

Issue of Preference Shares

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Preference Shares :-

Preference share capital means that part of the issued share capital of the company which carries or would carry a preferential right with respect to –

- a) Payment of dividend
 - b) Repayment of the amount of the share capital paid-up or deemed to have been paid up
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Conditions Before Issuing Preference Shares

- a) **Articles of Association** must authorize to issue preference shares
 - b) Call **Board Meetings** and Pass **Board Resolution**
 - c) Approval of members is to be sought by way of **special resolution** in the **general meeting** in case an amendment is to be made in AOA to enable issue of Pref. Shares;
 - d) At the time of issue of preference shares,
 - there should **NOT** subsist any default in the redemption of preference shares issued either before or after the commencement of 2013 Act.
 - **NO** payment of dividend due on any preference shares
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6. What are the regulations that are to be included in the Articles of Association of a company, which intends to issue preference shares?

The regulations in respect of the following matters relating to preference shares are to be included:-

- a) Priority with respect to payment of **dividend** or **repayment of capital vis-à-vis equity shares**;
 - b) Participation in **surplus dividend**;
 - c) Participation in **surplus assets and profits**, on **winding up** which may remain after the entire capital has been repaid;
 - d) Payment of dividend on **cumulative** or **non-cumulative** basis;
 - e) **Conversion** of preference shares into equity shares;
 - f) **Voting rights**;
 - g) **Redemption of preference shares**.
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Minimum Details in Explanatory Statement to be annexed to Notice of General Meeting for issue of Preference Shares

- The following are required to be included in the explanatory statement.
 - a) **Size of the issue** and **number of preference shares** to be **issued** and **nominal value** of each share;
 - b) **Nature of such shares** viz. cumulative or non-cumulative, participating or non-participating, convertible or non-convertible.
 - c) **Objectives** of the issue.
 - d) **Manner** of issue of shares.
 - e) **Price** at which such shares are proposed to be issued.
 - f) **Basis** on which the **price** has been arrived at.
 - g) **Terms** of issue, including terms and rate of **dividend** on each share, **premium** etc.
 - h) Terms of **conversion**, if convertible.
 - i) Terms of redemption, including the **tenure** of redemption, redemption of shares at premium
 - j) **Manner** and modes of redemption.
 - k) **Current shareholding pattern** of the company.
 - l) **Expected dilution** in equity share capital upon conversion of preference shares.
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Maximum Period

20 YEARS

- Exemptions :-

A company may issue preference shares for a period exceeding **20 years but not exceeding 30 years** for **infrastructure projects** (Specified in Schedule VI).

However, it is subject to redemption of minimum 10% of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Register To be Maintained

Register of Members maintained under **section 88** shall contain the particulars in respect of such preference shareholders.

Sources of Redemption

- **Redemption of preference shares shall be made only from the following;**
 - i) Out of the profits of the company which would otherwise available for dividend.
 - ii) Out of the proceeds of a fresh issue of shares made for the purpose of such redemption.
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Preference Shares which Can't be Redeemed

Partly Paid
Shares

Sources Of Redemption

- Redemption of preference shares shall be made only from the following;
 - i) Out of the profits of the company which would otherwise available for dividend.
 - ii) Out of the proceeds of a fresh issue of shares made for the purpose of such redemption.
 - A sum equal to the nominal amount of the shares to be redeemed is to be transferred to a reserve called “Capital Redemption Reserve”.
 - 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.
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- **In case of such class of companies as may be prescribed and whose financial statements comply with the accounting standards.**
 - i) Premium payable on redemption shall be provided out of the profits of the company, before the shares are redeemed.
 - ii) Premium payable on redemption of any preference shares issued on or before the commencement of 2013 Act, shall be provided out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.
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Procedures

Step 1: Call Board Meeting

Call a Board Meeting by giving **not less than 7 days** of notice to every director of the company. Decide on the date, time, place and agenda for calling a General Meeting to pass a special resolution for issuing preference shares.

Step 2: Draft a Board Resolution

Prepare a board resolution for issue of preference shares.

The board resolution must address aspects such as:

- Priority with respect to payment of dividends and capital
 - Participation in surplus funds
 - Participation in surplus assets and profits, on winding up of company
 - Payment of dividend – cumulative or non-cumulative basis.
 - Conversion of preference shares in equity shares.
 - Voting rights
 - Redemption of preference shares.
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Step 3: Draft Explanatory Statement to Board Resolution

Prepare an explanatory statement to the Board Resolution with all the facts pertaining to the proposed issue of preference shares. The explanatory statement must include information such as:

- Size, number of preference shares to be issued and value of each share.
 - Nature of shares to be issued, cumulative or non-cumulative, participating or non-participating, convertible or non-convertible.
 - Objectives of the issue.
 - Manner of issue of shares.
 - Price at which shares are to be issue.
 - Basis on which price was calculated.
 - Terms of issue, including terms and rate of dividend (coupon rate) on each share.
 - Terms of redemption, including tenure of redemption, redemption of shares at premium and terms of conversion, if applicable.
 - Manner and modes of redemption.
 - Current shareholding pattern of the company.
 - Expected dilution in equity on conversion, if applicable.
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Step 4: Conduct Board Meeting

Conduct a General Meeting as per the notice to board meeting and pass the special resolution.

Step 5: File MGT-14

- File the special resolution approved in the Board Meeting with the ROC using Form MGT-14 within 30 days.
 - MGT-14 must contain a copy of the approved special resolution and the explanatory statement. The form must be digitally signed by managing director or director or secretary of the company authorised by the Board.
 - In addition, the form must also be digitally signed and certified by a Chartered Accountant or Cost Accountant or Company Secretary in whole-time practice
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THANK YOU
