

SHARE CAPITAL AND DEBENTURES

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1. INTRODUCTION

Every company limited by shares must have a share capital. Share capital of a company refers to the amount invested in the company for it to carry out its operations. The share capital may be altered or increased, subject to certain conditions. A company's share capital may be divided into small shares of different classes. The different classes of share capital and the rights attached to these classes are different.

2. NATURE OF SHARES

A share is the interest of a member in a company. Section 2(84) of the Companies Act, 2013 (hereinafter referred to as Act) "share" means a share in the share capital of a company and includes stock. It represents the interest of a shareholder in the company, measured for the purposes of liability and dividend. It attaches various rights and liabilities.

Share, debentures or other interest of any member in a company shall be movable property. It shall be transferable in any manner provided for in the articles of association of the company. A member may transfer any "other interest" in the company in the manner provided in the articles. For example rights attached to a member in a guarantee company such as membership interest, suspension of membership or assignment of interest may be made transferable by making a provision in the Articles of the company

3 TYPES OF SHARE CAPITAL

A. *Equity Share Capital*

Section 43 of the Act provides that the share capital of a company limited by shares shall be of two kinds:

(a) equity share capital—

(i) with voting rights; or

(ii) with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) preference share capital

“Equity share capital”, with reference to any company limited by shares, means all share capital which is not preference share capital . As per section 43 (a) equity share capital may be divided on the basis of voting rights and differential rights(DVR) as to dividend, voting rights or otherwise according to the rules.

A DVR share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in voting rights can be achieved by reducing the degree of voting power. It is ideal for long term investors, typically small investors who seek higher dividend and are not necessarily interested in taking a voting position.

The Companies (Share Capital and Debentures) Rules, 2014(hereinafter referred to as Rules) provide that no company whether it is unlisted, listed or a public company limited by shares shall issue equity shares with differential rights as to dividend, voting or other wise, unless it complies with the following conditions:

- (a) the articles of association of the company authorizes the issue of shares with differential rights
- (b) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders: Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot ;
- (c) the shares with differential rights shall not exceed twenty six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (d) the company having consistent track record of distributable profits for the last three years;
- (e) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- (f) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

(g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

(h) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act,1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated\by sectoral regulators.

The Rules as aforesaid clearly state that the company shall issue DVR shares only after approval from shareholder by passing a ordinary resolution. It further provides that a listed company where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot

The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 or of a postal ballot pursuant to section 110 shall contain the following particulars:

(a) the total number of shares to be issued with differential rights;

(b) the details of the differential rights;

(c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(d) the reasons or justification for the issue;

(e) the price at which such shares are proposed to be issued either at par or at premium;

(f) the basis on which the price has been arrived at;

g) (i) in case of private placement or preferential issue -

(a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

(b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

(ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel

(h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(i) the scale or proportion in which the voting rights of such class or type of shares shall vary;

(j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights

(k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

(l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

The Rules further provide that the company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

According to the Rules the Board's Report for the financial year in which the issue of equity shares with differential rights was completed shall include the following details with respect to DVR shares:

(a) total number of shares allotted with differential rights;

(b) details of the differential rights relating to voting rights and dividends;

(c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(d) price at which such shares have been issued;

(e) particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(f) change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(g) diluted Earning Per Share pursuant to the issue of such each class of shares, calculated in accordance with the applicable accounting standards;

(h) pre and post issue shareholding pattern along with voting rights in the same specified format as given in explanatory Statement.

The rules provide that the holders of the equity shares with differential rights shall enjoy all other rights such a bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been\ issued.

The company issuing equity shares with differential rights, shall ensure that the Register of Members contains all the relevant particulars of the shares so issued along-with details of the shareholders.

B. Preference Share Capital

The other type of share capital is the “Preference share capital”. According to section 55 of the Act, a company limited by shares cannot issue any preference shares which are irredeemable. However a company limited by shares may, if so authorise by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

With reference to any company limited by shares, Preference share capital means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

- (a) payment of dividend, either as a fixed amount or an amount calculated at a fixed rate, which may either be free of or nsubject to income-tax; and
- (b) repayment, in the case of a winding up or repayment of capital, of the amount of the share capital paid-up or deemed to have been paid up, whether or not, there is a preferential right to the payment of any fixed premium or premium on any fixed scale, specified in the memorandum or articles of the company;

Capital shall be deemed to be preference capital, notwithstanding that it is entitled to either or both of the following rights, namely:—

- (a) that in respect of dividends, in addition to the preferential rights to the amounts with respect to dividend, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;
- (b) that in respect of capital, in addition to the preferential right to the repayment, on a winding up, of the amounts aforesaid, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire

4 SHARE CERTIFICATE

Every share in a company having share capital shall be distinguished by distinctive number. This section does not apply to shares held by a person as a beneficial owner in depository. capital has been repaid

Section 46 of the Act declares that a certificate, issued by the company under the common seal of the company shall be prima facie evidence of the title of the person to such shares. Such certificate shall specify the shares held by any person. Where the shares are held in dematerialize form the record of the depository is the prima facie evidence of the interest of the beneficial owner.

Section 56 sub clause 4 provides that every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted—

- (a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum;
- (b) within a period of two months from the date of allotment in the case of any allotment of any of its shares.

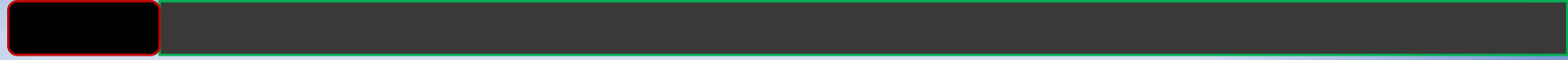
The manner of issuance of a certificate of shares or the duplicate thereof, the form of such certificate, the particulars to be entered in the register of members are prescribed under Rules

The manner of issuance of a certificate of shares the rules provide that no certificate of any share or shares held in the company shall be issued, except:

- (a) in pursuance of a resolution passed by the Board; and
- (b) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

Every certificate of share or shares shall be in Form No. SH-1 or as near thereto as possible and shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid-up thereon.



Thank you