

Companies Act Fundamentals

Issue and Redemption of Preference Shares



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.

Issue and Redemption of Preference Shares

Issue of Preference Shares

- According to section 55 of the Act, company limited by shares cannot issue any preference shares which are irredeemable.
- However a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.
- According to the Rules a company having a share capital may, if so authorized by its articles, may issue preference shares subject to the following conditions, namely:-
 - (a) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company;
 - (b) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.

Procedure

- The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall, inter-alia, provide the complete material facts concerned with and relevant to the issue of such shares, including-
 - (a) the size of the issue and number of preference shares to be issued and nominal value of each share;
 - (b) the nature of such shares i.e. cumulative or non-cumulative, participating or non - participating , convertible or non - convertible;
 - (c) the objectives of the issue;
 - (d) the manner of issue of shares;
 - (e) the price at which such shares are proposed to be issued;
 - (f) the basis on which the price has been arrived at;
 - (g) the terms of issue, including terms and rate of dividend on each share, etc.;

Redemption of Preference Shares

- A company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:
 - (a) at a fixed time or on the happening of a particular event;
 - (b) any time at the company's option; or
 - (c) any time at the shareholder's option.

Conditions for redemption

- Preference shares can be redeemed under following conditions:
 - Redemption can be made in any of the two procedures i.e. either out of the profits of the company which would otherwise be available for dividend; or; out of the proceeds of a fresh issue of shares made for the purposes of such redemption.
 - Preference shares shall be redeemed only when they are fully paid up.
 - In case the company proposes redemption of shares out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve, to be called the Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the Capital Redemption Reserve Account were paid-up share capital of the company.
 - The capital redemption reserve account may, be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Conditions for redemption

- Certain class of companies as may be prescribed and whose financial statements comply with the accounting standards prescribed under section 133, for such class of companies, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed. For other companies the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.
- A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

“Infrastructure Projects” have been covered defined under Schedule VI of the Act.

Inability to redeem

- There may be a situation where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue (such shares hereinafter referred to as unredeemed preference shares).
- Section 55 (3) of the Act provides that the company may with the consent of the holders of three-fourths in value of such preference shares and with the approval of the Tribunal on a petition made by it in this behalf, issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed preference shares shall be deemed to have been redeemed.
- The Tribunal shall while giving approval order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares.
- It has been clarified that the issue of further redeemable preference shares or the redemption of preference shares under shall not be deemed to be an increase or, a reduction, in the share capital of the company.

Thank you



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Passion, Integrity, Excellence**

Thank You

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