

# Companies Act Fundamentals

## Variation of Shareholders Rights and Equity Shares with DVR



2020 MHA Legal

# *Applicable Law*

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- 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.

# *Variation of Shareholders Right*

# *Variation of shareholders right*

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Section 48 of the Act provides that where share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied.

- if provision with respect to such variation is contained in the memorandum or articles of the company; or
- in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.

Such variation of rights of shares of particular class can be made in either of the following ways:

- with the consent in writing of the holders of not less than three-fourths of the issued shares of that class; or;
- by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class

## *Variation of shareholders right*

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Where variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also needs to be obtained.

Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled. Such application would need to be made within twenty-one days after the date on which the consent was given or the resolution was passed and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Under above circumstance, the variation shall not have effect unless it is confirmed by the Tribunal. The decision of the Tribunal on the application shall be binding on the shareholders. The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

## *Variation of shareholders right*

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Where any default is made in complying with the provisions of section 48 of the Act, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

# *Equity Shares with Differential Voting Rights*

## *Issue of equity shares with DVR*

Rule 4 read with section 43 (a) (ii) permits issue of equity shares with differential rights. Rule 4 provides that no company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

- the AOA of the company authorizes the issue of shares with differential rights;
- The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders:
- where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
- the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- the company should have a consistent track record of distributable profits for the last three years;



## *Issue of equity shares with DVR*

- the company must not default in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled 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;

## *Issue of equity shares with DVR*

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- the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934 , the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

# *Contents of explanatory statement to the notice*



The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars:

- the total number of shares to be issued with differential rights;
- the details of the differential rights ;
- the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- the reasons or justification for the issue;
- the price at which such shares are proposed to be issued either at par or at premium;
- the basis on which the price has been arrived at;
- in case of private placement or preferential issue-
  - (a) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

# ***Contents of explanatory statement to the notice***



- (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;
- in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;
- the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
- the scale or proportion in which the voting rights of such class or type of shares shall vary;
- the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;
- diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

# ***Contents of explanatory statement to the notice***

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- the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

## *Other conditions*

- The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.
- The Board of Directors shall, inter alia, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details:
  - (a) the total number of shares allotted with differential rights;
  - (b) the details of the differential rights relating to voting rights and dividends;
  - (c) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;
  - (d) the price at which such shares have been issued;

## *Other conditions*

- (e) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;
  - (f) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;
  - (g) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;
  - (h) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.
- The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights hares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
  - Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of theshareholders.

## *Other conditions*

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- It has been clarified that differential rights attached to such shares issued by any company under the provisions of Companies Act, 1956, shall continue till such rights are converted with the differential rights in accordance with the provisions of the Companies Act, 2013.



*Thank you*



**Mind, Heart, Aspiration =**  
**Passion, Integrity, Excellence**

**Thank You**

Please feel free to contact, if you need any further information or clarification:

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