



REDUCTION OF SHARE CAPITAL



BACKGROUND

The purpose of this presentation is to highlight the brief procedure of reduction of share capital of the Company as per the relevant sections of Companies Act, 2013 and other various statutory laws as applicable in India.



BACKGROUND

The reduction of share capital is one of the options available for withdrawal of cash in a company. The company can pay off any paid up share capital which is in excess of the wants of the company, if authorized by its articles, subject to the approval of National Company Law Tribunal (“NCLT” or “Tribunal”) and “No Objection” from the Creditors. However, certain amount of paid up capital and free reserves are required to be retained in order to meet day-to-day expense and other debts of the Company.

Pre-requisites for filing an application for reduction of share capital of company

A company cannot make an application for reduction in capital if it is in arrears in the repayment of any deposits accepted by it and interest payable thereon. An application to confirm a reduction of share capital shall be accompanied with:

- The list of creditors duly certified by Managing Director, or in his absence, by directors not earlier than 15 days prior to the date of filing of an application;
- A certificate from the auditors verifying the list of creditors;
- A certificate from auditors and declaration by a director verifying that as on date, the company is not in default of repayment of any deposits and interest thereon;
- A Certificate from auditors verifying that the accounting treatment applied for capital reduction is in conformity with accounting standards as on date.



PROCEDURE FOR REDUCTION IN SHARE CAPITAL OF THE COMPANY

Steps for Capital Reduction

- Step 1** *First step for capital reduction is to check if the Articles of Association (“AOA”) of a company permit for such reduction. In case the relevant clause for reduction of capital is not present in AOA, the clause needs to be incorporated by passing a special resolution in the general meeting of the shareholders in order to alter the existing AOA by adding the clause for capital reduction.*
- Step 2** *Valuation needs to be done for the shares of the company as on date and also latest audited financial statements and provisional financials as on date are required.*
- Step 3** *Board Meeting of the board of the directors of the company needs to be convened to give approval for capital reduction and also to give approval to convene Extra Ordinary General Meeting (“EGM”) for the purpose of approval of shareholder for the reduction of share capital of the company.*
- Step 4** *Dispatch of notice of the EGM to the shareholders at least 21 days before the date of EGM; or EGM can be convened at a shorter notice by taking the consents from the shareholders.*



Steps for Capital Reduction

- Step 5** *Drafting and preparation of the application along with the preparation and collation other relevant documents/information required for reduction in share capital of the Company*
- Step 6** *Convene EGM and place before the shareholders draft application along with other documents prepared for their approval with respect to capital reduction and pass the special resolution for the same.*
- Step 7** *Execution and signing of all the documents and arrangement for the legalization of documents wherever required.*
- Step 8** *Filing of respective e-form with Registrar of Companies (“ROC”) for registering the special resolution.*
- Step 9** *Obtaining certificates from auditor verifying list of creditors, verifying that company as on date is not in arrears in the repayment of deposits and verifying the accounting treatment with respect to capital reduction.*



Steps for Capital Reduction

- Step 10** *The application for capital reduction along with the necessary documents and certificates to be filed with NCLT.*
- Step 11** *The Tribunal shall give notice of the application or direct that notice to be given to the Central Government, ROC and the Creditors of the Company within 15 days of filing of application and shall take into consideration, the representations and objections if any, made to the Tribunal within a period of three months from the date of receipt of the notice*
- Step 12** *Preparation and publication of advertisement of the application within 7 days from the date on which directions are given by the Tribunal in English newspaper and in a vernacular language newspaper, both having wide circulation in the state in which the registered office of the company is situated.*
- Step 13** *The Company to be file an affidavit confirming the dispatch and publication of the notice within 7 days of dispatch of notice and publication.*
- Step 14** *Intimations also need to be sent to from the Income Tax Authorities and followed up with them for obtaining NOC's with respect to reduction of share capital.*



Steps for Capital Reduction

Step 15

The Tribunal may, if it is satisfied that the debt or claim of every creditor has been discharged or determined or consent has been obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit.

Step 16

On receipt of the order, file the order approved by the Tribunal in prescribed e-form with ROC with in 30 days from the date of order.

Step 17

Preparation and arrangement for publication of the Order of the reduction of the share capital as per the direction of the Tribunal and preparation to make necessary compliances as per scheme of reduction approved by the Tribunal. Further, amendment of Memorandum of Association by reducing its share capital and its shares accordingly.



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