COMPANY LAW
(PART II)

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WHAT IS A SHARE?

- A share is the **interest** of a shareholder in the company measured by a **sum of money**, for the purposes of liability in the first place, and of interest in the second and carrying **various rights** contained in its terms of issue.
- Section 49(1) – .................................................................
- Section 49(5) – .................................................................
RIGHTS ATTACHED TO A SHARE

• Section 49(2) – Subject to the company’s articles, a share in a company confers on the holder:
  (a) the right to 1 vote on a poll at a meeting of the company on any resolution;
  (b) the right to an equal share in dividends paid by the company;
  (c) the right to an equal share in the distribution of the surplus assets of the company on liquidation.
CLASSES OF SHARES

• Section 49(3) – A company may issue different classes of shares, and in particular may issue shares which:

  (a) are **redeemable**;

  (b) confer **preferential rights** to distributions; or

  (c) confer special, limited or conditional **voting** rights or confer no voting rights.
CLASSES OF SHARES

• **Ordinary/voting shares** – risk taking share of the company. If the company fails financially, ordinary shareholders carry the main financial burden of the company. If the company performs profitably, greater financial reward is enjoyed by them. Obtain a right to vote at general meetings for the decisions to be taken by the company.

• **Preference shares** – carries preferential rights particularly in comparison to ordinary shares. Generally confer a right to preferential dividends.

• **Redeemable shares** – created on the understanding that they may be bought back by the company. A share is redeemable if articles provide for the redemption of shares by the company (a) at the option of the company; (b) at the option of the holder of the share; or (c) on a date specified in the articles for redemption (Section 66).

• **Non-voting shares** – ordinary shares without voting rights.

• **Deferred shares** – deferred in priority to ordinary shares. For instance deferred shares may be issued with a right to income or profit after paying ordinary shareholders.
STATED CAPITAL – SECTION 58

• Stated capital in relation to a company means the total of all amounts received by the company or due and payable to the company:
  (a) in respect of the issue of shares; and
  (b) in respect of calls on shares.

• Where a share is issued for consideration other than cash, the board is required to determine the cash value of the same.

• Simply, stated capital represents the value of the assets received or receivable by the company on the issue of its shares.
ISSUE OF SHARES

• Section 51(1) – subject to the provisions of the Companies Act and the company’s articles, the board of a company may issue such shares to such persons as it considers appropriate.

• Section 53(1) – pre-emptive rights to new issues – subject to the company’s articles, where a company issues shares which rank equally with or above existing shares in relation to voting or distribution rights, those shares shall be offered to the holders of existing shares in a manner which would, if the offer was accepted, maintain the relative voting and distribution rights of those shareholders.
CONSIDERATION FOR ISSUE OF SHARES – SECTION 52

• Before issuing any shares, the board must:
  (a) ......................................................................................................................; and
  (b) ......................................................................................................................

• The consideration may take any form, including cash, promissory notes, future services, property of any kind or other securities of the company.

• Upon receipt of the consideration, the company is required to within a period of 20 days, make an allotment of the shares.
A share is deemed to be issued when ..........................................................................................................................
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Such entry must be made prior to giving statutory notice to the Registrar General of Companies of the issue of shares.
SHAREHOLDERS

• A company is a separate legal entity with its own rights and obligations, independent and distinct from its shareholders.

• Although a company is a separate legal entity, it cannot act on its own. It can only act through individuals – shareholders and directors.

• Shareholders are the proprietors of a company and considered as the owners of the company. However, they do not own the company’s property.

• Shareholders provide the capital required and in lieu thereof become stakeholders of the company.
SHAREHOLDERS

• Section 86 – “shareholder” means:
  (a) a person whose name is entered in the share register as the holder for the time being of one or more shares in the company;
  (b) until a person’s name is entered in the share register, a person named as a shareholder in an application for incorporation of a company at the time of registration of the company;
  (c) until a person’s name is entered in the share register, a person who is entitled to have his name entered in the share register under a registered amalgamation proposal as a shareholder in an amalgamated company;
  (d) until a person’s name is entered in the share register, a person to whom a share has been transferred and whose name ought to be but has not been entered in the register.

• Where a company has wrongfully failed to enter in the share register the name of a person to whom shares have been transferred, that person will be deemed to be a shareholder in the company; and will in respect of those shares, enjoy all such rights and privileges and be subject to all such duties and obligations under the Companies Act, as if his name had been entered in the share register as the holder of those shares.
LIABILITY OF SHAREHOLDERS

• Section 87(1) – A shareholder shall not be liable for any act, default or an obligation of the company, by reason only of being a shareholder.

• Liability is limited to express provisions in the articles or the Companies Act.

• If articles provide that shareholders have unlimited liability – shareholders have unlimited liability to contribute towards the assets of the company.

• If company is incorporated as a limited liability company – shareholders will only have a limited liability to contribute towards the assets of the company as specified in the articles.
POWERS OF SHAREHOLDERS

- Powers reserved under the Companies Act or the articles may be **exercised** only at a **meeting** of shareholders or by a **resolution in lieu of a meeting**.
- Powers are exercised at a meeting either by way of an ..........................
  ............................................................................................................
ORDINARY RESOLUTION

- A resolution passed by a **simple majority** of votes of shareholders who are present and entitled to vote.
- Section 91 – Unless otherwise provided by the Companies Act or in the articles, a power reserved to shareholders may be exercised by an ordinary resolution.
- Normally adopted when distribution is made, when appointing and removing directors, when appointing an auditor etc.
SPECIAL RESOLUTION – SECTION 143

• A resolution passed:
  (a) by a **majority of 75% of** those shareholders entitled to vote and voting on the question;
  (b) at a **general meeting** of which **not less than 15 working days’ notice**, specifying the intention to propose the resolution as a special resolution has been duly given.

  If **less than 15 working days’** notice – shareholders having the right to attend and vote at any such meeting, being shareholders together representing **not less than 85% of** the total voting rights at that meeting, must agree on a lesser period of notice.

• Powers that must be exercised by way of a special resolution:
  - Altering the articles;
  - Approving an amalgamation’
  - Changing the name of the company etc.
MINORITY BUY-OUT RIGHTS

• A shareholder is entitled to have his shares purchased by the company when there is a **fundamental change in direction** of the company.

• While the majority’s decision in changing the company’s business will be given effect to, the dissenting minority is given the right to exit from the company at a fair price.

• Brings about a compromise between 2 competing interests.
DISTRIBUTION TO SHAREHOLDERS – SECTION 56

• Section 529 – “distribution” means:
  (a) the direct or indirect transfer of money or property, other than the shares of a company, to or for the benefit of a shareholder; or
  
  (b) the incurring of a debt to or for the benefit of a shareholder, in relation to a share or shares held by that shareholder, whether by means of a payment of a dividend, a redemption or other acquisition of the share or shares, a distribution of indebtedness or otherwise;

• Before a distribution is made by a company to any shareholder, such distribution must:
  (a) ................................................................. ; and
  
  (b) unless the company’s articles provide otherwise, be approved by the shareholders by ordinary resolution.

• The board may authorise a distribution at such time and in such amount as it considers appropriate, where it is satisfied that the company will, immediately after the distribution is made satisfy the solvency test, provided that such board obtains a certificate of solvency from the auditors.
SOLVENCY TEST – SECTION 57

• A company will be deemed to have satisfied the solvency test, if:
  (a) it is able to pay its debts as they become due in the normal course of business; and
  (b) the value of the company’s assets is greater than:
     (i) the value of its liabilities; and
     (ii) the company’s stated capital.

• In determining whether a company satisfies the solvency test, the board:
  (a) must take into account the most recent financial statements of the company prepared in accordance with the Companies Act;
  (b) must take into account circumstances the directors know or ought to know which affect the value of the company’s assets and liabilities;
  (c) may take into account a fair valuation or other method of assessing the value of assets and liabilities.
DIVIDENDS – SECTION 6o

• A dividend is a **distribution out of profits of the company**, other than an acquisition by the company of its own shares or a redemption of shares by the company.

• The board of a company must not authorise a dividend in respect of some shares in a class and not others of that class or of a greater amount in respect of some shares in a class than other shares in that class, except where:

  (a) the amount of the dividend is reduced in proportion to any **liability** attached to the shares under the company’s articles; or

  (b) a shareholder has **agreed in writing** to receive no dividend or a lesser dividend than would otherwise be payable.
DIFFERENCE BETWEEN SHARE AND DEBENTURE

• Debenture is a long term debt capital, but share is the ownership.
• Debenture investor will get a fixed return based on the option agreed at the time of the issue.
• Shareholders have no assurance of the return, if the company is doing well (earning profits), shareholders will get the return by way of dividend.
• Debenture holder will not get the voting right, whereas most of the shareholders have the voting rights.