EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

Issue of Equity Shares with Differential Voting Rights

A company which proposes to issue equity shares with differential voting rights has to comply with the requirements of the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 and it has to check the following points and must ensure that the company is eligible for issuance of these shares:—

(*a*) A company limited by shares may issue equity shares with differential rights as to dividend, voting or otherwise.

(*b*) The following requirements shall be fulfilled:—

— the company has distributable profits in terms of section 205 for preceding 3 financial years preceding the year in which it was decided to issue such shares;

— the company has not defaulted in filing of annual accounts and annual returns for 3 financial years immediately preceding the financial year of the year in which it was decided to issue such share;

— the company has not failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend;

— the articles of association of the company authorises the issue of shares with differential voting rights;

— the company has not been convicted of any offence arising under Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, Foreign Exchange Management Act, 1999; and

— the company has not defaulted in meeting investors' grievances.

(*c*) The company shall obtain the approval of the shareholders in general meeting by passing resolution as per section 94.

(*d*) In the case of a listed company, the approval of shareholders shall be obtained through postal ballot.

(*e*) The notice of meeting of the resolution shall be accompanied by an explanatory statement stating:—

— the rate of voting right which the equity share capital with differential voting right shall carry;
— the scale or proportion to which the voting rights of such class or type of shares will vary;
— the company shall not convert its equity capital with voting rights into equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;
— the shares with differential voting rights shall not exceed 25% of the total share capital issued;
— that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, right shares of the same class;
— the holders of the equity shares with differential voting rights shall enjoy all other rights to which the holder is entitled to except right to vote as indicated above.

(*f*) A Register shall be maintained as required under section 150 containing the particulars of differential rights to which the holder is entitled.

Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001

In exercise of the powers conferred by sub-clause (ii) *of clause* (a) *of section 86 read with clauses (a) and* (b) *of sub-section* (*1*) *of section 642 of the Companies Act, 1956, the Central Government hereby makes the following rules, namely:—*

1. Short title and commencement.—(1) These rules may be called the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the contexts otherwise requires,—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "differential voting rights" includes rights as to dividend or voting;

(*c*) "financial year" means financial year as defined under clause (17) of section 2 of the Act.

(2) Words and expressions used and not defined in these rules, but defined in the Companies Act, 1956 shall have the same meaning respectively assigned to them in that Act.

3. Conditions.—Every company limited by shares may issue shares with differential rights as to dividend, voting or otherwise, if—

1. the company has distributable profits in terms of section 205 of the Companies Act, 1956 for three financial years preceding the year in which it was decided to issue such shares;
2. the company has not defaulted in filing annual accounts and annual returns for three financial years immediately preceding the financial year in which it was decided to issue such share;
3. the company has not failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend;
4. the Articles of Association of the company authorises the issue of shares with differential voting rights;
5. the company has not been convicted of any offence arising under Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, Foreign Exchange Management Act, 1999;
6. the company has not defaulted in meeting investors' grievances;
7. the company has obtained the approval of shareholders in general meeting by passing resolution as required under the provision of sub-clause (*a*) of sub-section (1) of section 94 read with sub-section (2) of the said section;
8. the listed public company obtained approval of shareholders through Postal Ballot;
9. the notice of the meeting at which resolution is proposed to be passed is accompanied by an explanatory statement stating—

(*a*) the rate of voting right which the equity share capital with differential voting right shall carry;

(*b*) the scale or in proportion to which the voting rights of such class or type of shares will vary;

(*c*) the company shall not convert its equity capital with voting rights into equity share capital with differential voting rights and the shares with differential voting rights into equity share capital with voting rights;

(*d*) the shares with differential voting rights shall not exceed 25% of the total share capital issued;

(*e*) that a member of the company holding any equity share with differential voting rights shall be entitled to bonus shares, right shares of the same class;

(*f*) the holders of the equity shares with differential voting rights shall enjoy all other rights to which the holder is entitled to excepting right to vote as indicated in (*a*) above.

1 See section 86(*a*)(*ii*) of the Companies Act, 1956.

4. Register.—Every company referred to in rule 3 shall maintain a register as required under section 150 of the Act containing the particulars of differential rights to which the holder is entitled to.