**UNIT 4: Share Capital and Debenture**

Semester- II (UG)

Subject- Company Law

Topic- Transfer, Transmission of Shares, Alteration of Capital, Buy Back, various regulations relating to issue of Buy Back

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Lecture no-5

 **Transfer, Transmission of Shares**

The scope of transfer of securities have been widened under section 56 of the Act to include all the securities of the company and the interest of a member in the company in the case of a company not having no share capital.

***General Condition*:** The section provides that a company shall not register a transfer of securities, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed. Such form shall be

• duly stamped,

• dated and executed by or on behalf of the transferor and the transferee, and

• specify the name, address and occupation, if any, of the transferee.

Under the rules an instrument of transfer of securities held in physical form shall be in Form No. SH-4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution. In the case of a company having no share capital, the provisions aforesaid rule shall apply to the interest of the member in the company.

***Time period***: Aforesaid form shall be delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

***Loss of instrument***: Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period i.e. within sixty days from date of execution, the company may register the transfer on such terms as to indemnity as the Board may think fit.

***Partly paid up Shares*:** The section provides that where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless the company gives the notice of the application, in such manner as may be prescribed, to the transferee and the transferee gives no objection to the transfer within two weeks from the receipt of notice. According to Rules a company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH.5 to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice

***Transmission of shares***: On receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted the company shall exercise its power to register the same. Further the section provides that the transfer of any security or other interest of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of the execution of the instrument of transfer.

***Delivery of securities*:** The Company shall deliver the certificates of all securities transferred or transmitted within a period of one month from the date of receipt by the company of the instrument of transfer or, of the intimation of transmission. Further the section provides where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

***Penal Provisions***: The company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

**ALTERATION OF CAPITAL**

***(A) Power of limited company to alter its share capital***

According to section 61 of the Act a limited company having a share capital derives its power to alter its share capital through its articles of association. As per the section the company may alter its memorandum in its general meeting to—

1. Increase its authorised share capital by such amount as it thinks expedient;
2. Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. The provision to Section 61(1)(b) clarifies that No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner (This proviso not notified).
3. Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
4. Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
5. Cancel 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, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation of shares shall not be deemed to be a reduction of share capital.

According to section 64, where—

1. A company alters its share capital in any manner specified in sub-section (1) of section 61;
2. An order made by the Government under sub-section (4)read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
3. a company redeems any redeemable preference shares, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. Where the company and any officer of the company who is in default contravenes it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

***(B) Buyback of Securities***

According to Section 68(1) of Act a company whether public or private, may purchase its own shares or other specified securities (herein after referred to as “buy-back”) out of:

(i) Its free reserves; or

(ii) The securities premium account; or

(iii) The proceeds of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus, the company must have at the time of buy-back, sufficient balance in any one or more of these accounts to accommodate the total value of the buy-back.

**“Specified securities”** as referred to in the explanation to the section includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

**“Free reserves”** as referred to in the explanation includes securities premium account.

***Authorisation*:** The primary requirement is that the articles of association of the company should authorise buyback. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back. Buy-back can be made with the approval of the Board of directors at a meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy back. In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

***Quantum:***

(a) Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company and such buy back has to be authorized by the board by means of a resolution passed at the meeting.

(b) Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company. In respect of any financial year, the shareholders can approve by special resolution upto 25% of total equity capital in that year.

***Post buy-back debt-equity ratio*:** The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves i.e. the ratio shall not exceed 2:1. However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies; All the shares or other specified securities for buy-back are to be fully paid-up.

***Buyback by listed/unlisted companies:***

* The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and
* The buy-back in respect of shares or other specified securities other than listed securities in is in accordance with such rules made under Chapter IV of the Act.

***Time gap:***

No offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

***Explanatory statement****:*

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of shares or securities intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time-limit for completion of buy-back.

Additionally the rules provide for following disclosures in explanatory statement with respect to private companies and unlisted public companies:

1. the date of the board meeting at which the proposal for buyback was approved by the board of directors of the company;
2. the objective of the buy-back;
3. the class of shares or other securities intended to be purchased under the buy-back;
4. the number of securities that the company proposes to buyback;
5. the method to be adopted for the buy-back;
6. the price at which the buy-back of shares or other securities shall be made;
7. the basis of arriving at the buy-back price;
8. the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
9. the time-limit for the completion of buy-back;
10. (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;

(ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;

(iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date;

1. if the persons mentioned in sub-clause (i) of clause (j) intend to tender their shares for buy-back –
2. the quantum of shares proposed to be tendered;
3. the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;
4. a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company; (m) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
5. that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
6. as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company’s business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
7. the directors have taken into account the liabilities(including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013
8. a report addressed to the Board of directors by the company’s auditors stating that-
9. they have inquired into the company’s state of affairs;
10. the amount of the permissible capital payment for the securities in question is in their view properly determined;
11. that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and
12. the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

***Procedure*:** According to the rules the company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No.SH-8, along with the fee as prescribed. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

***Filing Declaration of Solvency with SEBI/ROC*:** When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be , it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board(in case of listed companies), a declaration of solvency in Form SH-9 signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit as specified in said form.

***Dispatch of letter of Offer*:** The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

***Validity*:** The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer.

***Acceptance on proportional basis***: In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

***Time limit for verification***: The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.

***Separate Account***: The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back.

***Payment of consideration/returning of share certificates***: The company shall within seven days of the time limit of verification:

1. make payment of consideration in cash to those shareholders or security holders whose securities have been accepted, or
2. return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance .

The rules further provide that the company shall ensure that—

1. the letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document;
2. the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments;
3. the company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;
4. the company shall not withdraw the offer once it has announced the offer to the shareholders;
5. the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and
6. the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

***Time limit for completion of buyback***

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

***Methods of buy-back***

The buy-back may be—

(a) from the existing shareholders or security holders on a proportionate basis;

(b) from the open market;

(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

***Extinguishment of securities bought back:***

When a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

***Prohibition of further issue of shares or securities:***

When a company completes a buy-back of its shares or other specified securities it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities with in a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of Preference shares or debentures

into equity shares.

***Register of buy-back:***

When a company buys back its shares or other specified securities under this section, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

According to the rules the register of shares or securities bought back shall be maintained in Form SH-10, at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

***Return of buyback****:*

A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board (in case of listed companies) a return containing such particulars

relating to the buy-back within thirty days of such completion, as may be prescribed. The company shall file with the Registrar, and in case of a listed company with the Registrar and the SEBI, a return in the Form No. SH-11 along with the ‘fee’. There shall be annexed to the return filed with the Registrar in Form No. SH-11, a certificate in Form No. SH- 15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and rules made thereunder.

***Penal Provisions***: If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. Transfer to and application of Capital Redemption Reserve Account: When a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

***Circumstances prohibits buy-back*:** Under Section 70, no company shall directly or indirectly purchase its own shares or other specified securities—

* through any subsidiary company including its own subsidiary companies
* through any investment company or group of investment companies; or
* if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable there on to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist. No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92Annual Return), 123(Declaration of Dividend), 127(punishment for failure to distribute dividend) and section 129(Financial Statement).

**Reference:**

1. “ **Share Capital and Debentures**”, Companies Act 2013 published by **The Institute of Company Secretaries of India.**