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CHAPTER

SHARES AND SHARE CAPITAL

RESERVE CAPITAL vs. CAPITAL RESERVE

Que. 1: Distinguish between Reserve Capital and Capital Reserve.
(December 2009) (June 2012) (December 2012)(4 marks)

Or

'Reserve Capital' and 'Capital Reserve' are one and the same.
(December 2014) (5 marks)

Ans. Following are the main points of distinction between reserve capital & capital reserve:

Points	Reserve Capital	Capital Reserve
Meaning	Reserve capital is that part of the uncalled capital of a company which the limited company has decided by special resolution not to call except in the event and for the purpose of the company being wound up.	Capital reserves are created out of capital profit. Capital Reserve may be statutory capital reserve or non statutory capital reserve.
Need of Creation	Creation of reserve capital is not mandatory.	Creation of capital reserve is mandatory in certain cases.
Balance Sheet Disclosure	There is no need to disclose reserve capital in balance sheet.	Capital reserves are disclosed in balance sheet under the head " Reserves & Surplus ".
Writing Off Capital Losses	Reserve Capital cannot be used to write-off capital losses.	Capital reserves can be used to write-off capital losses.
Created out of	Authorized capital	Capital profits
Specific condition	Special Resolution should be passed at AGM	No such conditions

SWEAT EQUITY vs. ISSUE OF CAPITAL ON PREFERENTIAL BASIS

Que. 2: Distinguish between sweat equity and issue of capital on preferential basis. (December 2009) (4 marks)

Ans. Following are the main points of distinction between sweat equity & issue of capital on preference allotments:

Points	Sweat Equity Shares	Issue of capital on preferential basis
Meaning	Sweat equity Shares mean equity shares by a company to its employees or directors at a discount or for consideration, other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called.	A preferential issue is an issue of shares or of convertible securities by listed companies to a select group of persons under Section 81 which is neither a rights issue nor a public issue.
To Whom Issued	Sweat Equity Shares are issued to employees or directors.	A preferential issue is an issue to a select group of persons.
How Issued	Sweat equity Shares are issued at a discount or for consideration, other than cash.	A preferential issue at a par or at premium.

ESOP vs. ESOS

Que. 3: Distinguish between: ESOS and ESOP. (December 2009) (4 Marks)

Ans. Following are the main points of distinction between “Employee Stock Option Scheme” & “Employee Stock Purchase Scheme”:

Points	Employees Stock Option Scheme	Employee Stock Purchase Scheme
Meaning	“Employee stock option scheme or ESOS” means a scheme under which a company grants employee stock option directly or through a trust.	“Employee stock purchase scheme or ESPS” means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.

Points	Employees Stock Option Scheme	Employee Stock Purchase Scheme
Purchase of Shares	Under ESOS employees are given an option to purchase shares at a later date <i>i.e.</i> after vesting period.	Under ESPS employees are given an option to purchase shares on the spot at a discounted price.
Lock-in	The company may specify the lock-in period for the shares issued pursuant to exercise of option.	Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment.
Public Issue	ESOS has to be approved separately by the company in general meeting by passing special resolution. It cannot be part of public issue.	Shares under ESPS can be issued as a part of a public issue.
Vesting Period	Minimum vesting period for ESOS is one year.	No vesting periods for ESPS as shares are offered on the spot.

NOMINAL CAPITAL vs. SUBSCRIBED CAPITAL

Que. 4: Distinguish between nominal capital and subscribed capital.

(June 2010) (4 Marks)

Ans.

- ◆ **Nominal capital:** The amount of capital with which a company is registered with the Registrar of companies (body responsible for registration of companies). It is the maximum amount of capital which a company can raise through shares *i.e.* share capital can be maximum upto the authorized capital and not beyond. Due to this reason companies are registered with such authorized capital which is well above their current needs of financing so that if more is needed in future then it is easily possible. Authorized capital is also called **registered capital or authorized capital**.

Section 2(8) of the Companies Act, 2013: “Authorised capital” or “nominal capital” means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

- ◆ **Subscribed capital:** The amount of capital (out of authorized capital) for which company has received applications from the general public who are interested in buying shares. If this term is too technical to be understood then subscription is simply an application in which investors expresses his interest to buy shares in the company.

Section 2(86) of the Companies Act, 2013: “Subscribed capital” means such part of the capital which is for the time being subscribed by the members of a company.

BONUS SHARES vs. RIGHT SHARES**Que. 5: Distinguish between bonus shares and right shares.****(Dec. 2010) (June 2011)(4 marks)****Ans.**

Basis of Distinction	Bonus Shares (Section 63 of the Companies Act, 2013)	Right Shares (Section 62 of the Companies Act, 2013)
Meaning	Bonus shares are shares issued by a company free of cost to its existing shareholders on a <i>pro rata</i> basis out of free reserve.	When company issues further shares to existing shareholder in ratio of their holding such issue is known as right issue.
Cash Flow	In case of bonus issue there is no cash flow.	In case of right issue there is cash inflow to the company.
Consideration	Company does not receive any consideration in case of bonus issue.	Company receives consideration as shares are issued against cash.
Authorization	Bonus issue is made on the recommendation of the Board and authorization from general meeting of the company.	In case of right issue authorization from members through ordinary or special resolution is necessary.
Market Value	Issue of bonus shares does not affect the market value of the Company.	Right Issue of shares affects the market value of the Company.

SWEAT EQUITY SHARES vs. ESOP**Que. 6: Distinguish between sweat equity shares and employees stock option scheme.****(December 2010) (June 2015) (4 marks)****Ans.** Following are the main points of distinction between sweat equity shares & ESOS:

Basis of Distinction	Sweat Equity Shares	ESOS
Meaning	Sweat Equity Shares means equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.	Employees Stock option means the option given to the whole-time directors, officers or employees of a company, which gives such directors, officers or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price.
Issue	Sweat Equity shares can be issued at discounted price or free for know-how and services to the Company.	Employee Stock option can be issued with conversion right at a pre-determined price. The issue price can be less than the intrinsic value of the shares.

Consideration	The consideration can be partly cash and partly IPRs/value addition or fully non-cash consideration.	The consideration has to be paid in cash.
Lock-in-period	Sweat equity shares have compulsory lock-in-period of 3 years.	Lock-in-period is not specified for the ESOS.

PREFERENCE SHARE CAPITAL vs. EQUITY SHARE CAPITAL

Que. 7: Distinguish between preference share capital and equity share capital. (December 2015) (4 marks)

Ans. The main points of distinction between preference and equity share capital:

Points	Equity Share Capital	Preference Share Capital
Preference in Dividend Payment	The dividend on equity shares is paid only after the preference dividend has been paid.	Shareholders get a preference in dividend payment over equity shareholders.
In case of winding-up	Shareholders get payment of capital after the payment of capital to preference shareholders.	Shareholders get preference in capital payment in winding-up over equity shareholders.
Rate of dividend	Depends upon the amount of profit available and the funds requirements of the Company.	Entitled to a fixed rate of dividend.
Dividend Accumulation	Cannot be cumulative.	May be cumulative for cumulative preference shares.
Redemption	No redemption of equity shares except under a scheme involving reduction of capital.	Redeemable preference shares may be redeemed by the Company.
Voting rights	An equity shareholder can vote on all matters affecting the company.	A preference shareholder cannot vote on all resolution.

SWEAT EQUITY SHARES

Que. 8: Write a short note on sweat equity shares. (December 2014) (4 Marks)

Ans.

- ◆ According to section 2(88), sweat equity shares mean such equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
- ◆ According to *Explanation* to rule 8(1) of Companies (Share Capital and Debentures) Rules, 2014:

For the purposes of this rule- The expressions “Employee” means—

- (a) a permanent employee of the company who has been working in India or outside India;
- (b) a director of the company, whether a whole time director or not; or
- (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

◆ Section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

- (i) the issue has been authorized by a special resolution passed by the company in the general meeting.
- (ii) the following are clearly specified in the resolution: (a) number of shares (b) current market price; (c) consideration, if any; and (d) class or classes of directors or employees to whom such equity shares are to be issued.
- (iii) Where shares are listed on a recognized stock exchange, the company issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
- (iv) a company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government *i.e.*, Companies (Share Capital and Debentures) Rules, 2014.

RIGHT ISSUE

Que. 9: Bonus issue may be viewed as a ‘right issue’ except that money is paid by the company on behalf of the investing shareholders from its reserves.

Comment

(December 2008) (5 Marks)

Ans.

- ◆ **Rights Issue** is an issue of capital to be offered to the existing shareholders of the company through a letter of offer
- ◆ **Bonus Shares:** When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares
- ◆ In case of bonus issue, reserves which belong to shareholder is paid/ converted into equity shares.
- ◆ Hence, it is correct to say that bonus issue may be viewed as a “right issue” except that money is paid by the company on behalf of the investing shareholders from its reserves.

PREFERENCE SHARES

Que. 10: Redeemable preference shares are not preference shares. Comment.
(December 2010) (5 marks)

Ans. As per **Section 43(2) of the Companies Act, 2013**, preference share capital with reference to any company limited by shares, means that part of the issued capital of the company which carries or would carry a preferential right with respect to-

- (a) payment of dividend, either as a fixed amount or at a fixed rate, and
- (b) repayment in the case of a winding up or repayment of capital specified in the memorandum or articles of the company.

Thus, it is in correct to say that redeemable preference shares are not preference shares.

Que. 11: Preference share are cumulative unless expressly stated to be non-cumulative. Comment
(June 2011)(5 Marks)

Ans.

- ◆ A cumulative preference share confers a right on its holder to claim fixed dividend of the past and the current year and out of future profits.
- ◆ The dividend keeps on accumulating until it is fully paid.
- ◆ The non-cumulative preference share gives right to its holder to a fixed amount or a fixed percentage of dividends out of the profits of each year.
- ◆ If no profits are available in any year, the shareholders get nothing, nor can they claim, unpaid dividend in any subsequent year.

Thus, Preference shares are cumulative unless expressly stated to be non-cumulative.

Que. 12: Every employee of the company is eligible to participate in Employee Stock Option Scheme (ESOS). Comment
(December 2012) (5 marks)

Ans.

- ◆ **‘Employee Stock Option’ (ESOP)** has been defined under **Section 2(37) of the Companies Act, 2013**, according to which **“employees’ stock option”** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.
- ◆ *As per Section 62(1)(b) of the Companies Act, 2013:*

Following persons can participate:

- a permanent employee of the company who has been working in India or outside India; or
- a director of the company, whether a whole time director or not but excluding an independent director; or
- an employee as defined in above mentioned points of a subsidiary, in India or outside India, or of a holding company of the company.

◆ **Following persons cannot participate:**

- An employee who is a promoter or a person belonging to the promoter group; or
- A director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Hence, it is not correct to say that “Every employee of the company is eligible to participate in Employee Stock Option Scheme” (ESOS)

Que. 13: Whether equity shares already issued can be converted into redeemable preference shares? (December 2012) (4 marks)

Ans. As per Chowgule & Co. (P.) Ltd. 1972 Tax LR 2163, St. James Court Estates Ltd. [1944] Ch. 6, it was held that where the equity shares are to be converted into redeemable preference shares it was necessary to adopt the process of Reduction of Capital under Section 66 of the Companies Act, 2013.

Yes, equity shares already issued can be converted into redeemable preference shares only when procedure of Reduction Of Capital under Section 66 of the Companies Act, 2013 is complied with.

Que. 14: In no circumstances a company can issue redeemable preference shares with a redemption period of 20 years. (June 2015) (5 marks)

Ans.

- ◆ Section 55 (1) states that no company limited by shares shall issue any preference shares which are irredeemable.
- ◆ Section 55(2) further states that a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.
- ◆ **Exception: Issue and redemption of preference shares by company in 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.

- ◆ **The term “infrastructure projects”** means the infrastructure projects specified in Schedule VI.

FURTHER ISSUE OF SHARE CAPITAL

Que. 15: Section 62 ensures pre-emptive rights of shareholder. Discuss (December 2012) (4 marks)

Ans.

- ◆ To preserve the shareholders' proportionate dividend, liquidation and voting rights, pre-emptive rights are often recognised, but their existence and scope can be effected by provisions in the articles. However, Section 62 of the Companies Act, 2013 secures shareholders' pre-emptive rights with regard to the further issue of share capital by the company.
- ◆ As per Section 62(1) of the Companies Act, 2013, Existing Shareholder in proportion to the paid-up share capital on those shares by sending a letter of offer. Such right issue is subject to the following conditions:
 - ◆ The offer shall be made by notice specified in the number of shares offered, time for accepting offer which may be minimum 15 days or such lesser number of days as may be prescribed.
 - ◆ The notice shall be dispatched through registered post or Speed Post or through electronic to all the existing shareholders at least three days before the opening of the issue.
 - ◆ If offer is not accepted within period specified it shall be deemed to have been declined.
 - ◆ The offer shall include the right to renounce the shares in a favour of any other person and this fact should be specifically mentioned in the notice.
 - ◆ After the expiry of the time specified in the notice or on receipt of earlier intimation from the person that he declines to accept the shares offered, the Board of directors may dispose of them in manner which is advantages to the shareholders and the company.
 - ◆ To employees under the scheme of employee stock option by passing special resolution and complying with prescribed conditions
 - ◆ To other persons by passing a special resolution either for cash or for consideration other than cash. The price of such shares has to be determined by the valuation report of a registered valuer subject to prescribed conditions.

BONUS SHARES

Que. 16: Referring to the provisions of Companies Act, 2013, state that conditions required to be fulfilled before a company can issue bonus shares to the shareholders of the company. (June 2015) (4 Marks)

Ans. Conditions for issue of Bonus Shares:

In terms of section 63(2), no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- ◆ it is authorised by its articles;
- ◆ it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- ◆ it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- ◆ it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- ◆ the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.

Que. 17: The Board of directors of Aakash Limited, a listed company, at its meeting held on 1st April, 2015 announced a proposal for issue of Bonus shares to all equity shareholders of the company at 1:1 ratio. On 1st May, 2015, the directors at another meeting passed a resolution to reserve the proposal of bonus issue announced on 1st April, 2015. Discuss the validity of proposal and the reversal. (June 2012) (4 Marks)

Ans.

- ◆ In terms of the Provisions of the **Rule 14 of the Companies (Shares & Debentures) Rules, 2014**, the company which has once announced the decision of its board recommending a bonus issue shall not subsequently withdraw the same.
- ◆ A resolution passed by the director to reverse the bonus issue announced is not valid.
- ◆ The Board of directors of the Aakash Ltd. must issue of Bonus shares to all equity shareholders of the company at 1:1 ratio.

Thus, once proposed cannot be reversed such proposal of bonus issue.

UTILIZATION OF SECURITIES PREMIUM ACCOUNT

Que. 18: Securities premium shall be utilised only for certain specific purposes only. Comment (December 2013) (4 Marks)

Ans. Utilization of Securities Premium: In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

- (a) issuing fully paid bonus shares to members;
- (b) writing off the balance of the preliminary expenses of the company;
- (c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- (d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

Que. 19: In view of provisions of Companies Act, 2013 relating to 'securities premium', state whether the amount lying in securities premium account of a company can be used:

- (i) For issuance of Bonus shares; and
- (ii) For payment of dividend declared by the company at its General Meeting.

(December 2015) (4 Marks)

Ans. Utilization of Securities Premium: In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

- (a) issuing fully paid bonus shares to members;
- (b) writing off the balance of the preliminary expenses of the company;
- (c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- (d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

As discussed above, in relation to given case answer the following:

- (i) Company can use the amount lying in securities premium for issuance of bonus shares.
- (ii) Company cannot use the amount laying in securities premium for payment of dividend declared by the company at its general meeting.

Que. 20: Radhika Textile Limited has utilised the securities premium during the financial year 2016-2017 as follows:

- (i) Rs. 15 lakhs against expense of foreign travelling of directors.
- (ii) Rs. 5 lakhs for writing-off the balance of preliminary expenses of the company.
- (iii) Rs. 10 lakhs distributed as dividend for the financial year ending 31st March, 2017.

You, being the secretarial Auditor of the company, referring to the provision of Companies Act, 2013 relating to securities premium account, examine the validity of the above.

(June 2017) (8 marks)

Ans. Utilization of Securities Premium: In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilized only for:

- (a) issuing fully paid bonus shares to members;
- (b) writing off the balance of the preliminary expenses of the company;
- (c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- (d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

As discussed above, in relation to given case answer the following:

- (i) Balance in securities premium cannot be utilized for writing-off expenses of foreign travelling of directors.
- (ii) Balance in securities premium can be utilized for writing-off preliminary expenses of the Company.
- (iii) Balance in securities premium cannot be utilized for payment of dividend.

EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

Que. 21: Board of directors of Progressive Limited decides to issue equity shares of a company with differential voting rights. Examining the provision of Companies Act, 2013, State the conditions to be complied with the company in this regard. (December 2016) (8 Marks)

Ans. Conditions for issuing shares with differential rights (Rule 4) Companies (Share Capital and Debentures) Rules, 2014: Only a company limited by shares can issue equity shares with differential rights as to dividend, voting or otherwise. Such company has to comply with the following conditions, namely:-

- ◆ the articles of association of the company authorizes the issue of shares with differential rights;
- ◆ the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.
- ◆ when the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.
- ◆ Though with Companies (Amendment) Act, 2017 coming into force, any item of business required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108).
- ◆ The shares with differential rights shall not exceed 74% of total voting power including voting power including voting power in respect of equity shares with differential rights issued at any point of time; (***MCA Notification G.S.R. 574(E) dated 16th August, 2019***)
- ◆ the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares.
- ◆ the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

- ◆ the company has not been penalized by Court or Tribunal during the last three years of any offence under the **RBI Act, 1934**, the **SEBI Act, 1992**, the **Securities Contracts Regulations Act, 1956**, the **Foreign Exchange Management Act, 1999** or any other special Act, under which such companies being regulated by sectoral regulators.
- ◆ The company has not defaulted:
 - in payment of the dividend on preference shares or
 - repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or
 - dues with respect to statutory payments relating to its employees to any authority or
 - default in crediting the amount in Investor Education and Protection Fund to the Central Government;

However, a company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good.

Que. 22: As a practising Company Secretary, advise your client company regarding the matter relating to issue of shares with differential rights, to be included in the Board of Directors Report. (June 2017) (4 Marks)

Ans. As per Rule 4(4) of the Companies Act, 2013, The Board of Directors shall, *inter alia*, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:-

- ◆ the total number of shares allotted with differential rights;
- ◆ the details of the differential rights relating to voting rights and dividends;
- ◆ the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
- ◆ the price at which such shares have been issued;
- ◆ the particulars of promoters, directors or key managerial personnel to whom such shares are issued;
- ◆ the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
- ◆ the Diluted Earnings Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;
- ◆ the pre and post issue shareholding pattern along with voting rights.

CLOSURE OF REGISTER OF MEMBERS OR DEBENTURE HOLDER OR OTHER SECURITY HOLDERS

Que. 23: A2Z Management Services Limited is a listed company quoted at Bombay Stock Exchange Limited. The company closed its register of debenture holders in June and August 2016 for 12 and 21 days respectively. The chief financial officer (CFO) of the company has informed the secretary of the company to consider closing the register in December for another 15 days for some strategic reasons. Referring to the provisions of Companies Act, 2013, examine the validity of action of the company. (June 2017) (4 Marks)

Ans.

- ◆ **Section 91 of the Companies Act, 2013 contains guidelines for closing the register of members:**

A company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, **but not exceeding thirty days at any one time**, subject to giving of **previous notice of at least 7 days or such lesser period as may be specified by Securities and Exchange Board for listed companies** or the companies which intend to get their securities listed, in the prescribed manner.

- ◆ **Rule 10 of the Companies (Management and Administration) Rules, 2014** in relation to Closure of register of members or debenture holders or other security holders provides that a company closing the register of members or the register of debenture holders or the register of other security holders:—
 - shall give at least seven days previous notice and in such manner, as may be specified by Securities and Exchange Board of India(SEBI), if such company is a listed company or intends to get its securities listed,
 - by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.
- ◆ As per the abovementioned provisions and given facts of the case, A2Z Management Services Limited is a listed company quoted at Bombay Stock Exchange Limited. **The company closed its register of debenture holders in June and August 2016 for 12 and 21 days respectively aggregate of 33 days (12+21).**

As per professional advice CFO, register of debenture holder can be closed for further 12 days and not for 15 days so that aggregate period of closing should not exceed 45 days.

LETTER OF ALLOTMENT vs. LETTER OF RENUNCIATION

Que. 24: Distinguish between: Letter of Allotment & Letter of Renunciation. (December 2012) (4 Marks)

Ans.

Basis of Distinction	Letter of Allotment	Letter of Renunciation
Applicability	Letter of allotment is applicable in all cases where shares are allotted to persons.	Letter of renunciation is applicable in case of right issue under Section 62 of the Companies Act, 2013.
Option	Letter of allotment do not contain any option.	Letter of renunciation contains an option to renounce the shares in favour of any other person.
Transfer of Shares	Shares can be transferred with the help of letter of allotment if share certificate do not exists.	Shares cannot be transferred with the help of letter of renunciation. But right shares can be subscribed by the persons in whose favour the right has been renounced.
Surrender	Letter of allotment is required to be surrendered to company for issue of share certificate.	Letter of renunciation is not required to be surrendered to company. In fact it is right to transfer to subscribe the right shares of the Company.

BROKERAGE vs. UNDERWRITING COMMISSION

Que. 25: Distinguish between: Brokerage and Underwriting Commission. (December 2012) (4 marks)

Ans. Brokerage:

In general, A broker is a person or firm who arranges transactions between a buyer and a seller for a commission when the deal is executed.

A broker undertakes only to find buyers who are willing to buy shares or debentures and does not guarantee the sale of shares or debentures and amount paid to brokers for their services is known as brokerage.

Underwriting Commission:

Underwriters undertake to find buyers who are willing to buy shares or debentures and guarantees the sale of shares or debentures and the amount paid to underwriters is known as underwriting commission.

FORFEITURE OF SHARES

Que. 26: What are the important rules relating to forfeiture of shares.
(December 2010) (4 marks)

Or

Write a short note on conditions valid for forfeiture of shares.
(June 2014) (4 marks)

Ans.

- ◆ **Forfeiture of shares** is the process by which the directors of a company cancel the power of a shareholder if he does not pay his call money when the company demands for it.
- ◆ **For a valid forfeiture following conditions is necessary:**
 - The **Articles of Association** must authorise the forfeiture of shares.
 - The directors may pass a resolution forfeiting the shares.
 - **The company will give 14 days' notice;** after 14 days if the shareholder does not pay the company will forfeit his shares and strike his name from the register of shareholders.
 - The power of forfeiture must be **exercised *bona fide* and for the benefit of the Company.**
 - **Forfeiture of fully paid shares:** The clause of Table F on forfeiture do not make specific provision for forfeiture of fully paid up shares. However, in *Shyam Chandv. Calcutta Stock exchange Association* [1945] 2.I.L.R. Cal 313.

Que. 27: A company has forfeited shares of a defaulting shareholder for non-payment of call money. However, the defaulting shareholder approaches the Board after forfeiture of shares to cancel the said forfeiture. What should the Board do? Give your advice.
(June 2010) (4 marks)

Ans.

- ◆ In the given case, A company has forfeited shares of a defaulting shareholder for non-payment of call money. However, the defaulting shareholder approaches the Board after forfeiture of shares to cancel the said forfeiture.
- ◆ **A Board is empowered to cancel forfeiture:** In case, the defaulting shareholder approaches the Board after forfeiture to cancel the forfeiture, the board is empowered to cancel such forfeiture. Also, A Board is empowered to claim due amount with interest.

Que. 28: A public limited company incorporated under the Companies Act, 2013 may amend its articles of association so as to confer upon it power to forfeit the shares of those members who have defaulted in the payment of calls made by the company. Comment
(December 2015) (5 marks)

Ans.

- ◆ **Forfeiture of shares** is the process by which the directors of a company cancel the power of a shareholder if he does not pay his call money when the company demands for it.
- ◆ **For a valid forfeiture following conditions is necessary:**
- ◆ The **Articles of Association** must authorise the forfeiture of shares.
- ◆ The directors may pass a resolution forfeiting the shares.
- ◆ **The company will give 14 days' notice;** after 14 days if the shareholder does not pay the company will forfeit his shares and strike his name from the register of shareholders.
- ◆ The power of forfeiture must be **exercised bona fide and for the benefit of the Company.**
- ◆ **Forfeiture of fully paid shares:** The clause of Table F on forfeiture do not make specific provision for forfeiture of fully paid up shares. However, in *Shyam Chand v. Calcutta Stock exchange Association* [1945] 2.I.L.R. Cal. 313.

Thus, a public limited company incorporated under the Companies Act, 2013 may amend its articles of association so as to confer upon it power to forfeit the shares of those members who have defaulted in the payment of calls made by the company.

CALLS ON SHARES

Que. 29: Explain the manner in which calls on shares should be made by the company. (December 2012) (4 marks)

Ans. Usually, Articles of association of companies provide for the manner in which calls should be made. They follow the pattern set out in **Regulation 13 to Regulation 18 of Table F of Schedule I** appended to the Companies Act, 2013:

- i.* For each call at least 14 days notice must be given to members.
- ii.* An interval of 1 month is required between **two successive calls and not** more than one fourth of the nominal value of shares can be called at one time. However, company may have their own articles and raise the limit.
- iii.* The board of directors has the power to revoke or postpone a call after it is made.
- iv.* Joint shareholders are jointly and severally liable for payment of calls.
- v.* If a member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue or such lower rate, as the board may determine. The directors are free to waive the payment of interest wholly or in part.

- vi. If any member desires to pay the call money in advance, the directors may at their discretion accepted any interest not exceeding the rate specified in the articles.
- vii. A defaulting member will not have any voting right till call money is paid by him.

Que. 30: Well-done Limited wants to make a first call of INR 30 on equity share of nominal value of INR 100 each on 16th October, 2011. Can it do so? Further, if the company proposes to make second call on 7th November, 2011, will it be permitted to do so? (December 2011) (4 marks)

Ans. Usually, Articles of association of companies provide for the manner in which calls should be made. They follow the pattern set out in **Regulation 13 to Regulation 18 of Table-F of Schedule-I** appended to the Companies Act, 2013:

- i. For each call at least 14 days notice must be given to members.
- ii. An interval of 1 month is required between **two successive calls and not** more than one fourth of the nominal value of shares can be called at one time. However, company may have their own articles and raise the limit.

If Well-done Ltd. has adopted provisions of Table-F then, first call of INR 30 cannot be made as it exceeds 1/4th of the nominal value of shares. Further, it cannot make second call on 7th November, 2001 as interval between two successive calls will be less than one month.

If Well-done Ltd. has its own article then it has to observe the provisions contained in its Article.

ALLOTMENT OF SHARES

Que. 31: On receipt of 85% of the minimum subscription stated in the prospectus, Little Stars Limited allotted 200 shares to Ranjit and the money was deposited in a scheduled bank. Later on, it was revealed that 40% of the amount withdrawn was for acquisition of fixed assets for the company. Ranjit, knowing these facts, refused to accept the allotment contending that the allotment was a irregular under the provisions of the Companies Act, 2013.

As an expert on company law advice Ranjit. (December 2014) (4 marks)

Ans.

- ◆ **As per Section 39**, no allotment of any securities of a company offered to the public for subscription shall be made unless-
 - (i) The amount stated in the prospectus as the minimum amount has been subscribed and
 - (ii) The sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

As per SEBI ICDR Regulation, the minimum subscription for public company issuing shares to public is 90%.

- ◆ Minimum subscription received must be 90% of the public issue. If the subscription is less than 90%, shares cannot be allotted and application money received must be refunded as stated below:
 - (a) Non-underwritten issue: Within 15 days from the date of closure of the issue.
 - (b) Underwritten Issue: Within 70 days from the date of closure of the issue of underwriters fail to make up shortfall within 60 days of the closure of the issue.

If application money is not refunded within the period stated above, interest is payable for the delay.

Thus, allotment of shares to Ranjit is void and he can refuse to accept the shares.

BENEFICIAL OWNERS vs. REGISTERED OWNERS

Que. 32: Distinguish between: Beneficial owners under Depository Mode and Registered owners under depository mode. (December 2012) (4 marks)

Ans. Registered Owner & Beneficiary Owner:

- ◆ All the public limited companies are required by the Companies Act, 2013 to maintain an index of members, wherein they are required to keep a record of the owners of the company.
- ◆ So, in the index of members of any company, there are only two registered owners, *i.e.* the two depositories. The depositories keep a track of all clients through the depository participants.
- ◆ Therefore, the registered owners are the depositories whereas the beneficiary owners are the people who are holding the securities at any given point of time.
- ◆ For having securities of a company in demat form, first a company has to opt for the same. A company can do so by getting itself registered with at least one of the depositories. For this, the company has to transfer all its shares to the depository. For differentiating among all the companies, International Securities Identification Number (ISIN) is assigned to them which are unique in nature.
- ◆ Whenever a company declares a bonus shares, the securities are transferred in the name of two depositories and they further transfer it to the clients through their participants. Thus, the depositories are known as the registered owners and the investors are known as the beneficiary owners as they get the benefits of all the corporate actions.

TRANSFER vs. TRANSMISSION

Que. 33: Distinguish between “Transfer of Shares” and “Transmission of Shares”. (December 2016) (4 marks)

Ans. The main points of distinction between transfer & transmission of shares:

Points	Transfer of Shares	Transmission of Shares
Nature	Transfer is a normal course of transferring property.	Transmission takes place on death or insolvency of a shareholder.
Consideration	Transfer of shares is generally took place for some consideration	Transmission of shares is generally took place without any consideration.
Stamp duty	Stamp duty is payable on transfer of shares by a member.	No stamp duty is payable on transmission of shares.
Instrument of Transfer	An instrument of transfer is required in case of transfer.	No instrument of transfer is required in case of transmission.
Ways to do	Transfer takes place by a voluntary act of the transferor.	Transmission is the result of the operation of law.

FUNGIBILITY

Que. 34: Write a short note on: Fungibility. (June 2013) (4 marks)

Ans.

- ◆ As per Section 9 of the Depositories Act, 1996, all securities held in a depository are fungible.
- ◆ That is all certificates of the same security are inter-changeable in the sense that investors lose the right to obtain the exact certificate they surrender at the time of entry into depository.
- ◆ It is like withdrawing money from the bank without bothering about the distinctive number of the currencies.

TRANSMISSION OF SHARES

Que. 35: What do you understand by transmission of shares? (December 2009) (2 marks)

Ans. Transmission of shares refers to those cases where a person acquires an interest in property by operation of law, such as by right of inheritance or succession or by reason of the insolvency or lunacy of the shareholder or by purchase in a Court-sale.

BENEFITS OF "DEPOSITORY SYSTEM"

Que. 36: What are the benefits of depository system? (December 2010) (8 marks)

Or

Question: What are the benefits of depository system of stock holding? (December 2012) (4 marks)