



Companies (Share Capital and Debentures) Amendment Rules, 2019

Privileged and Confidential
August 26, 2019

Overview

Rules Amended

The Companies (Share Capital and Debentures) Rules, 2014

Applicability

All companies

Effective Date

August 16, 2019

Particulars of Notification

Notification G.S.R. 574(E) dated August 16, 2019

The Ministry of Corporate Affairs (“MCA”) vide its Notification dated August 16, 2019 has amended the Companies (Share Capital and Debentures) Rules, 2014.

The amendments are given below:

- The voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent. of total voting power including voting power in respect of equity shares with differential rights issued at any point of time [*Rule4(1)(c)*];
- No requirement of the company to have consistent track record of distributable profits for the last three years [*Rule 4(1)(d) omitted*];
- In the Explanation to Rule 5(3), the words “director or company secretary” has been substituted to provide for signing by a director and the company secretary, wherever the company has appointed company secretary;

Context

Context

The proviso to Explanation in Rule 12 (1) –

- Definition for a start-up company is as per notification number G.S.R. 127(E), dated 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade;
- Employee Stock Options (ESOPs) can now be issued by start-ups to promoters or directors holding more than 10 per cent of equity shares for 10 years from the date of their incorporation. Earlier, the time period for such ESOPs was five years.

Rule 18 (7) substituted –

- Debenture Redemption Reserve (DRR)* shall be created out of profits of the company available for payment of dividend;
- 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; and
- the amount credited to DRR shall not be utilized by the company except for the purpose of redemption of debentures

**Note: the applicability and limits with respect to adequacy of DRR shall be as per table given below*

Sr. No	Type of Company	Whether DRR to be maintained	Investment or Deposit **
[1]	All India Financial Institutions regulated by RBI and Banking Companies	No DRR required for both public as well as privately placed debentures.	N. A.
[2]	Other Financial Institutions within the meaning of section 2(72) of the Companies Act, 2013	Debenture Redemption Reserve shall be as applicable to NBFCs registered with RBI	N. A.
[3]	Listed companies, listed NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and listed Housing Finance Companies registered with National Housing Bank	No DRR required for both public as well as privately placed debentures.	Applicable
[4]	Unlisted NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and unlisted Housing Finance Companies registered with National Housing Bank	No DRR required for privately placed debentures	N. A.
[5]	Other unlisted companies	DRR shall be 10% of the value of outstanding debentures	Applicable

****Note:** Refer to table given below

<p>** Details of investment or deposit</p>	<p>On or before the 30th day of April in each year, invest or deposit, not less than 15% of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year, in any one or more methods of investments or deposits.</p> <p>Provided that the amount remaining invested or deposited, as the case may be, 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</p> <p>Such amount invested or deposited shall not be used for any purpose other than for redemption of debentures maturing during the year.</p>
<p>Methods of investments or deposits</p>	<p>The methods of deposits or investments, as the case may be, are as follows:-</p> <ol style="list-style-type: none"> a. in deposits with any scheduled bank, free from any charge or lien; b. in unencumbered securities of the Central Government or any State Government; c. in unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882; d. in unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882. <p>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.</p>

Implications

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1. Promoters can retain control even as they raise capital from private equity investors
 2. The changes are expected to benefit start-ups, which will be able to attract more capital, but without ceding control
 3. The capital issued through shares with differential voting rights increased to 74% of total paid up share capital (increased from 26%) and omission of condition of having three years of distributable profits. Differential voting rights also allow investors to take a substantial stake in a company and be a financial investor without voting rights
 4. Employee Stock Options (ESOPs) can now be issued by start-ups to promoters or directors holding more than 10% of equity shares of a company for 10 years from the date of its incorporation. Earlier, the time period for such ESOPs was five years
 5. To remove the requirement for creation of a DRR in respect of listed companies, NBFCs registered with the RBI and for HFCs registered with National Housing Bank (NHB), both for public issue as well as private placement
 6. For unlisted companies, the DRR has been reduced from the present level of 25% to 10% of the outstanding debentures
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