

**NEWS LETTER**

**COMPANY LAW**

**AND**

**CORPORATE AFFAIRS COMMITTEE**

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# ARTICLE

01.11.2024

## APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES

### INTRODUCTION:

The share capital of a company limited by shares shall be of two kinds.

- (a) **Equity share capital**— (i) with voting rights; or (ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed;
- (b) **Preference share capital.**

The nominal value, or face value, of a share, is the value that is assigned by the issuing company when the share is issued. This value will be mentioned in the certificate that is issued by the issuing company to those who subscribe to the shares and allotment is made. The company is at liberty to issue the share at a price above the nominal value. The price difference between the issue price and the nominal value is what is called as “**Premium**”. On the same footing, if the share is issued at a price less than the nominal value, the difference between the nominal value and the issue price is called as “Discount”. As per Section 53 of the Companies Act 2013 (Act) A company shall not issue shares at a discount except to the extent provided under Section 54 of the Act (Section 54 deals with issue of sweat equity shares).

### CHARGING SECTION:

**Section 52 of the Companies Act 2013** – which is also reproduced below for easy reference:

*52. Application of premiums received on issue of shares.*

*(1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account” and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.*

*(2) Notwithstanding anything contained in sub-section (1), the securities premium account may be applied by the company—*

*(a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;*

*(b) in writing off the preliminary expenses of the company;*

*(c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;*

*(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or*

*(e) for the purchase of its own shares or other securities under section 68.*

*(3) The securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133,—*

*(a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or*

*(b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or*

*(c) for the purchase of its own shares or other securities under section 68*

### **SECURITIES PREMIUM ACCOUNT:**

When a company issues shares at a premium, (i.e at a value higher than the nominal value of the share) whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to an account titled as “securities premium account”.

### **APPLICATION OF THE AMOUNT LYING TO THE CREDIT OF SECURITIES PREMIUM ACCOUNT:**

The securities premium account may be applied by the company towards one or more of the following:

(a) Towards the issue of unissued shares of the company to the members of the company as **fully paid bonus shares**;

(b) in writing off the **preliminary expenses** of the company;

(c) in writing off the **expenses of, or the commission paid or discount** allowed on, **any issue of shares or debentures of the company**;

(d) in providing for the **premium payable on the redemption of any redeemable preference shares or of any debentures** of the company; or

(e) for the **purchase of its own shares or other securities** under section 68.

**NOTE:** The restriction provided under Section 55(2)(d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company needs to be noted.

*Section 55(2)(d) (i) in case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed:*

*Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.*

*(ii) in a case not falling under sub-clause (i) above, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.*

### **UTILIZATION OF AMOUNT LYING IN SECURITIES PREMIUM ACCOUNT BY CLASS OF COMPANIES WHOSE FINANCIAL STATEMENT COMPLY WITH THE ACCOUNTING STANDARDS PRESCRIBED FOR SUCH CLASS OF COMPANIES UNDER SECTION 133:**

Notwithstanding anything provided under Section 52(1) and (2) such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133 may utilize the amount lying in Securities Premium Account for the following:

- (a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid **bonus shares**; or
- (b) In writing off the **expenses of or the commission paid or discount allowed on any issue of equity shares of the company**; or
- (c) For the **purchase of its own shares or other securities under section 68**.

### **RESTRICTIONS UNDER IFRS:**

Adjustment of Preliminary expenses and premium payable on the redemption of any redeemable preference shares or any debentures against Securities premium account is not permitted under IFRS.

### **UTILIZATION OF AMOUNT LYING IN SECURITIES PREMIUM ACCOUNT FOR PURPOSES OTHER THAN THOSE PRESCRIBED ABOVE:**

The provisions of this Act relating to reduction of share capital of a company shall, except as provided in Section 52, **apply** as if the securities premium account were the paid-up share capital of the company. The logical reasoning is that if a company issues shares at a value more than the par value of the share, then such excess amount is effectively part of the equity capital and hence the law treats share premium as part of share capital.

Divergent views exist. Some are of the opinion that if the Articles of Association facilitates utilization of share premium for the purposes other than those specified under Section 52(2), then it is permissible. In some instance in corporate restructuring scheme of arrangement a clause is provided for utilization of share premium for purposes other than those prescribed under Section 58(2). There are arguments and pronouncements stating that the list provided under Section 52(2) is only illustrative and not exhaustive.

### **ISSUE OF CONVERTIBLE DEBENTURES – TREATMENT OF PREMIUM AT THE TIME OF ISSUE AND AT THE TIME OF CONVERSION**

Company can issue convertible debentures at a premium. The requirement of Section 52 of the Act does not apply. The company can effect the conversion at par. The premium collected at the time of issue of convertible debentures will be transferred to Profit and Loss Account.

In the alternate can be amortized over the tenure of the debentures. It is to be kept in mind that if the issuing company issues convertible debentures at par but converts it at premium, then the premium amount should be transferred to Securities Premium account.

### **DISCLOSURE:**

Disclosure as mandated under Schedule III depending upon whether:

- a) the company comply with INS AS or not,
- b) whether it is a NBFC

should be made with reference to the classification of Securities Premium.

**Notable tips:** Under Section 68 of the Act, the term free reserves include Securities premium account.

### **CONTRAVENTION AND CONSEQUENCE:**

There is no specific penalty or fine provided and hence the general Section 450 will apply.

#### **Section 450: Punishment where no specific penalty or punishment is provided:**

*If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.*

### **DISCLAIMER:**

The above compilation on the topic “APPLICATION OF PREMIUMS RECEIVED ON ISSUE OF SHARES” is for better understanding and ease of doing the compliance. The above write up does not constitute or purport to be an advice or opinion in any manner. The information provided is not intended to create any client relationship and is not for advertising or soliciting. B RAVI & ASSOCIATES do not intend in any manner to solicit work through this. The objective is only to share information based on the author’s understanding on the subject. B RAVI & ASSOCIATES is not responsible for any error or mistake or omission in this write up or for any action taken or not taken based on the contents of this write up. It is advisable to refer the legislation and the Notifications issued by the Ministry of Corporate Affairs before taking any decision or action.

Any error may please be brought to our notice. Email: [bravics@gmail.com](mailto:bravics@gmail.com)

**Compiled by Dr B RAVI, Managing Partner, B RAVI & ASSOCIATES**

**MINISTRY OF CORPORATE AFFAIRS: SEPTEMBER 2024 – NOTIFICATIONS**

<b>S. No.</b>	<b>Date of Notification/ Circular</b>	<b>Notification/ Circular No.</b>	<b>Effective date of the Notification/ Circular</b>	<b>The Amended Rule</b>
1.	03.10.2024	G.S.R. 607(E)	04.10.2024	Investor Education and Protection Fund Authority (Form of Annual Statement of Accounts) Amendment Rules, 2024
2.	09.10.2024	G.S.R. 630(E)	09.10.2024	Companies (Adjudication of Penalties) Second Amendment Rules, 2024

**RELEVANT NOTIFICATIONS/CIRCULARS/AMENDMENTS/CONSULTATION PAPERS- SEBI**

<b>October 25, 2024</b>	<b>Annual Compliance Certificate for Client Level Segregation by Non-individual Investment Advisers and timeline for submission of periodic reports</b>
<b>October 25, 2024</b>	<b>Periodic Reporting format for Research Analysts and Proxy Advisers</b>
<b>October 24, 2024</b>	<b>Clarification with respect to advertisement code for Research Analysts (RAs)</b>
<b>October 22, 2024</b>	<b>Modification in Annexure to Common Application Form (CAF)</b>
<b>October 22, 2024</b>	<b>Association of persons regulated by the Board and their agents with certain persons</b>
<b>October 22, 2024</b>	<b>Inclusion of Mutual Fund units in the SEBI (Prohibition of Insider Trading) Regulations, 2015</b>
<b>October 18, 2024</b>	<b>Clarification with regard to usage of 3 – in – 1 type accounts for making an application in public issue of securities</b>
<b>October 16, 2024</b>	<b>Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism</b>

<b>October 15, 2024</b>	<b>Monitoring of position limits for equity derivative segment</b>
<b>October 14, 2024</b>	<b>Monitoring Shareholding of Market Infrastructure Institutions (MIIs)</b>
<b>October 14, 2024</b>	<b>Corrigendum to Circular on Ease of Doing Business in the context of Standard Operating Procedure for payment of “Financial Disincentives” by Market Infrastructure Institutions (MIIs) as a result of Technical Glitch</b>
<b>October 10, 2024</b>	<b>Change in timing for securities payout in the Activity schedule for T+1 Rolling Settlement</b>
<b>October 10, 2024</b>	<b>Extension of timeline for implementation of SEBI Circular SEBI/HO/MIRSD/MIRSD-PoD1/P/CIR/2024/75 dated June 05, 2024</b>
<b>October 08, 2024</b>	<b>Specific due diligence of investors and investments of AIFs</b>
<b>October 07, 2024</b>	<b>Timelines for disclosures by Social Enterprises on Social Stock Exchange (“SSE”)</b>
<b>October 03, 2024</b>	<b>Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015</b>
<b>October 01, 2024</b>	<b>Review of Stress Testing Framework for Equity Derivatives segment for determining the corpus of Core Settlement Guarantee Fund</b>
<b>October 01, 2024</b>	<b>Measures to Strengthen Equity Index Derivatives Framework for Increased Investor Protection and Market Stability</b>



## CONSULTATION PAPERS FOR PUBLIC COMMENTS:

Date	Title
Oct 24, 2024	<u>Valuation of repurchase (repo) transactions by Mutual Funds</u> <a href="#">Click here to provide your comments</a>
Oct 22, 2024	<u>Consultation Paper on recognition as specified digital platform</u> <a href="#">Click here to provide your comments</a>
Oct 16, 2024	<u>consultation paper on “Opening of demat account in the name of Association of Persons (AOPs) for holding certain securities in dematerialized form”</u> <a href="#">Click here to provide your comments</a>
Oct 08, 2024	<u>Consultation paper on draft circular for “Policy for Sharing Data for the Purpose of Research /Analysis”</u> <a href="#">Click here to provide your comments</a>
Oct 04, 2024	<u>Consultation paper on draft circular for “Facilitation to SEBI registered Stock Brokers to access Negotiated Dealing System-Order Matching (NDS-OM) for trading in Government securities- Separate Business Units (SBU)”</u> <a href="#">Click here to provide your comments</a>

### RELEVANT NOTIFICATIONS/CIRCULARS/AMENDMENTS/CONSULTATION PAPERS- RBI

1.	09.10.2024	RBI/2024-25/80 DOR.STR.REC.45/04.02.001/ 2024-25	-	Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit
2.	10.10.2024	RBI/2024-25/81 DoR.FIN.REC.47/20.16.042/ 2024-25	To be implemented within 6 months of the date of the circular.	Implementation of Credit Information Reporting Mechanism subsequent to cancellation of licence or Certificate of Registration
3.	19.10.2024	RBI/2024- 25/84DOR.AML.REC.48/14.06 .001/2024-25	Immediate	Designation of one organisation under Section 35(1) (a) and 2(1) (m) of the Unlawful Activities (Prevention) Act, 1967 and its listing in the First Schedule of the Act- Reg.

## **NOTABLE POINTS:**

- ❖ The NCLAT, Delhi ruled that the limitation period for filing an appeal starts from the judgment's pronouncement date, not the date of receiving a free copy. The tribunal dismissed a 15-day delay appeal, holding that receiving a free copy late cannot extend the limitation period.
- ❖ Sub Registrars cannot refuse to register a property transfer document merely because of non-production of either the original parent document of the property or a non-traceable certificate from the police if the parent document had been lost, the Madras High Court has held. A Division Bench of Justices R. Subramanian and R. Sakthivel held it would suffice to submit certified copies of the parent document and that the Sub Registrars could always cross check the genuineness of those copies with the original records available with their office.

**DR B RAVI  
CHAIRMAN  
COMPANY LAW AND CORPORATE AFFAIRS COMMITTEE  
04.11.2024**