

# Share Capital

## What is a share?

A share can be defined as a chose in action, intangible, can get a certificate for a share/s but bet do not own a portion of the company's property. It exists as a bundle of rights, such as voting in certain matters, and being issued dividends.

"Once issued a share comprises a collection of rights and obligations relating to an interest in a company of an economic and proprietary character, but not constituting a debt" - *Pilmer v The Duke Group (2001)*

## What is Share Capital? the money bag

Share capital is the total amount that investors provide to the company in consideration for the shares issued to them.

Shares come within the definition of securities: **s92**

There is an obligations imposed on companies to maintain their capital (keep a register of all the people who own shares) - *Trevor v Whitworth (1887)*

## Issued Capital:

**s254C:** Shares of a company have no par value (company is no longer restricted to a predetermined par or nominal value)

The company may issues or partly paid: s254A(1)(c)  
**FULLY** = share holder has paid the entire issue price of the shares, and ave no further obligation to contribute money to the company.

**PARTLY** = share holder is liable to pay calls on the shares unless the company is a no liability company (mining company): **s254M.**

The part unpaid on partly paid shares is called "reserve capital" or "uncalled capital."

The company can grant a security interest in uncalled capital: **s124(1)(e).**

(ASX operating rule 3801 requires market participants such as brokers to alert retail clients of the need to inform themselves of their rights and obligations in relation to partly paid shares)

## Issuing Shares - Contractual Rules

### OFFER AND ACCEPTANCE

**OFFER**- Investor makes an offer to acquire shares by sending the company an application form and paying the issue price.

**ACCEPTANCE** - the offer is accepted whom the company, through its directors, decides to allot the shares and sends the notice of allotment.

## When are shares allotted?

- Allotment is usually by post, acceptance is deemed effective when posted - *Byrne v Van Tienhoven (1880)*
- Offer lapses if not accepted within reasonable time (5months after offer was sent, no longer capable of acceptance by the company when attempted to allot the shares - *Ramsgate Victoria Hotel Co. v Montefiore (1866)*

## Can the company issue fewer shares than has been applied for?

- application forms for share issues usually provide that the applicant agrees to take the number of shares applied for or any lesser number that is allotted. This prevent problems arising where the number of shares applies for exceed the number of shares the company proposes to issue.

## Issues of Shares vs Allotment of Shares

Allotment: is the acceptance of an application or offer and appropriation of a given number of shares to the allottee (allottee will then become a shareholder).

Allotment is one step in the broader issue of shares.

- allotment, entry in the share register and the sealing and delivery of share certificates are matter of fact which constitute the issue of shares considered as form of personal property - *Commonwealth Homes and Investment Co Ltd v Smith (1937).*

Restrictions on Allotment: prohibit or make it an offence to issue securities in certain circumstances where conditions set out in a disclosure document are not met.

## Minimum Subscription

- if a company disclosure document states securities will not be issued unless application for a minimum number of securities are received or a minimum amount is raised, the person making the offer must not issue any of the shares until the minimum subscription condition is satisfied: **s723(2).**
- Application money received from investors must be held in trust until the minimum subscription condition is fulfilled and the securities (shares) are issued: **s722.**
- If minimum subscription condition is to satisfied within four months after the date of the disclosure document, the company must:
- repay the money received from the applicants: **s724(2)(a).**
- or change the terms of the offer: **s724(2)(b).**