

Ministry of Corporate Affairs mends provisions related to Differential Voting Rights under Companies Act

By : Editor Published On : 16 Aug, 2019 08:06 PM IST



INVC NEWS

New Delhi,

The Ministry of Corporate Affairs has amended the provisions relating to issue of shares with Differential Voting Rights (DVRs) provisions under the Companies Act with the objective of enabling promoters of Indian companies to retain control of their companies in their pursuit for growth and creation of long-term value for shareholders, even as they raise equity capital from global investors.

The key change brought about through the amendments to the Companies (Share Capital & Debentures) Rules brings in an enhancement in the previously existing cap of 26% of the total post issue paid up equity share capital to a revised cap of 74% of total voting power in respect of shares with Differential Voting Rights of a company.

Another key change brought about is the removal of the earlier requirement of distributable profits for 3 years for a company to be eligible to issue shares with Differential Voting Rights.

The above two initiatives have been taken by the Government in response to requests from innovative tech companies & startups and to strengthen the hands of Indian companies and their promoters who have lately been identified by deep pocketed investors worldwide for acquisition of controlling stake in them to gain access to the cutting edge innovation and technology development being undertaken by them.

The Government had noted that such Indian promoters have had to cede control of companies which have prospects of becoming Unicorns, due to the requirements of raising capital through issue of equity to foreign investors.

Alongside the above two changes, another major step taken is that the time period within which Employee Stock Options (ESOPs) can be issued by Startups recognized by the Department for Promotion of Industry & Internal Trade (DPIIT) to promoters or Directors holding more than 10% of equity shares, has been

enhanced from 5 years to 10 years from the date of their incorporation.

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