

Ch. 7 Alteration of Share Capital

Ways to alter Share Capital

Section 61 (1) of the Companies Act, 2013 provides that a company limited by shares or guarantee and having a share capital may, if so authorized by its articles, alter, by an ordinary resolution, its memorandum in the following ways:

- (a) It may increase the authorized share capital by such amount, as it thinks expedient;
- (b) It may consolidate and divide, all or any of its existing shares into a larger denomination than of its existing shares e.g., by consolidating ten shares of Rs10 each into one share of Rs100 each.
- (c) It may convert all or any of its fully paid-up shares into stock or reconvert that stock into fully paid-up shares of any denomination.
- (d) It may sub-divide its existing shares or any of them into smaller denomination than fixed by its Memorandum but it must keep the existing proportion between the paid-up and unpaid amount e.g., one share of Rs 100 each, Rs 60 paid up and be sub-divided into ten shares of Rs 10 each, Rs 6 paid-up per share.

AA to be amended by Special Resolution

In order to alter its capital clause in the Memorandum, the company requires authority in its articles. But if the articles give no power to this effect, the articles must be amended by a special resolution before the power to alter the capital clause can be exercised by the company [**Re. Patent Invert Sugar Co**]

Section 64(1) states that when—

- (a) a company alters its share capital u/s 61(1); or
- (b) an order made by the Government has the effect of increasing authorized capital of a company; or
- (c) 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.

Rule 15 of Companies (Share Capital and Debentures) Rules, 2014 states that the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in **Form No. SH.7** along with the fee.

Contravention

Section 64(2) states that contravention in this case will make the company and every officer of the company who is in default liable to a fine extending up to Rs. 1000 per day during which the default continues or Rs. 5 lakh, whichever is less (Section 64).

WHEN SHARE CAPITAL STANDS AUTOMATICALLY INCREASED?

The share capital of a company stands automatically increased when any Government, by its order made, directs that any debentures issued to, or the loans obtained from the Government by a company or any part thereof shall be converted into shares in the company, on such terms and conditions as are considered by that Government to be reasonable in the circumstances.

Appeal against Govt. Order	However, where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.
-----------------------------------	--

Where appeal is dismissed or not preferred	Where the Government has, by an order, directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorized share capital of the company, stand altered and the authorized share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into. [Section 62(6)]. This Section 62(6) is yet to be notified.
---	---

Judicial Pronouncement about a company's power to alter its share capital

1. The powers can be exercised by the members only if authorized by the articles. [**Re North Cheshire Brewery Co.**]
2. The power should be exercised bona fide in the interest of the company and not for benefiting any group. [**Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.**]
3. The notice convening the meeting to pass the resolution for increase must specify the amount of the proposed increase. [**Mac Connell v. E. Prill & Co. Ltd.**]
4. Consolidation and sub-division may be effected by the same resolution [**Re. North Cheshire Borewery Co. Ltd.**]
- 5.
6. It is not the function of the Court to interfere with the Company's power to consider a resolution for cancelling the unissued portion of its share capital. The exercise of power by a company to cancel the unissued shares cannot be restrained by an injunction. [**Re. Swindon Town Football Co. Ltd.**]
- 7.

NATURE OF STOCK

Meaning of Share	Section 2(84) of the Act in defining a share, states that "share means a share in the share capital of a company and includes stock".
-------------------------	---

Conversion to stock	Section 61 allows the company to convert its fully paid-up shares into stock.
----------------------------	---

Stockholder	Thus by converting shares into stock, a shareholder is known as a stockholder. A stockholder has the same rights as to dividends as a shareholder.
NOTE: (i) only fully paid-up shares can be converted into stock, and (ii) no direct issue of stock by a company is lawful. It is only the conversion of fully-paid shares into stock, that is allowed by and not a direct issue of stock.	
Example: After shares are converted into stock, the stockholder may own Rs.1,000 worth of stock where formerly he held 100 shares of Rs.10 each.	

S. No.	Basis	Share	Stock
1.	Distinct No.	Shares in physical form bear distinct numbers.	Stocks are the consolidated value of share capital
2.	Fully Paid up	Shares may or may not be fully paid up.	Stock is always fully paid-up
3.	Nominal Value	Shares have a nominal value.	Stock does not have any nominal value.
4.	Denomination	All shares are of equal denomination.	Denomination of stocks varies.
5.	Fractional value	It is not possible to transfer shares into fraction.	Stock is divisible and transferable into any fractional value.
6.	Issued	Shares comes into existence before the stock and it is issued initially.	Stock comes into existence after conversion of shares into stock and on conversion of shares into stock, the provisions of the Act governing the shares shall cease to apply to the share capital as it is converted into stock.

REDUCTION OF SHARE CAPITAL (Applicable section 66 is yet to be notified)

Sec. 66 (1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and may—

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares, —

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Proviso to Section 66(1)] states that the reduction of capital shall not be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon.

Notice by tribunal [Section 66(2)]	The Tribunal shall give notice of application made to it under sub-section (1) to 1. the Central Government, 2. Registrar
---	---

	<p>3. the Securities and Exchange Board, in the case of listed companies, and</p> <p>4. the creditors of the company</p> <p>within a period of three months from the date of receipt of the notice.</p>
<p>Proviso to Section 66(2) states that if no representation has been received from the Central Government, Registrar, the SEBI or the creditors within the said period, it shall be presumed that they have no objection to the reduction.</p>	
<p>Confirmation of reduction of capital [section 66(3)]</p>	<p>The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.</p>
<p>Publication of tribunal's order [section 66(4)]</p>	<p>The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.</p>
<p>Deliver a copy of order of tribunal to ROC (section 66(5))</p>	<p>The company shall deliver a certified copy of the order of the Tribunal showing—</p> <p>(a) the amount of share capital;</p> <p>(b) the number of shares into which it is to be divided;</p> <p>(c) the amount of each share; and</p> <p>(d) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.</p>

Difference in Alteration of share capital and reduction of share capital		
Basis	Alteration of share	Reduction of share capital
Applicability	Applicable section 61 of the Companies Act, 2013.	Applicable section 66 of the Companies Act, 2013.
Resolution	Alteration of share capital is required to be done by ordinary resolution.	Reduction of share capital is required to be done by special resolution.
Confirmation	Alteration of share capital is not required to be confirmed by the Tribunal.	Reduction of share capital is to be confirmed by the Tribunal.
Ways	Alteration of share capital may be done in the following manner: - (a) Increasing its nominal capital by issuing new shares. (b) Consolidating share capital into shares of large denomination. (c) Converting fully paid up shares into stock or vice versa. (d) Sub dividing its shares into shares of smaller amount.	Reduction of share capital may be done in the following manner: - (a) Extinguishing or reducing the liability of members in respect of the capital not paid up. (b) Paying off any paid up share capital which is in excess of the needs of the company.

	(e) Canceling shares which have not been taken up and diminishing the amount of share capital by the amount of the shares so cancelled.	
--	---	--

Diminution of share capital is not a reduction of capital

Diminution of capital

According to section 61(1)(e) of the Companies Act, 2013 (enforced), diminution of capital is the cancellation of the unsubscribed part of the issued capital. It can be effected by an ordinary resolution provided articles of the company authorizes to do so. It does not need any confirmation of the Tribunal under section 66.

In the following cases, the diminution of share capital is not to be treated as reduction of the capital:

1. Where the company cancels share which have not been taken or agreed to be taken by any person.
2. Redemption of redeemable preference shares.
3. Where the company buys-back its own shares under Section 68
4. Purchase of shares of a member by the Company on order of the Tribunal u/s 242 of Companies Act, 2013 (yet to be enforced).

Judicial Pronouncement relating to reduction of Share capital of a company

Re. SIEL Ltd., reduction of the share capital of a company is a domestic concern of the company and the decision of the majority would prevail. If the majority by special resolution decides to reduce the share capital of the company, it has the right to decide to reduce the share capital of the company and it has the right to decide how this reduction should be effected.

Re Indian National Press (Indore) Ltd., The need for reducing capital may arise in various circumstances for example trading losses, heavy capital expenses and assets of reduced or doubtful value. As a result, the original capital may either have become lost.

British and American Trustee Corp. vs. Couper When exercising its discretion, the Court shall consider the following, while sanctioning the reduction:

- (i) The interests of creditors must be safeguarded;
- (ii) The interests of shareholders must be considered; and
- (iii) Lastly, the public interest must be considered as well.

Re. Borough Commercial and Bldg. Society, In case of reduction in shares capital of an unlimited company-

An unlimited company to which section 66 of the Companies Act, 2013) does not apply, can reduce its capital in any manner that its Memorandum and Articles of Association allow.

Great Universal Stores Ltd., In case of Reduction of capital when company is defunct-

The Registrar of Companies has been empowered under Section 248 of the Companies Act, 2013) to strike off the name of the company from register on the ground of non-working.

Therefore, where the company has ceased to trade, and Registrar exercises his power u/s 248, a reduction of capital cannot be prevented.

Marwari Stores Ltd. vs. Gouri Shanker Goenka, In case of Equal Reduction of Shares of One Class:

Where there is only one class of shares, prima facie, the same percentage should be paid off or cancelled or reduced in respect of each share, but where different amounts are paid-up on shares, the reduction can be effected by equalizing the amount so paid-up.

REDUCTION OF SHARE CAPITAL WITHOUT SANCTION OF THE COURT

In the following cases regarding reduction of share capital, no confirmation by the Tribunal is necessary:

Surrender of shares	<p>“Surrender of shares” means the surrender to the company by the registered holder of shares already issued. Where shares are surrendered to the company, whether by way of settlement of a dispute or for any other reason, it will have the same effect as a transfer in favor of the company and amount to a reduction of capital.</p> <p>But if, under any arrangement, such shares, instead of being surrendered to the company, are transferred to a nominee of the company then there will be no reduction of capital [Collector of Moradabad v. Equity Insurance Co. Ltd.]. Surrender may be accepted by the company under the same circumstances where forfeiture is justified.</p>
----------------------------	---

The Companies Act contains no provision for surrender of shares. Thus, surrender of shares is valid only when Articles of Association provide for the same and:

- (i) Where forfeiture of such shares is justified; or
- (ii) When shares are surrendered in exchange for new shares of same nominal value.

Forfeiture of shares	<p>A company may if authorized by its articles, forfeit shares for non-payment of calls and the same will not require confirmation of the Tribunal.</p> <p>Where power is given in the articles, it must be exercised strictly in accordance with the procedure stated therein, otherwise the forfeiture will be void.</p> <p>Forfeiture will be effected by means of Board resolution.</p>
-----------------------------	---

Both forfeiture and surrender lead to termination of membership. Forfeiture is at the initiative of company and surrender is at the initiative of member or shareholder.

Creditors’ Right to Object to Reduction

After passing the special resolution for the reduction of capital, the company is required to apply to the Court by way of petition for the confirmation of the resolution. If the Court so directs, the following provisions shall have effect:

Consent of creditors	<p>The creditors having a debt or claim admissible in winding up are entitled to object. To enable them to do so, the Court will settle a list of creditors entitled to object. If any creditor objects, then either his consent to the proposed reduction should be obtained or he should be paid off or his payment be secured.</p>
-----------------------------	---

<p>Confirmation and Registration of reduction of share capital</p>	<p>If the Court is satisfied that either the creditors entitled to object have consented to the reduction, or that their debts have been paid or secured, it may confirm the reduction.</p> <p>The Court may also direct that the words “and reduced” be added to the company’s name for a specified period, and that the company must publish the reasons for the reduction.</p>
<p>Conclusiveness of certificate for reduction of capital</p>	<p>The Court’s order confirming the reduction of the company’s share capital, should be delivered to the ROC. The reduction takes effect only on registration of the order, and not before. The Registrar will then issue a certificate of registration which will be a conclusive evidence that the requirements of the Act have been complied with.</p> <p>Where the Registrar had issued his certificate confirming the reduction, the same was held to be conclusive although it was discovered later that the company had no authority under its articles to reduce capital. [Re Walkar & Smith Ltd.]</p>

<p>Buy Back of Shares [Section 68]</p>	
<p>Sources</p>	<p>According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares (referred to as “buy-back”) out of:</p> <ul style="list-style-type: none"> (i) its free reserves; or (ii) the securities premium account; or (iii) the proceeds of any shares. <p>However, no buy-back of any kind of shares can be made out of the proceeds of an earlier issue of the same kind of shares.</p> <p>The company must have at the time of buy-back, sufficient balance in account to accommodate the total value of the buy-back.</p>
<p>Authorization Section 68(2)</p>	<p>The main requirement is that the articles of association of the company should authorize buyback.</p> <p>In case, such a provision is not available, it would be necessary to alter the articles of association to authorize buyback.</p> <p>Buy-back can be made with the approval of the Board of directors at a board meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy back.</p> <p>In case of a listed company, approval of shareholders shall be obtained only by postal ballot.</p>
<p>Quantum Section 68(2)</p>	<ul style="list-style-type: none"> (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 up to 25% of total equity capital in that year.
Notice to be accompanied by Explanatory Statement Section 68(3)	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.

Letter of Offer to be Filed with Registrar of Companies before Buy-Back [Rule 17(2)]

The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the ROC 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.

Dispatch of letter of offer to shareholders [Rule 17(4)]

The letter of offer shall be dispatched to the shareholders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the ROC.

Offer for buy back open for [Rule 17(5)]

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.

Post buy-back debt-equity ratio not to exceed 2:1[Section 68(2)(d)]

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.

Time gap between two buybacks [proviso to Section 68(2)]

No offer of buy-back under Section 68(2) 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.

Shares being Bought Back are to be Fully Paid up (Section 68(2))

All the shares for buy-back are to be fully paid-up.

Time limit for completion of buyback (Section 68(4))

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 (Section 68(5))

The buy-back may be—

- (a) from the existing shareholders on a proportionate basis;
- (b) from the open market;
- (c) by purchasing the shares issued to employees of the company pursuant to a scheme of stock option or sweat equity.

Filing Declaration of Solvency with SEBI/ROC as the case may Rule 17(3) of Companies Share Capital & Debentures) Rules, 2014.

When a company proposes to buy-back its own shares in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buyback, file with the Registrar and the Securities and Exchange Board (in case of listed companies), a declaration of solvency signed by at least two directors of the company, one of whom shall be the Managing Director, if any, in **Form No. SH.9** and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board.

Extinguishment of securities bought back Section 68(7)

When a company buys back its own shares, 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 (Section 68(8))

When a company completes a buy-back of its shares it shall not make a further issue of the same kind of shares including allotment of new shares within 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 (Section 68(9))

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

Return of buy back (Section 68(10))

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.

Rule 17(14) of Companies (Share Capital and Debentures) Rules 2014 states that 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 the rules made thereunder.

Punishments (Section 68(11))

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.

Circumstances prohibits buy-back [Section 70(1)]

No company shall directly or indirectly purchase its own shares —

- 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, 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 thereon 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. [Proviso to Section 70(i)]