

News Alert



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The Companies (Share Capital and Debentures) Amendment Rules, 2019---- Notified on August 16, 2019

Major changes in Issue of shares with Differential Voting Rights, ESOP and Debentures

Recently on June 27, 2019, SEBI vide Press Release No. 16/2019 had approved a framework for issuance of Differential Voting Rights (DVR) shares along with amendments to the relevant SEBI Regulations to give effect to the framework. It allowed listed tech companies to issue superior voting rights (SR) to promoters and founders up to a maximum of 74 % of the company's total voting rights. The amendment under the Companies Act, 2013 (CA 2013) allows unlisted companies also to issue DVR Shares and if later it wants to offer shares to public, it can do so by complying with the requirements of SEBI regulations.

On August 16, 2019, Ministry of Corporate Affairs(MCA)had issued a Notification amending the Companies (Share Capital and Debentures) Rules, 2014 which will be effective from 16th August 2019 and is called as the Companies (Share Capital and Debentures) Amendment Rules, 2019 (RULES).

The Techno and Innovative startup entities and its promoters were demanding these changes in issue of shares with Differential Voting Rights (DVR)since past few years as these startups have the potential Unicorn. After SEBI, now MCA hasalso recognized their demands and approved these changes to enable the promoters to hold substantial or controlling voting power while raising funds for growth and scaling up and do not cede their control.

Following are the details of the amendments in the RULES :

1. Equity Shares with Differential Rights under Rule 4has been substituted as follow:

- 1.1 The Company can now issue shares with Differential Voting Rights (DVR) upto **74% of the total voting power** including the voting power in respect of equity shares with differential rights issued at any point of time. The same was limited earlier to 26% of total post-issue paid up equity capital of the Company. [Sub-Rule (c)]

1.2 The Company can issue shares with DVR even if it **does not have consistent track record** of distributable profits for the last 3 (three) years. [Sub-Rule (d)].

2. Certificate of shares under Rule 5 has been amended as follow:

2.1 The Share Certificate may be issued by printing of facsimile signature of **Director or Company Secretary** now and it shall be presumed that Director or Company Secretary has signed the same and shall also be personally responsible for permitting the affixation of his signature on such Share Certificate.

3. Issue of Employee Stock Options under Rule 12 has been amended as follow :

3.1 Startup Company are free to issue Employee Stock Option for a period of **10 (ten) years** from the date of its incorporation or registration (earlier it was 5 years) to an employee who is **promoter or a person belonging to the promoter group** or a director who either himself or through his relatives or through any body corporate, directly or indirectly, **holds more than 10%** of the outstanding equity shares of the Company.

3.2 Startup Company is as defined in notification number **“GSR 127(E),dated 19th February, 2019** issued by the Department for Promotion of Industry and Internal Trade” (Earlier the notification number was “GSR 180 (E) dated 17th February 2016”)

4. Debentures under Rule 18(7) has been substituted as follow :

Every company issuing redeemable debentures is required to comply with Debenture Redemption Reserve (“DRR”) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below :

(a) DRR shall be created out of profits of the company available for payment of dividend;

(b) the limits with respect to adequacy of DRR and investment or deposits shall be as under:-

(i) **DRR is not required** for debentures issued by All India Financial Institutions (AIFI) regulated by Reserve Bank of India (RBI) and Banking Companies, both public and privately placed debenture.

(ii) For other Financial Institutions within the meaning of section 2 (72) of the Companies Act, 2013, **DRR shall be as applicable** to NBFC registered with RBI.

(iii) For listed companies (other than AIF and Banking Companies, **DRR is not required** for following cases:

In case of public issue or privately placed issue of debenture:

(a) For NBFCs registered with RBI and for Housing Finance Companies (HFC) registered with National Housing Bank and

- (b) for other listed companies
- (iv) For unlisted companies (other than AIFI and Banking Companies) **DRR is not required** for NBFCs registered with RBI and Housing Finance Companies (HFC) registered with National Housing Bank, in case of privately placed debentures .
- (v) For **other unlisted companies**, the adequacy of DRR shall be 10% of the value of the outstanding debentures.
- (vi) The companies covered in Point (iii) and (v) above, are required to invest or deposit, **a sum of at least 15%** of the amount of its debentures maturing during the year ending on 31st March of next year in any one or more methods of investments or deposits as provided below. Further, the amount remaining invested or deposited, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.
- in deposits with any scheduled bank, free from any charge;
 - in unencumbered securities of the Central Government or any State Government;
 - in unencumbered securities / bonds mentioned in Indian Trusts Act, 1882;

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

- (c) in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.
- (d) the amount credited to DRR shall not be utilized by the Company except for the purpose of redemption of debenture.

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