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NON-VOTING SHARES

10.1 Introduction

Non-voting shares as the name suggests are shares which carry no voting rights. Till a few years ago, the term equity capital was synonymous, in public companies, with voting rights capital. However, by the Companies (Amendment) Act of 2000, the concept of non-voting right equity capital was introduced for the first time in public limited companies. Non-voting shares can be used with great effect to achieve various transaction structuring objectives, such as, in the case of joint ventures, foreign collaborations, etc. The voting rights in relation to preference shares are laid down in s.87 of the Companies Act and are explained in Chapter 9 above.

10.2 Companies Act

The Companies Act now permits a public limited company to issue shares with differential rights as to dividend, voting or otherwise. The maximum limit for the issue of shares with differential voting rights is 25% of the total issue share capital. The issuer company needs to comply with the following conditions:

(a) In the year in which the company decides to issue such shares, it has profits available for distribution as dividend u/s. 205 of the Companies Act.

(b) The company has not defaulted in filing the annual accounts and annual returns for the 3 financial years immediately preceding the financial year in which the company decides to issue such shares.

(c) The company has not failed to redeem its debentures or repay its deposits or interest thereon or to pay dividend.

(d) The Articles of Association of the company permit the issue of shares with differential voting rights. In case they do not permit, then the Articles would first need to be modified.

(e) It has not been convicted of any offence under the SEBI Act, SCRA, or FEMA.

(f) It has not defaulted in meeting investors' grievances.

(g) Shareholders' approval is obtained. In case of a listed company, the approval has been obtained by way of a Postal Ballot.

(h) The Explanatory Statement to the Notice of the Shareholders contains the prescribed information.

(i) The shareholders of such shares would continue to enjoy bonus/ rights of the same class.

(j) Other than the differential voting rights, the shareholder would enjoy all other rights as an equity shareholder.

As mentioned above, the amendment only applies to issue of shares with differential voting rights by a public limited company or a private company which is a subsidiary of a public company. Hence, any such issue by a private company does not need to comply with the conditions mentioned above. Further, there is no limit to the non-voting or differential voting shares which a private company can issue. Unlike in the case of a public company, it can even exceed 25% of the total capital.

10.3 SEBI Takeover Regulations

The Takeover Regulations deal with the acquisition of shares or voting rights over a listed company. Since the shares are non-voting there is no question of acquisition of voting rights. Further, the definition of the term "shares" in the Takeover Regulations only covers shares which carry voting rights and includes any security which would entitle the holder to receive shares with voting rights. Hence, correctly speaking the acquisition of non-voting shares should not trigger the Takeover Regulations.