

COMPANY LAW

UNIT 3 : Share Capital

TOPIC- CALLS AND FORFEITURE OF SHARES

CALLS & SHARE FORFEITURE

Companies generally instead of demanding the full face value of shares in one go, demand it in instalments as per their capital requirements i.e. on application, on allotment, on first call and on second or final call.

A call may be defined as a 'demand made by the company on its shareholders, to pay whole or part of the balance remaining unpaid on each share, after the allotment of shares, at any time, during its lifetime.'

The unpaid amount of the share is like a **debt** due from a member to the company but the **liability to pay it does not arise until a valid call has been made** by the company.

REQUISITES OF A VALID CALL-

- **Call must be authorised by a valid resolution of BOD**-The call resolution must specify the amount, the date and the place of payment.
- **Call must be made on uniform basis on all shares of same class**- Discrimination should not be made between shareholders of same class as regards the amount and time of payment of call.
- **Call must be made bonafide in the best interest of company**-Call must be made only when the company is in need of funds. The directors should not misuse the power to make calls for their personal benefits.
- **Call must conform to the provisions of AOA**- Call must be made strictly as per the provisions of AOA of the company. But incase AOA are silent on this issue, then Regulation 13 of Table F shall apply which states that
 - ✓ The maximum amount per call shall be 25% of face value of share
 - ✓ Atleast 1 months' gap should be there between two successive calls
 - ✓ Members be given atleast 14 days' prior notice stating amount, time & place of call
 - ✓ The directors have the discretion to revoke or postpone a call

Forfeiture of shares

Forfeiture means **confiscation of the shares of a shareholder by way of penalty for the nonpayment of any call**. Instead of taking a legal action against the defaulter to recover the call money, companies prefer to resort to forfeiting the shares. A company does not have a statutory right to forfeit shares and so they expressly insert a clause on forfeiture in their AOA to get the authority. If the AOA permit for forfeiture of shares, then it shall be as per the AOA. If Articles are silent, then forfeiture shall be as per the relevant Regulations (i.e. Regulations 28-34) of **Table F of Schedule I** -

- Shares are generally forfeited against nonpayment of call but AOA can provide for any additional ground for forfeiture.
- The defaulting member should be served proper notice giving him reasonable time to pay due call together with interest for the delayed period and informing him that incase he fails to pay by the certain date, his shares will be forfeited.
- If the member still does not comply with the notice, the BOD will pass a formal resolution of forfeiture and his shares will be forfeited. The forfeited shares shall be sold / reissued on such terms and manner as the Board thinks fit.
- The power of forfeiture is a power of trust which must be exercised bona fide for the good of the company and not for personal reasons like relieving a friend from liability or settling scores with the shareholder whom directors dislike.

Effects of forfeiture

- On forfeiture, the defaulting shareholder **ceases to be the member of the company** and his name is removed from the register of members
- He **loses his claim to the paid up amount** on his shares.
- If AOA so provide, he will also **remain liable for the unpaid calls** (just like an ordinary debtor of the company) for a period of 3 years from the date of forfeiture as articles are in the nature of contract between company and member. But the company cannot recover from him more than the difference between the amount payable on such shares at the time of forfeiture and the amount received from its subsequent holders .
- Forfeiture of shares **does not result in reduction of capital** as these shares are **reissued**

Reissue of Forfeited Shares

- Forfeited shares can be issued at par, premium or discount. But discount on reissue of a share cannot exceed the amount forfeited on such shares
- Reissue can be done only after suitable resolution of the board of directors .
- After the reissue, the new holder becomes the shareholder of the company and his name will be entered in register of members
- Reissue of forfeited shares is regarded as sale and not as allotment and therefore there is no need to file Return of Allotment with the ROC with respect of reissued shares.

Surrender of shares

Surrender of shares means **the return of shares by the shareholder to the company for cancellation voluntarily**. The legal effects of surrender as well as forfeiture are similar. The amount already paid on such shares is also confiscated and these can also be reissued in same way. There is no provision for surrender in the Companies Act or Table F. However , AOA may allow surrender of shares . But in that case ,BOD can accept surrender of only partly paid shares and that too where their forfeiture is justified i.e where a call has been made and amount remains unpaid after the due date. Surrender of fully paid shares is out of question.

SURRENDER VS FORFEITURE

- **Surrender is a shortcut to forfeiture, which is a lengthy process.**
- **Surrender involves the initiative of the shareholder whereas forfeiture is at the initiative of the company.**