1. **RELEVANT SECTION:-** Section 2(8), 2(15), 2(37), 2(50), 2(64), 2(84), 2(86), 2(88) and from section 43 to 72 of the Companies Act, 2013

- **U/S 2 (84): “Shares”:**
  Share in the share capital of a company and includes stock.

- **U/S 2 (8): “Authorised Capital” or “Nominal Capital”:**
  Such Capital as is Authorized by the Memorandum of a Company to be the maximum amount of share capital of the company;

- **U/S 2 (37): “Issued Capital”**
  Such Capital as the Company issues from time to time for subscription.

- **U/S 2 (86): “Subscribed Capital”**
  Such part of the capital which is for the time being subscribed by the members of a company;

- **U/S 2 (15): “Called up Capital”**
  Such part of the capital, which has been called for payment;

- **U/S 2 (64): “Paid up Share Capital”**
  Such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called.
**U/S 2 (37): “Employees’ Stock Option”**

“Employees’ Stock Option” means the option given to
1. The Directors, Officers or Employees of a Company OR
2. Of its holding company or subsidiary company OR
3. Companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company
4. At a FUTURE DATE AT A PRE-DETERMINED PRICE;

**U/S 2 (88): “Sweat Equity Shares”**

Such Equity Shares as are issued by a Company to its-
- Directors or Employees at a discount OR
- for consideration, OTHER THAN CASH,
- for providing their know-how OR
- making available rights in the nature of intellectual property rights or
- value additions, by whatever name called.

2. **APPLICABILITY:-** The provisions of these rules shall apply to

   - All unlisted public companies;
   - All private companies; and
   - Listed companies

3. **KINDS OF SHARE CAPITAL (Section-43):**-Share Capital shall be of two kinds, namely:-

   1. **Equity Share Capital**
      (Shares which are not Preference) With voting right
      With Differential right

   2. **Preferential Share Capital**: Preferential right for Dividend and repayment

   ✤ **Differential Voting Right(DVR):**
   - Likes ordinary equity Shares.
   - Provides fewer voting power to the Shareholders.
   - The Difference in voting power can be achieved by reducing the degree of voting power.
✓ Techniques for prevention of a hostile takeover and dilution of voting power.
✓ It is good for strategic investor, who do not want control but looking for higher dividend.

4. RULES FOR EQUITY SHARES WITH DIFFERENTIAL RIGHTS.-Rule:4

A. Preliminary Conditions for issuing DVR are namely-
   i) Provision in Article of Association
   ii) Authorizations by **Ordinary Resolution** in General meeting. In case of Listed Companies issue should be approved mandatorily by **POSTAL BALLOT**.
   iii) The DVR should not exceed 26% of POST ISSUE SHARE CAPITAL including DVR issued at any point of time.

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DVR< or Equal to 26% of post issue capital
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iv) Consistent Record of immediately **THREE** Financial Year

- Distributable profit.
- Annual Filing
- **NOT** be penalized by Court or Tribunal for any offence under the RBI Act, 1934, the SEBI Act, 1956, the FEMA act, 1999 or any other special act.

v) **NO SUBSISTING DEFAULT IN**-

- Payment of declared Dividend.
- Repayment of matured deposit
- Redemption of Preference Shares/Debentures.
- Payment of interest on such deposits or debentures.

vi) **NO** default in payment of-

- **Dividend** on Preference Shares.
- Repayment of Term loan
- Statutory dues
- No default in crediting the amount in IEPF to the CG.

B. Explanatory Statement or Postal Ballot should contain details regarding DVR.
C. **Conversion** of existing equity share capital with voting rights into DVR and *vice-versa* are **NOT ALLOWED**.

D. The Board of Directors shall, *inter alia*, disclose in the Board’s Report regarding issue of DVR, if any.

E. DVR holder has **same rights as normal Equity** Share holder, like Bonus, Right issue, subject to differential right with such shares have been issued.

F. Register of Members contain such details.

5. **CERTIFICATE OF SHARES- (WHERE SHARES ARE NOT IN DEMAT FORM).-Section -46 & Rule:5**

U/S 46:- A Share Certificate shall be *prima facie* evidence of the title of the person to such shares, issued as under-

- The Common Seal of the Company
- specifying the shares held by any person,

➢ Share Certificate shall be issued –

- in pursuance of resolution passed by Board

  And

- on surrender of Letter of allotment or fractional Coupon or letter of acceptances or of renunciation.

➢ Format of Share Certificate –similar to **Form No. SH.1**

➢ Every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of, and signed by-

  -the TWO directors of the Company and secretary or any person authorized by the Board.

**Therefore SH.1 should be sign by Total THREE person- TWO Directors and Company Secretary or Authorised person**

**And in case of OPC Form No. SH.1 should be signed by Total Two person-ONE Director and one Company Secretary or Authorised person**
6. **ISSUE OF RENEWED OR DUPLICATE SHARE CERTIFICATE: Section 46 (2) & Rule. 6**

**U/S 46 (2):** A Duplicate Certificate of Shares may be issued, if such certificate —

(a) is proved to have been lost or destroyed; or

(b) has been defaced, mutilated or torn and is surrendered to the company.

**U/S 46 (4):** Where a share is held in depository form, the record of the depository is the *primafacie* evidence of the interest of the beneficial owner.

- Duplicate Share Certificate may be issued by
  - prior consent of Board.
  - Surrender of old certificate.
  - with or without Charging Fees maximum of **Rs. 50 per Share Certificate.**
  - and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced:

- A company may replace all the existing certificates by new certificates without requiring surrender old Certificates upon:
  - sub-division or
  - consolidation of shares or
  - merger or demerger or
  - any reconstitution

- It shall be stated prominently on the face of Share certificate-
  - In case of duplicate Share Certificate—“duplicate issued in lieu of share certificate No.…..” and the word “**DUPLICATE**” shall be stamped or printed prominently on the face of the share certificate:
  - In case of Certificate is issued in any of the circumstances specified in this sub-rule— “**Issued in lieu of share certificate No.….. sub-divided/replaced/on consolidation**” and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government:
Register of Renewed and Duplicate Share Certificates maintained in Form No.SH.2

Duplicate Share Certificate should be issued-

In case Unlisted - **within 3 months** from submission of complete documents.

In case of Listed – **within 15 days** from submission of complete documents.

**DEFRAUD ISSUE DUPLICATE SHARE CERTIFICATE:**

**PUNISHABLE WITH FINE**

Minimum: 5 times of the face value of Shares.

Maximum: Extendable to **10 times** of face value or **Rs. 10 Crores**, whichever is **HIGHER**.

**AND** officer in default punishable u/s 447.

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### 7. MAINTENANCE OF SHARE CERTIFICATE FORMS AND RELATED BOOKS AND DOCUMENTS : Rule 7

- All Blank Share Certificate shall be-
  - Printed
  - Printing shall be done by authority of Board Resolution.
  - Blank form shall be **consecutively machine-numbered**
  - All material of printing of Share Certificate should be in custody of secretary or authorized person by BOARD

- Preservation of Books-
  - In NORMAL Cases: **MINIMUM 30 Years**
  - In case of Dispute: **PERMANENTLY**

- Surrender Share Certificate shall be immediately defaced by stamping or printing the word “CANCELLED” in **BOLD** Letters and may be destroyed by-
  - Under Authority by Passing **Board Resolution**.
  - After the Expiry **THREE** months of Surrender.
  - In present of authorized person
THESE RULES NOT APPLICABLE TO COMPANY WHEN CANCELLATION OF THE CERTIFICATES OF SECURITIES, UNDER SUB-SECTION (2) OF SECTION 6 OF THE DEPOSITORIES ACT, 1996 (22 OF 1996)

8. ISSUE OF SWEAT EQUITY SHARES.-:Section 2(88), Section 54 & Rule 8

❖ SWEAT EQUITY SHARES means-Equity Shares issued to Directors/Employees at a discount or for consideration other than cash for providing Know-How/Making available right in IP/value addition works.

Issued by listed Company: Issued accordance with the regulation made by SEBI

Issued by Unlisted Company:-Following procedures required to be followed:

➢ Special Resolution passé in General Meeting.
➢ Explanatory Statement of notice should contain:
  • Date of Board Meeting for this proposal.
  • Reason for issue.
  • Classes of shares.
  • Total no. of shares
  • Class of director/employees are to be issued.
  • Terms & condition and valuation, if any
  • Time period of associating of such person with company.
  • Name of such directors/employees and their relationship with Board/Promoters.
  • Price to be issued.
  • Consideration including other than cash.
  • Effect on Managerial remuneration, if any
  • A statement for Confirmation of Applicable Accounting Standard
  • Diluted EPS pursuant to Sweat Equity issue.

➢ Special resolution is Valid for 12 months for making allotment.
➢ At a time **Sweat issue should be not more than**

15% of existing paid up share capital  
*or*  
Rs. 5 Crore, which ever is **HIGHER**

At any time, the total issuance of sweat Equity shares **25% Paid up Equity Capital of in the Company** ≤ the Company

➢ **LOCK in Period** of Sweat Equity shares are

- **THREE** years from the allotment  
- Period of expiry of lock in shall be stamped in bold on the Share Certificate.

➢ Sweat Equity share valued at a price determined by the Registered Valuer with justification of fair price.

➢ Valuation of IP/Know-How/Value addition by the Registered Valuer.

➢ A copy of the Valuation Report should be annexed with NOTICE of General Meeting.

➢ Where Sweat Equity Share issued for **NON-CASH CONSIDERATION**, than such Non-Cash Consideration shall be treated in the **books of account** –

**NON-CASH CONSIDERATION** takes the form of

- Depreciable or Amortizable assets  
- Carried to B/S as per Applicable AS  
- **OTHER**

- Treat as form of Expenses

➢ Sweat Equity Shares shall be treated as **Managerial Remuneration u/s 197 & 198** when-

- **issued to the Directors or Managers** of the Company **AND**  
- issued for consideration **OTHER THAN CASH**
➢ Value of Sweat Equity Shares treated-

| It shall be Carried in the B/S | - If issued for Acquisition of an asset. |
| Treated as Compensation to the Employees | - If issued for the other purposes. |

➢ The Board of Directors Report shall contain details of these issue as per Rule 13.
➢ The company shall maintain a Register of Sweat Equity Shares in Form No. SH.3.

❖ For Sweat Equity issue-
- **Employee means** - Permanent Employee, working in India or outside India, including of subsidiary employee, in India or outside India - for at last ONE year.
- **Directors means** - a director of the company, including of subsidiary, in India or outside India whether WTD or not. (All Directors of the Company)

9. ISSUE AND REDEMPTION OF PREFERENCE SHARES.-: Section 55 & Rule 9

➢ Irredeemable Pref. share **NOW CAN NOT** be issued by any Company.
➢ A Company may issue Pref. Shares for a period **not exceeding 20 Years** except **Infrastructural Project** as per Schedule VI.
➢ Procedure for this issue:
  - Provision in AOA
  - Special Resolution in General Meeting.
  - No subsisting default in the
    - a. redemption of preference shares issued either before or after the commencement of this Act or
    - b. in payment of dividend due on any 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
10. ISSUE AND REDEMPTION OF PREFERENCE SHARES BY COMPANY IN INFRASTRUCTURAL PROJECTS: Section 55, Rule10 and Schedule VI

- Issue of Irredeemable Preferential Share are **NOT ALLOWED**.
- Preference shares are liable to be redeemed within a period **not exceeding twenty years**.
- A Company may issue preference shares for a period exceeding **TWENTY YEAR** for infrastructure projects,
- Preference Share can be issued for more than 20 years but should not be exceeding 30 years.

**CONDITION**: redemption of a minimum **ten percent** of such per year from the **TWENTY FIRST YEAR onwards** or earlier, on proportionate basis, at the option of the preference shareholders.

<table>
<thead>
<tr>
<th>Condition for Redemptions</th>
</tr>
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<tbody>
<tr>
<td>Redemption can be out of profit which are available for Dividend <strong>OR</strong></td>
</tr>
<tr>
<td>Out of the proceeds of a fresh issue for the purpose of such redemption.</td>
</tr>
<tr>
<td>ONLY Fully Paid up shares can be <strong>redeemed</strong>.</td>
</tr>
<tr>
<td>When such shares are redeemed out of profit than required to have provision of the Capital Redemption Reserve Account and Capital Redemption reserve account</td>
</tr>
</tbody>
</table>

- When Company **unable to redeemed** preference Share than it may-
  - With Consent by Special Resolution of such preference share holders **AND**
  - By PETITION to **TRIBUNAL**

Can 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**

11. INSTRUMENT OF TRANSFER: Section 56 & Rule 11

- **NOW** transfer form of securities is **FORM No. SH. 4**
- Transfer Form shall be delivered to the Company with in **60days** of execution.

(applicable to listed & unlisted company)
➢ If lost and not delivered in prescribed time limit than Company Shall take INDEMNITY BOND.

➢ Time limit for Company the Transfer is **2 Months**, if complete documents are received

➢ For Partly paid up Shares — A notice in **Form No. SH.5** to the transferee and the transferee has given **no objection** to the transfer within **two weeks** from the date of receipt of notice.

➢ Default under this section liable to Penalty Minimum Rs. 25000/- & Maximum up to Rs. 5.00 Lacs.

➢ Depository is liable to penalized u/s 447

12. ISSUE OF EMPLOYEE STOCK OPTIONS :Rule 12

An Unlisted Company could offer shares to its Employees by-

a. Passing Special Resolution.

b. The Companies will have the freedom to –
   - Determine exercise price.
   - Lock in period

c. The Company may by special resolution, **vary** the terms of not yet exercised by the employees provided **such variation is not prejudicial to the interests of the option holders**.

d. There shall be a minimum period of **ONE year** between grant of options and vesting of option

e. The option is **not Transferable** to any other person.

f. The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

g. In the **event of the death of employee while in employment**, all the options granted to him till such date shall **vest in the legal heirs or nominees** of the deceased employee.

h. In case the **employee suffers a permanent incapacity while in employment**, all the options granted to him as on the date of permanent incapacitation, **shall vest in him on that day**.
i. In the **event of resignation or termination** of employment, **all options not vested** in the employee **as on that day shall expire**.

j. The Board of Directors disclose full details regarding this matter in their Report.

k. The company shall maintain a Register of Employee Stock Options in **Form No. SH.6**

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**Private Placement: u/s 42 Chapter-3 :**

Any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in this section.

**Provisions:**

- This offer can be made to **MAXIMUM:50** or as may be prescribe – **Prescribe by RULES is 200** (Excluding QIBs & ESOS): **Form PAS-4**

- **For making this offer PRIOR CONDITION**
  - Approved by Special Resolution.
  - The value of such offer or invitation per person shall be with an investment size of not less than **twenty thousand rupees** of face value of the securities;
  - The company shall maintain a complete record of private placement offers in Form **PAS-5**:

- Exceeding this limit deemed **PUBLIC OFFER**.
- No fresh offer or invitation under this section shall be made **unless the allotments with respect to any offer or invitation made earlier have been completed** or that offer or invitation has been withdrawn or abandoned by the company.
13. ISSUE OF SHARES ON PREFERENTIAL BASIS (Right Issue) : Section 62, Rule 13

- Further issue of Shares shall be offered to-
  - to the existing Shareholders.
  - to the employees under a scheme of ESOS.
  - to any other persons, by way of preferential offer, if authorized by AOA.

- Valuation Report
  - For Listed Company- NOT Require, SEBI Regulations are applicable
  - For Unlisted Company-Required, Companies Act, 2013 and Rules are applicable.

- Compliance Requirement
  - Provision in AOA.
- Authorization by **Special Resolution**.
- Securities shall be **fully paid-up** at the time of allotment.
- Explanatory statement of Notice contain details of object of issue, number of shares issue, price, basis of price, relevant date of price, class of shares, Class of person for allotment, intension of issue, proposed time to completion of issue, Name of proposed allottee, Change in control, if any, previous issue of preferential issue, if any, justification of allotment, pre-post allotment details, if any, etc.
- the issue shall be **completed within 12 months of special resolution**, if the allotment is not completed within 12 months than another special resolution shall be passed.

14. **ISSUE OF BONUS SHARES: Section 63, Rule 14**

- Fully paid Bonus Shares may issue by Company to its Fully paid shareholders, out of-
  1. its Free Reserves
  2. the Securities Premium Account
  3. the Capital Redemption Reserve account.

- **Once announced** the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

15. **NOTICE TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL.- Section 61, Rule 15**

- Notice of alteration of Share Capital shall be filed by Company to the Registrar in **Form no. SH.7** along with fees.

16. **PROVISIONS OF MONEY BY COMPANY FOR PURCHASE OF ITS OWN SHARES BY THE EMPLOYEES OR BY TRUSTEES FOR THE BENEFIT OF EMPLOYEE.**

- Compliance requirement under these provision for purchase of its-own shares or
  -shares of holding Company,
  by complies of following conditions, namely-
a. Special Resolution.
b. In case of listed Company only through recognized Stock Exchange.
c. for Unlisted Company, valuation shall be made by registered valuer.
d. Value of Shares purchase/subscribed in aggregate $\leq 5\%$ of Paid up + Free Reserve.

- Following person are not eligible to appoint as TRUSTEES
  1. Director, KMP, Promoter of the company or of its holding, Subsidiary or of Associate Companies, or
  2. Any relative of Director, KMP or Promoter of the Company, or
  3. Beneficially holds ten percent or more of the paid-up share capital of the Company.

- Where voting right is not directly exercised by Employees than , inter alia, disclose in the Board's report of the F.Y.

17. BUY-BACK OF THE SHARES OR THE SECURITIES: Section 68 & Rules 17

- Only Board Resolution is required:
  - Authorized by Article.
  - 10% or less of Total Paid up Equity Capital + Free Reserve
  - The Buy Back Share 25% or less of Total Paid up Equity share capital and Free Reserve.

- Special Resolution Required
  - When it is out of Board Limits as mentioned above

These rules are applicable to Private Companies & Unlisted Companies

- Explanatory Statement contains details as per the prescribed rules.

- In Case of Special Resolution- Letter of Offer in Form SH.8 shall be filed to ROC which are dated and signed by two Directors, one of whom shall be MD, if any.

- A declaration of Solvency in Form SH.9 shall be filed to ROC & in case of listed to SEBI also, signed by two directors, one of whom shall be MD, if any and verified by an AFFIDAVIT.
The Letter of Offer shall be dispatched to securities holder - **21 days** of filing it to ROC.

Offer of Buy-Back shall be open - Minimum **15 days**
Maximum **30 days**

Proportionate rule follow when offer of securities greater than the securities to be bought back by the Company.

*Complete the verifications* of the offers received - **FIFTEEN days** from the date of closure of the offer.

*Deemed acceptance* unless no communication from the company within **30 days**.

The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as per the rules.

*With in 7 days* after completion of 15 days of closure -
- make payment of consideration in cash
- return the share certificates to the security holders whose securities have not been accepted at all.

*No issue of any new share*, including Bonus-- during authorizing of Buy back and closures of issues, except those arising out of any outstanding convertible instruments;

*Confirmation of adequate fund for payment of consideration* **ONLY BY CASH**

Offer shall not be withdraw once approve by shareholders.

*Borrowed from banks or financial institutions* for the purpose of buying back its shares shall not be utilized.

*Proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back shall not be utilized.*

The register of BUY-BACK in **Form SH. 10.**

Return require file in **Form No. SH.11** to ROC & SEBI (in case of Listed) along with Certificate in **FORM No. SH. 15**, regarding fulfillment of Compliance.

**18. DEBENTURES: Section 2(30), 71, Rule-18**

- Issue of debentures with an option to convert such debentures into share, at the time of redemption.
Debentures of carrying voting right can not be issue.
Secured Debenture can be issued by--Redemption shall not be exceed 10 Years.
(In case of infrastructure project redemption shall not be exceed 30 years)
Such issued shall be secured by creation of Charge.
Appointment of Debenture Trustees before the issue of prospectus or LOO and within 60 days of allotment.
Trust Deed in Form no. SH.12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within sixty days of allotment of debentures.
Debenture Redemption Reserve required to create-
- out of profit of the company available to distribute as dividend.
- equivalent to at least 15% of amount raised through before Debenture Redemption commence.
- For each year - a sum of minimum 15% of the amount of its debentures maturing during the year ending on the 31st day of March of the next year shall be credited to this fund on or before 30th April.
The amount credited to the Debenture Redemption Reserve shall not be utilized by the company except for the purpose of redemption of debentures.

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back is not more than twice the paid-up capital and its free reserves:
Only FULLY PAID up shares can be BUY BACK

19. NOMINATION BY SECURITIES HOLDERS: Section 72, Rule.19

- Any holder of securities of a company may, at any time, nominate, in Form No. SH.13, any person as his nominee in whom the securities shall vest in the event of his death.
- The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.
• Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No. SH.13 any person as nominee.

• A nomination may be cancelled, or varied by giving a notice of such cancellation or variation, to the company in Form No. SH.14.

• Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. SH.14.

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