



**Companies (Shares Capital and Debentures)  
Amendment Rules, 2016**  
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# Companies (Shares Capital and Debentures) Amendment Rules, 2016

## Introduction

The Ministry of Corporate Affairs (MCA) has been issuing various amendments / clarification to the Companies Act, 2013 and the corresponding Rules to remove practical impediments faced by Companies while its implementation. Government notified the Companies (Share Capital and Debentures) Rules, 2014 ("Rules") which lays down the procedure for issuance of shares and debentures, disclosures, filing requirements and other compliances under the Companies Act, 2013 MCA by way of notification dated 19th July, 2016 amended the Companies (Share Capital and Debenture) Rules, 2014

Notification 83/2015 dated 19<sup>th</sup> October 2015 proposes key amendments to Section 92C read with Rule 10AB, 10B and 10C that prescribes the methods of computation of Arm's Length Price and Variation in Arm's Length Price.

## Applicability

The provisions of these Rules shall apply to:

- a) all unlisted public companies
  - b) all private companies
  - c) listed companies
- so far as they do not contradict or conflict with any other provision framed in this regard by the Securities and Exchange Board of India.

## Rule 4(1)(g) – Equity Shares with differential rights

As per Rule 4 (1) of Rules, no companies limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with all conditions. Further, sub-clause (g) prohibits a company from issue of equity shares with differential rights if they has made default in payment of dividend on preference shares or repayment of any loan form a public financial institution or state level financial institution or schedule 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.

A new proviso is inserted after sub-clause (g) to facilitate companies to issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good.

## Rule 8(4) – Issue of Sweat Equity Shares

As per Rule 8, an unlisted company can issue sweat equity shares to its directors or employees at a discount or for consideration other than cash only by compliance with the conditions specified in Rules.

Under sub-Rule 4 of Rules, the company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of Rs.5 Crores, whichever is higher, provided that the issuance of sweat equity shares in the Company shall not exceed 25%, of the paid up equity capital of the Company at any time.

A new proviso is inserted after sub-rule 4, which provides relaxation to start-ups Company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. Accordingly, a start-up Company may issue sweat equity shares not exceeding 50% of its paid-up capital upto 5 years from the date of incorporation or registration.

### **Rule 12(1)(c)(ii) - Issue of Employee Stock Options**

As per Rule 12(1)(c), an unlisted company cannot offer shares to an employee who is promoter or a person belonging to the promoter group, or a director who either himself or through his relative or through his relative or through anybody corporate, directly or indirectly, holds more than 10 % of the outstanding equity shares of the company.

A new proviso has been inserted, which provides relaxation to start-up, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. Accordingly, for start-up companies, the conditions specified does not apply upto 5 years from the date of its incorporation or registration.

### **Rule 13(2)(c) – Issue of preference shares**

This Rule originally specified that unlisted company's could issue shares / other securities on preferential basis with the condition that the securities are fully paid-up at the time of allotment. By virtue of this amendment notification, this requirement has been omitted.

### **Rule 12(2)(h) - Issue of preference shares**

This Rule originally required that when convertible securities are offered on preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of valuation report of a registered valuer and also to be in compliance with the provisions of section 62 of the Act.

The amended Rules now provide that the price of the resultant shares pursuant to conversion should be determined in either of the following ways:

- I. Upfront at the time when the offer of convertible securities is made, on the basis of valuation report of a registered valuer given at the stage of such offer, or
- II. At time, not before 30 days from the date holder of convertible security become entitled to apply for shares, on the basis of valuation report of registered valuer given not before 60 days from the date holder of convertible security entitled to apply for shares.

However, Company shall take decision on the above options at the time of offer of convertible security itself and make such disclosures as prescribed under Rule 13(2)(d)(v) for relevant date with reference to which the price has been arrived at.

### **Rule 15 - Notice to Registrar for alteration of share capital**

In Addition to the requirement to the existing rule that specifies filling of notice of alteration with Registrar in Form No.SH7 along with fees, it is currently also required to file notice in case of company not having share capital increases the number of its members

### **Rule 18(1)(b) & 18(1)(d) - Debentures**

As per Rule 18, the company cannot issue secured debentures, unless it complied with all the conditions specified in Rules. Sub-Rule (1)(b) specifies that issue of debenture shall be secured by creation of charge, on properties or assets of company, having value which is sufficient for the due repayment of the amount of debentures and interest thereon. Sub-Rule (1)(d) requires that such charges or mortgage is created in favour of the debenture trustee on any specific movable property of the company (not being in nature of pledge).

The amended Rules now provide that a company can issue debenture only if, inter alia:

- I. Such an issue of debenture is secured by the creation of a charge on the properties or assets of the company **or its subsidiaries, its holding company or its associates companies**, having a value which is sufficient for the due repayment of the amount of debenture and interest thereon.
- II. The security for the debentures by way of a charge or mortgage is created in favour of the debenture trustee on any specific movable property of the company **or its holding company or subsidiaries or associates companies or otherwise.**

### **Rule 18(7)(b) & 18(7)(d) – Debentures**

The amended rules now provide that:

- For non-banking financial Companies registered with the reserve Bank of India (RBI) under section 45 IA of the RBI (Amendment) Act, 1997, “the adequacy” of DRR will be 25 % of the value **Outstanding** debentures issued through public issue as per present SEBI (Issue and Listing of debt Securities) regulation, 2008 and no DRR is required in case of privately placed debentures.
- For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of **outstanding** debentures (earlier only value of debenture was given) issued through public issue as per present SEBI (issue and listing of debt securities), regulation 2008 and also 25% DRR is required in case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of **Outstanding** Debentures.

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Additionally, a company which intends to redeem its debentures prematurely, may provide for transfer of such amount in DRR as in necessary for redemption of such debentures even if it exceeds the above mentioned limits as per the amended Rules

### **Conclusion**

The amended rule is a good regulator's effort to help smooth transition of the Companies Act, 2013. MCA continues to be a good listener to the requests of the stakeholders and also aligns the regulations to suit the ever changing business needs.

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