Chapter 5: Share Capital and Commencement of Business

1 Chapter Roadmap

SHARE CAPITAL nature · authorised & paid up · classes · variation of rights (Sec. 1) → **ALTERATION OF SHARE CAPITAL CLAUSE** increase · consolidate · sub-divide · cancel (Sec. 2) → **COMMENCEMENT OF BUSINESS** prospectus · statement in lieu · conditions (Sec. 3) → **OBJECTIVE BASED Q&A** (Sec. 4)

Theme: what a share is, the different layers of share capital, ordinary vs preference shares, how class rights are varied and challenged, how the capital clause is altered, and when a public company may start business.

2 Nature of Shares [Sections 2(63) & 60 to 62]

Share [Section 2(63)]
"Share" means a share in the share capital of a company.

Movable property
A share is **movable property**, carrying rights and obligations, transferable in the manner provided by the **articles**.

Paid in full
A share must be paid for **in full** when allotted.

Distinctive number
Every share in a company having share capital is distinguished by its **distinctive number**.

Evidence of title
A certificate in **physical form** (signed by an authorised officer) or in **book-entry (electronic) form** is the main evidence of title. Manner and form of certificates may be specified in the articles.

① **ISSUE** company offers its shares → ② **SUBSCRIPTION** people / promoters pay for the shares → ③ **ALLOTMENT** shares allotted in applicants' names – capital is paid up

3 Layers of Share Capital

AUTHORISED (NOMINAL) CAPITAL
maximum fixed by the memorandum – Rs. 8,000,000

ISSUED & PAID-UP CAPITAL
nominal value of shares issued (allotted)
≤ authorised – can never exceed it

400,000 × Rs. 10 = Rs. 4,000,000

fully paid → shareholders' further liability = NIL

Example 01 – ABC Limited: authorised 800,000 ordinary shares of Rs. 10 each.

Authorised capital [Section 2(5)]
"Authorised capital" or "nominal capital" – capital authorised by the memorandum to be the **maximum** amount of share capital of the company.

Fully paid shares only [Section 58]
A company having share capital shall issue **only fully paid shares** (partly paid shares were allowed many years ago).

Publication [Section 25]
If a notice, advertisement or publication states the **authorised** capital, it must state the **paid-up** capital in an **equally prominent** position and equally conspicuous characters – else company and officers in default are liable to penalty.

Nominal value
Face value / **par value**.

Market value
Price at which shares trade on the exchange or otherwise.

Chapter 5: Share Capital and Commencement of Business

4 Kinds & Classes of Share Capital [Section 58]

Kinds & classes
Different **kinds** (ordinary, preference) and **classes** under each kind (class A, class B…) – as provided by the **memorandum and articles**.

Same class = same value
Within a class, all shares have the **same fixed nominal amount** and equal rights (e.g. 500,000 ordinary shares all of Rs. 10).

Authorised for each kind
A company may have more than one kind of share capital only if its **authorised capital** (in the memorandum) includes all those kinds.

5 Ordinary vs Preference Shares – Don't Confuse!

	Ordinary Shares ("equity shares")	Preference Shares
Voting rights	Entitled to vote at general meetings (normally **one vote per share**); classes may have different voting rights	Usually **not** entitled to vote, or only on certain issues stated in the articles
Dividend	**Residual** profit after preference dividend	**Prior right** (ahead of ordinary) – usually **fixed**; may or may not be cumulative
Winding up	All **surplus assets** after return of nominal value to preference shareholders	**Prior right** to return of nominal value, but **no further share** in surplus
Basis of classes	Different voting rights, rights disproportionate to paid-up value, different entitlements to dividend, right issue and bonus shares	Varying fixed-dividend %, cumulative or not, redemption, or conversion into ordinary shares

Variations that may be attached to different classes (Pioneer Shipping Ltd)

- different voting rights; voting rights disproportionate to paid-up value; voting for specific purposes only; or no voting rights at all
- different rights to dividend, right shares or bonus shares, or to receive notices and attend general meetings
- rights and privileges for an indefinite period, or for a limited specified period

Why different voting rights? To maintain a **fair allocation of voting power** among different classes of shareholders.

6 Variation of Shareholders' Rights [Section 38]

ALTER THE ARTICLES by **SPECIAL RESOLUTION** (variation = reducing, enhancing or cancelling rights) → **CLASS AFFECTED?** at least **3/4 OF THE MEMBERS / CLASS AFFECTED** must vote for it → **FILE** altered articles with registrar within **30 DAYS** of the resolution

Practice Q – Saga Limited (listed): wants a new Class C (non-voting) ordinary share not in its MoA / AoA → first **alter MoA and AoA by special resolution** (+ 3/4 of any affected class) → file altered articles within 30 days → then issue. Pioneer Shipping's directors' resolution for Class B is valid **only if** the MoA and AoA provide for it.

Chapter 5: Share Capital and Commencement of Business

7 Challenging the Variation in Court [Section 59]

Who
Member(s) of the **affected class** holding at least **10%** of that class, aggrieved by the variation – application may be made by one or more of them **authorised in writing**.

Where & when
To the **Court** (not the registrar or Commission), within **30 days** of the date of the resolution.

After the order
Company files a copy of the court's order with the registrar within **15 days** of receipt.

Ground 1 – facts withheld
The company **withheld facts** in getting the resolution passed – had members known them, they would not have passed it (relevant where the applicant **voted for** it).

Ground 2 – unfair prejudice
The variation is otherwise **prejudicial** / would unfairly prejudice the class (relevant where the applicant **voted against** it).

Scenario	Advice
Pioneer Shipping – Ahmed 9% and Faraz 10% of Class A oppose new Class B	Together (19%) – and Faraz alone (10%) – meet the 10% test → apply to Court within 30 days
Paradise Ltd – special resolution on 20 Aug 20X3 varies Class B rights	Aggrieved Class B holders with ≥ 10% of Class B → apply within 30 days of 20 Aug
Sapphire Ltd – Class A voting rights increased by 50%; Faiza (Class B) objects	If she holds ≥ 10% of Class B (alone or with others authorising her in writing) → Court within 30 days
Candid Oils – Class B votes cut from 2 to 1 per share	Class B holders with **10% or more** of Class B → apply to the **Court**

If the Court cancels the resolution (Cadmium Limited)
Company can no longer implement the variation · must **reverse** actions taken under it · file the court order with the registrar within **15 days** · re-file the articles in their previous form · every copy of the articles issued afterwards must follow the court's decision.

8 Alteration of Share Capital Clause [Section 85]

A company having share capital may, **if authorised by its articles**, alter the capital clause of its memorandum by **special resolution** to:

(a) Increase
its authorised capital

(b) Consolidate
and divide into shares of **larger** amount

(c) Sub-divide
into shares of **smaller** amount

(d) Cancel
shares **not taken** or agreed to be taken – and diminish capital accordingly

Sub-division – Examples 04 / 07

	Before	After
Shares	5,000,000	50,000,000
Nominal value	Rs. 100	Rs. 10
Capital	**Rs. 500m**	**Rs. 500m**

Each member holding 1 share now holds **10**; total paid-up value unchanged.

Re-dividing unissued capital – Example 05
Authorised Rs. 500m (50m ordinary of Rs. 10), of which Rs. 200m paid up → may restate as **25m ordinary** of Rs. 10 (Rs. 250m) + **25m preference** of Rs. 10 (Rs. 250m) = **Rs. 500m**.

Chapter 5: Share Capital and Commencement of Business

Filing with registrar
Special resolution + altered copy of the memorandum within **15 days** of passing the resolution – otherwise the resolution is not effective and **lapses** (Sherwani Ltd: increase Rs. 100m → Rs. 200m).

No effect on rights
On consolidation / sub-division, rights of new shares are **strictly proportional** to the old. New shares of an existing class carry the **same rights** as shares already held.

Applied – JKL Limited: special resolution to sub-divide Rs. 100 shares into Rs. 10 shares passed at the AGM on **24 October 2025** → file within 15 days → Day 1 = 25 Oct ... Day 15 = **8 November 2025**.

9 Private → Raising Money from the Public

Practice Q – Swordfish (Private) Limited (authorised & paid-up Rs. 400m; wants Rs. 200m from the public)

Memorandum:
- remove "(Private)" from the name
- if raising by shares – **increase authorised capital** by at least Rs. 200m

Articles:
- remove "(Private)" from the name
- remove restriction on **transfer** of shares
- remove the **limit on number of members**
- remove the **prohibition on inviting the public** to subscribe

10 Prospectus vs Statement in Lieu of Prospectus

Prospectus
Formal document issued by a **public company** inviting the general public to subscribe for its shares or debentures – details of the company, financial position, risks and investment opportunity, to help investors decide.

Statement in lieu of prospectus
Filed with the registrar when a public company does **not** issue a prospectus – similar but lesser details; used when shares / debentures are not offered to the general public.

Circumstance	Document
Inviting the general public, or company listed on stock exchange	**Prospectus**
Not inviting the public to subscribe	**Statement in lieu of prospectus**
Issued a prospectus but could not obtain listing	**Repay all money** received on the prospectus **and** file a statement in lieu of prospectus

Filing before issue [Section 57]: no prospectus shall be issued unless, on or before its publication, a copy signed by **every person named as a director or proposed director** is filed with the registrar – else the company and every party to its issue, publication or circulation is liable to penalty.

11 Listing Process Before Allotment (Example 08)

ISSUE PROSPECTUS fix payment date; apply to exchange for listing → **PUBLIC DEPOSITS MONEY** in banks as required → **WAIT FOR LISTING** resolve exchange's queries → **LISTED** use applicants' money; allot shares

REFUSED repay money **FORTHWITH** – cannot commence business until repaid

Chapter 5: Share Capital and Commencement of Business

12 Commencement of Business [Section 19]

A **public company** shall not start operations or exercise any **borrowing powers** unless:

(a) Minimum subscription

Shares for cash allotted for not less than the **minimum subscription**.

(b) Directors paid in full

Every **director** has paid in full, in cash, on each share taken or contracted to be taken by him (not every member).

(c) Nothing to repay

No money is or may become liable to be **repaid to applicants** for shares offered for public subscription.

(d) Declaration

A duly verified declaration by the **chief executive or a director and the secretary** that (a)–(c) are complied with is filed with the registrar.

(e) Statement in lieu

If no prospectus inviting the public was issued – a **statement in lieu of prospectus** is filed with the registrar.

Conclusive evidence

Registrar, after enquiries, **accepts and registers** the documents → **conclusive evidence** the company may start operations and borrow.

Minimum subscription

Amount fixed by the MoA / AoA on which directors may proceed to allotment; if none fixed – the **whole share capital issued for cash** (e.g. funds needed for building, machinery and working capital).

Section 19 does not apply to

- a **private** company
- a company **converted from private to public**
- a company **limited by guarantee without share capital**

13 Consequences of Non-Compliance [Section 20]

Penalty: every officer or other person responsible for starting business or borrowing in contravention is liable to the prescribed penalty (without prejudice to other liabilities).

Contracts: any contract made before the company is entitled to commence business is **provisional only** – not binding until that date, and becomes **binding on that date**.

Blue Whale Ltd (incorporated 3 Sep 2021; will never approach the public; starts business next month) → must file a **statement in lieu of prospectus**.

14 Time Limits & Numbers

Requirement	Limit	Section
Majority of affected class to vary its rights	**3/4**	38
File altered articles with registrar	**30 days**	38
Minimum holding of affected class to apply to Court	**10%**	59
Apply to Court against variation (from date of resolution)	**30 days**	59
File Court's order with registrar (from receipt)	**15 days**	59
File special resolution & altered MoA after capital alteration	**15 days**	85

Chapter 5: Share Capital and Commencement of Business

15 Exam Question Patterns & MCQ Quick Clues

"Share capital is introduced by the company's..."	→	**Members**
"Issued share capital, compared with authorised capital..."	→	**May be less – never more**
"Authorised capital can be increased only with approval of..."	→	**Shareholders (special resolution)**
"Ordinary shares are also called..."	→	**Equity shares**
"Preference share – prior right to..."	→	**Repayment of capital on winding up**
"Prima facie evidence of title to a listed company's shares"	→	**Certificates in book-entry form**
"Nominal share capital means..."	→	**Maximum capital authorised by the MoA**
"Shares are movable property transferable as provided by..."	→	**Articles of association**
"A prospectus must be signed by..."	→	**Every named director / proposed director**
"Before trading, a public company must have..."	→	**Incorporation + commencement of business**
"A prospectus is needed when a company..."	→	**Raises capital from the general public**

⚠ CHAPTER 5 EXAM TRAPS

Trap: Only **directors** (not all members) must have paid in full in cash before commencement of business.

Trap: Variation challenges go to the **Court** – not the Commission or registrar – by holders of **10% or more** of the **affected class** (not of total capital).

Trap: Capital clause alteration → file within **15 days**; alteration of articles → **30 days**. Don't swap them.

Trap: If no minimum subscription is fixed, it is the **whole capital issued for cash** – not the authorised capital or the amount received.

Trap: Sub-division / consolidation does **not** change total capital or proportional rights.

Trap: Pre-commencement contracts are **provisional**, not void – they bind the company once it is entitled to commence business.

Chapter 5: Share Capital and Commencement of Business

16 Chapter Decision Tree

QUESTION GIVEN → ① **About a share?** movable property · fully paid · distinctive number · certificate (physical / book-entry) → ② **About capital?** authorised (MoA maximum) ≥ issued / paid up · publish both equally → ③ **New class / changed rights?** MoA & AoA must allow → special resolution + 3/4 of affected class → file AoA in 30 days → challenge: 10% of class · Court · 30 days · file order in 15 days → ④ **Change in capital clause?** articles must authorise · special resolution · increase / consolidate / sub-divide / cancel unissued · file in 15 days → ⑤ **Public company starting business?** minimum subscription · directors paid · nothing to refund · declaration · prospectus or statement in lieu → registrar's acceptance = conclusive

CAF-04 – CHAPTER 5 IN 60 SECONDS

- **Share** = share in share capital · movable property · transferable per articles · fully paid · distinctive number.
- **Authorised** = MoA maximum · **issued / paid up** ≤ authorised · publish both with equal prominence.
- **Nominal** = par / face value · **market** = trading price.
- **Ordinary vs preference:** votes · residual vs fixed prior dividend · surplus vs prior return of capital only.
- **Variation:** special resolution + 3/4 of class · Court challenge by 10% of class within 30 days · facts withheld or unfair prejudice · order filed in 15 days.
- **s.85:** increase · consolidate · sub-divide · cancel unissued – if articles allow · special resolution · file in 15 days · rights stay proportional.
- **Prospectus** for public offers (signed by all directors) · **statement in lieu** otherwise.
- **s.19:** minimum subscription · directors paid · nothing refundable · declaration · statement in lieu → conclusive registration · exempt: private, converted, guarantee without share capital.
- **s.20:** penalty on responsible officers · earlier contracts provisional until entitled.

17 Chapter Memory Map

Nature of Shares | Issue → Subscribe → Allot | Authorised Capital | Paid-up Capital | Equal Publication | Fully Paid Only

Nominal vs Market | Kinds & Classes | Ordinary vs Preference | Variation of Rights | Court – 10% / 30 Days

Capital Clause (s.85) | Sub-division Example | Prospectus | Statement in Lieu | Commencement Conditions

Minimum Subscription | Provisional Contracts