

SHARES WITH DIFFERENTIAL VOTING RIGHTS

Indian public limited companies can issue equity shares with differential voting rights. Previously, only Indian private limited companies could do so. The Government has recently issued the Companies (Issue of Share Capital with Differential Voting Rights) Rules, 2001 (“Rules”). Under the Rules, all Indian companies can issue shares with differential rights as to dividend, voting, or otherwise, if they comply with the following conditions.

- (i) The company has distributable profits in three (3) preceding financial years, prior to the year in which shares with differential rights are to be issued;
- (ii) The company has not defaulted in filing its annual accounts and annual returns for the three (3) preceding financial years prior to the year in which shares with differential rights are to be issued;
- (iii) The company has not failed to repay on due dates, deposits or interest on deposits, or failed to redeem its debentures or pay dividend thereon;
- (iv) The company is authorised by its Articles of Association to issue shares with differential voting rights;
- (v) The company has not been convicted of any offence under the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulations) Act, 1956, and the Foreign Exchange Management Act, 1999;
- (vi) The company has obtained approval of its shareholders by passing a resolution, in general meeting, to increase its share capital by issuing new shares with differential voting rights;

In case of a listed public company, it has obtained approval of the shareholders through postal ballot; and the notice of the meeting at which the resolution is to be passed should contain an explanatory statement as under:

- (a) The rate of voting rights, which the equity share capital with differential voting rights shall carry;
- (b) The scale or proportion of variation of voting rights;

- (c) An undertaking that the company shall not convert its equity share capital with voting rights into equity share capital with differential voting rights or vice versa;
- (d) A statement that the shares with differential voting rights shall not exceed 25% of the total issued share capital of the company;
- (e) A statement specifying the entitlement of a member of the company holding equity shares with differential voting right to bonus shares, or right shares of the same class;
- (f) A statement specifying that holders of equity shares with differential voting rights shall enjoy all other rights to which they are entitled, except the right to vote as provided under (a) above.