

Companies Act Fundamentals

Further issue of capital

2020 MHA Legal



Applicable Law

- Chapter IV- Share Capital and Debentures - Section 43-72 of the Companies Act 2013

- The Companies (Share Capital and Debentures) Rules, 2014.

- Act means – Companies Act 2013
- Rules means - The Companies (Share Capital and Debentures) Rules, 2014.

Further issue of capital

Eligibility

Section 62(1) of the Act provides that where at any time a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to the following:

- (a) Persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer. The offer shall be made by notice specifying the number of shares offered. The offer shall be open for a period not being less than fifteen days and not exceeding thirty days from the date of the offer. If the offer is not accepted within the period it shall be deemed to have been declined.
- (b) employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed.
- (c) any persons, if it is authorized by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

Conditions to comply

- Unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice shall contain a statement of this right. Hence a company may restrict the right of renunciation by its Articles.
- It has been clarified that after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company
- The notice mentioned aforesaid shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.
- Under the rules a company may if authorized by a special resolution passed in a general meeting, issue shares in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (a) or clause (b) of sub-section (1) of section 62.

Conditions for issue

- Such issue on preferential basis should also comply with conditions laid down in section 42 of the Act (private placement)
- The price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.
- “Shares or other securities” means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.
- Under the rules ‘Preferential Offer’ means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities.

Conditions for issue

- Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the SEBI, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements:-
 - (a) the issue is authorized by its articles of association;
 - (b) the issue has been authorized by a special resolution of the members;
 - (c) securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment.

Disclosures in the explanatory statement

The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

- the objects of the issue;
- the total number of shares or other securities to be issued;
- the price or price band at/within which the allotment is proposed;
- basis on which the price has been arrived at along with report of the registered valuer;
- relevant date with reference to which the price has been arrived at;
- the class or classes of persons to whom the allotment is proposed to be made;
- intention of promoters, directors or key managerial personnel to subscribe to the offer;
- the proposed time within which the allotment shall be completed;

Disclosures in the explanatory statement

- the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;
- the change in control, if any, in the company that would occur consequent to the preferential offer;
- the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
- the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- Pre issue and post issue shareholding pattern of the company in the format specified in the Rules.

Completion Period

- The allotment of securities on a preferential basis made pursuant to the special resolution passed are required to be completed within a period of twelve months from the date of passing of the special resolution.

- Where the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

Conversion of Loan / Debenture

- Section 62 is applicable to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.
- It is essential that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debenture or the raising of loan by a special resolution passed by the company in general meeting.

Conversion of Debentures issued to Government



- Section 62 (4) provides that where any debentures have been issued, or loan has been obtained from any Government by a company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.
- In the event the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

Conversion of Debentures issued to Government



- As per Section 62(5), in all circumstances Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.
- Section 62(6) provides that where the Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorized share capital of the company, stand altered and the authorized share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into.

Determination of Price:

- The price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer.
- 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 shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act.
- Further where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

Determination of Price:

- The preferential offer of shares made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (ii) where clause (i) is not applicable, it shall be expensed as provided in the accounting standards.

Thank you



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Passion, Integrity, Excellence

Thank You

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