

CHARACTERISTICS OF SHARES WITH RECENT AMENDMENTS

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ABSTRACT:

Shareholders are real owners of the Company. They have limited liability towards the company. They have powers to appoint directors who manage the company affairs in routine. Transfer of shares has the effect of a change in ownership. Share transfer in a private limited company is usually restricted. Shares have to first be offered to existing shareholders for sale. Share transfer can be effected subject to a relevant provision in the Articles of Association of a Private Limited Company. Therefore, it is important to review the Articles of Association of the Company prior to effecting a share transfer for Private Limited Company. EbizFiling.com is an eminent business platform and a progressive concept, which helps end-to-end incorporation, compliance, advisory, and management consultancy services to clients in India and abroad

KEYWORDS: Shareholders, ownership, Articles of Association, EbizFiling.com and consultancy services

INTRODUCTION

On August 18, 2022, the Ministry of Corporate Affairs (MCA) published the Companies (Incorporation) Third Amendment Rules, 2022, which is an updating in the Companies (Incorporation) Rules, 2014. The MCA has published a new Rule 25B, which pertains to the physical verification of the company's registered office. The Companies (Incorporation) Third Amendment Rules, 2022 were established by the government to ensure a clear procedure for the physical verification of registered addresses. The MCA has added a new regulation 25B (Physical verification of the company's registered office) after rule 25A. Under the new guideline, ROC will physically inspect a company's registered office in the presence of impartial witnesses. During the physical verification, the Registrar will also need to take a photo of the registered office of the firm. ROC will validate the Office's existence by comparing it to copies of the supporting documents collected during the physical proof, which have been officially validated from the owner of the building. A thorough report with detailed information, such as location details and pictures, will be prepared after completion of the verification. If the Registered Office is determined to be incapable of accepting all notices, ROC will notify the Company and all Directors.

Share Capital:

The term "Share Capital" refers to the amount of money raised by a company through the issue of shares. When the Share Capital of a company is divided into number of units of fixed denomination, each such unit is called as a share.

Definition:

Section 2 (84) of Companies Act of 2013 defines "A share is a share in the share Capital of a company". The shares are transferable from one person to another and it is serially numbered in order to distinguish them from one and another.

Types of shares: A company can issue different types of shares in order to satisfy the requirements of different classes of investors and to collect more capital. There may be different kinds of shares in a company with varying rights as to dividends and voting etc. Shares are mainly classified into 3 categories. They are-

- I) The Preference Shares.
- II) Equity Shares.
- III) Deferred Shares.

As per the Companies Act of 2013 a public limited company can issue only two types of share. They are Preference Shares and Equity Shares. But an independent private limited company can issue all 3 types of shares i.e. Preference Shares, Equity Shares and Deferred Shares.

I) Preference Shares:

The Preference Shares are those shares which carry the preferential rights over the equity shares in respect of

- a) A preferential right as to the payment of dividend.
- b) A preferential right as to the repayment of capital in the event of the winding up of the company.

Section 43 of the companies Act of 2013 defines preference share capital as “ that part of the capital of the company which carries a preferential rights as to payment of dividend and a preferential right to the repayment of paid up capital at the time of winding up”.

Dividend at a fixed rate is payable on these shares before any dividend is paid on equity shares. That is why preference share capital is also called as “Rentier Capital”. These shares do not carry equal voting rights (they enjoy restricted voting rights). Preference shares may be further classified as follows

- a) Cumulative Preference Shares and Non-cumulative Preference Shares.
- b) Redeemable Preference Shares and Irredeemable Preference shares.
- c) Convertible Preference Shares and Non-Convertible Preference Shares.
- e) Participating Preference Shares and Non-Participating Preference Shares.

II) Equity Shares:

These are the shares which do not carry any preferential rights in the payment of dividend and repayment of capital. The rate of dividend on these shares is not fixed. The equity share holders are paid at the time of winding up of the company after all debts and preference shareholders have been paid in full. They are entitled to receive dividend out of the profits left after all prior claims have been satisfied. Therefore, equity share holders are the real risk-bearers. They enjoy full voting rights in the management and control of the company.

Section 43 of the Companies Act 2013 defines the equity shares as, “Equity shares are those shares which are not preference shares.”

Distinction between Preference Shares and Equity Shares:**1) Face Value:**

The face value of Preference Shares is relatively higher than the face value of equity shares.

2) Right of Receiving Dividend:

The preference shares carry a right of priority over the equity shares in respect of payment of dividend. No dividend can be paid to equity shareholders unless the dividend is paid to preference shareholders.

3) Refund of Capital:

Again the preference shares carry a right of priority over the equity shares in respect of refund of capital in the event of company being wound up.

4) Rate and Magnitude of Dividend:

The rate of dividend on preference shares is fixed and never changes. But the rate of dividend on equity shares depends upon the profits of the company and is to be determined by the board of directors every year. It changes from year to year.

5) Voting Rights:

The preference shareholders have limited voting rights. They have voting rights on the matters affecting their interest. On the other hand, the equity share holders enjoy full voting rights at all the meetings of the shareholders.

6) Redeemability :

The preference shares may be redeemable if the articles permit the issue of such shares. But Equity Shares are not repayable during the life time of the company.

7) Bonus or right shares:

No right or bonus shares are issued to the preference shareholders, whereas bonus or right shares may be issued to the equity share holders.

8) Nature of Capital:

Preference share Capital is called rentier capital while the equity share capital is called risk capital.

9) Market Value:

The market value of preference shares remain more or less stable in the share market but the market value of equity shares fluctuate frequently in the share market.

10) Quantum of capital:

Preference shares proportion is less in the total share capital of the company compared to equity shares.

Sweat Equity

Meaning:

The Sweat Equity Share means the equity shares issued by the company to its employees or directors at a discount or for consideration other than cash. They are issued for providing technical know-how or intellectual property rights or value addition to the company.

Legal provisions relating to the issue of sweat equity:

- 1) There should be a special resolution in the general body meeting authorizing to the company the issue of Sweat Equity Shares.
- 2) The resolution authorizing the issue of Sweat Equity should specify the following particulars-
 - a) Number of share to be issued.
 - b) Current market price of the share.
 - c) Issue price of the share.
 - d) Class of the directors or employees to whom such shares are to be issued.
- 3) The Sweat Equity Shares to be issued by the company should be of that class of equity shares which the Company has already issued.
- 4) The Sweat Equity Shares can be issued only after the completion of at least one year from the date of Commencement of the business.
- 5) Sweat Equity Shares must be issued in accordance with the regulations made by the SEBI, incase the Equity Shares of the company are listed in a Stock Exchange.
- 6) The rules, provisions and restrictions relating to the equity shares is also applicable to such Sweat Equity Shares issued by the company.

III Deferred Shares:

These shares are also known as founders' shares or management shares, as they are issued mainly to the promoters or founders of the company in consideration of the services rendered by them in the formation of the company. They get a share in the profit of the company only after making payment to preference shares and equity shares. But these shares carry equal voting rights. The Companies Act of 1956 prohibits the issue of deferred shares by a public limited company.

ALLOTMENT OF SHARES

Allotment means "the appropriation of shares to an applicant by a resolution of the director of a certain number of shares in response to an application". In other words, allotment of shares is the act of allotting or distributing the shares of a company to specific persons in response to their application for shares.

Procedure for allotment of shares:

In a private company, the shares are taken up by the promoters and their relatives and friends. But in case of a public company, a proper procedure has been laid down in the Companies Act for the allotment of shares. It is the duty of the Company Secretary to follow the under mentioned procedure while allotting the shares:

1. Arranging opening and closure of subscription list.
2. Opening share application account with the company bankers.
3. Issuing the prospectus to the public through bankers, brokers and underwriters.
4. Receiving application forms from the company bankers.
5. Scrutinizing and sorting out the application forms.
6. Preparing application and allotment list after ensuring that all the conditions regarding allotment of shares are fulfilled.
7. Determining the allotment policy and basis of allotment
8. Entering the number of shares allotted to each applicant against his name in the application and allotment list.
9. Placing the application and allotment list before the board for its approval.
10. Convening a board meeting to pass a resolution approving the allotment of shares.
11. Dispatching the allotment letters to those applicants who have been allotted with shares giving the details of shares allotted, allotment money due and the date on which they have to pay allotment money.
12. Delivering letters of regret to those applicants to whom shares have not been allotted along with a cheque for refunding application money paid by them.

13. Filing a return of allotment with Registrar of companies within 30 days of allotment of shares giving all the details of shares allotted and the amount collected against the allotment of shares.
14. Preparing the register of members with the help of application and allotment list.
15. Preparing the share certificate with the help of register of members by convening board meeting for their approval and dispatching the share certificate to all the members of the company.

Provisions governing the allotment of Shares:

- I. General Provisions (of the Indian Contract Act)
- II. Special Provisions (of the Companies Act)

I) General Provisions:

A valid allotment must be in conformity with the general provisions of the Indian Contract Act. They are-

1) There must be an offer:

The prospectus issued by a company is only an “invitation to give an offer” and is not an offer by itself. In fact, the share application form submitted for the purchase of shares by an applicant is an offer. For a valid allotment of shares, there must be a share application by a prospective investor by paying application money to the company in response to the prospectus.

2) There must be acceptance by a competent authority:

On receiving applications from the applicants along with application money, the directors of company (competent authority) proceed with allotment of shares to the applicants. The allotment must be made by proper authority in accordance with the provisions of the articles. Usually an allotment is made by a resolution of the Board of Directors.

3) Allotment should be made within a reasonable Time:

Allotment must be made within the time specified in the application or if no time is specified therein, within reasonable period of time, otherwise the applicant may refuse to take the shares.

4) Acceptance of offer must be absolute and unconditional:

The allotment must be made on the same terms as stated in the application for shares. If there is a variation, there is no binding contract unless subsequently the applicant expressly or impliedly assented to the variation. If the above mentioned general provisions are not complied with, the allotment is void.

5) Allotment must be communicated:

Allotment must be properly communicated to the applicant in order to constitute a binding contract.

6) Revocation of application: An offer to take shares (i.e. application for shares) may be withdrawn at any time before the allotment of shares communicated to the applicant.

II) Statutory Provisions:

Statutory provisions relating to first allotment of shares are-

- a. No allotment can be made unless a copy of the prospectus has been duly filed with the Registrar of Companies.
- b. No allotment can be made unless the amount stated as minimum subscription in the prospectus has been subscribed and the sum payable on application in respect of such minimum subscription has been paid in cash and received by the company.
- c. The amount payable on application on each share shall not be less than 5 % of the nominal value of the share.
- d. The money received from the applicants for shares shall be kept deposited in a scheduled bank until the Business Commencement Certificate is obtained or until such application money is refunded.
- e. If minimum subscription could not be secured within 30 days from the date of issue of prospectus, the application moneys must be returned within 15 days from the closure of the issue. Any failure in this regard will make directors liable to repay such application money with interest at 15% P A.
- f. The company cannot proceed to allot the shares until the beginning of the 5th day from the date of issue of prospectus or such later date as may be stated in the prospectus.
- g. When a company has not issued a prospectus, it must file a statement in lieu of prospectus with the Registrar of Companies, at least 3 days before the first allotment.
- h. The prospectus must contain the name of the recognized Stock Exchange where an application has been made to deal the shares of the company.
- i. A Public Ltd. Company making initial public offer of shares for more than Rs. 10 crores shall issue the Shares in the D - Materialized Form only as per provisions of the Depository Act of 1996.

Share Certificate

A share certificate is a registered evidence of title to the shares, issued by the company under its common seal, duly stamped and signed by one or more directors and countersigned by the secretary of the company as per the articles. It is an official declaration of the company that a person named therein is a bona fide holder of the shares. It is a prima facie evidence for the title of the shares held by a member.

Contents of Share Certificate:

- a) Name and address of the member.
- b) Share certificate number.
- c) Number and class of shares.
- d) Distinctive numbers of the shares included in the certificate.
- d) Face value and amount paid on each share.
- f) Date of issue of share certificate.
- g) Common seal of the company.
- h) Name and address of the company.
- i) Signature of at least two directors who are authorized to sign and counter signed by the secretary of the company.
- j) Required revenue stamp.

Rules or Provisions for the issue of Share Certificate: The company must abide by the following rules relating to the issue of share certificate –

- a) A board resolution is required for the issue of share certificates.
- b) The company must complete and deliver the share certificate within 3 months of the allotment of shares. In case of transfer of shares the share certificate must be completed and delivered within 2 months after the application for registration of the transfer of shares.
- c) Every certificate should bear the name of the holder, the number of shares held and the amount paid on each share.
- d) No fresh certificate should be issued unless the previous certificate or letter of allotment has been surrendered to the company or the same has been proved to have been lost or destroyed.
- e) Every certificate must be issued under the common seal of the company.
- f) Every certificate must be signed by at least two directors and counter signed by the secretary of the company.
- g) No duplicate share certificate shall be issued unless it is proved that the original certificate is destroyed or lost.
- h) Where a duplicate has been issued the fact of it being duplicate shall be stated on the face of the certificate
- i) All the relevant particulars as specified in the rules must be entered in the Register of Members when a share certificate is issued.
- j) All books and documents relating to the issue of share certificate must be preserved permanently.
- k) All certificates surrendered to the company should be defaced by a cancellation mark and such certificates may be destroyed after three years on the approval of the board by passing a resolution.

Legal Effects of Share Certificate:**a) Evidence of title to shares:**

A share certificate is not a negotiable instrument and hence it cannot be transferred by mere delivery. A separate instrument of transfer should be executed in favor of the transferee who will become the legal owner of shares only when his name is entered in the Register of Members. Thus a certificate is evidence to title of shares.

b) Estoppels as to title to the shares:

On the issue of share certificate, the company is stopped from denying the title of the person whose name is mentioned in the share certificate. Thus, a share certificate is an official declaration by the company regarding the membership of the shareholder.

However, it is not a conclusive evidence as to the title of shares to the member. The register of members maintained by the company at the registered office is the conclusive evidence for having bought shares giving the real ownership/ membership right to a shareholder.

c) Estoppels as to Payment:

In case fully paid-up shares, the company is prevented from alleging that the shares are not fully paid-up. The company is completely estopped from denying the amount of payment indicated on the share certificate.

Share Certificate issued in Electronic Form or Demate Account.

Today, an issue of shares in the physical form has become outdated and hence shares are issued in the electronic form. The shares issued in the electronic form are dealt through Depository Participants. In case, where the shares are allotted in the electronic form, the company shall intimate the details of allotment of shares to the depository participants immediately.

The Depository Participants will hold these shares in the electronic form on behalf of the shareholders and credit them to the respective Demat Account. In case of sale of shares, the shareholder has to issue Delivery Instructions to the Depository Participants so that the Demat Account of the shareholder is debited with the number of shares sold. In the case of purchase of shares the Demat Account of the concerned shareholder will be credited with the number of shares bought.

A depository is like a bank where securities are held in electronic form. The shares are collected and receipts and records of the account are given to the investor through the depository participants. In India, there are two types of depositories namely, National Securities Depository Limited (NSDL) and Central Depository Services Limited(CDSL). A depository participant is an agent of a depository, who provides a link between the depository and the investors.

Share Warrant:

A Share Warrant is a document in which it is stated that the bearer of the warrant is entitled to the shares specified therein. Hence, it can be defined as follows – **“A share warrant is a bearer document of title to the shares issued by the company under its common seal, duly stamped and signed by one or more directors of the company, as per articles”**. A share warrant is just like a negotiable instrument. The shares specified therein may be transferred by mere delivery of the warrant from one person to another person. The following are the conditions for the issue of share warrants-

- a) The Articles of Association must authorize the issue of share warrants.
- b) Only a public company limited by shares can issue share warrants.
- c) Share warrants cannot be issued originally.
- d) Share warrants can be issued in respect of fully paid shares only.
- e) The company must obtain the approval of the Central Government.

Transfer of Shares

As per section 44, the shares of a company shall be movable property. It is transferable as per the provisions of the Companies Act and the Articles of Association. A transfer of shares takes place where the registered shareholder transfers his shares to another person voluntarily for a valuable consideration. Sections 56 to 59 of the Companies Act of 2013 contain the provisions relating to the transfer of shares. The provisions and procedure for transfer of shares are-

Provisions and Procedure for transfer of shares:

- 1) An instrument of transfer must be executed in the prescribed form.
- 2) Before it is signed by the transferor and the transferee, it should be presented to the Registrar of Companies who will stamp the date of presentation there on.
- 3) The instrument of transfer must then be duly filled and signed by the transferor and the transferee. It must also be duly dated and stamped and the relative share certificates must be attached to it. If share certificate has yet been issued, the letter of allotment shall be attached to the transfer form.
- 4) The completed transfer form along with the registration fees if any should be delivered at the Company or Transfer Agents for registration of transfer either by the transferor or by the transferee.
- 5) In case the application for the transfer of shares relates to partly paid-up shares, the company must give a notice to the transferee and register the transfer only if the transferee makes no objection to the transfer within two weeks from the receipt of the notice. If the application is made by the transferee himself notice is not required. Further, in order to ensure that the instrument of transfer is genuine and not a forged one, a notice should also be sent to the transferor, informing him about the deposit of the instrument of transfer.
- 6) If no objection is received either from the transferor or from the transferee within the specified time, the work of registration of transfer will be taken-up. The details of transfers will be entered in the Register of Transfers.
- 7) The meeting of directors must be held and a resolution must be passed approving the transfer of shares.
- 8) The transfer will be registered by striking off the transferor's name from the Register of Members and entering the name of the transferee in its place. An endorsement is made on the back of the share

certificate, recognizing the transferee as the new holder of the company and the same is issued to the transferee within two months from the date of deposit of the transfer.

Transmission of Shares

Transmission of shares means transfer of property or title in the shares by operation of law. Transmission of shares may be called a voluntary assignment of shares. Here the property in the shares passes automatically by the operation of law without formal instrument of transfer and without consideration, to a person who is entitled under the law to succeed to the estate of the deceased or lunatic or insolvent share holder. A person becoming entitled to any shares on transmission shall have the same rights as to dividend and other rights as if he is the original share holder.

Provisions and Procedure for transmission of shares: The regulation regarding the transmission of shares will be, usually, included in the Articles of Association of the company, In the absence of any provisions in the articles, regulations 25 to 28 of the Table - A of the Companies Act are applicable. The important provisions are-

1. On the death, insolvency or lunacy of a member, his legal representatives will be recognized by the company as the persons entitled to get the shares.
2. On transmission, a person who is entitled to shares is also entitled to enjoy the dividend and other benefits, as he would be entitled if he were a registered member.
3. The legal representative is entitled to the shares of a member on his death, insolvency or lunacy may elect one of them to become the member.
4. The elected person must send a "Letter of Request" to include his name in the register of members to the company along with the legal proof of entitlement for the shares.
5. If the legal representative elects to transfer the shares to someone else, he has to give the notice to the company of his execution of transfer of shares to someone else.
6. If the legal representative does not elect either to become a member or to transfer the shares to someone else, the company can give him a notice requesting him either to register himself as a member or to transfer the shares to someone else.
7. Finally, the name of the elected person will be registered in the "Register of Members" and he is entitled to receive dividend on shares and notice of the meetings.

Distinction between Transfer and Transmission

- 1) Transfer of shares is the result of a voluntary and deliberate act of the holder of shares, whereas transmission of shares is the result of the operation of law.
- 2) Transfer of shares is a general method of transferring the ownership of shares from one person to another. But transmission of shares takes place only on certain special circumstances such as the death, lunacy or insolvency of a shareholder.
- 3) There must be adequate consideration for the transfer of shares unless shares are transferred by way of Gift. But the question of consideration does not arise in case of transmission of shares.
- 4) Transfer of shares requires the execution of a formal instrument of transfer called Transfer Deed, whereas transmission of share do not requires such instrument of transfer.
- 5) In case of transfer of shares stamp duty is payable on the market value of shares, whereas no stamp duty is payable in case of transmission of shares.
- 6) In case of transfer of share, the liability of the transferor comes to an end when the share is transferred. But, in case of transmission of shares, the liability the transferor continues even after the completion of the transmission of shares.

Buy Back of shares- legal provisions relating to buy back of shares

Buy-back of shares means the purchase by the company of its own shares. Section 68 of the Companies Act, 2013 lays down that a company may purchase its own shares. However, the legal provisions relating to buy-back of shares are provided in Sections 68,69and 70 of the Companies Act, 2013. They are:

1. Sources of funds for buy-back [Section 68 (1)]:

A company can purchase its own shares out of

- a. Its free reserves; or
- b. The securities premium account; or
- c. The proceeds of the earlier issue of any shares.

However, the proceeds of an earlier issue of a kind of shares cannot be used to buy-back the same kind of shares.

2. Conditions for buy-back [Section 68 (2)]:

No company can purchase its own shares unless it fulfills the following conditions:

- a. The buy-back is authorized by its Articles [Section 68 (2) (a)];
- b. A special resolution has been passed at a general meeting of the company authorizing the buy-back [Section 68 (2) (b)]

This condition will not apply where:

- The buy-back is 10% or less of- total paid-up equity capital and free reserves of the company; and
 - Such buy-back has been authorized by the Board by means of a resolution passed at its meeting;
- c. The amount of buy-back must not be more than 25% per of the aggregate of paid-up capital and free Reserves of the company [Section 68 (2) (c)]
 - d. The debt equity ratio after buy-back should not more than 2:1.
 - e. All the shares for buy-back should be fully paid-up [Section 68 (2) (e)]:
 - f. The buy-back of the shares listed on any recognized stock exchange should be in accordance with the regulations made by the Securities and Exchange Board (SEBI) in this behalf [Section 68 (2) (f)] and
 - g. The buy-back of other shares not listed on any recognized stock exchange should be in accordance with such rules as may be prescribed [Section 68 (2) (g)]

3. Gap between two buy-backs [Section 68 (2)]:

The gap between two buy-backs must be at least one year.

4. Disclosures in the explanatory statement [Section 68 (3)1]:

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating:

- a. A full and complete disclosure of all material facts;
- b. The necessity for the buy-back;
- c. The class of shares intended to be purchased under the buy-back
- d. The amount to be invested under the buy-back; and
- e. The time limit for completion of buyback.

5. Completion of buy back [section 68(4)]:

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or board resolution, as the case may be, for the buy-back of shares.

6. Persons from whom to buy-back [Section 68 (5)]:

The buy-back of shares may be: (a) From the existing shareholders on a proportionate basis; (b) From the open market; c) By purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

7. Filing of Declaration of Solvency [Section 68 (6)]:

The company must file with the Registrar and the SEBI, a declaration of solvency before making such buy-back. However, no declaration of solvency shall be filed with the SEBI by a company whose shares are not listed on any recognized stock exchange.

8. Extinction of bought-back shares [Section 68 (7)]:

The company should extinguish and physically destroy the shares so bought back within 7 days of the last date of completion of buy-back.

9. No further issue of same kind of shares after the buy-back [Section 68 (8)]:

After the completion of buy-back, the company cannot make further issue of the same kind of shares within a period of 6 months from the completion of buy-back. But, issue of bonus shares or conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares are allowed.

10. Register of bought-back shares [Section 68 (9)]:

The company should maintain a register of the bought-back shares. It must state:

- a. The consideration paid for the shares bought back;
- b. The date of cancellation of shares bought back;
- c. The date of extinguishing and physically destroying the shares;
- d. Such other particulars as may be prescribed.

11. Filing of Return [Section 68 (10)]:

After the completion of the buy-back, the company should file with the Registrar and the SEBI a return containing such particulars, relating to the buy-back within 30 days of completion of buy-back, as may be prescribed. But, no such return is required to be filed with the SEBI by a company whose shares are not listed on any recognized stock exchange.

12. Penalty for non-compliance [Section 68 (11)]:

If a company makes any default in complying with these provisions or any regulation made by the SEBI:

- a. The company is punishable with fine which should not be less than Rs. 1,00,000 but which may extend to Rs. 3,00,000, and
- b. Every officer of the company who is in default should be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 3,00,000, or with both.

13. Transfer of amount to Capital Redemption Reserve [Section 69 (1)]:

Where a company purchases its own shares out of free reserves or securities premium account, then a sum equal to the nominal value of the shares so purchased should be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the Balance Sheet.

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares

14. Prohibition of buy-back of shares (Section 70):

a. A company cannot, directly or indirectly, purchase its own shares:

- through any subsidiary company including its own subsidiary companies;
- through any investment company or group of investment companies; or
- if a default, is made by the company, in the repayment of deposits or interest on it, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or a bank

However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

b. A Company cannot, directly or indirectly, purchase its own shares in case such company has not complied with the provisions of: (i) section 92 relating to annual return, (ii) section 123 relating to declaration of dividend, (iii) section 127 relating to default in distributing dividend, and (iv) section 129 relating to financial statements.

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