Securities and Borrowings

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Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Corporate Finance
Module Name /Title	Securities and Borrowings
Module No.	IV

Securities

Objective: After reading this module, the learners will have a clear picture of :
Borrowing is the act of taking or obtaining anything on Loan. Borrowing is contracting a loan taking money on credit.

Learning Outcomes:
A "security" varies by legal and regulatory jurisdiction. In some jurisdictions the term specifically excludes financial instruments other than equities and fixed income instruments.

Introduction:

Securities: A security is a tradable financial asset. It is commonly used to mean any form of financial instrument but the legal definition of a "security" varies by legal and regulatory jurisdiction. In some jurisdictions the term specifically excludes financial instruments other than equities and fixed income instruments.

1. **Corporate Securities:** Corporate Securities means raising of the Capital.
2. **Classification of Securities**: (i) Ownership: known as Capital Stock and (ii) Creditorship: Securities as Debt
3.**Ownership Securities**: Ownership securities includes Ordinary shares(equity), preference shares and cumulative convertible preference shares.
4. **Ordinary Shares:** Ordinary shares may be regarded as the corner-stone of financial structure. Ordinary shares are takes responsibility which are usually associated with ownership
5. **Advantage of Ordinary Share:** The Corporation by issuing equity shares can have the funds permanently and there is no obligation to return the creation of any charge against the assets of company.

ii **Legal Restriction**: Individual and Institutional investors cannot purchase equity shares because of choice.
Iii **Over-Captalisation:** Excessive issues of equity shares may result in over-capitalisation in future.
6.The Right of Ordinary Shares:
i **Right to Vote:** The shareholders having Right to vote. Vote issues like the amendment of Memorandum of Association or Alternation of article etc.
ii **Right against ultra vires acts of the Company:** Share holders consent is required to investment their Capital. Shareholders may bring legal action to prevent the corporation.
iii **Pre-emptive right**: It is vital right which serves to protect the shareholders by giving them **first option** to buy of additional issues.
iv**. Right to have knowledge of corporate affairs**: the equity shareholders have the fundamental right of **being informed** about various developments in a corporation at least once in a year in annual general meeting.
v.**Right to transfer the shares:** The shareholders are always at liberty in a public limited company to transfer their holding to anyone.
vi. **Miscellaneous Rights:** besides the above rights the shareholders have the privilege of participating in exceptional profits.
Borrowing: Borrowing is the act of taking or obtaining anything on Loan. Borrowing is contracting a loan taking money on credit.
Restriction on Borrowing (Sec11):A company having share Capital shall not start any business having borrowing power unless following condition fulfill:
1.**Decleration:**A declaration is filled by a director with the Registrar that every subscriber to the memorandum has paid value of the shares. The paid Capital value of the shares is not less than five lakh rupees in case of public company and not less than one lakh rupees in case of Private company.
2. **Registered office:** The company has filed with the Registrar a verification of its registered office.
3. **Penalty:**if any default is made in complying with the requirement of this section.
4. **Removal of the Name:** No declaration has been filed Within a period of one hundred and eighty days of the date of incorporation of the company Registrar believe that company is not carrying on any business he may removal of the name of the company.
5. **Borrowing by the Board of Directors:** Sec.180 (1) (c) :Consent of the shareholders: The Board of Directors of the company borrow the money with the consent of the company by a special resolution passed in the company general meeting shall .
6. Un Authorized borrowing (Ultra Vires Borrowing): If company borrows money beyond its powers the borrowing is ultra vires.

7. **Right to Recover:** If the money lent to the company has not been spent the lender may get injunction from the court to restrain the company. The lender has the right to recover the amount from the company.

8.**Recover Original Form:** As long as the money of the lender is in the hands of the company in its original form or its products are still capable of identification he may claim that money or its products. In case of winding up of company he may claim the distribution of assets of the company.

9.**Ultra Vires discovered in Public docouments:**The Lender under a transaction Ultra Vires the directors may recover damage from the directors. But if the fact that the borrowing is ultra vires have been discovered from the public documents of the company I;e Memorandum and Articles than the lender cannot recover from the company.

10.**Regular Borrowings:** If the borrowing is with in the powers of company, and misused the fund in unauthorized activities without knowledge of the lender than lender can recover. If lender provides finance for a business which(with his knowledge) is not within the company's objects the loan is ultra vires and the lender cannot claim from the company.

11.**Case:**I. In **Equity Insurance Co Ltd v Dinshaw & Co.(AIR 1940)** it was held that where the managing agent of a company who is not authorized to borrow has borrow money which is not necessary, neither bona fide nor for the benefit of the company,the company is not liable for amount borrowed.

ii.**Suraj Babu v Jaitly & Co AIR 1946** :where loan has not been taken in the name of company it will not be liable even though it may have benefited.

12.**Borrowing methods**:I Long term finance ii Short term finance

13.**Long Term finance can be raised** :By mortgaging immovable property such as land and Building,Machines etc.

Ii By securing long term loans from specialized financial institutions.

Iii By securing loan from central Government and state Government,

Iv By issuing Debentures

Short term finance:

I Loans from money lenders

Ii Loans by accepting deposits from the public for fixed period

Iii Loans by creating a charge on property and assets of the company.

Iv Loans borrowed from banks in the form of cash credits, over draft, loan etc.