

Government of India

MINISTRY OF CORPORATE AFFAIRS

Notification

New Delhi, 19th July, 2016

Companies (Share Capital and Debentures) Third Amendment Rules, 2016

G.S.R. (E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2016.

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

2. In the Companies (Share Capital and Debentures) Rules, 2014, (herein after referred to as the principal rules), in rule 4, in sub-rule (1), after sub-clause (g), the following proviso shall be inserted, namely:-

"Provided that a company may 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."

3. In the principal rules, in rule 8, in sub-rule (4), after the first proviso, the following proviso shall be inserted, namely:-

"Provided further that a startup 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, may issue sweat equity shares not exceeding fifty percent of its paid up capital upto five years from the date of its incorporation or registration."

4. In the principal rules, in rule 12, in sub-rule(i), in clause (c), after sub-clause (ii), the following proviso shall be inserted, namely:-

"Provided that in case of a startup 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, Government of India, the conditions mentioned in sub-clause (i) and (ii) shall not apply upto five years from the date of its incorporation or registration."

5. In the principal rules, in rule 13, in sub-rule (2),-

(i) clause (c) shall be omitted.

(ii) for clause (h), the following clause shall be substituted, namely:-

" (h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-

(i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

(ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:

Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule."

6. In the principal rules, in rule 15, after the words "or a company redeems any redeemable preference shares", the words "or a company not having share capital increases number of its members" shall be inserted.

7. In the principal rules, in rule 18,

(A) in sub-rule (1),-

(a) for clause (b), the following clause shall be substituted, namely:-

"(b) Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon."

(b) in clause (d), for sub-clause (i), the following sub-clause shall be substituted, namely.-

“(i) any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise."

(B) in sub-rule (7),-

(a) in clause (b), in sub-clause (ii) and (iii) for the words "of the value of debentures" wherever they occur, the words "of the value of outstanding debentures" shall be substituted;

(b) in clause (b), after sub-clause (iii), the following proviso shall be inserted, namely:-

"Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule."

[F. No. 01/04/2013 CL-V (part-II)]

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