

Allotment and Transfer of Shares in Private Company

1) Definition of Shares

1.1 As per **Section 2(84) of the company Act, 2013** "Share" means a share in share capital of a company and includes security. In simple language, security means tradeable financial instrument that can be sold or purchased.

1.2 As per **Section 44 of the Company Act 2013** the share of any member of a company is a movable property and transferable according to terms and conditions to Article of Association.

2) Types of Shares

As per section 43 of the company Act, 2013 there are two types of shares:

a) Equity Shares: The equity shareholders have full voting right alongwith right to participate in decision making process. In addition to this, they have right to get profit in the form of dividend at a fluctuating rate.

b) Preferential Shares: The holder of preferential shares don't have full voting right, but right to get profit on priority basis over equity shareholders at fixed rate. They are also know as Minority shareholders.

3) Allotment of Shares

A company having share capital allots share by adopting following modes:

- ★ **Private Placement offer:** a) As per section 42 of the company law, a company having share capital allots share by inviting to subscribe shares. The offer can be made to **minimum 50 subscribers and maximum 200.**
- b) The offer can be issued only if the same is authorized by AOA and a resolution approving the same by the shareholders has been filed in **Form No. MGT-14** in ROC.
- c) The company (promoters and directors) is liable to **penalty of Rs 1000 extendable up-to 2 crore** in case no allotment of shares takes place within 60 days (from the date of receiving application amount) and company fails to return the full amount within 15 days(after the expiry of 60 days).
- d) The company allotting shares must file an annual return in (**Form No. PAS-3**) alongwith the list of allottee, Complete record of private placement (**Form No. PAS-5**), valuation report. falling which promoters and directors shall be liable to penalty of Rs 1000 extendable up-to Rs 25 lakh

e) If a **company** allot share contravening the imposed restriction then the director and promoters shall be **liable for penalty to return the amount received in share application or Rs 2 crore whichever is less.**

- ★ **Rights Issue:** a) This sort of offer, under section 62 of the company Act, 201, is issued by the unlisted company (after the approval of BOD) to the existing shareholders with predetermined/specified price.
b) The company is sent a notice to all the existing shareholders at least **3 days before the date of opening of issue.** All shareholders to communicate their rejection or acceptance about the offer to company and the latter will sent a **7 days prior notice** to conduct Board of Directors meeting to all the directors.
c) All the members of the board to pass a resolution approving allotment and the issue of shares to the allottee.
d) The company to file Return Of allotment in **Form No. PAS-3** to ROC within 30 days to allotment.
- ★ **Issuing Share Certificate:** As per section 46 of the Company Act, 2013 A Certificate of share is issued to all the allottees by the company within 2 months from the date of allotment of shares. The same is Prima facie evidence to title of shareholder.
The Delhi High Court in its important decision in **SAS Hospitality Pvt Ltd v Surya Constructions Pvt Ltd (16 October 2018)** held that the NCLT has exclusive jurisdiction over a dispute regarding allotment of shares in a company.

4) Transfer of Shares

Transfer of shares takes place when a shareholder/Transferor opts to not be a member of a company and voluntary agrees to transfer rights, duties and liabilities to the transferee.

4.1 Provisions and rules governing transfer of shares

- ★ Section 56 of the company Act, 2013
- ★ Rule 11 of the Company (Share and Debenture) Rules, 2014

4.2 Person Involved in Transfer of Shares

- ★ Transferor
- ★ Transferee
- ★ Company (Both listed or unlisted)
- ★ Legal Representative (in case of death)
- ★ Subscribers to MOA

4.3 Procedure or steps involved in transfer of Shares Under Company Law

- ★ **Notice to company** by transferor showing his intention to transfer his share .
- ★ **Determination of price** by director or auditor as per the Article of Association to a company at which shares will be transferred to the existing shareholders of the company. **As per section 52(2)vii(b) of the Income tax Act, 1961 if a company receives consideration exceeding fair market value of the shares bring issued the same will be taxed under the head of Capital Gain.**
- ★ **Notification about availability of share and predetermined price is issued** to other members **by company** communicating time period within which intention to purchase proposed shares should be delivered. In case no one accepts the proposal then company have to accept the transfer if share is transferred to the outsiders.
- ★ **Execution of share transfer deed** by both transferor and transferee in Form No. SH-4. (under Section 56 of the Company Act, 2012/Article of Association), **by paying appropriate stamp fee and signed by two witness.**
- ★ **The transfer of shares deed will be delivered** to company along with share certificate or allotment letter within 60 days from the date of execution under Rule 11 of Company(share and debenture) Rules, 2014.
- ★ **Notice to the transferee by the company:** As per **Rule 11(3) of the Company (Share and Debenture) Rules, 2014** a company is under statutory obligation to send notice to the transferee requesting him to communicate his acceptance or objection within two weeks from the date of receipt of notice of company.
- ★ **Verification of transfer of shares deed along with required documents:** As per section 58 of the company Act, 2013 if company finds any discrepancy in documents it may refuse to register the transfer deed within 30 days from the date of delivery of documents and send a notice to the transferee.
The apex court in a significant judgement in **Mackintosh Burn Limited v. Sarkar and Chowdhury Enterprises Private Limited, (2018) 5 SCC 575** held that the registration of a share transfer may not only be refused on the ground of it resulting in a violation of any law, but also for any other sufficient cause.
- ★ **Appeal against the refusal to NCLT:** The transferee, under section 56(3) of company law, is entitled to file appeal to NCLT against the refusal to the company within 30 days from the date of receipt of notice. If no such notice is received in that case within 60 days from the date of delivery of transfer deed.
- ★ **Registering the transfer of shares by passing board resolution:** If after verification company finds that the transfer of shares deed and other filed documents are in appropriate order it will register the same after passing board resolution.

4.4 Penalty in case of default in following procedure in case of transfer of shares

- ★ **Company:** Fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees
- ★ **Officer of the company** who is in default Fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

5) Buy back of Shares by Company

5.1 Buy Back of Shares : The buy back of share is a process under which a company repurchase it's shares with the purpose of increasing financial leverage. It is an alternative way for reducing capital to a company.

5.2 Statute and Rules governing Buy Back of shares procedure

- ★ Companies Act, 2013 (**section 68-70**)
- ★ Companies (Share Capital and Debentures) Rules, 2014
- ★ Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 and Securities and Exchange Board of India (Buy-back of Securities) (Amendment) Regulations, 2013 (In case of listed company).

5.3 Sources of Buy Back of Shares

- ★ Free reserve to company
- ★ Security premium Account
- ★ Proceeds of any previous shares issued.

5.4 Essential conditions for valid and lawful Buy Back of Shares

- ★ No Buy Back of shares can be made **out of the proceed of earlier issued shares** or securities of the same kind.
- ★ The Buy Back of shares must be **authorized by company Article of Association.**
- ★ A **special resolution by company Board should be passed** for the purpose of buy back of shares.
- ★ No company should Buy Back of shares **through its subsidiaries or Investment companies.**
- ★ It should be **up-to 25 percent of the paid up capital and free reserve to company**
- ★ The shares to be repurchased should be **fully paid.**
- ★ **No buy back of shares** should be made **within one year** from the expiry date of previous buy back procedure.

- ★ The Buy Back of shares procedure should be **completed within one year** from the date of passing special resolution in this regard by company Board.

5.5 Procedure involved in Buy Back of Shares

- ★ The Buy back procedure should be **authorized by the Article of Association** to company.
- ★ **Approval by Board of Directors** in case buy buy is 10 percent to the paid up capital and free reserve or **shareholders** in case buy back is 25 percent of the paid up capital and free reserve to company.
- ★ Before the buy back of shares a company has **to file a letter of offer to ROC in form SH-8 along with the declaration of solvency in Form SH-9** and issuance of letter of offer to shareholders within 20 days from the date of filing letter of offer.
- ★ **Commencement** of Buy Back of shares and **continuance up-to 15-30 days**. The same procedure should be completed within one year from the date of passing special resolution by BOD and shareholders.
- ★ **Acceptanc, verification** (within 15 days from the completion of offer) or **rejection of offer** (intimation within 20 days of completion of offer).
- ★ To **open seperate bank account** of the company, **make payment or to return the shares certificate** (within 7 days from the date of verification of offer) to shareholders, whose shares are accepted or rejected and to destroy the shares physically brought back (AfTeresa the completion of buy back procedure).
- ★ A company should **file return to Buy Back of shares to ROC in the Form SH-11**. (within 30 days from the date of completion of offer)