order.

Certification of an instrument of transfer lodged with the company is a process in which the company certifies on the instrument of transfer that the share certificate as stated in the certification stamp has been lodged with the company for registration of transfer. It is a kind of receipt. This provision has been made to facilitate the sale of smaller number of shares in case the share certificate is for a larger number of shares.

Rights of Transferees

Till the company has registered the transfer, the name of the transferor continues to appear in the register of members and thus he continues to be the lawful owner but transferee is the beneficial owner (cestui que trust). In order to protect the interest of the transferees; section 206A was added by the Amendment Act, 1988 which provides that where any instrument of transfer of shares has been delivered to the company for registration and transfer has not been registered, the right to dividend, rights shares and bonus shares will be kept on hold. This dividend would be kept in an "Unpaid Dividend Account" unless the company is authorized by the registered holder of such shares in writing to pay dividend to the transferee.

Blank Transfer

Where a shareholder signs a share transfer form without filling in the name of the transferee and hands it over along with the share certificate to the transferee thereby enabling him to deal with the shares, he is said to have made a transfer 'in blank' or a 'blank transfer'. It is not a negotiable instrument because it may be transferred by mere delivery. Accordingly, the title of the transferee acquiring shares through a blank transfer is subject to the title of the transferor.

A bona fide transferee from a person who has acquired a blank transfer form by fraud does not acquire good title to the shares included in the deed. A transfer in blank, when accompanied by a share certificate, carries to the transferee both the legal and equitable rights to the shares and also the right to call upon the company to register the transfer. This right to get himself registered as a member is available to the transferee even after the death of the transferor. Blank transfer, however, results in loss of stamp duty and income tax. To prevent abuse of blank transfer subsections (1A) and (1B) of section 108 were introduced in 1965.

Right to Pre-emption

It is a common practice to provide in the articles that any member intending to transfer his shares must offer the shares first to other members of the company. Such restrictions are not invalid. The conditions imposed and the formalities prescribed by the articles are mandatory. The pre-emption clause does not, however, completely bar transfers to outsiders.

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Restrictions on Transfer of Shares

<u>*General grounds*</u>

Malafide instrument of transfer, inadequacy of reasons, irrelevant considerations and bad delivery of transfer documents, contravention of law, prejudicial to company or public interest and stay order by Court are the reasons when transfer of shares can be restricted.

<u>*Special Circumstances*</u>

1. On transfer with regard to the company's borrowing
2. Under SEBI Guidelines shares allotted to certain categories of shareholders such as promoters, employees, etc are subject to condition of non-transferability for a period of 3-5 years accordingly.
3. CLBs power under Section 250 — prohibit public transfers.
4. Under FEMA and joint venture agreements.

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<u>Applicability of section 111 to Private and Public Companies</u>

Transfer of shares in a private company

In Dr. Jitendra Nath Saha v. Shyamal Mondal, it was observed that after the amendment of Section 111 in 1988, all the provisions of S.111 are applicable to private companies and deemed public companies. In **Canara Bank v. MTNL** Court held that the Depositories Act, 1996 has introduced important changes in the Court's jurisdiction regarding transfer of shares and debentures, namely, the entire provisions as contained in Section 111 are now made applicable only to private companies which also include a private company which has become a public company by virtue of Section 43-A.

In **Charanjit Shingh Ghumman v. Dr. Reddy's Laboratories Ltd.** the Court observed that though with the coming into force of sub-section 14 of S. 111, S. 111 is not applicable to public companies, the Court may consider a petition on merits under S. 111-A of the Act to meet the ends of justice.

Transfer of shares in a public company

Recently, the Bombay High Court has said in the case of **Western Maharashtra Development Corporation Ltd. Vs. Bajaj Auto Ltd,** that a pre-emptive right would impose a fetter on transferability of shares- a requirement envisaged only for private companies and in fact prohibited for public companies, in the scheme of the Act – and therefore "patently illegal".

According to sec. 111 A, the shares or debentures and any interest therein of a company, other than a private company and a deemed public company shall be freely transferable.

However, if a company, without sufficient cause, refuses to register transfer of shares within two months from the date on which, the instrument of transfer or the intimation of transfer, as

the case may be, is delivered to the company, the transferee may appeal to the Company Law Board (now Tribunal) and it shall direct such company to register the transfer of shares.

In **Peerless General Finance and Cement Co. Ltd v. Poddar Projects Ltd.**, it was held that provisions of section 111A do not put any time restriction on approaching the Court and, therefore, a public company cannot refuse rectification of the plea of limitation. Only when a company refuses to register transfer of shares on grounds that transfer is in violation of provisions of SEBI Act or regulations, provisions of SlCA will apply.

In **Turner Morrison Ltd. v. Jenson & Nicholson (India) Ltd.**, the Bench held that in terms of recently introduced section 111A, the Co's scope of power for rectification of register of members is restricted only to cases of refusal by the company to make transfer of shares or securities. This section applies to public companies.

Further Rights Granted

The right of shares or Debenture holders, to transfer shall including voting rights unless they have been suspended by an order of the Court. Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the Company Law Board, of shares or debentures shall entitle the transferee to voting rights unless the voting rights in respect of such transferee have also been suspended. Court should decide all matters pertaining to rectification under section 111 and if it is found that matter in question does not fall under it, and then only it may direct a party to get its right adjudicated by Civil Court.

Transmission of Shares

Transmission of shares takes place, when the registered shareholder dies; or when he is adjudicated an insolvent; or where the shareholder is a company it goes into liquidation. On the death of a shareholder, his shares vest in his legal representative. The legal representative may transfer the shares devolved upon him by transmission. According to S.109, a transfer share or other interest in a company of a deceased member made by his legal representative is not a member, is valid as if he had been a member at the time of the execution of the instrument of transfer. Likewise, according to Reg 26(1) in Table A, any person entitled to a share due to the death or insolvency of a member, may either re-elect to be registered himself as a member; or alternatively, transfer the shares to someone else.

The legal representative can sell the shares without being registered subject to the provisions of the Articles. A company has no powers to refuse registration of transmission of shares once the legal heir produces a proper legal representation to the estate by way of will/probate/succession certificate, etc., if the same is required in terms of the Articles, unless there is an injunction against acting in terms of the legal representation.

Transmission of shares in favour of a member of a private company who is engaged in a competing business cannot be refused. In **S.M. Hagee Abdul Hye Sahib v. KNS Hajee Shaik Abdul Kadar Labbai Sahib Co. (P.) Ltd.**, the Court held that a transfer of shares in a private company may be refused in case the transferee is engaged in a competing business but transmission cannot be refused on that ground. Succession certificate covering shares held by

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a deceased member on the date of his death would cover subsequent issue of bonus shares and no fresh succession certificate would be required.

It is for the court to be satisfied about the payment of proper court fees and if coin fees paid is insufficient, the recovery of deficit court fees along with penalty is to be decided by the authority of the court or revenue authority. Once the succession certificate has been produced from the competent court which has declared the appellant as legal heir for the shares in question and there is no other claimant for the said shares, the company ought to effect the transmission of shares on the basis of succession certificate produced where shares are held in joint names.

Transmission vs Transfer

Transfer is by the act of the parties. Transmission is by devolution of law, i.e. death or bankruptcy. In transmission of shares no procedures are required to be followed unlike in transfer of shares.

9. Provisions Relating to Payment of Dividend

Declaration and payment of dividend under Companies Act – 2013

Sec. 2(35) provides the definition of dividend which states that dividend includes any "interim dividend". Where in simple terms, dividend can be defined as the sum of money paid by a company, to its shareholders, out of the profits made by a company, in the proportion to the amount paid-up on the shares held by them (Sec. 51).

Preference shareholders are always paid dividend in preference to the equity shareholders.

Subject to the provisions of Companies Act, 2013, All Companies, except those companies which are registered under sec. 8 (i.e. Non-profit organizations) can declare dividend.

Under Companies Act 2013, Chapter VIII containing sections, which deals with the provisions related to declaration and payment of dividend. Section 123 to 127 deals with the provisions related to the declaration and payment of dividend.

Provisions related to Declaration of dividend (Sec- 123)

Sources of Dividend

The basic principle of declaration of dividend is that it shall be paid out of profits only. However as per companies act dividend can be paid out of:

1. Current year's profit of the company, or
2. Undistributed or accumulated profits of the previous years, or

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3. Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

Conditions required to be satisfied for declaration of dividend

1. **Depreciation:** Before the declaration of dividend, a company shall provide depreciation to all its depreciable assets, in accordance with the rates or useful life, as the case may be provided in Schedule II of Companies Act, 2013.
2. **Transfer to Reserves:** A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year, as it may consider appropriate to the reserves of the company.
3. **Set off of previous year losses and depreciation:** A company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years, are set off against profit of the company for the current year.
4. **Free Reserves:** A company shall not declare or pay dividend out of its reserves, other than free reserves.

In case of, Inadequacy of Profits resulting declaration of dividend out of previous year undistributed profits: Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with Companies (Declaration and Payment of Dividend) Rules, 2014.

Conditions for declaration of dividend out of surplus reserves

Hence, as per Companies (Declaration and Payment of Dividend) Rules, 2014 a company may declare dividend out of surplus reserves subject to the fulfillment of the following conditions, namely:

1. **Rate of Dividend:** The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. However, this condition shall not apply to a company, which has not declared any dividend in each of the three preceding financial year.
2. **Total Amount to be withdrawn:** The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the paid-up share capital and free reserves as appearing in the latest audited financial statement.
3. **Utilization of withdrawn amount:** The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
4. **Balance amount of Reserves:** The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

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Payment of Dividend

According to the provisions of Companies Act, 2013, No dividend shall be payable except by way of cash, where dividend payable in cash can also be paid through cheque, warrant or in any electronic mode, to the shareholder who is entitled to the dividend.

Condition: A company who has committed any default in compliance with the provisions of Sec. 73 and 74 relating to the acceptance and repayment of deposits would be barred to declare dividend.

Interim Dividend

According to the provisions of section 123(3), Board of directors of a company may declare interim dividend during any financial year, out of the profits made by the company during such financial year or out of previous year undistributed profits (subject to Companies (Declaration and Payment of Dividend) Rules, 2014) .

As per Section 2(35) "dividend includes interim dividend" signifies that the provisions of Companies Act 2013, applicable to the final dividend to the extent possible, shall also applicable on interim dividend.

Unpaid Dividend Account (Sec. 124)

There are some cases wherein, dividend declared by the company has not been paid or claimed and in case where such dividend remained unpaid or unclaimed within 30 days from the date of declaration; company shall take the following necessary steps:

1. Open a special account with a scheduled bank to be called " Unpaid dividend account of ……………………(Company Limited/Company(Private) Limited"
2. Transfer the unpaid or unclaimed amount of dividend within a period of 7 days from the expiry of such 30 days, to the special account.

In case of default: If the company committed any default, in transferring such amount to the special account with in the specified time, company shall be liable to pay interest @ 12% p.a. from the date of such default.

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Punishment for failure to distribute dividend (Sec-127)

According to the provisions of sec- 127 of the companies act – 2013, if a company fails to pay the dividend, within a period of 30 days from the date of its declaration, to the shareholders who are entitled to the dividend then:

Liability of	**Imprisonment**	**Fine**
Company	NA	Interest @ 18% p.a. for the period of default.
Every director of Company	May extend to 2 years.	Rs. 1000/- for every day, during which such failure continues.

Exceptions to sec- 127: Following are the situation under which, no offence shall be deemed to have been committed, namely:

i. Where the dividend could not be paid by reason of the operation of any law;
ii. Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
iii. Where there is a dispute regarding the right to receive the dividend;
iv. Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
v. Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

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Procedure of Declaration and Payment of Dividend

i. Issue atleast 7 clear days' notice of the meeting of Board of directors in accordance with the sec- 173 of the companies Act – 2013.
ii. In case of listed companies, notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting
iii. Hold Board meeting and pass resolutions for following purposes:
    a. Approving the annual accounts (balance sheet and profit and loss account of the company for the year ended);
    b. Recommending the final amount of dividend;
    c. Determining the date of book closure;
    d. Fixing the Day, Date, Time and Venue of AGM;
    e. Approving the notice of AGM;
    f. Authorizing the Company Secretary/Director to issue the notice of AGM;
iv. In case of listed companies, give 7 days' notice of book closure to the stock exchanges.
v. In case of listed company, publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.
vi. Close the register of members and the share transfer register of the company.
vii. Hold a Board/committee meeting for approving registration of transfer/ transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure.
viii. Hold the annual general meeting and pass an ordinary resolution declaring the payment of dividend to the shareholders of the company as per recommendation of the Board.
ix. Prepare a statement of dividend in respect of each shareholder.
x. Ensure that the dividend tax is paid to the tax authorities within the prescribed time.
xi. Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
xii. If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agents (RTI & STA), any Reserve Bank of India approved electronic mode of payment such as Electronic Clearing Services (ECS), National Electronic Fund Transfer (NEFT), etc.

xiii. Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par.

xiv. Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.

xv. Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend Account" within 7 days after expiry of the period of 30 days of declaration of final dividend. (Section 124).

xvi. Transfer unpaid dividend amount to Investor Education and Protection Fund (IEPF) after the expiry of seven years from the date of transfer to unpaid dividend account.

10. Investor's Education and Protection Fund

The Preamble of the SEBI describes the basic functions is to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto. The SEBI only act as market regulator and control the irregular market practices. The SEBI is not in position to guide, to increase awareness among the investors. Therefore the central government has established a fund to be called Investor Education and Protection Fund [IEPF] vide publishing the Notification No. 749(E), dated 1-10-2001 under Companies Act 1956 in the official gazette.

Administration

The Central Government has specified a committee with such members for administration of the fund. Pursuant to Section 205C (4) read with Rule 7 of the IEPF Rules 2001, the Central Government has constituted a Committee vide Notification No. S.O. 539(E) dated 25.02.2009. The Secretary, Ministry of Corporate Affairs is the Chairman of the Committee. The members are representatives of Reserve Bank of India, Securities Exchange Board of India and experts from the field of investors' education and protection. The non-official members of the Committee hold office for a period of two years. The official members hold office for a period of two years or until they occupy their position, whichever is earlier. The committee has an authority under sub section 4 to spend money out of the fund for carrying the object which the fund has been established. The Registrar of Companies have an duty to furnish as abstract of receipts and shall reconcile them the amount so remitted and collected with concern pay and account officer. MCA maintain a consolidated abstract of receipt and shall reconcile with principal pay and account officer of MCA. The following amounts shall be part of IEPF, if they remain unpaid for a period of seven years from the date of declaration except point (f) and (g):

a) amounts in the unpaid dividend accounts of companies;
b) the application moneys received by companies for allotment of any securities and due for refund;
c) matured deposits with companies;
d) matured debentures with companies;
e) the interest accrued on the amounts referred to in clauses (*a*) to (*d*);

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f) grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and
g) the interest or other income received out of the investments made from the Fund.

As per secretarial standard 3 of ICSI, the company should give individual intimation to the members in respect of whose unclaimed amount being transfer at least six month before due date amount. Also, the Company should be mentioned amount unpaid and proposed date of transfer to IEPF in annual report of the Company.

Function of the Committee

I. To recommend the Investor Education and Protection activities like seminars, symposium, proposal for registration of voluntary association or institution engaged in Investor Education and Protection projects.
II. Proposals for registration of Voluntary Associations or Institution or other Organizations engaged in Investor Education and Protection activities.
III. Proposals for projects for Investors' Education and Protection including research activities and proposals for financing such projects.
IV. Co-ordination with institution engaged in Investor Education and awareness and profession activities.
V. To appoint one or more subcommittee for functioning of fund in good manner.
VI. To furnish report to central government at end of each six months.

Registration

The committee may register from time to time various association or organization engaged in activities relating to Investor Education, Protection and proposing for investor programme, seminars, undertaking projects for investors interactions including research.

I. Any voluntary organization or association engaged in the activities relating to investors awareness, education and protection and proposing investors programmes, organizing seminars; symposium and undertaking projects for investor protection including research activities can register itself under IEPF through form 3.
II. The committee finance up to five of total budget of Investor Education and Protection Fund subject to maximum 80%.
III. The entity may register in Society Registration Act, Trust Act or Companies Act 1956.
IV. For proposal, it is required two years experienced organization have a minimum 20 member and a proven record of at least two years.
V. No profit making entity shall eligible for registration for the purpose of financial assistance.
VI. The committee considered audited account, annual report for last three years of entity seeking assistance.

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Guidelines for funding of research proposals

The registered association files an application for funding of research projects.

- A 2000-word outline of the research program that is being proposed indicating therein also a rationale of why the same fits in with the goals of IEPF
- Detailed resume of all the researchers who shall be associated with the project.
- Three best recent published/unpublished papers of the researchers.
- Letters of commitment by researchers promising that they will put in at least 50% of their time for the proposed project from the stated starting date to the stated ending date.

Procedure for financial assistance

- Entities that fulfil the criteria/guidelines for the purpose of financial assistance from IEPF may apply to the IEPF for such assistance in Form 4.
- The feasibility of the project, quantum of financial assistance, genuineness of the organization, etc. is then evaluated by the Sub Committee of IEPF in its meetings held in regular intervals
- After the Sub -Committee approves the proposal, IEPF issues the financial sanction with the approval of Internal Finance Wing of the Ministry of Corporate Affairs.
- The amount is then released to the organization, but only after it submits a pre-defined Bond and a pre-receipt to IEPF.
- After the project is completed, the organization is required to submit the funds utilization certificate and copies of the bills etc. to IEPF for scrutiny.

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