I. CAPITAL AND SHARES

1. Nature of Shares and Share Capital

(a) What is a Share?

A share is the unit of measure for determining a member’s interest in the company.

The memorandum states the nominal value for each share - members must contribute at least this amount.

(b) Share Capital

There are different aspects to this:

Authorised Share Capital

Total value of shares the company is allowed to allot - also known as nominal or registered capital.

Allotted Share Capital

Value of shares the company has actually allotted to members.

Paid-up Share Capital

Amount that members have paid on their shares, excluding any premium.

Called-up Share Capital

Paid-up capital + any amount members have been called on to pay.

Uncalled Capital and Reserve Capital

Uncalled capital is the amount owing on partly paid shares which members have not yet been called on to pay.

Reserve capital is uncalled capital the company has resolved not to call unless the company is wound up.

2. Classes of Shares

(a) Typical Rights of Shareholders

Member's rights are detailed in the Articles, but the following are typical:

- right to control company through voting at meetings
- right to participate in distribution of profits
- right to participate in surplus assets in a winding up.

(b) Preference Shares

Give preferential right to a dividend of fixed amount or fixed percentage per share - this dividend is paid before anything is paid to ordinary shareholders. Right to dividend is normally cumulative.

Preference shares usually give a preferential right to repayment of capital on a winding up.

Preference shareholders normally have restrictions placed on their power to vote at general meetings.

(c) Ordinary Shares

Dividend depends on company profits and there is no automatic right to a dividend.

3. Issue and Allotment of Shares

Issuing is the process by which members take shares in the company.

A share is allotted when someone acquires an unconditional right to be entered in the register of members.

(a) Allotment Contracts

Usual rules of contract apply. There must be an offer met by an acceptance. A prospectus is not an offer to sell shares, it is an invitation to treat.

It is possible to have a conditional contract which gives an option to demand the allotment of shares at a later date. These option can be traded like shares.

(b) Authorisation of Allotment

CA 1985, s.80 - Directors cannot allot shares without authority given by the existing shareholders or the articles.

The authority must state the maximum number of shares to be allotted. It is a criminal offence to allot shares without proper authorisation, but the allotment remains valid.

(c) Pre-emption Rights

CA 1985, s.89 - existing shareholders must be offered the opportunity to buy any new issue of shares before they are offered elsewhere. Shareholder must be given 21 days to decide whether to buy. Private companies can avoid pre-emption rights.

4. Transfer of Shares

CA 1985, s.182 - shares must be transferable.

Private companies usually restrict members' rights to transfer shares.

(a) Transfer of Unlisted Shares

- transferor signs stock transfer form

- form is given to transferee with share certificate.

- if only part of shareholding is being transferred, form and certificate are sent to the company instead, for certification.

- transferee sends form and certificate to company, which enters him on register of members. New share certificate is issued after two months.

(b) Transfer of Listed Shares

- can be done as for unlisted shares.

- companies that support CREST can transfer listed shares electronically - records are computerised and no share certificate is issued.

(c) Transmission of Shares

Transmission is the automatic transfer of shares by operation of law. It takes place in a number of circumstances.

(i) Death of Shareholder

Shares of deceased shareholder transmit to his executor to deal with as directed by the will or the rules of intestacy.

(ii) Insanity of Shareholder

If shareholder becomes a patient under the Mental Health Acts and a public guardian is appointed, the shares transmit to the public guardian.

(iii) Bankruptcy of Shareholder

Shares held by a bankrupt transmit to his trustee in bankruptcy.

Holder of shares through transmission has the same rights and benefits as a member even if not registered as a member - but he cannot vote. He can choose to be registered and can then vote.

5. Capital Maintenance

Members are entitled to a dividend out of profits. A company cannot return capital to the members. This provision operates to protect creditors.

CA 1985 sets out some legal methods by which the capital of a company can be returned to the members.

(a) Reduction of Capital

CA 1985 ss.135-141

A company can reduce its capital if this is authorised by the articles and the reduction is confirmed by the court. It also requires alteration of the share capital as stated in the memoradum - this needs a special resolution.

The court will only confirm the reduction if satisfied that the company’s creditors have been paid or have consented to the reduction.

(b) Redeemable Shares

CA 1985 s.159(1)

A company can issue redeemable shares if power to do so is given by the articles.

The shares give a temporary membership of the company - the nominal value (and sometimes a premium) is paid to the shareholder at the end of the period.

When shares are redeemed they must be cancelled by the company. The company must make up its capital by issuing new shares or transferring funds from the profit and loss account to the capital redemption reserve account.

Any premium payable on redemption must be paid out of profits.

Private companies can pay for redemption completely out of capital - this needs a special resolution and a declaration from the directors that the assets will exceed liabilities after the payment is made.

(c) Company Purchasing its own Shares

Generally this is prohibited by s.143(1), but s.162 allows a company to buy its own shares in the circumstances provided by the Act and if authority is given in the company’s articles.

(i) Market Purchase

Must be authorised by ordinary resolution, which must state maximum number of shares to be purchased and minimum and maximum price to be paid. The authority cannot last more than 18 months.

(ii) Off-Market Purchase

This requires a special resolution approving the specific purchase contract. If the company is a public company, the authority to buy must expire within 18 months.

When a company has bought its own shares it must cancel them and compensate for lost capital by a new share issue or a transfer of profits to the capital redemption reserve.