

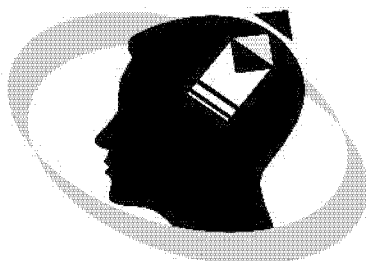
CA - IPCC COURSE MATERIAL

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SUPPLEMENTARY MATERIAL ON COMPANY LAW _39e

(MATERIAL NO: 23, TYPE 3 CHAPTERS – APPLICABLE FOR GROUP – 1 CRASH
BATCH OF OLD SYLLABUS)

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GUNTUR | RAJAHMUNDRY | KURNOOL | VIZAG | NELLORE

HYDERABAD | VIJAYAWADA | TIRUPATHI

Cell: 98851 25025 / 26

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1. SHARE CAPITAL

Q.No.1. What are the differences between shares and stock? (C)

DIFFERENCES BETWEEN SHARES AND STOCK:

- Numbering:** Shares are identified by distinctive numbers (Except where the shares are held in depository). Whereas stocks are not identified by distinctive numbers.
- Denomination:** Shares have fixed denomination and stocks are expressed in amount and have no denomination.
- Issue:** Unlike shares, the company can't issue stock directly. It must issue shares first and later when they are fully paid up, convert them into stock.
- Fully paid up:** Shares may or may not be fully paid-up. Stock is always fully paid-up, because only fully paid shares can be converted into stock.
- Division:** Stock is divisible into any amount required. Thus, it is possible to transfer Rs.50.87 worth of stock, while it is not possible to transfer a fraction of share.

Q.No.2. Explain the provisions of Conversion of shares into stock. [Sec 61](C)

(SM)

MEANING: "Stock" is an aggregate of fully paid shares that have been legally consolidated. The consolidated amount is divisible into fractions of any amount, regardless of the nominal value of the shares that have been consolidated. (i.e. it represents a part of the capital of the company which is fully paid)

For example: After shares are converted into stock, the stockholder may own 1,000 worth of stock where formerly he held 100 shares of Rs.10 each. Thus, though Shareholder's investment remains same, the interest of the stockholder is described differently.

PROVISIONS OF CONVERSION OF SHARES INTO STOCK:

1. Procedure for issue [Sec 61 of the Companies Act, 2013]:

- A company limited by shares, if authorised by its AOA, may by means of an "OR" passed at a GM alter the conditions of its MOA for conversion of all or part of its fully paid shares into stock and also reconversion of the stock into share.
- However, the company can't issue stock ab-initio. It must issue shares first and later when they are fully paid up, convert them into stock.

2. **Notice required u/s sec 64:** The company shall file a notice in the prescribed form with the ROC within a period of 30 days of such alteration along with an altered MOA.

3. **Punishment in contravention of the provision:** If a company and any officer of the company who is in default contravenes the above provision, then the company or the officer shall be punishable with fine which may extend to Rs.1,000 for each day during which such default continues, or Rs.5 lakh, whichever is less.

4. Effects of conversion of Shares into Stock:

- The Register of members shall show the amount of stock held by each member instead of the shares previously held by each member.
- The conversion of shares into stock does not affect in any way the rights of a member.
- The stock can be transferred in the same way as the shares can be transferred with the only difference that stock can be transferred even in fractions.

5. **Advantage:** Stock can be easily transferable in any denomination which is not limited to the nominal value of the share converted into stock.

6. **Minimum Stock:** The BOD may, from time to time, fix the minimum amount of stock transferable but such minimum shall not exceed the nominal value of share.
7. **Reconversion of stock into shares:** For conversion of stock into shares, the company shall comply with the same conditions as are required to be complied with for conversion of shares into stock.

Q.No.3. "Diminution of capital does not constitute reduction of capital within the provisions of the Companies Act, 2013," State in what respect they differ from each other. (B) (N15- 4M)

Sec 61 of the Companies Act, 2013 specifically states that diminution does not constitute a reduction. The expression "diminution of share capital" and "reduction of share capital" differ from each other in the following respects.

DIMINUTION: Sec 61 of the Companies Act, 2013 states that, the cancellation of that portion of the issued capital which has not been subscribed for. (*i.e. the cancellation of "shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person*)

- a) **Applicable Section:** Reduction is covered u/s.100 of Companies Act, 1956 and Diminution is covered u/s 61 of the Companies Act, 2013.
- b) **Meaning:** Reduction may involve reduction of paid up capital, whereas diminution may be in respect of authorised capital but not of paid up capital.
- c) **O.R. Vs. S.R.:** Reduction can be affected only by passing a "SR". Diminution can be affected by passing an "OR".
- d) **Tribunal permission:** Diminution needs no confirmation by the Tribunal but reduction requires it.
- e) **The words "And reduced":** In case of reduction the Tribunal can order the company to add the words 'And reduced' after its name, but such a provision does not exist in case of diminution.
- f) **Notice to ROC:** In the case of diminution, notice is to be given to the ROC within 30 days from the date of cancellation whereupon the ROC shall record the notice and make the necessary alteration in the MOA or AOA or both. In the case of reduction more detailed procedure regarding notice to the ROC has been.
- g) **Creditor's permission:** Required for reduction and not required for diminution.
- h) **Change in MOA:** Not required in case of reduction and it is required in case of diminution.

[Note: The corresponding provisions related to "Reduction of Share capital" u/s 100-104 of the Companies Act, 1956 are covered in sec 66 of the Companies Act, 2013 which is notified & applicable w.e.f 15th Dec 2016.]

Q.N.4. Define the term "Free Reserves" as contained in the Companies Act, 2013. (C) (PM, N14 – 4M)

FREE RESERVES [SEC 2(43)]: As per Sec 2(43) of the Companies Act, 2013, "Free Reserves" means such reserves which as per the latest audited balance sheet of a company are available for distribution as dividend provided that :

- a) Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise or
- b) Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in P&L A/c on measurement of the asset or the liability at fair value shall not be treated as free reserves.

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Q.No.5. Reserve Capital and Capital Reserve. (C)

RESERVE CAPITAL: It is that part of the uncalled capital of the company which can be called up only in the event of its winding up. A limited company may, by a SR, determine that a portion of its uncalled capital shall be called up.

- a) In the event of winding up,
- b) For the purposes of winding up.
 - i) Reserve capital cannot be turned into uncalled capital without the leave of the Court. It is available only for the creditors on the winding up of the company. The company can neither create charge on reserve capital nor but can cancel it in a reduction of capital [*Midland Ry Carriage Co. Re*].
 - ii) A company cannot borrow on the security of its reserve capital.
 - iii) Reserve capital and Capital reserve are not one and the same.
 - iv) Reserve capital is not required to be disclosed in the Balance sheet.
 - v) It cannot be used to write off capital losses.

CAPITAL RESERVES: The expression "Capital Reserve" does not include any amount regarded as free for distribution through the profit and loss account. Any reserve other than a capital reserve shall be "Revenue reserve".

Capital reserves comprise profits that arise in special circumstances. A few examples of these are given below:

- a) Profit prior to incorporation;
- b) Profit on acquisition of business, that is, where the value of assets acquired is more than the liabilities taken over and the purchase consideration;
- c) Profit on sale of fixed assets, the excess of sale proceeds over the original cost;
- d) Premium on issue of debentures;
- e) Profit on redemption of debentures;
- f) The credit to the CRR A/c (for redemption of redeemable preference shares);
- g) Premium on issue of shares; and
- h) Profit on re-issue of forfeited shares.

Some of the capital profits may ultimately become available for dividend on the fulfillment of certain conditions. These conditions are that profits have been realised in cash and that they remain on a fair revaluation of assets and that the AOA do not forbid the utilisation of such a profit for distribution of dividends. Therefore it is possible that a profit may be a capital profit initially and later it may become a revenue profit.

SIMILAR QUESTION:

1. Reserve Capital of a public Company may be called at any time.

A. Refer the above answer.

Q.No.6. Differentiate between 'Share Warrant' and 'Share Certificate' under the Companies Act, 2013. (C) (PM)**DISTINCTION BETWEEN SHARE WARRANT AND SHARE CERTIFICATE:**

| No. | SHARE CERTIFICATE | SHARE WARRANT |
|-----|---|---|
| 1. | A share certificate is a prima facie evidence of document of title, stating that the holder is entitled to specified number of shares | A share warrant is a bearer document stating that the holder is entitled to certain number of shares specified therein. |
| 2. | Share certificate can be issued by a public and private company | Share warrant can be issued only by public companies. |

| | | |
|----|---|---|
| 3. | A share certificate can be issued for a fully paid and partly paid up shares | A share warrant can be issued only with respect of fully paid up shares |
| 4. | The holder of a share certificate is normally a member of the company | The bearer of a share warrant can be a member only if the articles provide. |
| 5. | A share certificate is not a negotiable instrument | A share warrant is by mercantile usage a negotiable instrument |
| 6. | The shares can be transferred by execution of a transfer deed and its delivery along with the share certificate. The transfer is complete when it is registered by the company. | A share warrant can be transferred by mere delivery and no registration of transfer with the company is required. |
| 7. | Stamps duty is payable on transfer of shares specified in a share certificate | No stamp duty is payable on transfer of a share warrant |
| 8. | In order to qualify as a Director, the person should acquire shares in his own name. | This is not applicable to share warrants. |

PRACTICAL QUESTIONS

Q.No.1. Reserve capital can be created out of net profits of the Company?

False. Reserve capital is created out of capital of the Company. This is that part of the uncalled capital of the Company which can be called up only in the event of its winding up. A limited Company may, by a special resolution, determine that a portion of its uncalled capital shall be called up in the event of winding up for the purposes of winding up. (Sec 99).

Q.No.2. A Company by SR declared that Rs.50 out of each Rs.100 share should be the reserve capital. The company then issued debentures charging its undertaking and property including its uncalled capital. 2 years later, the company went into liquidation. The debenture holders claimed a first charge on the reserve capital. Is their claim justified? Give reasons referring to the provisions of the Companies Act, 2013

No, the debenture holders claim is not justified.

A company cannot borrow on the security of its reserve capital. This is because reserve capital is not capable of being called up except in the event of the company being wound up. Thus the reserve capital of Rs.50 per share can't be subject to the charge (*Mayfair Property co. Re*).

Q.No.3. State whether the given statements are true or false with reasons-

(PM)

- Deferred shares also called founders' shares.
- To authorise the issue of shares at a discount, a SR is required

(M15 - 1M)

- True. Since deferred shares are often held by the promoters of the company, they are called as founder shares. They are also known as promoter shares or Management shares.
- False. U/s 54 of the Companies Act, 2013 – issue of share at discount is strictly prohibited.

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2. MEMBERSHIP

Q.No.1. Explain different ways through which a person may become a member of the Company.(C)
(OLD SM, OLD PM)

A PERSON MAY BECOME A MEMBER OF THE COMPANY IN ANY ONE OF THE FOLLOWING WAYS:

a) Membership by subscription to MOA:

- i) The subscribers to MOA are deemed to have agreed to become its members.
- ii) When the Company is registered, their names are entered in the register of members.
- iii) Even in the absence of an entry in the register of members will not alter the position. Neither application nor allotment of shares is necessary [*Universal Transport Co. vs. Jagjit Singh, Babulal vs. Naraina Sugar Mill*].

b) By Application and Allotment (Primary Market):

- i) Every other person, other than subscribers to MOA, who agrees in writing to become a member and
- ii) Whose name is entered in the register of members, shall be a member of the Company.

c) By Transfer (Secondary Market):

- i) A person may purchase the shares in open market.
- ii) He becomes member when the transfer of shares is registered in his name.

d) By Transmission (Succession of shares): In case of death of a member his legal representatives are entitled to have their names entered in the register of members, thereby becoming the members of the Company. (*i.e. by operation of law*)

e) In case of depository:

- i) Every person holding shares of the Company and
- ii) Whose name is entered as beneficial owner in the records of the depository shall be deemed to be the member of the concerned Company.

f) By estoppel:

- i) One cannot be deemed to be a member on ground of estoppel, simply because his name appears in the register of members.
- ii) Where, however, a person's name is there in the register and he has, in fact, accepted the position and acted as a member,

Then the agreement will be presumed to be in writing.

SIMILAR QUESTION:

1. State the manner in which a person may acquire membership of a public Company?

A. By subscription, transfer or transmission.

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3. DEBT CAPITAL

PART A: REGISTRATION OF CHARGES

Q.No.1. Explain the provisions relating to power of Registrar to make entries of satisfaction and release of charges in the absence of intimation from company (sec 83)

Powers of the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company (sec 83 of the Companies Act, 2013):

- a) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge:
 - i) That the debt for which the charge was given has been paid or satisfied in whole or in part; or
 - ii) That part of the property or undertaking charged -
 - has been released from the charge or
 - has ceased to form part of the company's property or undertaking,

Enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking, as the case may be, despite the fact that no intimation has been received by him from the company.

- b) The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges kept u/s 81(1).

Provisions of the Companies (Registration of Charges) Rules, 2014 with respect to the satisfaction of charge -

1. A company shall within a period of 30 days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the ROC along with the fee.
2. Where the Registrar enters a Memorandum of satisfaction of charge in full in pursuance of sec 82 or 83, he shall issue a certificate of registration of satisfaction of charge.

Q.No.2. Explain provisions relating to condonation of delay and rectification of register of charges.

Where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the CG (Power delegated to RD)

1. The application for condonation of delay and for such other matters covered in sub clause (a), (b) and (c) of Sec 87(1) of the Act shall be filed with the CG (Power delegated to RD) along with the fee.
2. The order passed by the CG (Power delegated to RD) u/s 87(1) of the Act shall be required to be filed with the ROC along with the fee as per the conditions stipulated in the said order.

Q.No.3. Write about Intimation of appointment of receiver or manager to the company and the registrar.

INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER TO THE COMPANY AND THE REGISTRAR [SEC 84 OF THE COMPANIES ACT, 2013]:

- a) If
- i) any person obtains an order for the appointment of a receiver, or manager, of any property of the company, which is subject to charge, or
 - ii) any person appoints such receiver or person under any power contained in an instrument,
- b) he shall, within a period of 30 days from the date of the passing of the order or of the making of the appointment, give notice of such appointment to the company and the ROC along with a copy of the order or instrument and
- c) The Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.
- d) Any person appointed above shall, on ceasing to hold such appointment, give to the company and the Registrar a notice to that effect and the ROC shall register such notice.

Q.No.4. What is E- filing? List at least five advantages of E filing under MCA 21.

The term E-filing indicates the process of getting services electronically with a comprehensive on-line portal.

Some of the advantages of MCA 21 are:

1. Expeditious incorporation of companies;
2. Simplified and ease of convenience in filing of Forms/ Returns ;
3. Better compliance management
4. Total transparency through e-Governance
5. Customer centric approach
6. Increased usage of professional certificate for ensuring authenticity and reliability of the
7. Forms / Returns
8. Building up a centralised database repository of corporate operating
9. Enhanced service level fulfillment
10. Inspection of public documents of companies anytime from anywhere
11. Registration as well as verification of charges anytime from anywhere
12. Timely redressal of investor grievances
13. Availability of more time for MCA employees for monitoring and supervision.

Q.No.5. What are the steps for e-Filing ?

1. Select a category to download an e Form from the MCA portal (with or without the instruction kit.)
2. At any time, read the related instruction kit to familiarise with the procedures (download the instruction kit with e-form or view it under **Help** menu).
3. Fill the downloaded e-Form.
4. Attach the necessary documents as attachments.
5. Use the **Prefill** button in e Form to populate the greyed out portion by connecting to the Internet.
6. The applicant or a representative of the applicant needs to sign the document using a digital signature.
7. Click the **Check Form** button available in the e Form. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).

8. Upload the e Form for pre-scrutiny. The pre-scrutiny service is available under the **Services** tab or under the **e-Formstab** by clicking the **Upload e Form** button. The system will verify (pre-scrutinise) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).
9. The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.
10. Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter through challan).
 - a) Electronic payments can be made at the Virtual Front Office (VFO) or at PFO
 - b) If the user selects the traditional payment option, the system will generate 3 copies -of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorised for accepting challan payments.
11. The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
12. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
13. MCA 21 will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.
14. Filing will be complete only when the necessary payments are made.
15. In case of a rejection, helpful remedial tips will be provided to the applicant.
16. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.

PART B: DEBENTURES

Q.No.1. State the types of debentures which may be issued by a public company. (C) (PM)

DIFFERENT TYPES OF DEBENTURES MAY BE ENUMERATED AS FOLLOWS:

1. **Unsecured debentures:** Such debentures do not carry any charge on the assets of the company. The holders of these debentures do not have any security as to repayment of principal or interest thereon.
2. **Secured debentures:** Such debentures are secured by a mortgage of the whole or part of the assets of the company and known as mortgaged or secured debentures. Such debentures may be of one or more of the following types:
 - a) **Redeemable:**
 - i) These debentures are redeemable on the expiry of the term for which they have been issued. Secured debentures shall be redeemable within a period of 10 years from the date of issue and
 - ii) In case of infrastructure projects, infrastructure finance company, infrastructure Debt fund NBFC within a maximum period of 30 years.
 - b) **Partly convertible:** These debentures are convertible into equity shares of the company for part of their face values and the balance face value is redeemed;
 - c) **Fully convertible:** These debentures are not redeemable in cash, but are converted into equity shares after the prescribed period as per the terms of issue.

PART C: DEPOSITS

Q.No.1.Discuss the provisions of the Companies Act, 2013 with respect to repayment of deposits accepted before commencement of this Act [Sec 74] (C) (SM)

APPLICABILITY: Sec 74 is applicable to all companies.

Where in respect of any deposit is accepted by a company, before the commencement of the Act, and any amount thereof or interest due thereon has remained unpaid (though due) then such companies shall:

1. **Intimations to ROC [Sec.74(1)]:** Company shall file a statement in Form DPT - 4 with the ROC,
 - a) Within 3 months of commencement of the Act (in respect of deposit and interest thereon which became due but remained unpaid) or
 - b) Within 3 months of due date for repayment of deposits and interest thereon (*where they are not due for repayment at the time of commencement of the Act*),
 - c) The statement shall contain the particulars of all the deposits accepted by the company and sums remaining unpaid with interest payable thereon. Such statement shall also give details of arrangements made by the Company for its repayment.
 - d) The statement shall be filed notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law.
2. **Repayment:** Repay within 1 year from such commencement or from the date on which such payments are due, whichever is earlier.

APPLICATION TO NATIONAL COMPANY LAW TRIBUNAL (NCLT) [Sec.74 (2)]:

The Tribunal may on the application made by the company and after considering -

- the financial position of the company,
- the amount of deposit or part thereof and the interest payable thereon and
- such other matters,

allow further time as considered reasonable to the company to repay the deposits.

PENALTY [Sec.74(3)]: Where a company fails to repay deposits and interest thereon or part thereof within the specified period of 1 year, or within such time extended by NCLT:

- a) The company is liable to pay minimum fine of Rs.1 crore and which may extend upto Rs.10 crores. Apart from that the company continues to be liable to repay deposits with interest.
- b) Every officer of the company who is in default shall be liable for
 - i) Minimum fine of Rs.25 lakh and which may extend upto Rs.2 crore or
 - ii) Imprisonment upto 7 years or
 - iii) Both (fine and imprisonment)

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THE END