

Companies Act Fundamentals

Share and share capital Basics



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Applicable Law

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

- Act means – Companies Act 2013
- Rules means - The Companies (Share Capital and Debentures) Rules, 2014.

The basics

What is a Share and Share Capital

- A company's capital is divided into small equal units of a finite number. Each unit is known as a share. In simple terms, a share is a percentage of ownership in a company or a financial asset. Investors who hold shares of any company are known as shareholders.
- Section 2(84) of the Companies Act, 2013 define “share” and provides that a share means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend.
- Share capital of a company refers to the amount invested in the company for it to carry out its operations. The share capital may be altered or increased, subject to certain conditions. A company’s share capital may be divided into small shares of different classes. The different classes of share capital and the rights attached to these classes are different.

Authorized, Issued, Subscribed capital

Authorized Capital

- The amount of company with which registration of a company could take place, such capital is authorized capital. It is the amount of total value of shares that the company is authorized to offer for subscription.

Issued Capital

- It is authorized capital which is actually issued to the public for sale. Generally, a company does not issue the shares for its total authorized capital at one time. It rather invites front eh public for a part of its capital and the subscription for the remaining capital is called for as and when required.

Authorized, Issued, Subscribed capital

Subscribed Capital

- Subscribed Capital is the part of issued Capital which is generally accepted and willfully taken by the public. If the public accepts the total issued capital, then the issued capital shall be equal to the Subscribed Capital

Type of share capital

The share capital of a company limited by shares is of two kinds:

- Equity share capital
- Preference share capital

- Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:
 - (a) equity share capital—
 - (i) with voting rights; or
 - (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and
 - (b) preference share capital:

Equity share capital

Equity share capital regarding any company limited by shares, means all share capital which is not preference share capital. As per section 43 (a) equity share capital may be divided based on voting rights and differential rights as to dividend, voting rights or otherwise according to the rules.

A Differential Voting Rights (DVR) share is an ordinary equity share, which alters the voting rights to the shareholder. The difference in voting rights can be achieved by reducing the voting powers of the shareholders. For example instead of offering equity shares on 1:1 voting right, equity shares with 4:1 voting right can be issued wherein the shareholder holding equity shares with DVR shall be issued one voting right for 4 equity shares.

Equity shares with DVR are usually opted by investors who are interested in financial gains by achieving higher dividend and are not necessarily interested in taking a voting right in the affairs of the Company.

Preference share capital

"preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to:

- payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or subject to income-tax; and
- repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid-up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Note:

In case of private company - Section 43 is not apply where MOA of the private company so provides. - Notification dated 5th june, 2015.

Voting Rights

Section 47 of the Act provides that every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and his voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company.

In case of member of a company limited by shares and holding preference share capital, shall have a right to vote only on

- resolutions placed before the company which directly affect the rights attached to his preference shares; and
- any resolution for the winding up of the company; or
- for the repayment or reduction of its share capital.

Voting Rights

Voting right of holder of preference share capital is in proportion to his share in the paid-up preference share capital of the company. The proportion of the voting rights of equity shareholders to the voting rights of the preference shareholders shall be in the same proportion as the paid-up capital in respect of the equity shares bears to the paid-up capital in respect of the preference shares.

Preference shareholders are entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such class of preference shares are in arrears for a period of two years or more.

Penalty for Personation of Shareholder

Section 57 of the Act provides that if any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Thank you



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Passion, Integrity, Excellence**

Thank You

Please feel free to contact, if you need any further information or clarification:

Manish K Tyagi

Partner- MHA Legal

manish@mhalegal.in

9902977833/9810187833

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