

Lesson 03

OPERATIONS AND GOVERNANCE OF

COMPANIES

Part – III (Major types of share dealings in a company)

1) Capital

Capital refers to the funds a company has available for use in its business operations, and this is reflected in the assets it owns. A company's capital typically consists of the following:

1. Share capital (Equity Capital) - money raised from shareholders
2. Debt Capital / Loan capital (Debentures) - money raised from lenders

2) Share capital (Equity Capital)

It represents the investment made by shareholders in the company. To raise this capital, a company divides its total capital into a number of small, equal units called 'shares'. Individuals who purchase these shares are known as 'shareholders', and they are regarded as the owners of the company.

3) Nature and classes of shares

What is a share?

The judicial nature of the share has no precise definition. However, the most widely quoted definition of a share is that of Farwell J in ***Borland's Trustee vs Steel*** [(1901) 1 Ch 279, 288], which was approved by the House of Lords in ***Inland Revenue Commissioner vs Crossman*** (1937 AC 26). The definition of a share was usefully and accurately summarized by Lord Russel of Killowen in his speech (dissenting on the facts) as :

“...in the interest of a person in the company, that interest being composed of rights and obligations which are defined by the Companies Act and by the memorandum and articles of association of the company”

A company divides its ownership into shares, which are offered for sale to raise capital, termed as issuing shares. Thus, a share is an indivisible unit of capital, expressing the ownership relationship between the company and the shareholder. The Companies Act in its interpretation section 529 states that a share means, a share issued by a company.

Nature of shares (Section 49)

- Shares are noted to possess the following characteristics by section 49 of the Companies Act which reads as follows:
 1.
 2. Subject to the company's articles, a share in a company shall confer on the holder:
 - (a) the right to one vote on a poll at a meeting of the company on any resolution;
 - (b) the right to an equal share in dividends paid by the company;
 - (c) the right to an equal share in the distribution of the surplus assets of the company on liquidation.

Types of Shares (Section - 49)

A company may issue different classes of shares, and in particular may issue shares which—

- a) are redeemable;
 - b)
 - c) confer special, limited or conditional voting rights or confer no voting rights.
- No share in a company shall have a nominal or par value.
 - A share in a company is transferable in the manner provided for by its articles and such articles may limit or restrict the extent to which a share is transferable.

Classes of shares

Under company law, the company has the freedom to issue different classes of shares. A separate class of share is created when the principal rights carried by a share differ from other existing shares. For example, shares may carry preferential or deferred rights as to dividends or capital or may carry more votes than other classes of shares.

The common classes or types of shares can be analyzed as follows;

a. Ordinary Shares

The basic form of shares is ordinary shares. Most companies have just ordinary shares. It is also referred to as 'equity' or 'risk' taking capital. Ordinary shares vest the owner with one vote per share; entitlement to participate equally in dividends; and if the company is wound up, share in the proceeds of the company's assets after all the debts have been paid. Holders of ordinary shares have a right to unrestricted participation in the dividends of the company and to the distribution of its remaining property. The risk is that holders of ordinary shares will be entitled to dividends only if the company makes profits.

b. Preference Shares

Under Section 49(3)(b) of the Companies Act, a company may issue shares that carry rights ranking above those of ordinary shares in specified respects. Preference shareholders are entitled to priority in receiving a fixed dividend and in the return of capital upon winding up. These shares typically carry rights to preferential dividends, which may be either cumulative or non-cumulative. Although the general rule is that all shares rank equally, any preferential rights must be expressly stated at the time the preference shares are issued.

c. Deferred Shares

These shares are issued with limited rights. In a modern world company, the tendency is not to issue deferred shares. The fact that the deferred shares have no rights to dividends during a particular period does not mean they are not ordinary share capital. Deferred shares are often created for commercial reasons, to enable private investors to take capital growth instead of dividend income. They are generally issued to founders or directors of the company. These shares receive no rights to a company's remaining assets in the event of bankruptcy until all common and preferred shareholders have been paid.

d. Non-voting Shares

In terms of Section 49(3)(c), companies may issue shares which do not carry voting rights at all, or which carry limited rights of voting in specified situations as set out in the Articles of Association. Such shares are usually issued for the purpose of retaining control with the promoters. For example, there could be situations where the law prohibits foreign control of certain types of companies.

e. Redeemable Shares

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The redemption may be at the option of the company or the shareholder, or on a fixed date or upon the occurrence of an event. The price at which the shares must be redeemed may also be specified either on the basis of a predetermined price or a formula.

f. Employee shares

As an incentive many companies issue shares to employees under an employee share scheme.

4) Issue of shares

As per Section 50; Immediately following the incorporation of a company under section 5, the company shall issue to each shareholder named in the application for incorporation, the shares to which that person is entitled.

Immediately following the issue of a certificate of amalgamation under section, 244, the amalgamated company shall issue to each person who is entitled to shares under the amalgamation proposal, the shares to which that person is entitled.

Furthermore, section 51 of the Companies Act states:

(1) Subject to the provisions of sections 52 (consideration) and 53 (pre-emptive rights) and the company's articles, the board of a company may issue such shares to such persons as it considers appropriate

(2) If the shares issued confer rights other than those set out in subsection (2) of section 49 or impose any obligation on the holder, the board shall approve terms of issue which will set out the rights and obligations attached to those shares.

Terms of issue approved by the board under subsection (2) -

(a) shall be consistent with the articles of the company, and to the extent that they are not so consistent, are invalid and of no effect ;

(b) are deemed to form part of the articles, and may be amended in accordance with section 15.

Notice to the Registrar Regarding Issue of Shares – (Section - 51(4))

Within twenty working days of the issue of any shares (both initial shares and subsequent shares), the company shall give notice to the Registrar in the prescribed form (**Form 6**) of,

- (i) the number of shares issued;
- (ii) the amount of the consideration for which the shares have been issued;
- (iii) the amount of the company's stated capital following the issue of the shares;
- (iv) a copy of any **terms of issue** approved by the directors under sec. 51 (2).

Method of Issuing Shares (Section - 54)

A share is deemed to be issued when the name of the holder is entered on the share register, and such entry shall be made before filing **form 6**.

Matters to be Considered when Issuing Shares (Section - 51)

The board of a company may issue shares subject to-

1. the company's articles
2. the provision of Sec.52 in respect of consideration and
3. the provision of 53 regarding pre-emptive rights to new shares

Consideration for the Issue of Shares (Section - 52)

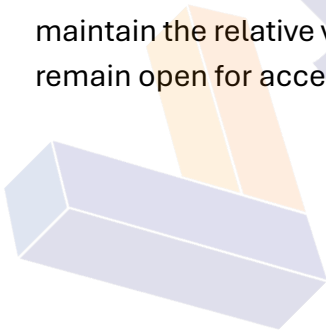
Before issuing any shares, the board shall decide the consideration for which the shares will be issued; and resolve that in its opinion that consideration is fair and reasonable to the company and to all existing shareholders. The consideration for which a share is issued may take any form, including

- (i) cash,
- (ii) promissory notes,
- (iii) future services,
- (iv) property of any kind or
- (v) other securities of the company.

Upon receipt of the consideration, the company shall within a period of twenty days, make an allotment of the shares.

Pre-Emptive rights to new issues– Existing Shareholders right to buy new shares (Section 53)

Subject to the company's articles, where a company issues shares which rank equally with or above existing shares in relation to voting or distribution rights, those shares shall be offered to the holders of existing shares in a manner which would, if the offer was accepted, maintain the relative voting and distribution rights of those shareholders. Such an offer shall remain open for acceptance for a reasonable period of time.



Prospectus

A company may raise capital through the issue of securities, namely shares and debentures. Debentures operate as loans obtained by the company, whereas shares represent the company's capital.

When an invitation is made to the public to subscribe for such securities, the law requires that all persons to whom the invitation is addressed must be provided with all material information relating to the company. This ensures that prospective investors are able to make fully informed investment decisions.

Therefore, a document containing all the relevant information is furnished to the interested parties. Such a document is called a "prospectus".

"prospectus" means, any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription to or purchase of any shares or debentures of a company, and includes any such notice, circular, advertisement, or other invitation, notwithstanding that it may contain on the face thereof, that it is not a prospectus or offer of shares to the public;

Section 37(1) of the Companies Act stipulates the 'Specific requirements as to particulars in prospectuses'.

Accordingly, prospectus issued by or on behalf of a company or any person must contain the information specified in Part I of the Fourth Schedule to the Companies Act and set out the reports specified in Part II of the same Schedule. Some of the requirements set out in Part I of the aforesaid Schedule relate to the nature and scope of the Company's business, the relevant time frames, the composition and structure of its shareholding, and other associated matters. These obligations are articulated in more comprehensive and detailed terms to ensure that all material aspects of the Company's operations and ownership are adequately disclosed.

The prospectus must include the information and reports prescribed in Parts I and II of Schedule 4 of the Companies Act, read subject to the requirements of Part III of the same Schedule. These provisions collectively ensure that a prospectus contains all essential disclosures and that such information is made available to investors in advance, enabling them to make an informed investment decision.

According to section 37 (3), it is illegal for a company to issue an application form for shares or debentures unless it is accompanied by a prospectus that complies with statutory requirements.

Exceptions - the requirement to issue the form with a prospectus does not apply when the application form is issued:

- (a) For a bona fide invitation to a person to enter into an underwriting agreement for the shares or debentures.
- (b) For shares or debentures not offered to the public.
- (c) For the issuance of commercial papers by a listed company, where such papers are offered to the public.

If a prospectus contains any untrue statement, the company and the officers responsible for its issue may incur civil and criminal liability under sections 41 and 42 of the Companies Act.

Further, a company is prohibited from making an allotment of shares in an initial public offering unless the minimum amount of funds—being, in the opinion of the directors, the amount required to achieve the objects of the offer and to meet the related expenses—has been fully subscribed and the corresponding sums have been received by the company.

5) Calls on shares

The Act places no prohibition on the issue of shares even though the consideration for the shares is to be paid on a future date. When a partly paid share is issued the shareholder is under a liability to pay the amount for the time being unpaid on his shares in accordance with the provisions in the articles. The legislature envisages that the liability of a shareholder is contingent upon a call being made upon him to pay a specific amount for a share or to perform an obligation attached to a share.

Where a call is made on a share or any other obligation attached to a share and is performed by the shareholder, the company shall within ten working days give notice to the Registrar in the prescribed form of;

- (a) the amount of the call or its value as determined by the board under subsection (3) of section 58; and
- (b) the amount of the stated capital of the company following the making of the call.

The failure to notify the Registrar of the amount of the call or its value as determined by the board and the amount of the stated capital of the company following the making of the call is deemed an offence under the act and the company and every officer of the company who is in default will be guilty of an offence.

6) Distribution

As per Section 529, “distribution” means

- (a) ;
or
- (b) the incurring of a debt to or for the benefit of a shareholder, in relation to a share or shares held by that shareholder, whether by means of a payment of a dividend, a redemption or other acquisition of the share or shares, a distribution of indebtedness or otherwise ;

The Companies Act interprets “distribution” broadly to include any transaction that reduces company assets for the benefit of a shareholder. What is in essence captured by the definition of the term distribution is the transfer of property (or the incurring of a debt) by the company. A link must be established between the outflow of wealth from the company and the benefit received by or on behalf of a shareholder.

Procedure to be followed before making a Distribution

According to Section 56:

Before a distribution is made by a company to any shareholder, such distribution shall —

- (a) be authorized by the board under subsection (2); and
- (b) unless the company’s articles provide otherwise, be approved by the shareholders by ordinary resolution.

(2) The board of a company may authorize a distribution at such time and in such amount as it considers appropriate, where it is satisfied that the company will, immediately after the distribution is made satisfy the solvency test, provided that such board obtains a certificate of solvency from the auditors.

(3) The directors who vote in favour of a distribution shall sign a certificate setting that in their opinion, the company will satisfy the solvency test immediately after the distribution is made.

(4) In applying the solvency test for the purposes of this section, “debts” includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made, except where the fixed preferential return is expressed to be subject to the power of the board to authorize distributions.

Recovery of Distributions (Section - 61)

If a distribution is made to a shareholder at a time when the company did not, immediately after the distribution, satisfy the solvency test, such a distribution may be recovered by the company from the shareholder.

In case it is unable to be recovered from the shareholders, every director who failed to ensure the procedure to be followed or who signed the certificate, will be personally liable to repay to the company, so much of the distribution as the company is not able to recover from the shareholders.

7) Solvency Test

(1) A company shall be deemed to have satisfied the solvency test, if-

(a) it is able to pay its debts as they become due in the normal course of business; and

(b) the value of the company’s assets is greater than -

(i)

(ii)

In determining whether a company satisfies the solvency test, the board-

a) shall take into account the most recent financial statements of the company;

b) shall take into account circumstances the directors know or ought to know which affect the value of the company’s assets and liabilities;

c) may take into account a fair valuation or other method of assessing the value of assets and liabilities.

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If a company is able to pay its debts as they become due in the normal course of business the liquidity limb would be satisfied. If the value of company's assets is greater than the value of its liabilities and stated capital, the balance sheet limb would be satisfied.

The solvency test is the red flag that pops up throughout the Act to keep company in check, so that it maintains its solvency and its overall financial health.

8) Stated Capital

58. (1) Subject to section 59, stated capital in relation to a company means the total of all amounts received by the company or due and payable to the company -

- (a) in respect of the issue of shares; and
- (b) in respect of calls on shares.

Where a share is issued for consideration other than cash, the board shall determine the cash value of such consideration for the purposes of the stated capital.

The stated capital represents the value of the Assets received or receivable by the company on the issue of shares. The 'share' referred to in section 58 can belong to any class of share for the Act recognizes that the company is at liberty to issue different classes of shares.

Reduction of Stated Capital – (Section - 59)

Under the Act the entire scheme of reduction of capital is guided by the solvency test.

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- Before the stated capital is reduced, Public notice of a proposed reduction should be given not less than sixty days before the resolution to reduce stated capital is passed.
- If a company
 - had issued redeemable shares which are redeemable at the option of the shareholder or on a fixed date or
 - if the company is compelled to purchase its own shares under a minority buy out provision

and if the company does not have adequate profits or reserves to the said redemption or repurchase, the board may, after obtaining the auditors certificate of solvency, resolve that

the stated capital of the company shall be reduced by the amount by which the company would so fail to satisfy the solvency test.

- A company may agree in writing with a creditor of the company, that it will not reduce its stated capital below a specified amount without the prior consent of the creditor or unless specified conditions are satisfied at the time of the reduction. If stated capital is reduced in breach of any such agreement, such a reduction will be invalid and of no effect. This is a protection available to long term creditors.
- A company which has reduced its stated capital shall give notice of the reduction to the Registrar by way of Form 8, within ten working days of such reduction specifying the amount of the reduction and the reduced amount of its stated capital.

9) Dividends (Section 60)

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

Since the term 'Dividend' having being defined as an act of 'distribution' immediately brings into play all the safeguards governing the making of a distribution under the Act. Accordingly, dividends are subject to solvency test, claw back provisions of an irregularly made distribution and directors' personal liability if the payment of dividend was made in breach of solvency test.

Shareholders have no right to claim that the company should distribute its profit as dividend nor can they assert a right as against the company to be paid a dividend.

However, a restrictive dividend policy which denies shareholders a return that they were reasonably entitled to expect from their investment in the company could amount to unfairly prejudicial conduct.

When the dividend is declared shareholders of the same class are entitled to equality of treatment the board cannot discriminate between them

When a dividend is declared shareholders of the same class are entitled to equality of treatment. The board cannot discriminate between them unless the reduction is in proportion to any liability attached to the share under articles, or the shareholder agrees to it in writing.

10) Acquisition or redemption of its own shares

A company may purchase or otherwise acquire any of its own shares —

- (a) under section 64 or section 67;
- (b) if the company is a private company, with the agreement or concurrence of all shareholders under section 31; or
- (c) in accordance with an order made by the court under this Act.

As per section 63 (3) a share that is acquired or redeemed by the company shall be deemed to be cancelled immediately upon acquisition or redemption and immediately following the acquisition or redemption of shares by the company, the company shall give notice to the Registrar of the number and class of shares acquired or redeemed.

Re-Purchase of its own shares by a company (Section 64)

A company may agree to purchase or otherwise acquire its own shares if the articles of such company provide for it to do so, with the approval of the board.

Before a company purchases its own shares, the board must confirm that the buyback is in the company's interests, that the price is fair according to the auditors, and that no undisclosed material information makes the offer unfair to shareholders.

If the buyback is structured in a way that does not treat all shareholders equally in terms of voting or distribution rights, the board must also resolve that the offer is fair to the shareholders who are not included in the transaction.

Where a party enters into a contract with a company, which provides for the acquisition by the company of its shares, such contract will be specifically enforceable against the company. The exception to this requirement is where it could be established that the company would after performing such contract, fail to satisfy the solvency test.

Until the company has fully performed a contract referred to in subsection (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or, in the event of a liquidation, to be ranked subordinate to the rights of creditors, but in priority to the other shareholders.

Redemption of Shares

Meaning of “redeemable” (Section – 66)

A share is redeemable if the articles of the company make provision for the redemption of that share by the company

A. at the option of the Company (section 67);

Before the shares are redeemed at the option of the company, the board must resolve that the redemption is in the best interest of the company.

A redemption of a share at the option of the company is deemed to be—

- (a) an acquisition by the company of the share, for the purposes of subsection (3) of section 64; and
- (b) a distribution for the purposes of section 56.

B. at the option of the holder of the share (section 68); or

Where a share is redeemable at the option of the holder of the share and the holder gives proper notice to the company requiring the company to redeem the share, such redemption will take place on the date specified in the notice or if no date is specified, on the date of receipt of the notice.

From the date of redemption, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption

C. on date specified in the articles (section 69);

Where a share is redeemable on a specified date, the company shall redeem the share on that date.

Under redemption at the option of the holder of the shares and redemption on a date fixed in the Articles, the share is deemed to be cancelled on that date. From that date, the former shareholder ranks as an unsecured creditor of the company for the sum payable on redemption.

A redemption under the above sections is not a distribution for the purposes of section 56, but is deemed to be a distribution for the purposes of subsection (1) and subsection (3) of section 61.

The consequence of this is that strict distribution formalities set down in section 56 of the Act need not be complied with when shares are redeemed at the option of a shareholder and on a fixed date. However, for the limited purpose of recovering the redemption where solvency test has not been satisfied only the Act deems such redemptions as distributions.

11) Financial Assistance in connection with purchase of shares

Restrictions on giving financial assistance (Sec.70)

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The principle behind such prohibition was to prevent the possibility of abuse of company funds, particularly in takeover bids where the company could finance the preferred buyer to buy its own shares. This prohibition also ensured that creditors were protected against the capital of the company being returned to the shareholders.

As per section 70(2), a company may give financial assistance for the purpose of or in connection with the acquisition of its own shares, if the board has previously resolved that ;

- Giving such assistance is in the interest of the company;
- The terms and conditions on which the assistance is given are fair and reasonable to the company and to any shareholders not receiving that assistance; and
- Immediately after giving the assistance, the company will satisfy the solvency test.

According to section 70 (4) giving of financial assistance under this section is not a distribution for the purposes of section 56.

Transactions not prohibited by section 70 (Section 71)

Section 71 of the Act removes from the ambit of the general section contained in section 70 (1), various classes of transactions where the giving of financial assistance is not prohibited.

Accordingly, the general prohibition will not apply if; (a) the company's principal purpose in giving the assistance is not to give it for the purpose of that acquisition or the giving of the assistance is an incidental part of any other larger purpose of the company; and (b) the assistance is given in good faith in the interest of the company.

The provisions of section 70 shall also not apply in respect of—

- a. a distribution to a shareholder approved under section 56;
- b. the issue of shares by the company;
- c. a repurchase or redemption of shares by the company;
- d. anything done in terms of a compromise reached under the provisions of Part IX or a compromise or arrangement approved under the provisions of Part X;
- e. the lending of money by a company in the ordinary course of business, where the ordinary business of the company includes the lending of money;
- f. the provision by a company in good faith in the interest of the company, of financial assistance for the purposes of an employees' share scheme;
- g. the granting of loans by a company to its employees other than directors in good faith in the interest of the company, with a view to enabling those persons to acquire beneficial ownership of shares in the company.



12) Shareholder Remedies

Shareholder remedies under the Companies Act form a crucial safety net designed to protect investors when corporate power is abused or governance breaks down. These mechanisms such as actions for oppression and mismanagement, derivative actions, and applications for restraining orders ensure that shareholders have meaningful avenues to challenge conduct that is unfair, prejudicial, or harmful to the company as a whole. Together, they reinforce accountability within corporate structures, safeguard minority interests, and promote responsible management by allowing courts to intervene when internal remedies fail or when directors act contrary to their duties.

I. Oppression and Mismanagement

In terms of section 224 of the Companies Act, subject to section 226, any shareholder or shareholders of a company who has a complaint against the company that the affairs of such company are being conducted in a manner oppressive may make an application to the court for relief.

Specific situations include unjustifiably high director's remuneration by controlling shareholders to themselves resulting in the company suffering loss, persistent disregard for Companies Act or company's articles, etc

Section 225 describes that subject to the provision of section 226 any shareholder or shareholders of the company who have complaint that;

- a) the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or
- b) that a material change has taken place in the management or control of the company and by reason of such change it is likely that the affairs of the company may be conducted in a manner prejudicial to the interest of the company may make an application to the court under the provisions of Section 225.

When an application has been filed under Section 224 or 225, the court is empowered to make such order as it thinks fit. Pending the making of a final order, the court may on the application of a party to the proceedings make an interim order which it thinks fit if necessary.

According to Section 226 an application under section 224 and section 225 may only be made by a shareholder or shareholders who at any time during the six months prior to the making of the application;

- a) constituted not less than 5% of the total number of shareholders; or
- b) held shares which together carried not less than 5% of the voting rights at a general meeting of the company.

Powers of Court on application under section 224 or section 225;

Any order may provide for the regulation of the conduct of the company's affairs in the future; the purchase of the shares or interests of any shareholders of the company by other shareholders thereof or by the company; (c) the termination, setting aside or modification of any agreement, however arrived at, between the company on the one hand and any of the following persons on the other, namely ; (i) the managing director; (ii) any other director; (iii) the board of directors ; (iv) the agent or secretary ; or (v) the manager, etc

II. **Derivative Action**

The right to a derivative action is originally developed as an exception to the rule laid down in *Foss v. Harbottle* (1843) 67 ER 189, in which it was held that proper party to bring actions for wrongs committed against a company was no one but the company itself. This rule was severely detrimental to the rights of the minority shareholders as where the majority shareholders who are in control of the company fail or ignore to act in the best interest of the company, the minority shareholders became helpless.

The principle underlying the derivative action is that since a company has a duty to act in the best interest of its shareholders, a shareholder has a right to file suit acting on behalf of the company when the directors and management are failing to act for the benefit of the company and all of its shareholders. A derivative action often arises in cases of fraud, mismanagement, self-dealing and/or dishonesty which are being ignored by officers and the board of directors of a corporation. The right to bring a derivative action was recognized in Sri Lanka in *Amarasekera v. Mitsui Company and others*.

The 2007 Companies Act recognizes derivative actions under section 234.

Accordingly, the court may, on the application of a shareholder or director of a company, grant leave to that shareholder or director to:

- (a) bring proceedings in the name and on behalf of the company or any subsidiary of that company; or
- (b) intervene in proceedings to which the company or any subsidiary is a party, for the purpose of continuing, defending, or discontinuing the proceedings on behalf of the company or subsidiary, as the case may be.

However, when granting leave as aforementioned, the court will consider the following,

- (a) the likelihood of the success of proceedings;
- (b) the costs of the proceedings in relation to the relief likely to be obtained;
- (c) any action already taken by the company or subsidiary to obtain relief;
- (d) the interests of the company or subsidiary in the proceedings being commenced, continued, defended or discontinued, as the case may be.

Leave to bring proceedings or intervene in proceedings may be granted only if the court is satisfied that either,

- (a) the company or subsidiary does not intend to bring, diligently continue, defend or discontinue the proceedings, as the case may be; or
- (b) it is in the interests of the company or subsidiary that the conduct of the proceedings should not be left to the directors or to the determination of the shareholders as a whole.

According to section 234 (4) and (5), the notice must be served on the company or subsidiary, which may appear before the court to state whether it will initiate, continue, defend, or discontinue the relevant proceedings.

III. Restraining Orders

The court may on an application made under section 233 of the Act, make an order restraining a company that, or a director of a company who, proposes to engage in a conduct that would contravene the articles of the company or any provision of this Act, from engaging in that conduct.

(2) An application may be made by, (a) the company; or (b) a director or shareholder of the company.

13) Major Transactions (Section 185)

A company shall not enter into any major transaction, unless such transaction is—

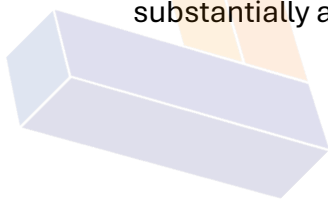
- (a) approved by special resolution;
- (b) contingent on approval by special resolution;
- (c) consented to in writing by all the shareholders of the company; or
- (d) a transaction which the company is expressly authorised to enter into by a provision in its articles, which was included in it at the time the company was incorporated.

In this section the reference to—

“assets” includes property of any kind, whether corporal or incorporeal;

“major transaction”, means—

- (a) the acquisition of or an agreement to acquire whether contingent or not, assets of a value which is greater than half the value of the assets of the company before the acquisition;
- (b)
.....;
- (c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities of a value which is greater than half the value of the assets before the acquisition; or
- (d) a transaction or series of related transactions which have the purpose or effect of substantially altering the nature of the business carried on by the company.



14) Debenture Holder Rights and Protections

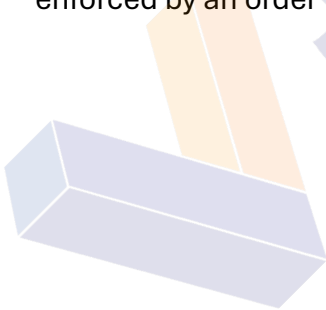
Unlike shareholders, who are the owners of the company, debenture holders are creditors whose rights arise entirely from the terms of the debenture trust deed. Their interests centre on the timely payment of interest and the repayment of principal, rather than participation in the company's governance. The trust deed operates as the governing instrument, appointing a trustee to represent all debenture holders and oversee the company's compliance with its obligations. These obligations commonly include maintaining specified financial ratios, limits on further borrowing, and requirements for periodic financial reporting.

Protecting debenture holders therefore involves regularly reviewing the trust deed to identify all covenants and payment commitments, monitoring financial performance to ensure the company can continue servicing its debt, and maintaining open communication with the trustee regarding compliance. If the company defaults, the trustee may invoke the remedies provided in the deed, including appointing a receiver to take control of secured assets.

According to section 81, every company which has issued debentures shall maintain a register of holders of debentures of the company. A copy of any trust deed for securing an issue of debentures shall be forwarded to every holder of any such debentures at his request, on payment of specified sum.

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A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.



TEST YOUR KNOWLEDGE

1) As the Group Business Controller at Hormus Exports Ltd, you are responsible for guiding the company's financial strategy through a period of significant growth. The founding family, who are the major shareholders, wish to declare a special dividend of Rs. 200 million following a profitable year.

However, the company also has firm plans to invest Rs. 400 million in a new processing line to support its expansion.

The board has asked you to address a critical question: How should the company assess its financial stability before declaring a significant dividend to its shareholders, and what are the implications for its capital structure?

