INTRICACIES ON VARIOUS SECURITIES TRANSACTIONS
FURTHER ISSUE OF CAPITAL – SEC. 62

RIGHTS ISSUE SEC. 62

By Unlisted Companies
Sec. 62(1) of Companies Act, 2013

As Listed Companies
SEBI(ICDR) Regulations, 2009 & Sec. 62 of Companies Act, 2013

OTHER THAN RIGHTS ISSUE - SEC. 62

Preferential Offer - Sec 62 (or)
Private Placement - Sec 42

Public Issue of Shares
- Initial Public Offer (IPO)
- Further/Follow on Public Offer
  - Sec. 24 to Sec. 41 & Sec. 62

Employee Stock Option
- Sec. 62

Sweat Equity Shares
- Sec. 54
UNLISTED COMPANIES

Rights Issue
Sec. 62(1) of Companies Act, 2013

Preferential Offer/Private Placement
Sec. 62 read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and
Sec. 42 read with Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Employee Stock Options
Sec. 62(1) (b) read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014

Issue of Sweat Equity Shares
Sec. 54 read with Rule 8 of Companies (Share Capital and Debentures) Rules, 2014

Bonus Issue
Sec. 63 read with Rule 14 of Companies (Share Capital and Debenture) Rules, 2014

LISTED COMPANIES

Rights Issue
Sec. 62(1) of Companies Act, 2013 & SEBI (ICDR) Regulations, 2009

Preferential Offer/Qualified Institutional Placement (QIP)
Sec. 62(1) of Companies Act, 2013 & SEBI (ICDR) Regulations, 2009

Public Issue of Shares
a) Initial Public Offer (IPO)
   SEBI (ICDR) Regulations, 2009

   b) Further/Follow on Public Offer
   SEBI (ICDR) Regulations, 2009

Employee Stock Options
SEBI (Share Based Employee Benefits) Regulations, 2014

Issue of Sweat Equity Shares
SEBI (Issue of Sweat Equity Shares) Regulations, 2002

Bonus Issue
SEBI (ICDR) Regulations, 2009
Meaning:
Issue of shares to the Existing shareholders in proportion to the paid up share capital held by them.

1. The Board of Directors are the competent authority to issue shares to existing shareholders

2. The Rights issue offer is made by sending Letter of Offer to the shareholders who are existing on the date of sending of Letter of Offer

3. Contents of Letter of Offer:
   a) Specifying No.of Shares offered
   b) Mentioning Time Limit
   c) Right to exercise renouncing of the offer

4. Dispatchment of Notice Through:
   a) Registered Post (or)
   b) Speed Post (or)
   c) Electronic Mode
5. **Time of Sending Notice**: At least 3 days before the opening of the offer.

6. **Opening of Offer Period**: 15 to 30 days

7. **Renouncing of the Rights**: Unless AOA restricts, shareholder has the right to offer the shares to any other person of his choice.

8. The Board can offer the rights issue shares to any person of if there is no response from existing shareholders.

9. **Return of Allotment**: shall be filed by the company in e-Form **PAS-3** with the Registrar of companies within **30 days** of allotment of shares.

10. **Availability of Pre-emptive Rights**: Only to the existing Equity shareholders and not to Preference shareholders.

11. The Board of Directors must comply with Sec. 61, 64 to increase of Authorised Capital if post rights issue paid up capital is exceeding the existing authorised capital.
Check list for Secretarial Audit:

1. Letter of offer
2. Contents of Letter of offer
3. Disposal of shares by the Board on expiry of period/renunciation
4. Allotment should be made within 60 days from the date of receipt of the share application.

In case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule(1) and proviso to sub-rule(3) of rule 14 of Companies (Prospectus ad Allotment of Securities) Rules, 2014 shall not apply.

Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 deals with private placement

Indicative List of Documents to be checked:

1. Minutes of Board Meeting
2. Copy of Notice of offer of shares
3. Articles of association
4. Intimation to accept/decline the shares offered
5. Special Resolution for offering the shares to any other persons and minutes thereof.
6. PAS-3, MGT-14
Applicability: These Regulations are applicable to a Rights Issue of a Listed Company, where the aggregate value of specified securities offered is fifty lakh rupees or more;

General conditions to be fulfilled:

1) No issuer shall make a rights issue of specified securities:

   a) if the issuer, any of its promoters, promoter group or directors or persons in control of the issuer are debarred from accessing the capital market by the Board;

   b) if any of the promoters, directors or persons in control of the issuer was or also is a promoter, director or person in control of any other company which is debarred from accessing the capital market under any order or directions made by the Board;

   c) unless it has entered into an agreement with a depository for dematerialisation of specified securities already issued or proposed to be issued;

   d) unless all existing partly paid-up equity shares of the issuer have either been fully paid up or forfeited;
Procedure:
1. Appointment of merchant banker and other intermediaries.

The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries only those who are registered with SEBI, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.

2. In-Principle Approval of Stock Exchange

The company must obtain in-principle approval for its Rights Issue from the Stock Exchanges where the company shares are listed.

3. Pricing of Rights Issue

The Board of Directors can fix the Rights Issue price at their discretion. Record Date will be announced by the BOD and informed to the SE at least 7 days before the announcement of a Corporate Action.
4. Withdrawal of the Rights Issue

No Rights Issue can be withdrawn by issuer after fixing the Record Date. In case if it has withdrawn after announcing record date, no further issue of capital is allowed for a period of 12 months from the record date.

5. Minimum Subscription

Minimum Subscription of Rights Issue shall be 90% of the Issue Size

6. Letter of Offer

The Merchant Banker in consultation with the issuer must prepare Letter of Offer (LOO) in the format prescribed under Schedule VIII of ICDR Regulations

7. Issue Opening Date

Rights Issue must be opened to shareholders for subscription within 12 months from the date of clearing of SEBI
The Rights Issue must be opened for subscription for a minimum period of 15 days and Maximum period of 30 days

8. Abridged Letter of Offer

The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post to all the existing shareholders at least three days before the date of opening of the issue

9. Over Subscription

No part of over subscription of Rights Issue shall be retained by the Listed company, the amount has to be refunded

10. Listing of Rights Issue

The Rights Issue shall be listed in SE within 12 days from the date of closing or else amount shall be refunded within 15 days failing which 12% p.a interest shall be paid
Check List for Secreterial Audit

1. **Certified True copy of the resolution passed by the Board of Directors**

2. **Intimation** to Stock Exchange within **2 working days** prior to the Board Meeting

3. **Resolution passed by the Shareholders for increase of authorised capital**
   - Check the copy of SH-7, MGT-14 filed with ROC

4. **Pre-issue advertisement is made or not**
   - Check News Paper clippings

5. **In case convertible debt instruments are issued**
   - Check whether reservations have been made for the convertible portion.

6. **Record Date**
   - Check whether 7 working days notice was given for record date
Check List for Secreterial Audit

7. **Letter of Offer**
   - Check whether Letter of Offer had been approved by the BOD

8. Check Compliance of Continuous Listing of the Issuer

9. **Subscription for Additional shares by promoters**
   - check whether promoters complied SEBI(SAST) Regulations
According to Sec. 62 of the Companies Act, 2013, any further issue of capital by public and private companies other than Rights Issue requires approval of shareholders by passing Special Resolution U/s. 62 in their meeting.

**PRIVATE PLACEMENT/PREFERENTIAL OFFER**

**BY PUBLIC AND PRIVATE COMPANIES**

Sec. 62(1) (c) read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Sec. 42 read with Rule 14 of companies (Prospectus and Allotment of Securities) Rules, 2014

**Private Placement** means 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 following conditions.

**Preferential Offer** means an issue of **shares or other securities**, by a company to any select person or group of persons on a preferential basis and **does not include shares or other securities offered through:**

a) public issue,

b) Rights Issue
PRIVATE PLACEMENT/PREFERENTIAL OFFER

BY PUBLIC AND PRIVATE COMPANIES
Sec. 62(1) (c) read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Sec, 42 read with Rule 14 of companies (Prospectus and Allotment of Securities) Rules, 2014

c) Employee Stock Option Scheme,
d) Employee Stock Purchase Scheme or
e) Issue of Sweat Equity shares or
f) Bonus Shares or
g) Depository Receipts issued in a country outside India or foreign securities

Note:

Shares or other securities means equity shares fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.
Explanatory Statement annexed to the Notice of Meeting shall contain:

1) The object of the issue; the total number of shares or other securities to be issued.

2) The price or price band, basis of pricing arrived at along with report of Registered Valuer

3) Relevant Date with reference to which the price has been arrived at;

4) Classes of persons to whom the allotment is proposed

5) Intention of promoters, directors or KMP to subscribe to the offer
Explanatory Statement annexed to the Notice of Meeting shall contain:

6) The proposed time within which the allotment shall be completed

7) The names of the proposed allottees and the percentage of their post issue capital

8) The change in control, upon the preferential offer

9) The number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price

10) The pre issue and post issue shareholding pattern
PRIVATE PLACEMENT/PREFERENTIAL OFFER

BY PUBLIC AND PRIVATE COMPANIES

Sec. 62(1) (c) read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Sec. 42 read with Rule 14 of companies (Prospectus and Allotment of Securities) Rules, 2014

Conditions:

1. Issue shall be authorised by the Articles of Association and by a Special Resolution

2. The securities shall be made fully paid up at the time of their allotment

3. In case of Non-Convertible Debentures, it shall be sufficient if the company passes a previous Special Resolution once in a year for all the offers for such debentures during the year

4. Private Placement Offer Letter: shall sent in Form PAS-4, serially numbered application form to the subscribers, either in writing or in electronic mode within 30 days of recording of their names in the “Record of Private Placement Offer” kept by the company in prescribed form PAS-5

5. Offer or Invitation: shall be made to not more than 200 Persons in the aggregate in a Financial Year excluding a) Qualified Institutional Buyers (QIB’s) and b) Employees under stock option scheme and would be calculated individually for each kind of security.

6. No fresh offer shall be made before completion of earlier offers made or withdrawn
7. Investment size per person shall be not less than Rs. 20,000 of “Face Value” of the securities.

8. The Explanatory statement shall contain disclosures as mentioned in the rules.

9. The price may be either for cash or for consideration other than cash, shall be determined on the basis of Valuation Report.

10. If convertible securities are offered with an option to get equity shares, the price of the shares shall be determined before hand on the basis of valuation report.

11. The Non-cash consideration shall be valued by a registered valuer who shall submit a valuation report to the company giving justification for the valuation.

12. Non-cash consideration shall be treated in the books of accounts in the following manner:

   a) If it is in the form of Depreciable Asset, it shall be carried to the Balance Sheet as per Accounting Standard

   b) If it is in the form of Non-Depreciable Asset, it shall be expensed as provided in the Accounting Standard
13. Payment shall be through bank channels only: No cash Transactions shall be allowed and received amount shall be kept in a separate bank account.

14. Allotment: shall be made within 60 days from the date of receipt of application money.

15. If not allotted within 60 days, company shall repay the application money to subscribers within 15 days from the date of completion of 60 days. If it is failed, it shall be liable to repay the money with interest of 12% after expiry of 60 days.

16. Private Placement Offer Letter in PAS-4 and Record of Private Placement in PAS-5 shall be filed with ROC in form GNL-2

17. A Return of Allotment shall be filed in PAS-3 within 30 days of allotment
Check list for Secretarial Audit:
1. Prepare list of persons to whom offer may be made (not exceeding 200 in a financial year for each kind of security)
2. Ensure that no allotment against any previous offer/invitation of any kind of security is pending
3. Issue to be authorised by AOA
4. Pass special resolution for such issue.
5. Explanatory statement to contain justification for price and premium.
6. Determine issue price by valuation report
7. The issue price not to be less than the price determined on the basis of valuation report
8. Only fully paid securities can be issued
9. Issue an offer letter in Form No. PAS-4
10. Requirements of Offer Letter:
   a. To be accompanied by serially numbered application form
   b. Addressed specifically to the person to whom offer is being made
   c. Sent to only such person in writing/electronically
   d. Within 30 days of recording names in the list
   e. No person other than the addressee allowed to apply through application form
   f. Value of offer/invitation per person not less than Rs. 20,000 of face value of the security
   g. To also comply with requirement of contents of notice about renunciation etc.
Check list for Secretarial Audit:

11. Maintain record of offer letters in Form No. PAS-5
12. File offer letter with ROC along with offer letters with 30 days of circulation of offer letter
13. Amount to be received only by cheque/DD/other banking channels but not by cash – only from the bank account of the subscriber.
14. Company to maintain record of the bank account from which payments received
15. In case of joint holders, payment was received from first applicant only.
16. With in 12 months from the date of passing special resolution allotment should be completed if not another resolution was passed to complete allotment
17. Where convertible securities are offered, price of resultant shares shall be determined beforehand on basis of valuation report.
18. Board resolution to specifically contain authority for issuance of share certificates to 2 directors and CS/one authorised person. One of the two directors should be director other than MD/WTD.
19. Share application money was kept in separate bank account and was utilized only for
   - Adjustment against allotment or
   - Repayment
20. Return of allotment in Form No. PAS-3 within 30 days
PRIVATE PLACEMENT/PREFERENTIAL OFFER
BY PUBLIC AND PRIVATE COMPANIES

Sec. 62(1) (c) read with Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 and Sec. 42 read with Rule 14 of companies (Prospectus and Allotment of Securities) Rules, 2014

Check list for Secretarial Audit:
21. Share certificates to be issued within 2 months of allotment of shares / 6 months of allotment of debentures
22. Entry in Register of Members
23. In case of consideration other than cash, accounting treatment as specified in Rules, was complied
24. In case a charge is required to be created in connection with the issue of the securities, check if the same has been done in accordance with the provisions of the Act and other applicable legal requirements and prescribed returns have been filed.

Indicative list of documents to be checked:
1. Minutes of Board Meeting
2. Special Resolution with Explanatory Statement and minutes thereof
3. AOA
4. Valuation Report
5. Copy of offer letter
6. Record of Bank Account from where payments for subscription have been received
7. Board Resolution giving authority to sign the share certificates
8. Register of members
9. Boards Report
10. PAS-3, PAS-4, PAS-5, SH-6, MGT-14
Conditions for preferential issue.

1. A listed issuer may make a preferential issue of specified securities, if:

   a) a special resolution has been passed by its shareholders;

   (b) all the equity shares, if any, held by the proposed allottees in the issuer are in dematerialised form

   (c) the issuer is in compliance with the conditions for continuous listing of equity shares as specified in the listing agreement with the recognised stock exchange where the equity shares of the issuer are listed;

   (d) the issuer has obtained the Permanent Account Number of the proposed allottees

2. Validity of the Resolution

   The Special Resolution passed by the shareholder of the company is valid for a period of 15 days from the date of passing of Special Resolution within which the allotment should be completed.
3. Conversion Period:

If preferential allotment is made in the form of convertible instrument or warrants these must be converted into Equity Shares within a period of 18 months from the date of allotment.

4 (a) Pricing of equity shares [Frequently traded shares:]

If the equity shares of the issuer have been listed on a recognised stock exchange for a period of twenty six weeks or more as on the relevant date, the equity shares shall be allotted at a price not less than higher of the following:

a) The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date;
   (or)

b) The average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.

4 (b) Pricing of equity shares [Infrequently traded shares:]

Where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.
5. Lock-in of specified securities- Promoters

The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked-in for a period of three years from date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be.

Provided that not more than twenty per cent. of the total capital of the issuer shall be locked-in for three years from the date of trading approval. Provided further that equity shares allotted in excess of the twenty per cent. shall be locked-in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

6. Lock-in of specified securities- Other than Promoters

The specified securities allotted on preferential basis to persons other than promoter and promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to such persons shall be locked in for a period of one year from the date of trading approval.

7. Payment of consideration

Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities.
8. Payment of consideration on warrants

An amount equivalent to at least twenty five per cent. of the consideration shall be paid against each warrant on the date of allotment of warrants. The balance seventy five per cent. of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

9. Restrictions

a) No preferential allotment shall be made as partly paid up

b) No preferential allotment shall be made to an allottee who sold the shares of the company in last 6 months

c) No preferential allotment shall be made for a period of one year to an allottee who failed to pay the balance payment on previous allotment of warrants
Check List for Secretarial Audit

1. Special Resolution
   - check copy of e-form MGT-14

2. Disclosure in Explanatory Statement
   - check whether additional disclosures were made as per these regulations

3. Private Placement Offer Letter
   - check whether offer is made in PAS-4

4. Record of Private Placement Offer
   - check whether offer is made to persons mentioned in PAS-5

5. Completion of Allotment in 15 days

6. Preferential Allotment for consideration other than cash; check
   a) Valuation Report
   b) Shareholders Agreements
   c) Approval letter from FIPB/RBI if applicable
Check List for Secretarial Audit

7. Allotment pursuant to CDR Scheme/ Order of High Court/BIFR
   - check copy of relevant scheme/order

8. Allotment pursuant to conversion of loan of FI’s
   - Loan Agreement executed by the company

9. Disclosures under SEBI(SAST) Regulations/SEBI (PIT) Regulations
   - SEBI(PIT) Regulations, 2015 will be effective from May 15, 2015

10. No. Of Allottees
    - check no. of allottees does not exceed 200 in a F.Y
PUBLIC ISSUE
SEBI (ICDR) REGULATIONS, 2009

Public Issue

- Initial Public Offer (IPO)
  - Fresh Issue
  - Offer for Sale

- Further/Follow on Public Offer (FPO)
  - Fresh Issue
  - Offer for Sale
Eligibility Requirements (Option I):

1. it has net tangible assets of at least three crore rupees in each of the preceding three full years (of twelve months each), of which not more than fifty per cent. are held in monetary assets:

2. it has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years

3. It has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

4. the aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year

5. if it has changed its name within the last one year, at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name
Option II

An issuer not satisfying the above conditions may make an initial public offer if the issue is made through the book-building process and the issuer undertakes to allot, at least seventy-five percent of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

Conditions for further public offer (FPO)

An issuer may make a further public offer if it satisfies the above conditions 4 and 5 and if it does not satisfy those conditions, it may make a further public offer if it satisfies the conditions specified Option II.
1. **Issue Size:** No. of Shares×Offer Price and Issue Size consists of:
   
   a) promoter Contribution  
   b) Net Offer to Public  
   c) Reservations

2. **Issue Price** = Face Value + Premium

3. **Participants in Net Offer to the Public**
   a) Qualified Institutional Buyers(QIB’s)  
   b) Non-Institutional Investors(NII’s)  
   c) Retail Individual Investor(RII’s)

4. **Reservations:** Reserved Categories
   
   a) Employees  
   b) Shareholders  
   c) Associated Persons and Issue Management Team(Service Providers)
5. Debarment

The issuer company, its directors or promoters should not have been debarred by SEBI to access the capital market through any of its previous orders.

6. Appointment of Merchant Banker/BRLM and other intermediaries.

The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.

7. Agreement with NSDL & CDSL

The issuer must have entered into an agreement with NSDL and CDSL offering the option to the investor to apply for demat shares.
8. Minimum Allottees

The issuer company must ensure there must be a min. Of 1000 allottees in the public issue failing which the amount shall be refunded.

9. In-principle Approval from Stock Exchanges

The company must obtain in-principle approval from the stock exchanges where the securities being offered to the public are intended to be listed.

10. Partly Paid Up shares

The issuer company shall not have any partly paid up shares before submitting of Draft prospectus/Draft Red-Herring Prospectus to SEBI.

11. Filing of Offer Document

The offer document(DP/DRHP) must be submitted to SEBI at least 30 days prior to submission of offer document to the ROC for registration
Other Requirements:

1. Promoter’s Contribution
2. Issue Price
3. Underwriting
4. Call Money
5. Subscription List
6. Issue Opening Date
7. Minimum Subscription
8. Due Diligence
Othe Requirements:

9. Pre-Issue Advertisement for rights issue

10. Mandatory Collection Centers

11. Reservations

12. Appointment of Compliance Officer

13. Basis of Allotment

14. Anchor Investors

15. Application Supported by Blocked Amount (ASBA)
1. Approval of Share holders by passing special resolution u/s.62 for IPO/FPO.

2. Conducting of Board Meeting for appointment of intermediaries of Primary Market.

3. Preparation of DRHP by the BRLM.

4. Submission of DRHP along with Due Diligence to SEBI, certificates and other documents to SEBI & Stock Exchanges Simultaneously

5. Obtain In-principle approval of Stock Exchanges and submit to SEBI.

6. Obtain Final Observations of SEBI on the DRHP.

7. Conduct Board Meeting and approve RHP by all directors, Appoint Bankers, underwriters/syndicate members to the issue.

8. Register the RHP with ROC

9. Ensure that amount has been received from the reserved category mentioned in the offer document.
10. Circulate copies of RHP & Bid-cum Application forms to the investors.

11. Open Bank Account with branches of Bankers to the issue.

12. Announce Floor price and price band 1 or 2 days before opening of the issue.

13. Deposit 1% of Issue size as refundable deposit with the DSE (before opening of public issue with DSE).

14. Open the issue for subscription.

15. Close the Public Issue.

16. Finalise the Basis of Allotment.

17. Submit the return of allotment in e-form PAS-3 with ROC.

18. Register the Final Prospectus with ROC.

19. Make listing application to the Stock Exchanges.
Check List for Secretarial Audit

1. **Replies given by the Merchant Banker to SEBI**
   - check whether suggestions, changes and observations made by SEBI have been incorporated

2. Copy of Due Diligence Certificate in Form A of Schedule I

3. **Issue of warrants along with public issue and it’s tenure**
   - check tenure of warrants does not exceed 12 months

4. **Non-Receipt of Minimum Subscription**
   - check whether the application money is refunded within time specified
   - check refund orders/certificate of posting etc.

5. **Issue Size exceeding 500 crores**
   - check whether monitoring agency is appointed
   - check copy of report of monitoring agency
   - check whether report has been submitted to SEBI half yearly
Check List for Secretarial Audit

6. Check the documents received from the MB/BRLM

7. Pre-issue Advertisement
   - check whether advertisement is made after registering the RHP/prospectus
   - check the copies of newspaper clippings

8. Announcement of Floor Price or Price Band
   - check copies of newspaper clippings

9. Receipt of Min. Promoter’s Contribution
   - verify the copy of Board Resolution for payment by promoters and allotment
   - check certificate from chartered accountant

10. Green Shoe Option
    - check GSO is authorised by Special Resolution
    - check copies of resolutions of general meetings
    - check agreement with stabilizing agent
Check List for Secretarial Audit

11. Reporting of Activities of GSO to SEBI
   - check the reports sent to SEBI are in compliance with these regulations

12. Utilization of Application money
   - check the application money is utilised as per Sec.40 of Companies Act, 2013

13. Check whether disclosures made in RHP are made publicly accessible

14. Outstanding Subscription Money
    - check whether outstanding subscription money is called in 12 months

15. Terms of Issue of specified securities
    - check whether issuer has made variation of terms of issue

16. Check whether the compliance officer is appointed

18. Check whether lead manager submitted post issue reports to SEBI

19. Check whether post issue advertisement is made or not
**Employee Stock Options**

**BY PUBLIC AND PRIVATE COMPANIES**

Sec.62(1) (b) read with Rule 12 of Companies(Share Capital and Debentures) Rules, 2014

**Employee Stock Option** means the option given to the directors, officers or employees of a company or of its holding company or subsidiary 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 at a future date at a pre-determined price.

Some of the important definitions are:

1) **Employee Stock Option Scheme (ESOS)** means a scheme under which a company grants option to employees.

2) **Employee Stock Purchase Scheme (ESPS)** means a scheme under which the company offers shares to employees as part of public issue or otherwise.

3) **Exercise** means making of an application by the employee to the company for issue of shares against option vested in him in pursuance of the ESOS.

4) **Exercise Period** means the time period after vesting within which the employee should exercise his right to apply for shares against the option vested in him under ESOS.

5) **Exercise Price** means the price payable by the employee for exercising the option granted to him. Grant means issue of option to employees under ESOS.
6) **Option** means a right but not an obligation granted to an employee in pursuance of ESOS to apply for shares of the company at a pre-determined price.

7) **Vesting** means the process by which the employee is given the right to apply for shares of the company against the option granted to him under ESOS.

8) **Vesting Period** means the period during which the vesting of the option granted to the employee in pursuance of ESOS takes place.

**EMPLOYEE** means

1. a permanent employee of the company who has been working in India or outside India or

2. a Director of the company, whether a whole time director or not but excluding an independent director; or

3. an employee, as defined above, of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include:
   
   i) an employee who is a promoter or a person belonging to the promoter group; or
   
   ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company.
Conditions for issue of ESOS:

1) Employee Stock Option Scheme has been approved by the shareholders of the company by passing a Special Resolution (SR)

2) The Explanatory Statement shall contain the disclosures as mentioned in the Rules

3) The Company shall have the freedom to determine the exercise price in conformity with its accounting policies

4) Another Special Resolution is required to be passed in case of granting of options to the employees of subsidiary or holding company or if any employee is entitled for granting of options equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) at the time of grant of options (during the one year)

5) The company may vary terms of the Stock Option Scheme by passing a Special Resolution and the Notice of SR shall disclose all the variations of the scheme

6) There shall be minimum of one year gap between granting and vesting options

7) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option
EMPLOYEE STOCK OPTIONS
BY PUBLIC AND PRIVATE COMPANIES
Sec.62(1) (b) read with Rule 12 of Companies(Share Capital and Debentures) Rules, 2014

Conditions for issue of ESOS:
8) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits, till the shares are issued on exercise of option

9) The amount may be forfeited if the options are not exercised by the employee within the period or the amount any may be refunded if the options are not vested due to non-fulfillment of the terms and conditions of the scheme.

10) The Board shall disclose in the Director’s Report for the year, all the details of the ESOS as mentioned in the rules

11) The company shall maintain a Register of Employee Stock Options in Form No.SH.6 and shall be kept at the registered office of the company or any other place as may be decided by the board.

Contents of Explanatory Statement
1) Total Number of stock options to be granted

2) Eligible classes of employees, the appraisal process for the eligibility of employees

3) Terms of vesting and the maximum period and process of exercise and lock-in-period
EMPLOYEE STOCK OPTIONS
BY PUBLIC AND PRIVATE COMPANIES
Sec.62(1) (b) read with Rule 12 of Companies(Share Capital and Debentures) Rules, 2014

Contents of Explanatory Statement

4) Maximum Number of options to be granted per employee and in aggregate

5) Method of valuation; conditions for laps in case of termination, resignation

Transferability of the Options

1) The options granted to employees shall not be transferable to any other person

2) The option shall not be pledged, hypothecated, mortgaged or encumbered or alienated

3) No person other than the employees shall be entitled to exercise the option.

4) In the event of death, the options shall be vested with the legal heirs or nominees of the deceased employee.

5) In case of 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.

6) In the event of resignation, all options not vested in the employee as on that day shall expire
Check list for Secretarial Audit:

**UNLISTED PUBLIC COMPANIES**
1. Company should pass special resolution as required
2. If passes, check the copy of the special resolution for approving the scheme of ESOP
3. Special Resolution to be filed with ROC in Form No. MGT-14
4. The explanatory statement to the notice of the meeting contains the disclosures to be made.
5. The Directors Report contains the disclosures required to be made in such report
6. The Register of Employee Stock Options maintained in Form No.SH-6 and is duly authenticated by the Company secretary / other person authorised by the Board for the purpose.

**Indicative List of Documents to be checked:**

1. Minutes of Board Meeting
2. Special Resolution approving ESOP along with explanatory statement
3. Minutes of General Meeting
4. Boards’ Report
5. Register of Employee Stock Option (Form SH-6)
6. PAS-3, MGT-14
In exercise of the powers conferred by section 11, section 11A, section 30 of the Securities and Exchange Board of India Act, 1992 read with section 62 of Companies Act, 2013 and rule 12 of Companies (Share Capital and Debentures) Rules, 2014, the Securities and Exchange Board of India hereby makes the following regulations, to provide for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.
Applicability of these Regulations

The provisions of these regulations shall apply to following:

(i) employee stock option schemes;
(ii) employee stock purchase schemes;
(iii) stock appreciation rights schemes;
(iv) general employee benefits schemes; and
(v) retirement benefit schemes.

Applicability of the provisions of these regulations

The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and has a scheme:
(i) for direct or indirect benefit of employees; and

(ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and
(iii)satisfying, directly or indirectly, any one of the following conditions:

a. the scheme is set up by the company or any other company in its group;
b. the scheme is funded or guaranteed by the company or any other company in its group
c. the scheme is controlled or managed by the company or any other company in its group

ADMINISTRATION OF SPECIFIC SCHEMES

PART A: EMPLOYEE STOCK OPTION SCHEME (ESOS)

1. Administration and implementation
2. Pricing
3. Vesting Period
4. Rights of the option holder
PART B: EMPLOYEE STOCK PURCHASE SCHEME (ESPS)

1. Administration and implementation

2. Pricing and lock-in

PART C : STOCK APPRECIATION RIGHTS SCHEME (SARS)

1. Administration and implementation

2. Vesting.

PART D : GENERAL EMPLOYEE BENEFITS SCHEME (GEBS)

- Administration and implementation

PART E: RETIREMENT BENEFIT SCHEME (RBS)

- Administration and implementation
Check List for Secretarial Audit

1. Direct Route or Irrevocable Trust Route for ESOP?

2. Check whether the Implementation of Scheme through Trust was decided upfront

3. Scheme Involving Secondary Acquisition or Gift or Both

4. Check whether Appointment of Trustee is in-compliance with these Regulations

5. Check whether approval of share holders is obtained authorising the trust to implement the scheme

6. Whether Trust deals in Delivery Based Transactions and not in derivatives

7. Shares under secondary acquisition held by the trust is within prescribed limits

8. Trust holds shares acquired through secondary acquisition for a min. of 6 months
Check List for Secretarial Audit

9. Off-market transactions by the trust have been made in accordance with these regulations

10. Whether company has constituted compensation committee for administration of the scheme

11. Check whether the Employee is eligible to participate in the scheme

12. Whether scheme is approved by shareholders by SR

13. Check whether the variation of scheme has been done as per these Regulations
Sweat Equity Shares

means 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 (IPRs) or value additions, by whatever name called

For this Section: Employee means

a. permanent employee of the company who has been working in India or outside India, for at least last one year; or
b. director of the company, whether a whole time director or not; or
c. an employee or a director of a subsidiary, in India or outside India, or of a holding company of the company
Value additions

means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of IPRs, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

Conditions for issuing Sweat Equity Shares

1. The company can issue sweat equity shares only after expiry of one year from the date of commencement of Business

2. The issue is authorised by Special Resolution
3. The Explanatory Statement shall contain the details as mentioned in rules

4. The SR is valid for 12 months for the allotment of shares from the date of passing of SR

5. Equity Shares issued under sweat equity shall rank equal with other equity shares

6. The company shall not issue sweat equity for more than 15% of the existing paid up equity capital in a year or shares of the issue value of Rs. 5 crore whichever is higher. However sweat equity shall not exceed 25% of the paid up equity capital

7. The sweat equity shares issued to Director or employees shall be locked in for 3 years

8. The company shall maintain sweat equity shares in Form SH-3
Check list for Secretarial Audit

1. Special Resolution
2. Explanatory statement to be annexed to the notice of the general meeting contains the specified particulars
3. Not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business.
4. Not to issue more than 15% or share of the issue value of Rs. 5 crores further ensure that the issuance of has not exceed 25% of the paid up equity capital of the Company any time.
5. Shares to be issued or valued at a price determined by a registered valuer.
6. The issued share are locked in for a period of 3 years from the date of allotment.
7. The amount of Sweat Equity shares issued is included as a part of managerial remuneration while calculating the limits.
8. The company is maintaining Register of Sweat Equity Shares in Form No. SH-3.
9. The Register is maintained at the Registered office of the company or such other place as the Board may decide
10. The Register is authenticated by the Company Secretary or by any other person authorised by the Board for the purpose.
Indicative List of Documents to be checked:

1. Minutes of Board Meeting
2. Special Resolution with Explanatory Statement
3. Minutes of General Meeting
4. Approvals of registration from sectorial regulators such as RBI, SEBI etc.
5. Valuation Report
6. Board’s Report
7. INC-21, SH-3
8. PAS-3, MGT-14
1. **Applicability.**

These Regulations are applicable to listed companies

2. Sweat equity shares may be issued to employee, promoter

3. **Special Resolution**

The BOD at the time of sending notice to the shareholders shall send additional information in the explanatory statement as mentioned in the schedule to these Regulations

4. **Issue of Sweat Equity Shares to Promoters.**

In case of Issue of sweat equity shares to promoters, the same shall also be approved by simple majority of the shareholders in General Meeting
5. Pricing of Sweat Equity Shares

The price of sweat equity shares shall not be less than the higher of the following:

a) the average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or

b) The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date

6. Accounting Treatment

If the sweat equity is being issued in the form of a Depreciable Assets the same will be transferred to the balance sheet

If the sweat equity is being issued other than in the form of Depreciable assets it will be treated as expenditure in the Statement of profit and loss
7. Valuation of intellectual Property

The merchant banker may consult such experts and valuers, as he may deem fit having regard to the nature of the industry and the nature of the property or other value addition.

The merchant banker shall obtain a certificate from an independent Chartered Accountant that the valuation of the intellectual property or other value addition is in-accordance with the relevant accounting standards.

8. Lock-in of sweat equity shares

The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.

9. Listing

The Sweat Equity issued by a listed company shall be eligible for listing only if such issues are in-accordance with these regulations.
Check List for Secretarial Audit

1. Check whether the sweat equity shares are issued to the promoters, Employees

2. Special Resolution
   - check resolutions of BOD, Notice and Explanatory Statement
   - check General Meeting Resolutions

3. Pricing
   - check whether pricing has been arrived as per these regulations

4. Accounting Treatment
   - check whether appropriate entries have been in the balance sheet, statement of profit and loss

5. Valuation of Intellectual property
   - check valuation report of the chartered accountant
   - check whether valuation report is in-accordance with the Accounting standards
Check List for Secretarial Audit

6. Locking Period
   - check the shareholding pattern whether shares have been locked or not

7. Listing
   - check whether sweat equity shares are listed in-accordance with these regulations

8. Register of Sweat Equity shares
   - check whether entries have been made in the register
Sources for issue of fully paid up Bonus Shares

1. Its Free Reserves
2. The securities premium account
3. The capital redemption reserve account

However, no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

Conditions:

1. It is authorised by the Articles of Association
2. It has on the recommendation of the Board, been authorised in the general meeting
3. No default in payment of interest or principal on fixed deposits or debt securities
4. The company once announced the decision of Board recommending a bonus issue shall not withdraw.

5. No default in payment of statutory dues of the employees

6. The partly paid up shares on the date of allotment are made fully paid up

7. The bonus shares shall not be issued in lieu of dividend
Bonus shares

means capitalisation of reserves or capitalisation of securities premium account or capitalisation of capital redemption reserve account by issuing free shares to all the shareholders of the company

Conditions:

1. There must be an article in AOA

2. It has not been defaulted in payment of interest or principal in respect of fixed deposits or debentures issued by the company

3. No default in payment of interest or principal on fixed deposits or debt securities

4. The existing partly paid up shares if any must be made fully paid up before issuing of Bonus shares
Restriction on bonus issue

1. No Bonus issue shall be made out reserves created on revaluation of assets

2. The Bonus Issue is allowed to be made only out of reserves created out of profits of the company or out of securities premium account collected in cash

3. No Bonus Issue shall be made in lieu of dividend

Rights of PCD/FCD holders

The board shall take into account the interests of PCD/FCD holders while issuing Bonus Shares
Completion of Bonus Issue

The BOD must complete issue of Bonus Shares:

a) Within 2 months if the bonus issue requires shareholders approval
b) Within 15 days if no approval of shareholders is required

Withdrawal of Bonus Issue

No Bonus issue shall be withdrawn by BOD after announcing the Record Date to Stock Exchange
Thank You

CS P.S. Rao
Practising Company Secretary

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