



**Companies (Share Capital and Debentures)  
Amendment Rules, 2015  
– Firsthand Analysis (Mar' 15)**

## Background

***“Ministry tweaks Companies (Share Capital and Debenture) Rules, 2014 with an intent to further the ease of doing business which is much welcomed by the industry. Positive relaxations in compliance requirements in case of preferential offer to members, procedural revisions in issuance of share certificate and duplicate share certificate, and changes relating to the provisions of debentures are some of the highlighted reforms brought under the amendment rules.”***

# Companies (Share Capital and Debenture) Amendment Rules, 2014 dated March 18, 2015

## Share Certificate

(R.5(3)(b) & R. 6(2)(c))

- **Issue of share certificate** – The deeming provision which mandated Company Secretary (CS) to be signatory on issue of share certificate stands omitted now. Thus, now a company having CS may authorise any person other than CS for signing share certificate during its issue, unlike before.
- **Issue of duplicate share certificate by listed companies** - Listed companies may now issue duplicate share certificate within 45 days from submission of documents to the company instead of earlier 15 days.

Ministry narrows down the definition of "Employees" by **excluding employees of "associate company"** under the amendment rules. In this respect, the Companies Act goes one step ahead of the newly enacted SEBI (Share Based Employee Benefits) Regulations, 2014 as the definition of "Employees" under the said SEBI Regulations includes employees of associate company.

## Definition of "Employee"

(R. 12(1)(c))

## Preferential Offer

(R. 13(1))

This amendment dismisses two compliance requirements relating to preferential offer in case the offer is made to any **existing members only**.

- Firstly, **maintaining of complete record of private placement** in Form PAS 5 is dispensed with.
- Secondly, **RoC filing** of PAS 4 (Offer Letter) and PAS 5 (Record of Private Placement) is not required for such issue.
- Exemption in filing of PAS 4 (Offer Letter) with RoC does not imply that such Company need not issue / circulate the Offer Letter to its members. Offer Letter needs to be sent to members as earlier, however its filing with RoC is no longer required.

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## Creation of Security for Secured Debentures

- Rule 18(1)(d) which specifies nature of assets on which charge / mortgage can be created in favour of debenture trustee, is now amended.
- Earlier, sub clause (i) of Rule 18(1)(d) provided that charge / mortgage shall be created in favour of debenture trustee on any specific movable property of the company (not being in nature of pledge). The wordings “**not being in nature of pledge**” are omitted now.
- It implies that, apart from charge / mortgage of specific movable property, **pledge** also can be created, which was not allowed earlier. This provision would be welcomed by the industry.
- **NBFCs** are allowed to create charge / mortgage on **any movable property** and non NBFCs can create charge on specific movable property only.
- Requirement of **creation of charge shall not be applicable for Government Companies** issuing debentures **provided** it is backed by guarantee of either Central Government / 1 or more State Governments / both for the full amount of debentures.
- **Properties / assets of holding company can now be charged / mortgaged** in favour of debenture trustee, in case of loan taken by a subsidiary company from any bank or financial institution.

## Time Frame

Time frame of execution of trust deed revised from “within 60 days of allotment” to “**within 3 months of closure of the issue or offer**”

## Deb. Rules shall not be applicable

- On issuance of **Commercial Paper** under guidelines / Regulations issue by RBI
- **Foreign Currency Convertible Bonds / Foreign Currency Bonds** issued under Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 / Regulations / Directions issued by RBI unless otherwise provided in such scheme / regulations.

## New formats for Form SH-13 & SH-14

According to the new formats, shareholder has an option to nominate a name as a nominee in case of death of minor before attaining age of majority, which was not the case earlier

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