



SECRETARIAL STANDARD

SECRETARIAL STANDARD ON FORFEITURE OF SHARES

The following is the text of the Secretarial Standard-9 (SS-9) issued by the Council of the Institute of Company Secretaries of India, on "Forfeiture of Shares".

In the initial years, adherence by a company to this Secretarial Standard will be recommendatory.

Introduction

Forfeiture is withdrawal of shares due to non-payment of any call by the shareholder or for any other ground as may be provided in the Articles. On forfeiture of shares the member loses the amount paid thereon and his interest in the ownership of the shares.

Scope

This Standard seeks to lay down a set of principles for forfeiture of both equity and preference shares arising from non-payment of calls.

Definitions

The following terms are used in this standard with the meaning specified:

"Act" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof.

"Articles" means the articles of association of a company.

"Board" means the Board of directors of a company.

"Call" means a demand made by the company on members for payment of an amount due on shares in respect of nominal value or premium or both.

Unless the context otherwise requires, words and expressions used herein and not defined shall have the meaning respectively assigned to them under the Act.

Secretarial Standards

The Act requires affixation of the common seal on certain documents, share certificates and share warrants issued by the company.

1. Authority

The Articles should contain a provision for forfeiture of shares.

Forfeiture of shares requires approval of the Board in a duly convened meeting.

2. Procedure

Non – Payment of Calls

A forfeiture of shares held by a member should be made under the authority of the Board, if a call on the shares, together with interest accrued thereon, in accordance with the terms of issue of the shares, remains unpaid after the day appointed for payment thereof.

Notice

If a member fails to pay any call, on or before the day for payment thereof, the company should during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of the call remaining unpaid, together with interest which may have accrued.

Notice should be served by the company on the defaulting member by registered post acknowledgment due.

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The notice should be sent at the address registered with the company.

Contents of Notice

The notice should state the amount of the call due and the interest accrued thereon.

The Notice should also specify a day not being earlier than the expiry of twenty-one days from the date of posting of the notice on or before which the payment required by the notice is to be made; and state that in the event of non-payment on or before the day so specified, the shares in respect of which the call was made including the amount already paid thereon will be forfeited.

If the notice is not given, the forfeiture cannot be effected.

Forfeiture on non - payment

If the amount payable specified in the notice was not paid within the stipulated date, any share in respect of which the notice has been given may at any time thereafter be forfeited.

Any entitlement of the defaulting member for dividends on his partly paid up shares may be adjusted against his dues on calls.

3. Requirements of Forfeiture

The Board at a duly convened meeting should approve the forfeiture and authorize any director or manager or the secretary to make a declaration of such forfeiture.

An authenticated list of shares to be forfeited together with the names of shareholders thereof should be placed before the Board for this purpose.

The date of approval by the Board is the date of forfeiture.

Upon forfeiture, any director or manager or the secretary, authorized by the Board of the company shall make a declaration specifying the particulars of shares forfeited.

The declaration shall be conclusive evidence of forfeiture as against all persons claiming to be entitled to the shares of the company which have been forfeited.

The Board should issue individual notices to the defaulting members whose shares have been forfeited.

Entries in the register of members should be made with regard to forfeited shares.

Share certificates in relation to forfeited shares shall stand cancelled upon forfeiture.

There should be a reference to the forfeiture of shares in the report of the directors to the shareholders.

In case of listed companies, notice of forfeiture of shares and actual forfeiture should be intimated to the stock exchange.

4. Annulment of forfeiture

The Board can annul the forfeiture by passing a resolution before the reissue of forfeited shares.

On annulment, the name of the member should be restored in the register of members for those shares.

In case of shares issued in physical form, fresh share certificates should be issued for those shares.

The forfeiture can be annulled by the Board at its discretion, if the member pays all outstanding calls due on the shares together with interest.

The member whose shares have been forfeited should be duly informed by the Board on revoking the forfeiture and restoring the name of the member on the register of members.

5. Effect of Forfeiture

A person whose shares have been forfeited would cease to be a member of the company, in respect of those shares.

A person whose shares have been forfeited would notwithstanding the forfeiture, remain liable to pay to the company all moneys, which at the date of forfeiture were payable by him to the company in respect of the shares.

The liability of the defaulting member shall not cease till the company receives the full payment which is due in respect of shares. The name of the defaulting member will be placed as a past member on the list of contributories if a winding up of the company commences within one year of the date of forfeiture.

6. Reissue

A forfeited share may be reissued or otherwise disposed of on such terms and in such a manner as the Board may think fit.

Reissue of forfeited shares is a sale of shares and it does not amount to an allotment. The company should duly record the particulars of the members who acquire those shares as if it were a transfer of shares.

The directors would fix a price for the forfeited share that should not be lower than the amount of the call(s) due and unpaid on the share at the time of forfeiture.

In the case of a company whose shares are listed in a recognized stock exchange, re-issue of forfeited shares shall be as per Guidelines for Preferential Issue of the Securities and Exchange Board of India and the listing agreement.

Effect of Re-issue

- On reissue the transferee should be registered as the holder of the share.

- A new share certificate should be issued in the name of the transferee who shall be registered as the holder of the shares.
- The title of the transferee should not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

EFFECTIVE DATE

This Standard is effective from 6th November 2008.

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