

## **Important provisions of the Companies Act, 2013 Regarding Share Capital**

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When we look at the various provisions of share capital in the Companies Act, 2013 (CA 2013 or the Act), there is no much difference in the basic features of the same as compared to the Companies Act, 1956 (CA 1956). Hence in this article instead of giving details of the provisions, an attempt has been made to highlight the changes or departure from the earlier provisions for the general understanding of readers. Except where it is specifically stated, the provisions in relation to the Act are given. Further, some of rules are published by the Government but have not yet become effective for want of their publication in the Official Gazette. However, the same are considered in this article.

Like in the CA1956, in this Act also i.e. CA 2013, there are two types of share capital viz. Equity and Preference. Further, Equity shares may be issued with differential rights as to dividend, voting or otherwise.

As regards variation of voting rights, apart from the earlier provisions, a new provision has been made in CA 2013. Proviso to section 48(1) states that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three fourths of such other class of shareholders shall also be obtained and the provisions of the section will apply to such variation.

### *Share certificates:*

Section 56 of the Act stipulates that the company is supposed to issue share certificates to subscribers to memorandum within two months of incorporation which casts a responsibility upon subscribers to make the payment for the shares subscribed by them within two months. Further, it is required to issue share certificates within two months from the date of allotment or within one month from the date of the date of receipt of transfer or transmission request and within six months from the date of allotment of debenture.

### *Transfer/ transmission of Shares:*

Under the Act, in case of transfer of any security, the instrument of transfer duly stamped, dated and executed need to be delivered to the Company within sixty days from the date of execution. This provision is applicable to all the companies including listed ones. Earlier, the validity for listed companies was any time till the next book closure after the date of presentation of transfer form to prescribed authority or twelve

months from the date of such presentation, whichever is later. Now, there is no need to present the transfer form to prescribed authority for its endorsement.

In case a private company refuses to give effect to the transfer/ transmission of any security or interest of any member in the company, it shall within thirty days from the date on which such transfer or transmission request was delivered to the Company, send notice of such refusal giving reasons. In the earlier Act, this period was sixty days. In case of such refusal, the Transferee may appeal to the National Company Law Tribunal (NCLT) within thirty days ( as against two months earlier). In case no notice of refusal is sent by the Company, then he can appeal within sixty days ( as against four months earlier) from the date on which the instrument of transfer or intimation of transmission was delivered to the company. In the new Act, the right of appeal is restricted to transferee only whereas earlier even the transferor or the person who gave intimation of transmission by operation of law was also covered.

In case a public company, without sufficient cause, refuses to give effect to the transfer or transmission within thirty days from the date on which the instrument of transfer or intimation of transmission was delivered to the company, the transferee within sixty days can prefer an appeal and in case no intimation is received from the company then within ninety days from the date on which the instrument of transfer or intimation of transmission was delivered to the company, can prefer an appeal to NCLT.

Most important provision in the new Act is that in case a person contravenes an order made by the Tribunal he shall be punishable with imprisonment which shall not be less than one year but which may extend to three years and with fine which shall not be less than rupees one lakh but which may extend to Rupees five lakh. In the earlier Act, the punishment was by way of fine only.

#### *Issue of shares/ Securities:*

A public company may issue securities by way of a public offer to public through prospectus or through private placement or through rights issue or bonus issue. Like in the past, elaborate disclosures have been prescribed to be made in the prospectus. However, in view of the experience gathered over a period of time in the capital market, this time an important provision has been made in the Act. Any variations in the terms of the contract referred to in prospectus or objects for which the prospectus was issued shall be made only with the approval of the members accorded by way of a special resolution. The details of notice in respect of such resolution should be published in two newspapers- one in English and one in vernacular language in the city in which the registered office of the Company is situated, clearly giving justification for the same. The details should include the original purpose or object of the Issue, the total money raised, the money utilised for the objects of the company stated in the prospectus, the extent of achievement of proposed objects(that is fifty percent, sixty percent, etc), the unutilised amount out of the money so raised through prospectus, the particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued, the reason and justification for seeking variation, the proposed

time limit within which the proposed varied objects would be achieved, the clause-wise details as specified in sub-rule (3) of rule 3 of The Companies (Prospectus and Allotment of Securities) Rules, 2014 as was required with respect to the originally proposed objects of the issue, the risk factors pertaining to the new objects and the other relevant information which is necessary for the members to take an informed decision on the proposed resolution.

Such Company, which has varied the terms as aforesaid, should not use any amount raised by it through prospectus for buying , trading or otherwise dealing in equity shares of any other listed company. If some shareholders do not agree to such proposal, the promoters or controlling shareholders have to give them exit offer at such price and in such manner on such conditions as may be specified by SEBI. This will help dissenting shareholders to move out of the Company at a reasonable price.

In the CA 1956, it was not necessary for a private company to issue shares on rights basis however in the new Act, even private companies have to issue further shares on rights basis. Moreover, the provisions of further issue of capital were applicable only if the Company, at any time after the expiry of two years from the formation of the Company or after one year from the allotment of shares in that company made for the first time after its formation, proposes to increase its subscribed capital. Now, whenever a company wants to increase its subscribed share capital, the provisions of section 62 will be applicable. Further shares shall be offered to existing members on rights basis. They can also be offered to employees under employees' stock option scheme subject to passing of a special resolution and subject to such conditions as may be prescribed. For issue of shares to non-members and non-employees, a special resolution is required to be passed and the price should be determined by a registered valuer subject to rules as may be prescribed.

#### *Private placement:*

Of course, they can issue shares on private placement basis after complying with the provisions therefor. Hitherto, in case of private companies, the Board of Directors can issue shares at any time subject to articles of association, to any persons without any restrictions as to procedure. However, this liberty will go now. Under section 23(2), A private company may issue securities by way of rights issue or bonus issue or through private placement.

As per section 42, private placement means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section. Under the said section, a Company may make private placement through issue of private placement offer letter. Such offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42, provided that no person other than the

person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid. Under sub section 7, the Company has to record names of the persons to whom offer is made prior to invitation to subscribe, keep complete record of such offers and file complete information about such offer with Registrar Of Companies within a period of thirty days of circulation of relevant private placement offer letter and also with SEBI, if the Company is a listed entity.

A previous approval by the shareholders of the company, by a Special Resolution, for each of the Offers or Invitations is necessary before a Company makes a private placement. In the explanatory statement annexed to the notice for the general meeting the basis or justification for the price (including premium, if any) at which the offer or invitation is being made is required to be disclosed. In case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year. Such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year. Any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

No fresh offer or invitation shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the Company. (Section 42(3)).The requirement of provisions of sub-section (3) of section 42 shall apply in respect of offer or invitation of each kind of security and no offer or invitation of another kind of security shall be made unless allotments with respect to offer or invitation made earlier in respect of any other kind of security is completed.

The value of such offer or invitation per person shall be with an investment size of not less than twenty thousand rupees of face value of the securities and the payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the Bank account from where such payments for subscriptions have been received provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application. Thus, the notable condition for private placement is that the subscription has to be compulsorily by cheque/dd or banking channel and not in cash. Money received in such issue has to be kept in a separate bank account and can be used only on allotment or can be used for refund. Thus, the practice of accepting share application money, utilizing it and showing the same as pending allotment in accounts for years cannot continue.

The Company offering securities under private placement route neither can release public advertisements nor can utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer.

### *Allotment:*

The Company has to allot shares within 60 days or refund it within next 15 days otherwise liable to pay interest at 12% pa. Further, in case the Company fails to refund such amount within the stipulated period of 15 days, such amount will be treated as deposit and penal provisions in respect of acceptance of deposit without complying with the conditions will apply. A return of allotment of securities under section 42 shall be filed with the Registrar within thirty days of allotment in Form **PAS-3** and with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 along with a complete list of all security holders containing the full name, address, Permanent Account Number (PAN) and E-mail ID of such security holder, the class of security held, the date of allotment etc. The most important factor is the mentioning of PAN. So no company can claim that their investors are panwala, chaywala having untraceable address and without having bank account and PAN. They cannot claim that millions of investors have given them hundreds of crores without any record.

If a company contravenes the provisions of this section, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees whichever is higher and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

In respect of preferential issue of shares under further issue of capital, the explanatory statement accompanying the special resolution seeking approval of the members should contain elaborate disclosures e.g. price band, basis for pricing, relevant date with reference to which price is arrived at, class or classes of persons to whom allotment is proposed to be made, justification for allotment proposed to be made for consideration other than cash, pre and post shareholding pattern etc. and such issue shall also comply with the conditions of section 42.

### *Preference shares:*

While there is no much difference in respect of provisions relating to preference shares, a relaxation in redemption is made for infrastructure projects. A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Thus, the Government has tried to plug the loopholes in the earlier Act.