



# RAMA UNIVERSITY

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## **FACULTY OF COMMERCE & MANAGEMENT**

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# Lecture-9



## Unit II

### **Duties of a Company Secretary in Relation to Call and Forfeiture**

The price of a share may be payable at a time of making the application of purchase or in installments, as the company desires.

#### **The installments are payable in the following manner:**

- (i) One part at the time of making the application;
- (ii) One part at the time of allotment;
- (iii) The balance may be payable part by part as and when the company calls upon the shareholders to make the payment.

The demands for making installment payments are known as Calls. If any shareholder fails to pay any call money, then the company may forfeit his shares. It means that the defaulter shareholder is no longer recognized by the company as its shareholder. There are distinct procedures for making calls and for forfeiture. Since all these are connected with shares, the Company secretary has the duty to handle them.

#### *Calls:*

A company can make calls at any time as and when it thinks that there is necessity of funds. A call can be made even at the time of winding up to pay the creditors. Sometimes a company may not have to make any call at all during its existence.

#### **The Companies Act provides certain rules with regard to calls (Sees. 91 to 93 and Table A) which are as follows:**

- (1) Not more than  $\frac{1}{4}$ th of the total value of a share can be called for payment at any time.
- (2) No two calls can be made within one month's time.
- (3) All the shareholders belonging to one class of shares shall be asked to pay at the same rate.
- (4) If any shareholder fails to pay his call money, his voting rights are proportionately reduced.
- (5) If any shareholder pays call money in advance (i.e., when no call has been made) his proportionate voting rights do not increase but he may get dividend proportionately on the

excess capital supplied by him if the Articles of Association of the company makes such provision. Regulations 13 to 18 of Table A provide the procedure for making calls.

**Since calls are related to shares, the Company Secretary has to follow the procedure which shall be as follows:**

- (a) To arrange a Board meeting where the decision for making a Call is to be taken.
- (b) To prepare a Call List showing the amount payable by each share holder against the shares held by himself.
- (c) To prepare and send to each shareholder, according to the Register of Members, a Call Notice or Call Letter requesting him to pay the call money within a specified period of time.
- (d) To send a reminder letter to each shareholder who has failed to make payment.
- (e) To send a second reminder to still defaulting shareholders clearly mentioning that the shares will be forfeited if the call money is not paid within a specified period of time.
- (f) To arrange a Board meeting to take a decision on forfeiture of shares, before the second reminder is sent.

#### *Forfeiture:*

It is to be noted that the Companies Act does not provide any Sections specifying forfeiture of shares. Regulations 29 to 35 of the Table A, however, provide the procedure. It is implied that a company can forfeit shares subject to two conditions:

- (i) If there is such provision in the Articles of Association of the company and
- (ii) Only when a shareholder has failed to pay call money and not any other dues by him to the company.

The company may re-issue the forfeited shares at any price and there is a capital profit. Re-issue of forfeited shares is not a case of new allotment but more or less a case of transfer.

**Accordingly, a Company Secretary has the following duties in respect of forfeiture of shares:**

- (a) To arrange a Board meeting; to take a decision on forfeiture after the first reminder for payment of call money to defaulting shareholders has been issued.
- (b) To issue a second reminder to still defaulting members with a caution that shares may be forfeited if the call money is not paid within a specified period of time.
- (c) To have a resolution passed at a Board meeting on forfeiture.

(d) To make necessary changes in the Register of Members and to cancel the share certificates concerned.

(e) In case forfeited shares are re-issued, the Company Secretary has to make further entries in the Register of Members, to issue share certificates to the re-purchasers, and to see that necessary entries are made in the books of account.

### **Duties of a Company Secretary in Relation to Shares**

One of the foremost duties of a Company Secretary is to handle the affairs related to shares. A company limited by shares has a share capital. It means that the total capital is divided into some equal parts, each part is called a share.

The promoters of a company are the first shareholders and then other shareholders join the company by purchasing shares. An intending person applies for shares and he becomes a shareholder when shares are allotted to him.

### **Each shareholder is entitled:**

(a) To get a Share Certificate as an evidence of his shareholding and

(b) To get his name entered into the Register of Members so that he becomes a member.

‘Subsequently a shareholder may transfer his shares to another person for the shares may be transmitted to another person by operation of law.

According to the Companies Act, the Board of Directors is empowered by the Articles to decide on allotment, transfer and transmission of shares. Shares of a public company are freely transferable while shares of a private company are transferable under restrictions as mentioned in the Articles of Association of the company.

A company in its Articles of Association provides the procedure of allotment, transfer and transmission of shares. Table A provides a model procedure. The Company Secretary, who is conversant with the procedure, helps the Board of Directors in the process of allotment, transfer and transmission of shares.

### **Allotment:**

A person intending to buy shares of a company has to make a written application in the prescribed form supplied by the company, together with application money either covering full value of the shares or in part or together with premium if as desired by the company, in case of a widely held public company a share application form is attached to the Prospectus.

The term 'allotment' means acceptance of share application by the Board of Directors by passing a resolution at a Board meeting. The Companies Act makes provisions for allotment of shares.

There are three different situations under which allotment takes place and the Company Secretary has to act accordingly. (I) When a new company is promoted and shares are issued or offered for sale then as and when applications together with application money are coming in, the Company Secretary has to do the following:

- (a) To make a chronological (i.e., date and time-wise) record of the applications and sending the money to a scheduled bank.
- (b) To help the Board of Directors in the act of allotment. If applications for shares are received less than the number of shares offered for sale then there is no problem and all the applicants will get shares allotted to them. But problem arises when more applications have come.

**Then the Secretary will do, on behalf of the Board of Directors, allotment which may take place under any of the following three methods as to be mentioned in the Articles of Association of the company: They are:**

*(i) Priority Basis:*

Shares will be allotted to those applicants who have applied for shares first, according to chronological order as recorded,

*(ii) Pro-Rata Basis:*

It is not always justifiable that shares should be allotted on priority basis. And so allotment is made on pro rata basis. Suppose, applications have been received for twice the number of the shares offered for sale. Then each applicant will get half of the shares applied by him accepted and shares are allotted accordingly and the remaining half rejected.

*(iii) Lottery Basis:*

Applications are drawn at random out of the total number of applications thoroughly mixed up such drawings will continue until all the available shares are allotted and the remaining applications will be rejected. Out of the three systems, the second one is the best.

**It has to be noted that allotment of shares cannot be undertaken:**

(i) Before the Minimum Subscription is received in case of a widely held public company (Sec. 69) and

(ii) Unless before at least three days a Statement in lieu of Prospectus has been filed (showing the list of allotments) with the Registrar of Companies in case of a closely held public company (Sec. 70).

(c) At the instance of the Board of Directors the Company Secretary shall (i) issue Letters of Allotment to all the applicants to whom shares have been allotted asking them to pay allotment money within a stipulated time or (ii) issue Letters of Regret to those share applicants whose applications have been rejected. Together with regret letters, cheques shall be sent as refund of applications money.

(d) Within 3 months from the date of allotment of shares, share certificates (Sees. 84, 113) containing the names of the shareholders, the number and value of shares held, serial number of the certificate, date of issue, common seal of the company and signatures of at least two Directors and of the Secretary himself, if any, shall be made ready for delivery and the names of the shareholders with all other details shall be entered into the Register of Members (Sec 150).

Every company must maintain a Register of Members, with alphabetical name index, which has about 20 columns showing the name and description of each member, no. of shares held, date of payment of money, record of transfer of shares, if any, etc.

A separate Register has to be maintained for shareholders in foreign countries. The Company Secretary shall prepare and maintain the Register of Members. The name of the shareholder shall not be entered into the Register of Members if a share warrant is issued to him in place of a share certificate.

(e) The Company Secretary, as an officer of the company and responsible in the process, shall be personally liable and punishable if there is any irregular allotment of shares.

#### **Irregular allotment takes place in many ways:**

(i) If allotment is made before submitting a Statement in lieu of Prospectus to the Registrar in case of a closely held public company.

(ii) If allotment is made, in case of a widely held public company, before minimum subscription is raised. Or

(iii) Before fifth day from the date of issue of Prospectus to the public while counting days public holidays shall not be counted.

(f) After the allotment is over, the Company Secretary shall submit, within 30 days after allotment, a Return on allotments to the Registrar of Companies (Sec. 75).

### **(2) When an Existing Company Issues Rights Shares:**

If an existing company, after two years from its formation or after one year from the date of first allotment of shares, wants to raise fresh capital by offering for sale new shares out of the shares not yet issued, then it should first offer the shares to the existing shareholders on pro rata basis (Sec 81.)

Such shares are called Rights Shares,

(a) The Company Secretary has to send letters to all the shareholders making such offer expecting reply within 15 days,

(b) Some of the shareholders may send Letters of Acceptance while others may send Letters of Renunciation. It means some shareholders accept the offer while others reject or renounce it. Those who agree have to pay for the shares. Accordingly the Company Secretary has to take steps for the allotment of shares to the former group of shareholders and to make arrangement for the issue of rejected shares to outside public.

### **(3) When an Existing Company Issues Bonus Shares:**

The members of a company by passing a resolution may convert the reserves of the company into share capital divided into shares. Such shares are called Bonus Shares. Such shares are offered to the existing shareholders on pro rata basis on their shareholdings.

The shareholders have not to pay anything for such shares nor they can renounce such shares. It is the duty of the Company Secretary to send necessary notices to all the shareholders and to make necessary changes in the Register of Members. Fresh share certificates shall be issued for the additional shares.

### **Transfer:**

It is an inherent right of a shareholder to transfer his shares to another person freely in case of a public company and under restrictions in case of a private company as provided in its Articles of Association. The Companies Act provides the guidelines for transferring of shares (Sees 108 to 113). Regulations 19 to 24 of the Table A provide a model of procedure.



According to the Act, a shareholder or transferor has to obtain a Share Transfer Deed or Instrument of Share Transfer (purchasable in the market) duly certified by a public servant, on which the shareholder as the transferor has to make endorsement of the shares in favour of the transferee and sign his name on necessary stamp.

The transferor shall hand over the share certificate together with the instrument to the transferee and take the money from the transferee by way of consideration. The transferee will send these documents to the company for acceptance and other necessary actions.

**On receiving these documents the duties of the company secretary will be:**

- (a) To inspect and to verify-the correctness of the instrument and genuineness of the share certificate. He will issue a Transfer Receipt to the transferee.
- (b) To write a letter to the transferor and the transferee each, called the 'notice of lodgment of transfer', inviting objections to the transfer, if any. This is very important particularly when shares are not fully paid.
- (c) If no objection is received within two weeks from the sending of above notice, the matter will be placed by the Company Secretary at the next meeting of the Board of Directors for approval or disapproval of transfer. Normally, disapproval is not made unless there are strong reasons in the interests of the company.
- (d) Within two months from the approval, the Company Secretary shall issue a new share certificate to the transferee in exchange of Transfer Receipt, remove the name of the transferor from the Register of Members and enter the name of the transferee in it. Instead of issuing a new share certificate the old certificate duly endorsed by the transferor may be given to the transferee.

**Some complications may arise in the process of issuing share certificate:**

- (i) When all the shares mentioned in a share certificate are transferred, there is no problem. But problem arises when a few shares out all (say 5 out of 10) mentioned in the certificate are transferred by the transferor retaining the remaining ones. In that case two share certificates have to be prepared by the Company Secretary, one for the transferor (for 5 shares) and the other for the transferee (for 5 shares),
- (ii) When a transferor wants to transfer his shares to joint holders, problem arises. Shares of a company cannot be allotted for the first time to joint holders but shares can be transferred to

joint holders. In the latter case the company recognises the first name as the member. The Company Secretary has to do necessary records keeping this point in view.

A company may appoint a Committee of Transfers consisting of a few Directors and the Secretary. In that case the approval of transfer shall be by the Committee. A company may maintain a Register of Transfers and the Company Secretary has to make necessary entries in it.

No transfer can be possible during the time when Register of Members remains closed (not more than 45 days in a year and not more than 30 days at a time). Such closure is necessary generally at the time of annual general meeting to get a final list of members who shall get dividend.'

(e) Sometimes loan capital may be transferred to share capital. For example, debentures are repaid by shares or loan given by a public financial institution is converted into equity capital by the order of the Central Government. Such a transfer is a completely different affair consisting of an elaborate accounting process and is a case of fresh allotment. The Company Secretary has to function in collaboration with the accounts department.

(f) Another kind of transfer takes place when share warrants are exchanged for share certificates and vice versa. In the former case the Company Secretary has to insert the name of the transferee afresh in the Register of Members and in the latter case the name of the transferor is removed from the Register of Members but no new name is inserted. In each case, the approval by the Board of Directors has to be secured.

(g) In a Government Company, shares are often held by the Central Government in the name of the President of India and also in the names of some responsible officers either of the Central Government or of the State Governments. With the change of the President or of the officers, changes have to be brought about by the Company Secretary in the Register of Members.

#### Transmission:

Transmission of shares means transfer of shares by operation of Law. For example, when a shareholder dies, his shares are transferred to his inheritor. The inheritor may hold the shares in his own name or before that he may transfer the shares to any other person.

When a creditor, being unable to get payment from his debtor starts a case and gets a decree on the assets of the debtor including some shares held by the debtor, there is a case of transmission. The Companies Act does not provide any specific Sections for Transmission of shares. But Table A provides Regulations 25 to 28 for the same.

**The Company Secretary has the following duties to do in connection with transmission of shares:**

- (a) To examine all the legal documents and evidences as to the claim made by a transferee. In case of inheritance, the Probate of Will (i.e., a copy of the Will certified by the Court) of the deceased shareholder entitling the inheritor to the shares shall be demanded. If there has been no Will then a Letter of Administration has to be received from the person claiming transmission.
- (b) The Company Secretary has to obtain the approval of transmission by the Board of Directors. The Board of Directors has powers to reject transfer of shares but it cannot normally reject transmission because it is by operation of law.
- (c) After that the Company Secretary has to take all other steps, as in case of a transfer, with regard to issue of new share certificates and necessary changes in the Register of Members. It has to be noted that rules regarding transfer and transmission, of shares also apply to debentures.