

**Intensive Study Course on
Share Capital and Debentures,
Registration of charges and
Management & Administration
Under Companies Act, 2013**

**Conducted by WIRC of ICAI
on
Saturday, June 13, 2015**

**CS Rahul Padmakar Sahasrabuddhe
Partner, SPRS And Co,
Company Secretaries**

Part I Share Capital & Debentures

Part II Registration of charges and

Part III Management & Administration

Part I

Share Capital & Debentures

Applicable Section & Rules

- Section 43 to Section 72 of the Companies Act,2013.
- Companies (Share Capital & Debentures Rules),2013.

Few Definitions

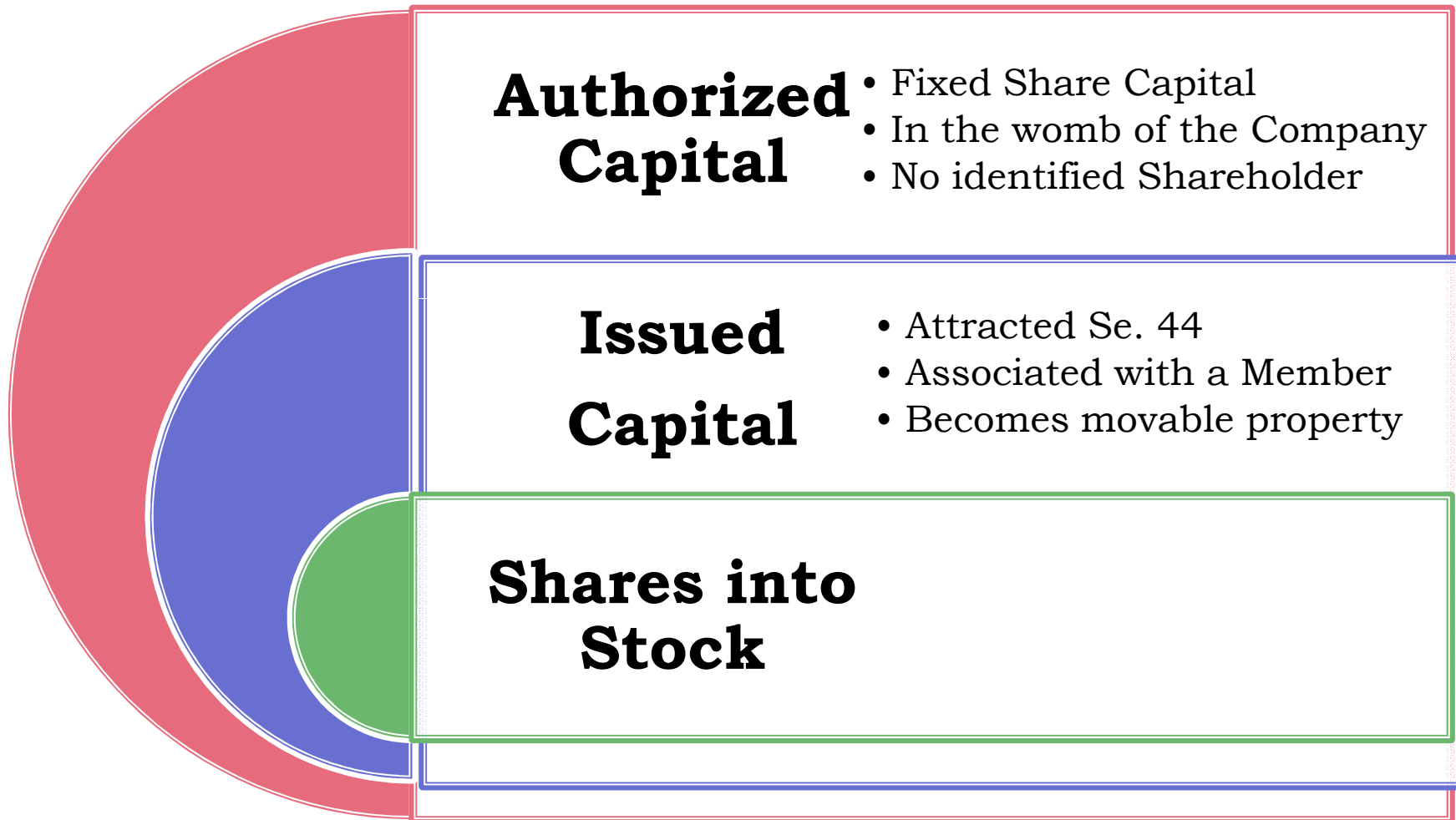
Se. 2 (84) “share” means a share in the share capital of a company and includes stock;

** CIT Vs. Standard Vaccum Oil Co and Bucha F Guzdar Vs. CIT, Bombay – Share is bundle of rights and obligations.*

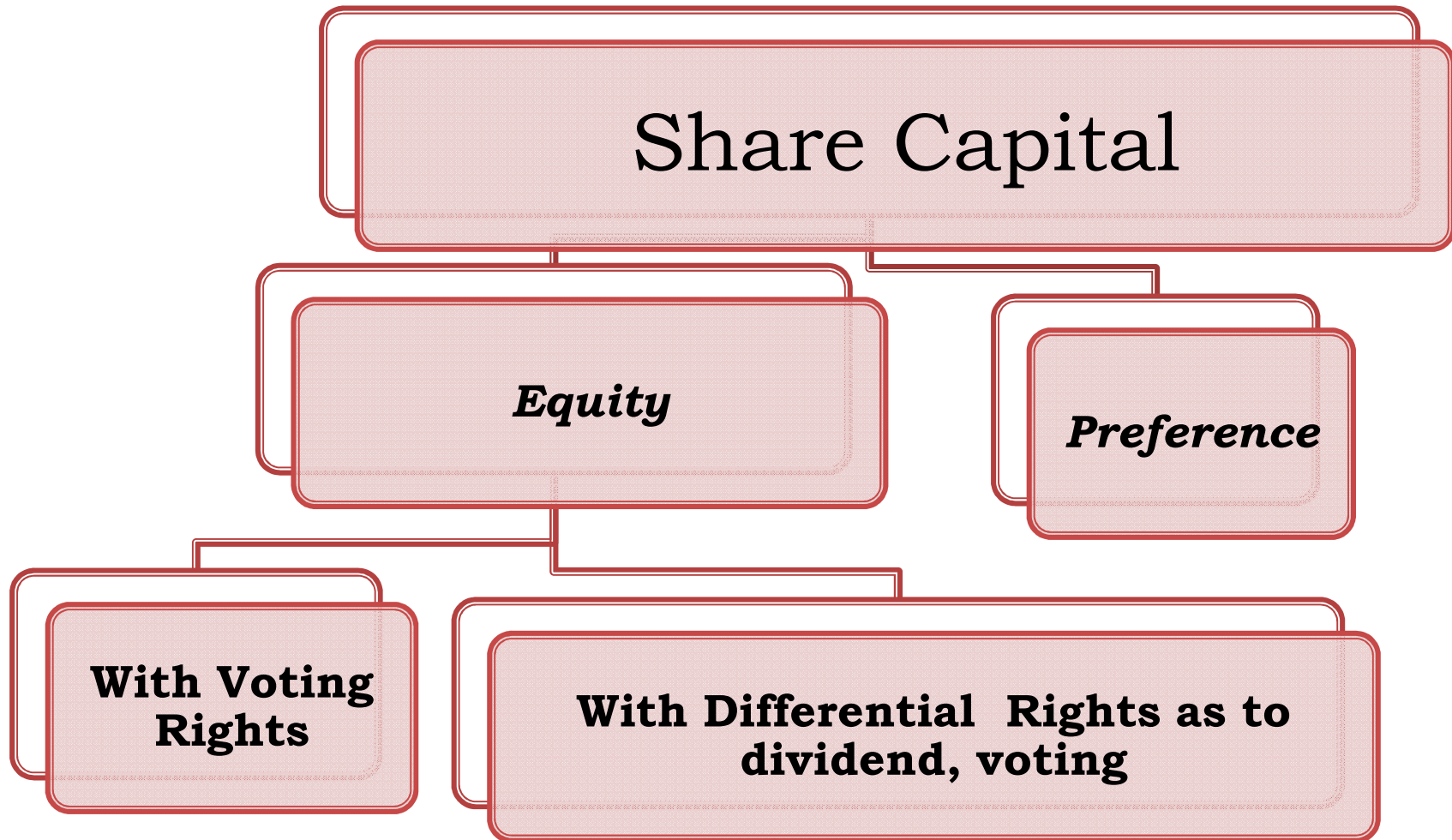
Se. 2 (93) “voting right” means the right of a member of a company to vote in any meeting of the company or by means of postal ballot

Shares – Three Stages

As observed in Shree Gopal Paper Mills Ltd. Vs. CIT



Kinds of Share Capital



What is Preference Share Capital

Preference SC means that part of capital which carries preferential right as to

- Dividend
- Repayment in case of winding up.

Capital shall be deemed to be Pref SC, if entitled to

- Participative Dividend; and/or
- Participative repayment of capital in case of winding up

Issue of Shares with differential rights

Conditions to be complied with

- Must be provided in Articles of Association
- Member's approval by way of Ordinary Resolution
- Such shares shall not exceeds 26% of total paid-up capital including such shares.
- Track record for distributable profits for 3 years.
- No default in filling annual return for last 3 years.

Issue of Shares with differential rights

- No default in payment of declared dividend, repayment of matured deposits, redemption of preference shares, interest on deposits or dividend
- No default in repayment of term loan from a public financial institution, State level financial institutions, Scheduled bank or interest thereon.
- No penalization during last three years under FEMA, RBI Act, 1934, SEBI Act, 1992 etc.

Issue of Shares with differential rights

- **Explanatory Statement shall contain the details as mentioned in Rule 4 of the Rules.**
 - Total no. of DVR shares
 - Details of DR
 - % with total capital
 - Reasons and justification
 - Price and basis of the same
- Existing Equity Capital with voting rights can not be converted into equity capital carrying differential voting rights.
- Disclosure in Board Report.

Voting Rights

- Equity Shareholder has right to vote on every resolution placed before the Company.
- In case of poll the voting right shall be in proportion to shares held by him.
- Preference Shareholders has right to vote on those resolutions which effects their right.
- In case of preference shares in respect of which no dividend is paid for 2 years they have right to vote on all resolution.

Share Certificate

- Evidence to the ownership of the shares.
- In case of shares held in depository form the records of depository is prima facie evidence of ownership.
- Shall have distinctive numbers except in case of shares held in depository form.
- Shall be in the form SH-1.

Share Certificate

Share Certificates shall be issued within

- 2 months from the date of incorporation in case of subscription to MOA.
- 2 months from the date of allotment.
- 1 month in case of transfer/transmission.
- 6 months in case of issue of debentures.

Issue of Duplicate/ Renewed Certificate

- Shall be issued with prior consent of the Board.
- The duplicate share certificate is required to be issued within a period of 3 months and in case of listed company within a period of 45 days.
- The details of renewed/ duplicate share certificates issued shall be maintained in the Register of Renewed and Duplicate Share Certificate in form SH-2.

Application of Securities Premium

Securities Premium Account shall be known as Securities Premium account. It can be applied for following purposes.

- Issue of bonus shares.
- Writing off the preliminary expense, expenses or commission paid or discount allowed on any issue of shares or debentures of the Company.
- Providing premium for redemption of debentures or redeemable preference share of the Company.
- For buy back of shares or other securities as mentioned in Section 68 of the Act

****Usage of Securities Premium Account for reasons other than the above two shall amount to Reduction in Capital of the Company**

Issue of Sweat Equity Shares

A company can issue sweat equity shares subject to following conditions.

- Members approval by Special Resolution.
- 1 after year commencement of business.
- Listed Co. to follow Listing Agreement and applicable SEBI regulations.

Issue of Sweat Equity Shares

Some of the important provisions of Rule 8 which governs the issue of Sweat Equity Shares are as follows:

- Requirement of Special Resolution.
- Explanatory statement shall contain the details as mentioned in the Rules.
 - Date of BOD meeting approving the issue
 - Reasons and justifications
 - Class of shares for which Sweat Equity is issued
 - Total no. of shares to be issued
 - Names of the allottees
 - The price and considerations (Cash/Non Cash)
 - Diluted EPS

Issue of Sweat Equity Shares

- Allotment of sweat Equity Shares shall be made within a period of 12 months from the date of passing Special Resolution.
- The sweat equity shall not exceed 15% of the existing paid-up capital of the year or issue value of Rs.5 cr whichever is higher .
- The quantum of sweat equity shares shall not exceed 25% of the paid-up equity capital of the Company at any time.
- Such shares are locked in for a period 3 years.
- Price shall be determined based on valuation done by registered valuer.

Issue of Sweat Equity Shares

- The amount of managerial remuneration under Section 197 and 198, Sweat Equity Shares shall be treated as part of managerial remuneration.
- The Board Report shall contain the details of sweat equity shares issued.
- The Company shall maintain the Register of Sweat Equity Shares in form SH-3.

Issue & Redemption of Preference shares

- Irredeemable preference shares can not be issued .
- The preference shares shall be compulsory redeemed within a period of 20 years except in case of infrastructure projects.
- Issue of preference shares shall be authorized by the Articles of Association.
- Special resolution is required to be passed for issue of preference shares.

Issue & Redemption of Preference shares

- Only fully paid-up preference shares can be redeemed.
- The shares can be redeemed out of the profits of the Company or out of the proceeds of the fresh issue of shares made for the purpose of redemption.
- When shares are redeemed out of profit of the Company it shall transfer the amount equivalent to nominal value of the shares to the CRR.

Transfer & Transmission of Securities

The instrument of transfer (Form SH-4) duly stamped, dated and executed is required to be delivered to the Company within 60 days of execution along with share certificate.

Alteration of share capital

- A Company limited by shares may alter its memorandum to:
 - i) Increase the authorised capital.
 - ii) Consolidate the share capital.
 - iii) sub-divide the share capital.
 - iv) Cancel the unissued share capital.
- The notice of alteration in share capital or redemption of preference share capital shall be given to the Registrar of Companies within 30 days of the passing of resolution in form No.SH-7.

Further Issue of Capital - RIGHT ISSUE

- Offer to the existing shareholders in the proportion of shares already held by them.
- The offer shall be open for minimum period of 15 days and maximum period of 30 days.
- The Articles of Association of the Company shall contain the provisions for renunciation of shares offered on right basis.
- The Board has authority to dispose of the shares not taken under the offer in a manner not disadvantageous to shareholders and Company.

Further Issue of Capital - ESOP

- Special Resolution.
- Listed Company to observe SEBI ESOP Guidelines.
- The explanatory statement shall give disclosures as mentioned in Rule 12 of the Rules.
 - the total number of stock options to be granted;
 - procedure of determination and identification of employees;
 - Vesting period;
 - Maximum period of vesting;
 - Exercise price and formula for arriving the same;
 - Lock in period, if any;
 - A statement to the effect that Co shall comply with AS.

Further Issue of Capital - ESOP

- There shall be minimum period of one year between grant of options and vesting of option.
- The Board Report shall contain the details of shares issued under ESOP Scheme.
- The Register of Employee Stock Option shall be maintained in Form No.SH-6.

Further Issue of Capital - Preferential Basis

- Special Resolution
- AOA must authorise.
- All existing securities must be paid up
- The allotment shall be made within a period of 12 months from the date of Board Resolution.
- The price shall be determined on the basis of valuation report of registered valuer.

Further Issue of Capital - Preferential Basis

The explanatory statement shall contain disclosures as mentioned in Rule 13

- the objects of the issue and total no. of securities to be issued;
- Pricing and basis for the same;
- Relevant date;
- Details of allottees and % of shares held/to be held by them pre and post issue;
- Promoters, KMP's intention to participate;
- Time to complete allotment, etc.

Further Issue of Capital

Other Important Provisions

- The Company issuing shares to the existing shareholders is not required to comply with formalities of PAS-4 & PAS-5.
- Conversion of Loan into Equity Share Capital may be done provided terms and conditions are approved through SR

Issue of Bonus Shares

- *Company may issue bonus shares out of*
 - i) its free reserves;
 - ii) Securities Premium account and
 - iii) capital redemption reserves.
- *For bonus issue following conditions shall be satisfied:*
 - Authorization of Articles of Association.
 - Approval of the Members
 - All the shares of the Company shall be fully paid-up.

Issue of Bonus Shares

- The Company has not defaulted in payment of interest or principal in respect of fixed deposits or any security
- The Company has not defaulted in payment of statutory dues of employees, such as contribution to provident fund, gratuity and bonus.
- Once a Bonus issue recommended by the Board is announced, no Company shall withdraw the same.

Reduction of Share Capital

- SR and Tribunal Approval.
- No arrears as to repayment of any deposits accepted by it or the interest payable thereon.
- Notice to CG, Tribunal, RoC, and SEBI and creditors.
- The reply period is 3 months. If no reply is received in 3 months then it is presumed that they do not have any objections.

Reduction of Share Capital

- The order of Tribunal shall be filed with the Registrar of Companies within a period of 30 days.
- This Section will not apply to Buy back of its own securities by the Company under Section 68.

Buy Back of Shares

- *A Company can buy-back its securities out of*
 - its free reserves
 - securities premium account and
 - the proceeds of the issue of any shares or other specified securities.
- *Conditions for Buy-back*
 - Authorised by the Articles.
 - Members approval if over 10% of Pd Up Capital+FR
 - not to exceed 25 % of Pd Up Capital +FR

Buy Back of Shares

- DER shall not exceed 2:1 .
- All the shares are fully paid-up.
- In case of listed company SEBI regulations are required to be followed.
- The [explanatory statement](#) shall give details as mentioned in the Section and Rules.
- The buy-back shall be completed within 1 year of resolution (Board/member).
- Buy-back from the existing shareholders on proportionate basis, from open market or purchasing securities from employee to whom shares are issued under ESOP.

Buy Back of Shares

- A declaration of solvency should be filed with Roc/SEBI
- Physical destruction of securities in 7 days of completion
- After buy back Company shall not issue further shares of same class for a period of 6 months except in case of bonus or discharging other agreed obligations.
- After completion of buy back a return is required to be filed with Registrar of Companies and in case of listed companies with SEBI within 30 days of completion.

Buy Back of Shares

The private companies and unlisted public limited companies are in addition to above mentioned provisions requires to comply with the rule 17 of the rules which gives the details regarding :

- Disclosures in explanatory statement.
- Filing of letter of offer.
- The provisions regarding the dispatch and offer period.
- Opening of separate bank account for buy back.

Issue of Debentures

- A company may issue debentures secured or unsecured with a option to convert such debentures partly or wholly into shares.
- No debentures with voting rights shall be issued.
- The Company issuing secured debentures shall comply with the provisions of Rule 18 i.e.
 - Tenure not to exceed 10 years (30 years for Infra projects)
 - Security to cover Debenture amount and interest thereon
 - Execute a Debenture Trust Deed and appoint Trustees within 60 days
 - Security may be movable or immovable
- DRR to be created out of divisible profits
- Any Company which propose to issue debentures for more than 500 persons must appoint debenture trustee.
- The Company shall pay the interest and redeem debentures as per the terms agreed.

Other Important Provisions

- Issue of shares at discount is prohibited.
- No finance to purchase own shares.
- Amount equivalent to nominal value of bought back shares must be transferred to the Capital Redemption Reserve Account.
- Nomination of shares.

Forms & Format

Sr. No.	Form Name	Purpose	Due Date for filing, if Applicable
1	SH-1	Format of Share Certificate	N.A
2	SH-2	Register of Renewed and Duplicate Share Certificates	N.A
3	SH-3	Register of Sweat Equity Shares	N.A
4	SH-4	Securities Transfer Form	N.A
5	SH-5	Notice for transfer of partly paid securities	N.A

Forms & Format

Sr.No.	Form Name	Purpose	Due Date for filing, if Applicable
6	SH-6	Register of Employee Stock Options	N.A
7	SH-7	Alteration of Share Capital	Form 30 days of passing resolution
8	SH-8	Letter of Offer	Before the Buy back
9	SH-9	Declaration of Solvency	Before the Buy back
10	Sh-10	Register of shares or other securities bought-back	N.A

Forms & Format

Sr.No.	Form Name	Purpose	Due Date for filing, if Applicable
11	SH-11	Return in respect of buy-back of securities	Within 30 days of Completion of buy-back
12	SH-12	Format of Trust Deed	N.A
13	SH-13	Nomination form	N.A
14	SH-14	Notice of cancelation of Nomination	N.A
15	SH-15	Certificate of compliance in respect of buy-back of securities	N.A

Part II
Registration of charges
Management &
Administration

What is Charge?

➤ Definition

Se 2(16) - Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

➤ Essential Feature

1. Creator of charge & charge holder
2. Current / future Assets & Properties of the borrower
3. Intention of the borrower to offer one or more of its specific assets as security for
4. Fixed or floating

Se 77 : Duty to Register Charges

- A company creating a charge, shall, register the particulars of the said charge signed by the company and the charge holder together with the instrument with the ROC within 30 days of its creation.
This charge could be:
 - a. On its property or assets or
 - b. Any of its undertakings
 - c. Whether tangible or otherwise
 - Situated in or outside India
 - Signed by both the Company and the charge-holder
 - Together with the instruments creating the charge

- If the Particulars of charge are not filed within the aforesaid period , on application by company it can be filed within 300 days of its creation on payment of additional fees.

Se 78 : Application for Registration of Charge

- Where a company fails to register charge within the period prescribed in Se 77
- A charge holder can make an application to Registrar within 14 days after giving notice to company and shall be entitled to recover any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Registration of Charge or Modification of charge (As per Se 77(1), 78, 79)

- For Creation Form No.CHG-1 (for other than Debentures)
- For Creation of Charge on Debentures Form No.CHG-9
- Copy of every instrument evidencing any creation/ modification of charge required to be filed with registrar ge holder.

Se 80 : Date of Notice of Charge

Where any charge on any property or assets of a company or any of its undertaking is registered under Se 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration

Se 82 : Company to report satisfaction of charge

- A company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No.CHG-4.
- Registrar shall issue shall issue a certificate of registration of satisfaction of charge in Form No.CHG-5.

Se 86 : Punishment for contravention

- Company – Rs. 1 L – Rs 10 Lacs
- Officer – Imprisonment upto 6 months or fine upto Rs. 25K – Rs. 1 L

Part III
Management &
Administration

Se. 88-91 & Companies (Management and Administration) Rules, 2014

Register of Members/Beneficiary Owners

- Every Co shall keep RoM in Form MGT - 1
- Register of Debenture holders in Form MGT - 2
- Register of any other security holders in form MGT-2
- All the registers should have Index
- register and index of beneficial owners maintained by a depository deemed to be compliance
- AOA may authorise Co to keep register of Foreign Members at foreign location in Form MGT - 3
- Non compliance - Company and responsible officers may be fined upto Rs. 50 k to Rs. 3 L + Rs. 1000 for continuing offence

Se. 88-91 & Companies (Management and Administration) Rules, 2014

Register of Members/Beneficiary Owners

- Person not having beneficial interest in Shares shall make a declaration in MGT 4
- Person having beneficial interest in Shares shall make a declaration in MGT 5
- Notify any changes in 30 days
- Failure to do so - fine upto Rs. 50K , Rs. 1000 for continuing offence.
- On receipt of any such intimation, Co shall file MGT 6 with RoC within 30 days.
- Closure or Register of Members/Debenture holders/Other Securities
- All entries must be made within 7 days and be authenticated by CS or such other office

Annual Return – Se. 92

Every Co shall AR as per prescribed format consisting of

- registered office, business activities, HC/SC;
- shares, debentures and other securities and shareholding pattern;
- indebtedness;
- members and debenture-holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;

Annual Return – Se. 92

- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration of directors and key managerial personnel;
- penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of compliances, disclosures as may be prescribed;
- details, as may be prescribed, and
- such other matters as may be prescribed,

Annual Return – Se. 92

- Form MGT 7
- Listed Co or Company having paid up Capital \geq Rs. 10 Cr or turnover \geq Rs. 50 Cr must file MGT 8
- AR must be signed by Director and CS
- PCS shall certify MGT 8
- An extract of the annual return as prescribed shall form part of the Board's report
- AR must be filed within 60 days of AGM

Annual Return – Se. 92

Penalty

- Non filing of AR - penalty of Rs. 50K to Rs. 5 Crore
- Officer responsible may be imprisoned upto 6 months with a penalty upto Rs. 50K to Rs. 5 L
- Certifying PCS, for non conformity may be penalized upto Rs. 50K to Rs. 5 L

Promoters' Change of Stake – Se. 93

- Every listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change. [Form No. MGT-10]

Place of keeping and inspection of registers, returns – Se. 94

- Register to be open for inspection unless closed
- Kept at Registered office
- Copies may be kept in the city wherein $\geq 10\%$ shareholders reside (SR to be passed)
- May be inspected without fees by any member and with fees by any other person
- Copy of the register may be sought by paying a fees of Rs. 10 per page.
- Company is required to provide copy within 7 days

Place of keeping and inspection of registers, returns - Se. 94

- Registered of DH and other Security Holders is required to be kept for 8 years, rest all records are permanent.
- Annual Report is to be kept for 8 years
- Foreign register of member is a permanent record

Se 95 - Registers, indices and copies of annual returns shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

Annual General Meeting Se 96-97

- AGM must for every Company other than OPC
- **Periodicity**
 - *Gap between 2 AGM can not exceed 15 months*
 - *1st AGM within 9 months from the closure of FY*
 - *Subsequent AGM within 6 months from the closure of FY*
 - *Registrar may extend the time upto 3 months*

Annual General Meeting Se 96-97

Date, Timing, Place of AGM

- Should not be a National Holiday
- During business hours i.e. 9 AM to 6 PM
- At R/O or City/town/village where R/O is situated

Annual General Meeting Se 96-97

- In case of default Tribunal may direct Co to hold AGM
- With a Direction which includes 1 person AGM
- Such meeting convened shall be compliance of the Act

Power of Tribunal to convene Members' Meeting - Se 98

Tribunal may call members' meeting

- Suo motu
- Application of the Director
- Application of a Member

Default u/Se. 96-98

Company and responsible officer shall be punishable with a fine upto Rs. 5 lac and Rs. 5000 per day in case of continuation

EGM- Sec 100

Who can convene

- Board of Directors
- Members holding 1/10 of voting rights/paid up capital
 - Co. on requisition call EGM within 21 days notice. EGM date can not be later than 45 days.
 - If co fails to convene such meeting , requisitionists may convene meeting by themselves in 3 months.

Notice of GM and Explanatory Statement - Se 101, 102

- 21 days of clear notice
- Shorter notice provided, 95% shareholder had given written consent
- notice of a meeting shall specify the place, date, day and the hour of the meeting
- Notice of the meeting shall be given to
 - Every member
 - Auditor
 - Director
- Any accidental omission shall not invalidate the proceedings

Notice of GM and Explanatory Statement - Se 101, 102

Explanatory Statement

- Nature/Concern of interest of Manager/KMP or their relatives in every item of business
- Such information amplifying meaning, scope and implications of business to be transacted
- Promoters, KMPs interest in any other co.
- Any default – penalty upto Rs 50K or 5 times of the benefit, whichever is more.

Ordinary Business/ Special Business

Se 101, 102

Annual General Meeting

- All business to be transacted shall be deemed special other than
 - Consideration of FS and Board's Report
 - Declaration of Dividend
 - Appointment of Director other than retiring
 - Appointment and fixing of remuneration of Auditors

Ordinary Business/ Special Business

Se 101, 102

Extra Ordinary General Meeting

- All business to be transacted shall be special business

Quorum - Se 103

- Public Co

No. of Members

Quorum

- Not more than 1000

5

- 1000-5000

15

- More than 5000

30

- Meeting convened by requisitionists shall be cancelled for want of quorum

- Adjourn meeting to the next week, same time and place.

- Public notice 3 days before such meeting

- Quorum for Adjourned meeting

Chairman of the Meeting - Se 104

- Chairman of the Company
- As per AOA
- Members may elect themselves by show of hands

Proxies - Se 105

- Any member entitle to vote may appoint proxy
- Proxy shall have right to vote but not to speak
- Notice calling meeting shall prominently mention “a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member”
- In case of default a penalty of Rs. 5000

Proxies - Se 105 - 106

- Proxy needs to be deposited 48 hours before the meeting
- Company can not issue invitation to members to appoint a specific person as proxy - penalty Rs. 1 L
- Instrument of proxy shall be in Form MGT 11
- AOA may have provision to restrict voting rights of a member on non payment of calls

Voting - Se 107 - 110

- By show of hands
- Through electronic means
 - Under rule 20, Listed Co. (other than on MSME platform) or company having 1000 or more members shall provide e-voting facility for every general meeting
- Demand for Poll

Voting - Se 107 - 110

Postal Ballot

- Sec 2 (65) “postal ballot” means voting by post or through any electronic mode;
- Company with no. of members less than 200, these provisions are not applicable
- Any business other than ordinary business
- Resolution approved through postal ballot shall be deemed to be approved

Voting - Se 107 - 110

- Following business must be approved through postal ballot
 - Alteration of Main Objects Clause
 - Private to Public – vice versa
 - Change in R/O, outside of city/town/village
 - Change of objects clause to used unutilized money raised through prospectus
 - DVR shares issue
 - Variation in rights
 - Buy back of shares
 - Appointment of small shareholders' Director in Listed Company
 - sale of the whole or substantially the whole of an undertaking of a company
 - giving loans or extending guarantee or providing security in excess of the limit

Ordinary and special resolutions - Se 114

- *Ordinary Resolution*
- *Special Resolution*
 - the intention to propose the resolution as a special resolution has been duly specified
 - the notice required under this Act has been duly given
 - Votes required are three times more than vote against

Minutes – Se 118

- Every Company shall record minutes of the meeting of the Shareholders/BOD within 30 days with pages nos. consecutively
- Fair and correct summary of proceedings
- Minutes not to include anything defamatory, irrelevant, immaterial, detrimental to the interest of the shareholders – Chairman to have final say
- Minutes shall be evidence of the proceedings recorded therein

Minutes – Se 118

- Comply SS1 and SS2
- Defaulting Company may be penalized up to Rs. 25K and officer may be penalized up to Rs. 5K
- Person found guilty of tampering with minutes – Imprisonement upto 2 years and penalty upto Rs. 25K to 2 L

Report on AGM – Se 121

- Listed Co. shall prepare a report confirming conducting AGM
- Required to file such report with RoC within 30 days
- In case of default, Co to pay fine upto Rs. 1 L to 5 L
- In case of default, Officer to pay fine upto Rs. 25K to 1L



Thank You

CS Rahul Padmakar Sahasrabuddhe

