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Equity Finance

Why raise capital?

1. Start-up capital
 - a. Premises
 - b. Stock
 2. Working capital
 - a. Wages
 - b. Suppliers
 - c. Costs
- Share capital – money raised by issuing shares
 - Share capital must be maintained for the benefit of the company

Shares

- Shares are a bundle of rights in a company – rights set out in Articles
 - Voting rights
 - Dividend rights
 - Rights to profits / assets on winding up
- Share capital – money in the company after a share issues
 - Part 17 CA 2006
 - Must be maintained on the balance sheet for the creditors
- Private limited companies must have physical paper shares (s 768 CA 2006)

Recording share issuance on balance sheet

No premium

- Top of balance sheet: Money paid in on shares goes into balance sheet as an asset (e.g. £100)
- Bottom of balance sheet: Share capital will also be £100, such that shareholder funds = £100
 - This must remain available to pay company's debts on insolvency

With premium

- Top of BS: 100 shares with par value of £1, paid at £200 = £200 assets
- Bottom of BS: £100 share capital + £100 share premium account = total equity of £200

Share Capital

- Nominal / par value – unit of ownership (£1, £0.10, £0.05, £0.01), not the market value
 - Difference between nominal value + market value = premium
- Shares may NOT be issued at a discount on par value
- However, shares may be issued partly paid

Allot/Issue/Transfer

Share creation – by company, with shareholder subscribing to shares

- ‘Allotted’ when acquire unconditional right to be included on the members’ register in respect of those shares (s 558 CA 2006)
- ‘Issued’ when a member is actually entered into the members’ register
- No stamp duty payable

Share transfer – by current shareholder

- Transfer of shares – performed by current shareholder to a purchaser
- Stock transfer form – s 770 CA 2006, signed by transferor
- Transfer over £1000 – stamp duty payable at 0.5%

Issued and authorised share capital

- Issued SC – aggregate number of shares actually issued
- ASC – aggregate number of shares a company is permitted to issue
 - CA 1985 required ASC in memorandum; no longer required, and moved to Articles of Association
 - May be removed by OR (despite changing Articles)

Allotment

- Private companies may not offer shares to the public (s 755 CA 2006)
 - S 756 – excluded where investors are targeted

Procedure to allot and issue new shares

1. Check for any Cap (ASC limit) – company’s Articles
 - If any, and number of shares we wish to issue are in excess of cap, change by:
 - i. Amending Articles by SR (s21(1) CA 2006) for post-2006 company (incorporated on or after 1st October 2009)
 - ii. OR for CA 1985 company, as authorised share capital deemed to transfer into Articles under s 28(1) CA 2006
2. Directors need authority to allot – directors must not allot shares except in accordance with s 550 or s 551 (s 549(1) CA 2006)

NB, however, failure of director to obtain s 551 authority to allot **does not affect the validity of an allotment** (s 549(6)); it merely means the director has committed an offence (s 549(4))

- a. No authority needed where:
 - i. Private company with one class of share:
 - CA06 company – provided not prohibited by Articles (check Arts), and issuing the same class of shares (s 550)
 - CA85 company – OR giving authority for directors to rely on s550, i.e. to allot shares
 - ii. Allotment of shares under employees’ share scheme (s 549(2)(a))
 - b. If not single class (or issuing another class of shares), need s 551 authority to allot (s 551(1) CA 2006):
 - i. Grant directors authority to allot in articles – SR; or
 - ii. Pass OR for one-off transaction
- Authorisation may be general or particular, conditional or unconditional (s 551(2))
 - Authorisation must state:
 - Maximum amount of shares that may be allotted (s 551(3)(a))
 - The date on which it expires, being ≤ 5 years from:
 - Date of incorporation where authority under original Articles (s551(3)(b)(i)); or
 - Date resolution passed for OR or new Articles (s551(3)(b)(ii))
 - Authorisation may be:
 - Renewed by OR for ≤ 5 years (s 551(4)(a))
 - Revoked / varied by OR at any time (s 551(4)(b))
 - Directors may allot / convert securities into shares after authorisation has expired if (s 551(7))
 - Shares allotted in pursuance of an offer/agreement made before authorisation expired; and
 - Authorisation allowed company to make offer/agreement requiring shares to be allotted after authorisation expired

3. Disapplying pre-emption rights of shareholders?

NB failure to disapply pre-emption rights does not invalidate allotment, but company and officers who knowingly authorised / permitted contravention are jointly and severally liable (s 563(2))

General Rule: Company must not allot equity securities unless it has made an offer to each person holding ordinary shares (s 561(1)(a))

- a. No need to disapply where:
 - i. Allotment of equity securities wholly or partly paid up otherwise than in cash (s 565 CA 2006)
 - ii. Rights of pre-emption are excluded by the Articles of the company (s 567(1) CA 2006)
- b. Is the company issuing 'equity securities'? – ES = **ordinary shares** or rights to convert securities into ordinary shares, i.e. shares other than those with limited (capped) rights to participate in distribution of dividends **and** capped capital (s 560(1)(a) CA 2006) – Non-ES shares are **non-participating** (not attached to company's fortunes)
- c. Is the proposed allotment an offer to existing shareholders in proportion to their existing shareholding?
 - i. If yes, no need to disapply; offer of shares must be made in hard copy or electronic form (s 562(2)) and may not be withdrawn (s 562(4)) within the period specified for acceptance of at least 14 days beginning the day the offer is sent (s 562(5))
 - May allot ES following this period / acceptance or refusal of every offer so made (s 561(1)(b))
 - ii. If no, must disapply or allow directors to modify pre-emption rights:
 - Private company with one class of shares (s 569(1)):
 - a. Power given to directors by Articles
 - b. Special resolution
 - Disapplication of PR under s 569 can apply for so long as the company has in issue and allots shares of only one class
 - Directors of company with more than one class of shares authorised under s 551 CA 2006 to allot shares (s 570(1)):
 - a. Power given by Articles
 - b. Special resolution
 - Disapplication of PR under s 570 attaches to a particular, pre-existing s 551 authority
 - Possible to disapply PR in relation to a specific allotment of shares under s 571
 - Power conferred by s 570 ceases to have effect when the authorisation to which it relates is revoked / expires (s 570(3))

4. Creating a new class of shares?
 - a. If yes, must amend the articles by SR (s 21(1) CA 2006)

5. Directors need to allot by BR and post-meeting matters are to be dealt with
 - a. Filing of new Articles at CH within 15 days of amendment taking effect (s26(1))

 - b. Filing of the following at CH within 15 days (s 30(1)):
 - i. OR –
 - To remove cap in CA85 company; or
 - In CA06 company – Granting directors authority to allot shares under s 551 (s 551(9), s 29(1)(e))
 - In CA 85 company – Granting directors to rely on s 550
 - ii. SR (s 29(1)(a)) –
 - To amend articles
 - To disapply pre-emption rights

 - c. File SH01 return of the allotment, delivered to the registrar within one month of making an allotment (s 555(2)), accompanied by a statement of capital (s 555(3)(b))

 - d. Update register of members (s 112(1); s 113(1)) within 2 months (s 554)

 - e. Issue paper share certificate to new shareholder (s 769)

 - f. Update PSC Register (s 790M) + make Registrar aware using PSC01 (s 790VA)

 - g. Minutes of the BMs and GM must be drawn up and entered into the Company's minute book (s 248(1) and s 355(1) respectively)