Shares

Through the course of time, Business Law has evolved in the field of the division and flexibility in transferability of the ownership of a company. Each shareholder is considered an owner of the company. The degree of ownership depends on the number of shares each individual buys.

Any kind of shares can be issued in accordance with the company's articles of association. The articles of association are a set of guidelines, which provide the rules for buying, selling and transferring different types of shares. The articles of association also mention the types of shares, which could be transacted by the company. Ordinary shares constitute the biggest amount of shares, but special types of shares like the alphabet shares also exist.

- Share capital is considered as the total amount of money a company owns plus the total valuation of its assets in terms of money.
- Share capital is divided into shares.
- Shares are valued in terms of money.
- In other words, the amount of money collected by the company from its consumers to contribute to its capital is collectively known as share capital and individually known as shares.
- A share contains bundles of rights and obligations contained in the articles of association.
- A share can be considered as an interest measured by a sum of money.
- A person who invests in the shares of a company contributes to partial ownership of the company.
- The degree of ownership of the company of a shareholder is directly proportionate to the number of shares the individual buys.

Types of Shares

According to the section 85 of the Companies Act, 1956, the share capital of a company consists of two kinds of shares −

- **Preference shares**

- **Equity shares**

Preference Shares

As per section 85(1) of the Companies Act, 1956, a share is considered as a preference share if it carries the following preference rights −

- Before paying dividends to equity shareholders, the payment of dividend should be at fixed rate.
- Before the payment to the equity shareholder, the capital must be returned at the time of winding up of the company.

No voting rights are given to the shareholders for the internal affairs of the company. However, the shareholders can enjoy voting rights in the following situations −

- If dividend is outstanding for more than two years in case of cumulative preference shares
- If dividend is outstanding for more than three years in case of non-cumulative preference of shares
- On resolution of winding-up
- On resolution of capital reduction

Types of Preference Shares

The important types of preference shares are as follows −

Cumulative Preference Shares

If dividend is not paid at the end of any year due to loss or inadequate profit, the dividend will accumulate and will be paid in the forthcoming years.

Non-Cumulative Preference Shares

Dividends cannot accumulate in the case of non-cumulative preference shares.

Participating Preference Shares

In addition to basic preferential rights, these shares may carry one or more of the following participation rights −

- Receiving dividends out of surplus profits left after paying dividends to equity shareholders.
- Having shares in surplus assets, which remain after the winding-up of the company.

Non-Participating Preference Shares

In addition to basic preferential rights, these shares do not carry any of the following participation rights −

- Receiving dividends out of surplus profits left after paying dividends to equity shareholders.
- Having shares in surplus assets which remains after winding up of the company.

Convertible Preference Shares

These shares can be converted into equity shares on or after specific dates as mentioned in the prospectus.

Non-Convertible Preference Shares

These shares cannot be converted into equity shares.

Redeemable Preference Shares

These shares can be redeemed by the company on or after a certain date after giving the prescribed notice.

Irredeemable Preference Shares

These types of shares cannot be redeemed by the company. The shares are redeemed only on the occasion of winding up.

Equity Shares

As per section 85(2) of the Companies Act, 1956, equity shares are defined as the shares, which do not have the following preferential rights −

- Preference of dividend over others.
- Preference of repayment of capital over others at the time of repayment of the company.
- These shares are also called ‘risk capitals’.
- They only claim dividends.
- The equity shareholders have the right to veto on each and every resolution passed by the company.

Shares Capital

Shares capital may mean any of the following divisions in capital −

- **Authorized capital**

  It is the amount stated as share capital in the Capital Clause of the memorandum of association of the company. This is the maximum limit amount, which is authorized to be raised by a company. A company cannot raise money above this amount unless the memorandum of association is amended.

- **Issued Capital**

  It is a nominal part of the authorized capital, which has been

  - Subscribed by the signatories of the memorandum of association.
  - Allotted for cash or cash equivalents and
  - Allotted as bonus shares.

Transfer & Transmission of Shares

Transfer of shares is a voluntary act. It is the phenomenon of transferring the ownership of one shareholder to another person.

Free Transferability of Securities of Public Companies

- The shares of a public company are freely transferrable.
- The board of directors or any higher official does not have the authority to refuse or hold any transfer of shares.
- The transfer should be made effective immediately by the company as soon as the notice of transfer is made.

Restrictions on Transfer of Shares

The articles of association empower the directors to reject any transfer of shares under the following grounds −

- Transfer of partly paid shares to paupers or minorities.
- The transferee is of unsound mind.
- Unpaid call against the share of transfer.
- The company has lien on shares because the transferee is in debt of the company.

Procedure for Transfer of Shares

- An instrument of transfer should be executed in the form prescribed by the government.

- Before it is signed by the transferor and before making any entry, it is given to a prescribed authority who will attest it with a stamp and the authorized date.
- The transferor and the transferee must duly sign the instrument of transfer.
- The share certificate must also be attached to it.
- A letter of allotment must be attached to the transfer form if no certificate of transfer has been issued.
- The complete transfer form along with the transfer fees should be given at the head office of the company.
- The work of registration of transfer is taken up if no objection is received by the transferor or the transferee.
- The details of transfer are entered by the secretary in the register of transfers.
- The secretary presents the instrument of transfer along with the share certificates and the register of transfers to the board of directors.
- The board of directors passes a resolution and approves the transfer.

Buy-back of Shares

Buy-back of shares refers to the buying of sold shares. In case of buy-back, the company buys the shares back from the shareholders.

Objectives of Buy-back

A company may buy its shares back from its shareholders for one or more of the following reasons −

- For increasing promoters holding.
- For increasing the earnings per share.
- For rationalizing the capital structure by writing off capital not represented by capital assets.
- For supporting share value.
- For paying surplus pay back not required by business.

Resources of Buy-back

The shares of a company can be bought back by the company from the following resources −

- Free reserves
- Securities premium account
- Proceeds of any shares or any specified securities.

Conditions of Buy-back

The authorization of the buy-back is done by the articles of association of the company. For authorization of buy-back, a special resolution has to be passed at the general meeting.

- The shares involved in the buyback must be free from non-transferability.
- The buy-back must be less than twenty-five percent of the total paid-up capital.
- The ratio of debts taken by the company should not exceed twice the capital and its free reserves.

Procedure for Buy-back

When a company decides to buy-back its shares, it should publish an announcement notice about the decision in at least one English, one Hindi and one regional language daily newspapers in the place where the registered office of the company is located. The notice of announcement must include a specific date for determining the names of the shareholders to whom the letter of offer is to be sent.

- A public notice containing the disclosures as specified in accordance with the SEBI regulations must be given.
- A draft containing the offer letter shall be filed with SEBI through a merchant banker. This offer letter shall be dispatched to the members of the company.
- A copy of board resolution should authorize the buy-back and should be filed with the SEBI and stock exchanges.
- The opening date of the offer letter should neither be earlier than seven days nor be later than thirty days of the specified date.
- The offer shall remain open for at least fifteen days and thirty days at the most.
- An escrow account should be opened by a company opting for buy-back through public offer or tender offer.

Penalty

If a company is found to be a defaulter, the company or any of its officers who is found guilty may be punished in accordance with Section 621A of the Companies Act, 1956.

The punishment may include imprisonment of up to two years and/or fine up to fifty thousand rupees.