

Companies Act Fundamentals

Reduction of Share Capital



2020 MHA Legal

Applicable Law

- Chapter IV- Share Capital and Debentures - Section 43-72 of the Companies Act 2013
 - The Companies (Share Capital and Debentures) Rules, 2014.
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- Act means – Companies Act 2013
 - Rules means - The Companies (Share Capital and Debentures) Rules, 2014.

Reduction of Share Capital

Reduction of Share Capital

Section 66 (1) of the Act provides that subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in, particular, may—

- extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- either with or without extinguishing or reducing liability on any of its shares-
 - (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - (ii) pay off any paid-up share capital which is in excess of the wants of the company,
- alter its memorandum by reducing the amount of its share capital and of its shares accordingly:
- However no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.

Process followed by Tribunal

- The Tribunal shall give notice of every application made to it under Section 66 (1)) to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:
- In the event no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.
- The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

Process followed by Tribunal

- No application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.
- The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

Filing of order to RoC

- The company shall deliver a certified copy of the order of the Tribunal provided under section 66 (3) sub-section (3) and of a minute approved by the Tribunal to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect indicating-
 - the amount of share capital;
 - the number of shares into which it is to be divided;
 - the amount of each share; and
 - the amount, if any, at the date of registration deemed to be paid-up on each share.

Other Aspects

- Nothing in section 66 shall apply to buy-back of its own securities by a company under section 68.
- A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.
- Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim.

Other Aspects

- Every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date; and
- If the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- Nothing in section 66 (8) shall affect the rights of the contributories among themselves.

Penalty

If any officer of the company—

- knowingly conceals the name of any creditor entitled to object to the reduction;
- knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.

- If a company fails to comply with the provisions of section 66 (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

Restrictions on Giving of Loans for Purchase of Shares

- Section 67 of the Act provides that no company limited by shares or by guarantee and having a share capital shall have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.
- No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. However, this does not apply to:
 - (a) the lending of money by a banking company in the ordinary course of its business;

Restrictions on Giving of Loans for Purchase of Shares

- Disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

- Nothing shall affect the right of a company to redeem any preference shares issued by it under this Act or under any previous company law.

- If a company contravenes the provisions of this section, it shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees

Restrictions on Giving of Loans for Purchase of Shares

- (b) the provision by a company of money in accordance with any scheme approved by company through special resolution and in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid-up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
- (c) the giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership:

Thank you



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Passion, Integrity, Excellence

Thank You

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