

- to invest in Indian venture capital funds or undertakings.
- **Registration:** FVCIs must be registered with SEBI.
- **Investment Conditions**
 1. **Disclosure:** FVCIs must disclose investment strategy to SEBI.
 2. **Investment Restrictions:**
 - 66.67% of funds must go into unlisted equity shares/equity-linked instruments.
 - 33.33% max can be invested in:
 - IPOs of venture capital companies.
 - Debt instruments (after equity investment).
 - Preferential equity allotment (with lock-in period).
 3. **Other Conditions:**
 - Duration of fund's lifecycle must be disclosed.
 - Investment via **Special Purpose Vehicles (SPVs)** allowed.
- **Books and Records**
 - **Maintenance:** Must maintain records for 8 years, detailing the state of affairs.
 - **Notification to SEBI:** FVCI must inform SEBI about the location of records.
- **General Obligations**
 0. **Custodianship:** Agreement with domestic custodian for securities handling.
 1. **Reporting:** Custodian must report on investment activities.
 2. **Bank Accounts:** Must have an RBI-approved bank for foreign currency and non-resident rupee accounts.

AIF Listing Process and Documentation:

- **Process**
 1. **In-Principle Approval:** AIF applies to the Stock Exchange.
 2. **SEBI Approval:** After Stock Exchange approval, seek SEBI's consent.
 3. **Final Listing:** Post SEBI approval, apply for listing and trading.
- **Documentation for In-Principle Approval**
 1. Certified copies of agreements: Investment Management, Custodian, R&T.
 2. **Draft Information/Placement Memorandum:** Hard and soft copies.
 3. **Registration:** SEBI's certification for AIF registration.
 4. **Trust/Company Documents:** Trust Deed, Articles of Association, Board resolutions.
 5. CEO's Undertaking: Compliance with AIF regulations.
- **Post-Allotment Documentation**
 1. **Listing Application:** Details of unit allotment and issue.
 2. **Final Placement Memorandum:** Certified copy and soft copy.
 3. **Compliance Confirmation:** CEO statement on regulatory compliance.
 4. **ISIN Activation:** Confirmation from NSDL/CDSL.
 5. **Fee Payment:** Listing fees and applicable taxes.

AIF Reporting and Disclosures (SEBI Guidelines)

- **Leverage Reporting:** Category III AIFs must report leverage by next working day.
- **Placement Memorandum:** Must include details of fees, charges, and disciplinary history.

- **Change in Placement Memorandum:** Notify investors and SEBI within 1 month.
 1. **Exit Options for Dissenting Investors:** Buyout or redemption (valuation by independent valuers).
 2. **KYC/AML Compliance:** AIFs must adhere to SEBI's KYC and Anti-Money Laundering guidelines.

CH-12 RAISING OF FUNDS NON FUND BASED

Regulatory Framework

- **SEBI Regulations:**
 - SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021
 - SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
 - SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
 - Companies Act, 2013

Bonus Issue Overview

- **Definition:**
 - Issue of shares to existing shareholders without payment based on shares already held.
 - Shares are issued from the company's free reserves or share premium account.
- **Purpose:**
 - Increases the number of shares outstanding, but individual shareholding remains unchanged.
 - A method of distributing accumulated profits as capital.
- **Advantages:**
 - No adverse effect on fund flow.
 - Reduces market value of shares to nominal value.
 - Increases return on investment for shareholders.
 - Non-taxable income for shareholders.
 - Increases paid-up capital.

Provisions under the Companies Act, 2013

- **Section 63(1):**
 - Bonus shares may be issued from:
 - Free reserves
 - Securities premium account
 - Capital redemption reserve account
 - Not from reserves created by asset revaluation.
- **Conditions (Section 63(2)):**
 - Authorization by Articles of Association (AoA).
 - Shareholder approval in a general meeting.
 - No default on debt/interest payments or statutory dues.
 - Any partly paid shares must be made fully paid before issuing bonus shares.
- **Section 63(3):**
 - Bonus shares cannot be issued as a substitute for dividends.
- **Rule 14, Companies (Share Capital and Debentures) Rules, 2014:**
 - Once announced, the bonus issue decision cannot be withdrawn.

Provisions under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

1. **Eligibility:**
 - Must be authorized by AoA, or pass resolution to amend AoA.
 - Approval required from stock exchange for listing and trading.
 - No default on payments or statutory dues.
 - Partly paid shares must be made fully paid.
2. **Rights of Convertible Debt Holders:**

- Reservation of equity shares in bonus issues for holders of fully/partly convertible debt instruments.
- Rights should be in proportion to convertible debt.
- 3. **Free Reserves:**
 - Bonus shares must be issued from free reserves, securities premium, or capital redemption reserves.
 - Asset revaluation reserves cannot be used.
- 4. **No Bonus in Lieu of Dividend:**
 - Bonus shares cannot replace a dividend.
- 5. **Dematerialized Form:**
 - Allotment must be in dematerialized form.
- 6. **Implementation:**
 - Must be implemented within 15 days of Board approval if no shareholder approval needed.
 - If shareholder approval is required, implementation must occur within 2 months.

Provisions under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

- **Prior Intimation:**
 - Notify stock exchange 2 days before the Board meeting discussing bonus issue.
- **Record Date:**
 - Intimate the stock exchange about the record date for bonus shares.
- **Disclosure:**
 - Within 30 minutes after the meeting, disclose the details of the bonus issue and the date for credit/distribution.

Checklist for Issuing Bonus Shares

1. **AoA:**
 - Ensure AoA allows bonus shares or pass resolution to amend AoA.
2. **Authorized Capital:**
 - Confirm that the post-issue capital is within authorized capital or increase it if necessary.
3. **Stock Exchange Approval:**
 - Obtain approval from stock exchanges.
4. **No Defaults:**
 - Ensure no defaults on debt/interest or employee statutory dues.
5. **Partly Paid Shares:**
 - Make any partly paid-up shares fully paid before issuing bonus shares.
6. **Promoters' Status:**
 - Ensure no promoters or directors are fugitive economic offenders.
7. **Source of Bonus:**
 - Issue bonus from free reserves, and not from asset revaluation reserves.
8. **Convertible Debt:**
 - Ensure equity shares are reserved for holders of convertible debt, if applicable.
9. **Implementation Deadline:**
 - Implement the bonus issue within the prescribed timeline (15 days or 2 months).
10. **Irrevocability:**
 - Once declared, the bonus issue cannot be withdrawn.

This concise structure covers the key regulatory framework and procedural requirements for issuing bonus shares under the Companies Act, SEBI regulations, and Listing Requirements.

Procedure for Issue of Bonus Shares

1. **Notice of Board Meeting:**
 - Send at least 7 days before the meeting date.
2. **Inform Stock Exchange (Listed Entity):**
 - Notify at least 2 working days before the meeting about the proposal to consider the bonus issue.
3. **Board Meeting:**
 - Convene to consider the bonus issue and take necessary steps, including:
 - Fix date for closure of books.

- Decide date, time, place, and agenda for the General Meeting.
- 4. **Outcome of Board Meeting:**
 - Submit within 30 minutes of meeting conclusion.
- 5. **General Meeting Notice:**
 - Issue to shareholders, directors, and auditors at least 21 days before the meeting.
- 6. **General Meeting:**
 - Hold meeting to consider and pass the Special Resolution for bonus issue.
- 7. **File MGT-14:**
 - File within 30 days after passing the Special Resolution.
- 8. **RBI Permission (If Applicable):**
 - Obtain permission under FEMA, 1999 for issuing bonus shares to Non-Resident Indians, if required.
- 9. **Stock Exchange Approval:**
 - Obtain necessary listing and trading approval.
- 10. **Board Meeting for Allotment:**
 - Convene to finalize bonus share allotment in the prescribed proportion, as per resolution.
- 11. **File Return of Allotment (PAS-3):**
 - File with ROC within 30 days, after paying the requisite fee.
- 12. **Stock Exchange Listing Application:**
 - Apply for listing of bonus shares with the concerned stock exchange(s).
- 13. **Approval from NSDL/CDSL:**
 - Obtain approval for issuing shares in dematerialized form.
- 14. **Physical Shares:**
 - If in physical form, issue share certificates within 60 days from the date of issue.

Documents Required for Listing Approval under SEBI Regulations

For In-Principle Listing Approval (Regulation 28(1) of SEBI LODR):

1. Certified copy of the Board resolution for bonus issue approval.
2. Certified copy of the AGM/EGM notice with the explanatory statement.
3. Certified copy of the shareholder resolution approving the bonus issue and any increase in authorized share capital.
4. Certificate from auditors confirming compliance with SEBI (ICDR) Regulations for bonus issue.
5. Statement showing bonus entitlement, shares to be allotted, and shares in abeyance.
6. Certified true copy of the amended Memorandum and Articles of Association, or confirmation if not amended.
7. Confirmation from the Managing Director/Company Secretary.
8. Processing fee.
9. Latest audited annual report.
10. Contact details of the company's representative.

For Listing Approval of Bonus Shares:

1. Letter of application for listing of bonus shares.
2. Certified copy of the Board resolution for bonus share allotment.
3. Details of the newly issued securities.
4. Shareholding pattern pre and post-bonus issue.
5. Certificate from auditors confirming compliance with SEBI (ICDR) Regulations.
6. Details of the Board and shareholder approval dates, and any delays in bonus issue implementation.
7. Confirmation from the Managing Director/Company Secretary.
8. Details of the listing/processing fee remitted.

This streamlined procedure and checklist ensure compliance with regulatory requirements for issuing bonus shares, from initial board approval to listing.

SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

Introduction

- **Objective:** Retaining top talent by rewarding employees with equity shares through schemes like **Sweat Equity Shares** and **ESOP (Employee Stock Option Plan)**.
- **History:**
 - SEBI (Sweat Equity) Regulations, 2002 and SEBI (SBEB) Regulations, 2014 regulated share-based employee benefits separately.
 - Merged into a single framework in 2021 to improve regulatory efficiency.

Applicability

The SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 apply to:

1. **Employee Stock Option Schemes (ESOS)**
2. **Employee Stock Purchase Schemes (ESPS)**
3. **Stock Appreciation Rights Schemes (SAR)**
4. **General Employee Benefits Schemes (GEBS)**
5. **Retirement Benefit Schemes (RBS)**
6. **Sweat Equity Shares**

Companies Covered:

- Listed companies on recognized stock exchanges in India.
- Companies with a scheme for employee benefit (direct/indirect) involving securities of the company or its group.

Non-Applicability

- **Preferential Issue** provisions under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, don't apply unless specifically stated.

Important Definitions

1. **Employee:**
 - Defined as an employee or director (including non-executive directors, excluding independent directors) who works exclusively for the company, whether in India or abroad.
 - Excludes:
 - Promoters or their group.
 - Directors holding >10% equity shares.
2. **Scheme:**
 - Any company plan providing share-based benefits to employees, managed either directly by the company or through a trust.
3. **General Employee Benefits Scheme (GEBS):**
 - Employee welfare schemes involving shares (healthcare, disability, scholarships, etc.), including those dealing with shares of the company or its holding company.
4. **Retirement Benefit Scheme (RBS):**
 - A scheme providing retirement benefits to employees, involving shares of the company or its listed holding company.
5. **Sweat Equity Shares:**
 - As defined under Section 2(88) of the Companies Act, 2013.
6. **Stock Appreciation Rights (SAR):**
 - A right given to an employee to receive appreciation for specified shares, settled either in cash or shares.

Key Questions and Answers

1. **“Exclusively working in India or outside India” - What does it mean?**
 - Refers to employees working solely for the company, regardless of their physical location (India or abroad).
2. **Are contractual employees eligible for Share-Based Employee Benefits?**
 - Yes, if designated as employees and working exclusively for the company or its group.
3. **Are welfare schemes without share-based benefits covered?**
 - If a scheme holds or deals in shares of the company or its listed holding company, it falls under **GEBS**.

Key Concepts

1. **ESOS (Employee Stock Option Scheme):**
 - Allows employees to purchase shares at a future date at a predetermined price.
2. **ESPS (Employee Stock Purchase Scheme):**
 - Offers shares to employees, either through a public issue or trust-held shares.
3. **Stock Appreciation Right (SAR):**
 - Employees receive appreciation in value for a specified number of shares, settled either by cash or shares.
4. **Grant & Vesting:**
 - **Grant:** Issuing options/SARs.
 - **Vesting:** Employee gains entitlement to the grant after a certain period.
5. **SAR Price:**
 - The base price at which appreciation is calculated for SARs.
6. **Vesting Period:**
 - The duration before employees can exercise their options/SARs.
7. **Trust:**
 - A trust established to implement share-based schemes as per the regulations.

Regulatory Changes

- **SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021** repealed the **SEBI (Sweat Equity) Regulations, 2002** and **SEBI (SBEB) Regulations, 2014**.
- These regulations streamline share-based benefits management for employees, covering a broader range of schemes.

SCHEMES – IMPLEMENTATION & PROCESS

Implementation via Trust

- **Scheme Setup:** Co. may implement directly / via **irrevocable trust**
- **Trust decision:** Must be made **at time of shareholder approval**
- **Change in mode:** Allowed only with **special resolution**; must **not harm employees' interests**
- **Mandatory Trust:** If scheme involves **secondary acquisition / gift / both**, trust mandatory

Multiple Schemes via Single Trust

- Allowed under same trust
- Must maintain:
 - **Books of account**
 - **Records & docs** for each scheme
 - Must reflect **true & fair financial position**

Trust Deed (Schedule I, Part A)

- Must be filed with **recognized stock exchanges**
- Must include:
 - **Trust details:** Name, object, settlor, schemes, funds source & usage, beneficiary details
 - **Trustees' powers/duties:**
 - Admin rules per scheme/object/regulations
 - Maintain books
 - **Dissolution clause**
 - Trustees must act in **beneficiaries' interest**
 - No clause harming beneficiaries

Trustee Appointment - Restrictions

- Disqualified if person is:
 - **Director/KMP/Promoter** of co. or group co. (holding/subsidiary/associate) or their relatives
 - Holds **≥10% paid-up capital / voting rights**
- **Min. 2 trustees** if individual/OPC
- **Sole trustee allowed** if corporate entity

Voting & Shareholding

- Trustees **must not vote** shares held by trust
- Co. must obtain **shareholders' approval** for:
 - **Scheme implementation**
 - **Secondary acquisition**
- Trust:
 - **No derivatives**
 - Only **delivery-based secondary acquisitions**

Funding & Disclosures

- Co. may **lend funds** to trust (per Companies Act) for:
 - **New issue / secondary acquisition**
- Trust's shares classified as **non-promoter & non-public**
 - **Not counted in 25% public shareholding** under SCRR, 1957

Limits on Secondary Acquisition

- **Yearly limit:** ≤ 2% of paid-up equity capital (prev. FY end)
- **Total holding limits:**
 - **ESOS/ESPS/SAR** (Part A/B/C): ≤5%
 - **GEBS/RBS** (Part D/E): ≤2%
 - **All schemes total:** ≤5%

Unappropriated Inventory

- Must be appropriated by:
 - **End of next FY**, or
 - **2nd next FY with committee approval**

Holding & Transfer of Shares

- Shares from **secondary acquisition** to be held ≥6 months
 - Except when required for transfer under regulations
- **Off-market transfers allowed** only for:
 - Transfer to **employees under scheme**
 - Participation in **open offer / buy-back / delisting / exit offer**

Trust – Sale of Shares Permitted When:

- For **employee's exercise price / taxes / expenses**
- On **vesting/exercise of SAR** (Part C)
- In **emergency** under GEBS/RBS (Part D/E)
 - **Trustee records reason**
 - **Use funds** per scheme/trust deed
- In **buy-back / open offer / delisting / exit offer**
- To **repay loan** (if inventory not appropriated in time)
- For **winding up scheme**
- With **Board approval** (Part A/B/C schemes) +
 - **₹1L non-refundable fee** to SEBI
 - **Written reason + bank transfer**

Compliance

- Trust must comply with **SEBI Insider Trading Reg. 2015**
 - Disclosures as **insider/promoter**

Eligibility Criteria – Employee Participation

- Determined by **Compensation Committee**

If Employee is Institution-Nominated Director:

- Agreement must specify:
 - Whether **grants can be accepted**
 - Grant **not renounceable to institution**
 - Conditions for accepting **fees/incentives**
- **Institution must file** agreement with company & stock exchanges
- **Director must furnish** copy in **first board meeting** attended

Here's a **summarised version** of the content you provided, covering the key points as per your earlier format:

Compensation Committee

- A company must constitute a **Compensation Committee** for managing share-based benefit schemes.

- If a **trust** is used to implement the scheme, the committee must delegate administration to it.
- It must be formed as per **Regulation 19** of SEBI (LODR) Regulations, 2015. A company may designate the **Nomination and Remuneration Committee** for this purpose.
- The committee is responsible for **formulating detailed terms and conditions** (as per Part B of Schedule I), including:
 - Type and quantum of options/SARs/shares
 - Vesting conditions and lapse terms
 - Exercise period and lapse upon non-exercise
- It must also ensure compliance with **SEBI (PIT) and SEBI (FUTP)** regulations.

Shareholders' Approval

- A scheme **cannot be offered without shareholders' approval** via special resolution in the general meeting.
- Approval is specifically required in cases such as:
 1. **Secondary acquisition** implementation
 2. **Capital expansion**-related acquisitions by the trust
 3. Granting benefits to **employees of group companies** (subsidiaries, JVs, associates, holding companies)
 4. Grants to identified employees exceeding **1% of issued capital** in a year
- The explanatory statement must include all disclosures listed in **Part C of Schedule I**.

Variation of Scheme Terms

- Scheme terms can be varied via **special resolution**, provided changes aren't against employee interest.
- Regulatory changes can be incorporated **without shareholder approval**.
- Full disclosure of variations and beneficiaries is mandatory in the notice.
- **Repricing** is allowed if due to market price fall, but requires **special resolution** and must benefit employees.

Winding Up of Schemes

- On winding up, excess funds/shares must be:
 - Used to repay loans
 - Distributed to employees
 - Transferred to another SEBI-compliant scheme (with shareholder approval)

Non-Transferability

- Options/SARs/benefits are **non-transferable, non-pledgeable, and non-mortgageable**.
- Exceptions apply:
 - **Death:** Benefits vest in legal heirs
 - **Permanent incapacity:** Immediate vesting
 - **Termination/Resignation:** Unvested benefits expire; vested may be retained
 - **Transfers (internal or under M&A):** Vesting/exercise continues per original terms

Listing of Shares

- Shares issued under schemes must be **listed immediately** on all stock exchanges where the company is listed, subject to:
 - Compliance with these regulations
 - In-principle approval from exchanges
 - Notification to exchanges upon each exercise

Schemes by Unlisted Companies

- Post-IPO, shares from pre-IPO grants must be listed upon exercise.
- No fresh grants under **pre-IPO schemes** unless:
 - They comply with current SEBI regulations
 - They are **ratified by shareholders** after IPO

- Changes to such schemes (e.g. repricing, vesting) need **shareholder approval**.

Accounting and Disclosure

- Holding companies granting benefits to subsidiary employees must **disclose costs** in financials; if reimbursed, both companies must disclose accordingly.
- Companies must **appoint a merchant banker** for scheme implementation till in-principle approval.
- At each AGM, a certificate from **secretarial auditors** confirming regulatory compliance must be placed before shareholders.
- Detailed disclosures to be made in Board Report and financials per **Schedule I, Part F and Accounting Standards** under the Companies Act, 2013.

Here's a **succinct summary** of the information you provided, categorized by each specific scheme:

1. Employee Stock Option Scheme (ESOS)

- **Administration:** Must include implementation details and disclosures to prospective grantees.
- **Vesting:** Minimum one year. Exemptions in case of death or permanent incapacity.
- **Rights:** No dividend/voting rights until shares are issued.
- **Pricing:** Exercise price determined by the company as per accounting policies.
- **Failure to Exercise:** Amount paid may be forfeited/refunded based on conditions.

2. Employee Stock Purchase Scheme (ESPS)

- **Administration:** Should detail scheme operation.
- **Pricing & Lock-in:** Company can determine price. Shares are locked in for at least one year unless:
 - Issued at public issue price.
 - Adjusted for mergers/amalgamations.
 - Exempted due to death or permanent incapacity.

3. Stock Appreciation Rights Scheme (SAR)

- **Administration:** Can be equity or cash-settled; fractional shares settled in cash.
- **Vesting:** Minimum one year, with adjustments for mergers or exemptions for death/incapacity.
- **Rights:** No dividend or shareholder rights until SARs are settled.

4. General Employee Benefits Scheme (GEBS)

- **Implementation:** Must detail scheme operation.
- **Asset Cap:** Company or its listed holding company's shares $\leq 10\%$ of total assets (book/market/fair value).
- **Compliance:** Verified by secretarial auditor upon balance sheet adoption.

5. Retirement Benefit Scheme (RBS)

- **Implementation:** Subject to SEBI and other applicable retirement laws.
- **Asset Cap:** Same as GEBS ($\leq 10\%$ of assets).
- **Compliance:** Certified by secretarial auditor on adoption of balance sheet.

Additional Clarification

- **Post-Retirement Treatment:** Options, SARs, or benefits granted but not vested will continue to vest as per schedule, even after retirement, based on company policy.

Here's a clear and **structured summary** of the ESOP/ESPS provisions under **SEBI (LODR) Regulations, 2015**, including **pre- and post-issue formalities** and the **procedure for issuing ESOPs by a listed company**:

◆ Provisions under SEBI (LODR) Regulations, 2015

1. Regulation 17(6): Stock Options to Non-Executive Directors

- Fees or compensation, including stock options, to **non-executive/independent directors**:
 - Must be recommended by the Board.
 - Requires **shareholder approval** via a general meeting.
 - Shareholder approval must **specify limits** for maximum options in a year and in aggregate.

2. Regulation 30 & Schedule III (Disclosure of Material Events)

- **Disclosure required** for ESOP/ESPS schemes if deemed **material** by the board.
- **Mandatory Disclosure if events fall under Para A**, such as:
 - Granting of options.
- **Materiality-based Disclosure if under Para B**, including:
 - Stock options or ESOP/ESPS schemes.

Details to disclose (as per SEBI circular dated Sept 09, 2015): a)

- Options granted
- Scheme compliance with SEBI (SBEB) Regulations, 2014
- Shares covered
- Pricing formula
- Options vested
- Exercise timeline
- Options exercised
- Money realized
- Shares arising
- Options lapsed
- Variations in terms
- Significant terms
- Changes/cancellations
- Diluted EPS impact

◆ Disclosure Deadline:

Within 30 minutes of board meeting conclusion if the decision is material.

◆ Pre-Issue Formalities (In-Principle Approval)

Applicable for: ESPS / ESOS / SARS / GEBS / RBS

Checklist Includes:

1. Certified Scheme copy (by CS)
2. Statement under SEBI SBEB & Sweat Equity Regs, 2021
3. AGM/EGM notice (scheme approval/amendment)
4. Special resolution + Explanatory Statement
5. Secretarial Auditor compliance certificate
6. Merchant Banker compliance certificate
7. List of Promoters
8. High-grant employee details ($>5\%$ or $>1\%$ of capital)
9. Latest Annual Report
10. Share certificate specimen (for physical shares)
11. Company confirmation
12. SEBI-mandated undertakings
13. Reconciliation statement
14. Irrevocable trust deed
15. Disclosure Document (for ESOS/SARS)
16. Processing Fees

◆ Post-Issue Formalities (Listing of Shares)

Documents Required:

1. Listing application
2. Statement as per Regulation 10(c)
3. Additional listing fees
4. Certified board resolution of allotment
5. Certificate of receipt of money (by CA/CS)
6. List of allottees (names, number of shares)
7. NSDL/CDSL credit or dispatch confirmation
8. Statutory Auditor's compliance certificate
9. Reconciliation statement
10. Company Undertaking:
 - Full compliance with SBEB & Sweat Equity Regulations, 2021
 - No authority has restricted the issuance

- Money for shares received
- No violation of SEBI (Delisting Regulations), 2021
- No violation of SEBI circular dated Aug 1, 2017

◆ Procedure for Issuing ESOP by a Listed Company

1. Draft ESOP plan (per Companies Act & SEBI SBEB Regs, 2021)
2. Send Board Meeting notice (min. 7 days before)
3. Hold Board Meeting:
 - Approve ESOP issuance
 - Appoint Merchant Banker
 - Approve notice of General Meeting
4. File MGT-14 (ROC) within 30 days of board resolution
5. Send General Meeting notice (21 days clear)
6. Hold General Meeting, pass **special resolution**
7. File MGT-14 for special resolution
8. Apply to stock exchange for **in-principle approval**
9. Issue **grant letter** + option acceptance form to employees
10. On acceptance, issue **option certificates**
11. Post-vesting (min. 1 year), issue **vesting letter** + exercise form
12. Receive **exercise request** from employee
13. Hold Board Meeting to approve **allotment of shares**
14. Dispatch **allotment letter** or credit shares to depository
15. Apply for **listing of allotted shares**
16. **Receive stock exchange listing approval**

ISSUE OF SWEAT EQUITY SHARES – QUICK REVISION NOTES

Definition

- **Sweat Equity Shares** = Equity shares to **employees/directors at discount** or for **non-cash consideration** (know-how, IPR, value additions).
- **Purpose:** Reward contribution, retain talent, share-based compensation.

Eligible Companies

- **One Person Co., Private, Public, Section 8, Listed/Unlisted**

ESOP vs Sweat Equity

Criteria	ESOP	Sweat Equity
Exercise	Right to exercise after 1 yr	Immediate allotment
Compensation	Deferred	Immediate benefit

Companies Act, 2013 – Provisions

- **Sec 2(88):** Def. – Shares to **employees/directors at discount/non-cash for know-how/IPR/value-addition**
- **Sec 54 – Conditions:**
 - **Special Resolution** in GM
 - Must specify: **No. of shares, Mkt price, Consideration, Class of recipients**
 - If **listed** → follow **SEBI Regs**
 - If **unlisted** → follow **Rule 8, Companies (Share Capital and Debentures) Rules, 2014**
 - Rights/obligations = **same as equity shares** (pari passu)

Definition of ‘Employee’

- **Permanent employee** (India/abroad)
- **Director** (WTD or not)
- **Employee/Director of subsidiary/holding** (India/abroad)

Rule 8 – Unlisted Companies

- **Cannot issue unless authorized by Special Resolution**
- **Value Additions** = Actual/expected economic benefits **not** part of regular remuneration

Preferential Issue?

- **Not** a preferential issue (SEBI ICDR Reg. 2(1)(nn), Rule 8(13))

SEBI (SBEB & Sweat Equity) Reg., 2021 – Listed Cos.

Applicability

- Applies only to **Listed Cos.**
- **Unlisted** → not covered unless filing for IPO

Definition: ‘Employee’

- **Employee** in India/abroad
- **Director** (WTD or not)

Issuance Conditions

- Must comply with **Sec 54 & SEBI Regs**
- Allowed for **know-how/IPR/value-add**

Quantum Limits

- **Max 15%** of existing paid-up equity / yr
- **Max 25%** of paid-up equity at any time
- **Innovators Growth Platform (IGP):**
 - **Max 15% / yr, ≤ 50%** total for 10 yrs from incorporation

Special Resolution

- Must include (as per **Schedule II**):
 - **Total shares**
 - **Market price**
 - **Valuation of know-how/IPR** (+ valuation report)
 - **Names & relation of recipients**
 - **Consideration paid**
 - **Issue price**
 - **Managerial remuneration impact**
 - **Accounting policy compliance**
 - **Diluted EPS** (as per AS)

Promoter/Promoter Group Employees

- **Require simple majority**
- **Promoters can't vote**
- **Voting via postal ballot/e-voting**
- **Validity: 12 months** from resolution
- **Separate resolution** per issue

Pricing

- As per **SEBI ICDR Regs (preferential issue – non-QIB)**

Valuation

- By **Merchant Banker**
- Can consult experts/valuers
- Must get **CA Certificate** (compliance with AS)

Accounting Treatment

- **Non-cash consideration:**
 - If asset → **Capitalized** as per AS
 - Else → **Expensed** per AS

AGM Compliance

- **Secretarial Auditor's Certificate** must be placed confirming compliance

Managerial Remuneration

- Included in **Sec 196/197** limits if:
 - Issued to **director/manager**
 - **Non-cash consideration**, not capitalizable asset

Here's the exam revision version of the content on **Sweat Equity Shares** in **bullet points**, with **bolded key terms**, **symbols where needed**, and no repetition:

Definition

- **Sweat Equity Shares** = Equity shares issued to **employees/directors**:
 - At **discount** or
 - For **non-cash consideration**
 - For providing **know-how/IPR/value additions**

Eligible Companies

- **All companies**:
 - **OPC**
 - **Private Co.**
 - **Public Co.**
 - **Section 8 Co.**
 - **Listed/Unlisted Co.**

ESOP vs. Sweat Equity

Point	ESOP	Sweat Equity
Allotment	After vesting period (min 1 year)	Immediate
Form of Compensation	Deferred	Immediate benefit
Payment	Pay exercise price	Given at discount/free for contribution

Companies Act, 2013: Key Provisions

- **Section 2(88)**: Definition of **sweat equity shares**
- **Section 54**: Conditions:
 - ✓ **Special Resolution**
 - ✓ **Mention no. of shares, market price, consideration, class of recipients**
 - ✓ **Listed Co.** – SEBI regulations
 - **Unlisted Co.** – Rule 8, Companies (SCD) Rules, 2014
 - ✓ **Same rights** as equity shares (**pari passu**)

Definition of Employee

- **Permanent employee** (India/abroad)
- **Director** (WTD or not)
- Employee/Director of **subsidiary/holding co.**

Rule 8 – Companies (SCD) Rules, 2014

- **Unlisted companies** must pass **Special Resolution**
- Define **Value Additions** = Actual/anticipated economic benefits from **IPR/know-how** not part of regular pay

Not a Preferential Issue

- **Reg. 2(1)(nn)** SEBI (ICDR), 2018 → **Sweat equity** ≠ **Preferential issue**
- **Rule 8(13)** Companies (SCD) Rules also excludes it

SEBI (SBEB & Sweat Equity) Regulations, 2021 – Listed Cos. Applicability

- Applicable **only to listed cos.**
- **Unlisted Co.** → Not covered unless IPO-bound

Definition of Employee

- Same as Companies Act → **Employee or Director**

Quantum Limit

- Max **15%** of paid-up capital/year or **₹5 Cr.**, whichever is higher
- Overall cap: **25%** of paid-up capital
- **Startups**: up to **50%**, within **10 yrs** of incorporation

Special Resolution: Disclosures (Schedule II)

- ✓ No. of shares
- ✓ Market price
- ✓ Valuation of **IPR/know-how**

- ✓ Names & relation with company
- ✓ Consideration
- ✓ Issue price
- ✓ Impact on **managerial remuneration**
- ✓ Accounting conformity
- ✓ **Diluted EPS**

Promoter Group Employees

- Approval by **simple majority**
- Voting by **postal ballot/e-voting**
- **Promoters not to vote**

Resolution Validity

- Valid for **12 months**

Pricing

- As per **SEBI (ICDR) Regulations** for **non-QIB preferential issue**

Valuation

- By **Merchant Banker**
- Can consult **experts**
- Obtain **CA certificate** confirming accounting standard compliance

Accounting Treatment

- **Depreciable asset** → Capitalized in B/S
- **Others** → Expensed as per AS

Post-Issue Compliance

- AGM: Place **secretarial auditor's certificate**
- Sweat equity (non-cash) to **directors/managers** = Part of **managerial remuneration** if not capitalized

Lock-In

- Lock-in as per **SEBI (ICDR), 2018**
- If public issue post sweat equity issue → **Promoter contribution lock-in applies**

Listing

- Allowed if compliant with **SEBI SBEB Regulations**

SAST Regulations

- **Acquisition** via sweat equity subject to **SEBI Takeover Code, 2011**

General Obligations (Listed Co.)

- ✓ Disclosures in **GM notice**
- ✓ Place **secretarial auditor's certificate** in AGM
- ✓ Intimate Stock Exchange within **7 days**:
 - No. of shares
 - Issue price
 - Total consideration
 - Names of allottees
 - Change in **capital structure/shareholding pattern**

✓ Checkpoints Before Issue

1. **Special Resolution** (valid 12 months)
2. Max 15% of PU capital/year OR ₹5 Cr; Overall cap: 25% → **Startups**: Up to 50% within 10 years
3. **Lock-in: 3 years**
4. Shares & IPR/know-how to be valued by **Registered Valuer**
5. Send **valuation report gist** with GM notice

📌 Procedure (Unlisted Co.)

1. Finalize **no. of shares**, price, recipients, consideration
2. Send **Board Meeting notice (7 days)**
3. **Hold Board Meeting** → Approve issue, fix GM date
4. File **MGT-14** (Board Resolution) within **30 days**
5. Send **GM notice (21 clear days)**

6. Hold GM, pass **Special Resolution**
→ File **MGT-14** (Special Resolution)
7. Within **12 months**, **Board Meeting** for allotment
8. File **PAS-3** (Return of Allotment) within **30 days**
9. Listed Co. → Apply for **listing/trading approval**
10. Next AGM → Place **Secretarial Auditor Certificate**

CH-13 AN OVERVIEW ON LISTING AND ISSUANCE OF SECURITIES IN INTERNATIONAL FINANCIAL SERVICE CENTRE

REGULATORY FRAMEWORK

- **Acts & Regulations:**
 - **IFSCA (Issuance and Listing of Securities) Regulations, 2021**
 - **IFSCA Act, 2019**
 - **SEBI (IFSC) Guidelines, 2015**
 - **IFSCA (Fund Management) Regulations, 2022**

LISTING IN IFSC

- **Objective:** Tap **global capital** & provide **international platform** for issuers
- **Sec. 23(3), Companies Act, 2013** (Notified: 28.09.2020): Enables **listing in foreign jurisdictions** incl. IFSC
- **Before IFSCA:** Listing governed by SEBI (IFSC) Guidelines, ICDR Regs, Companies Act, and DR scheme

POST IFSCA ESTABLISHMENT

- **Unified Framework** via **IFSCA (Issuance & Listing of Securities) Regs, 2021**
- Enables:
 - **Cross-border listing**
 - **Startup listing**
 - **SPAC listing**
 - **ESG bond listing** (Green, Social, Sustainable, Linked Bonds)

ESG & SUSTAINABLE FINANCE

- IFSCA promotes **sustainable finance ecosystem**
- Supports **ESG-related issuances** to align with **Paris Agreement & SDGs**

MARKET INFRASTRUCTURE INSTITUTIONS (MIIs) IN GIFT-IFSC

- **Stock Exchanges:**
 - India International Exchange
 - NSE IFSC Ltd.
- **Clearing Corporations:**
 - India International Clearing Corp. (IFSC) Ltd.
 - NSE IFSC Clearing Corp. Ltd.
- **Depositories:**
 - CDSL
 - NSDL

IFSCA LISTING REGULATIONS – DEFINITIONS

- **Business Combination** = Merger/Amalgamation/Acquisition of shares or assets
- **Debt Securities** = Non-convertible (e.g., bonds, debentures)
- **Depository Receipt** = Negotiable instrument for underlying foreign securities
- **Foreign Jurisdiction:**
 - Signatory to **IOSCO MMOU** or bilateral MoU with IFSCA
 - Not on **FATF blacklist**
- **Key Managerial Personnel (KMP)** = Core management (excluding Board)

- **SPAC** = No operations, formed to execute **business combination**
- **Specified Securities** = Equity shares + convertible securities
- **SR Equity Shares** = Shares with **superior voting rights**

APPLICABILITY OF REGULATIONS

- Applies to:
 - IPO / FPO of **specified securities**
 - Listing by **startups / SMEs**
 - **Secondary listing**
 - IPO by **SPACs**
 - **Rights / Preferential issues**
 - Listing of **depository receipts / debt securities / ESG bonds**
 - **Other securities** as specified by IFSCA

IPO ELIGIBILITY IN IFSC

- **Eligibility** (Any one):
 - Avg. **pre-tax profit** ≥ USD **1M** (last 3 FYs)
 - OR **Operating revenue** ≥ USD **20M** (preceding FY)
- **Other Conditions:**
 - Business must be operational for ≥**3 years**
 - **Offer size** ≥ USD **15M**
 - **Min subscription:** 75% of offer
 - **Min investors:** 200

DEBT LISTING ELIGIBILITY

- **Eligible Issuers:**
 - **Incorporated in IFSC / India / Foreign Jurisdiction**
 - **Supranational / Multilateral / Statutory bodies**
 - **Municipalities / SPVs** for infra or SMART city
 - Entities backed by **Sovereign Guarantee**
 - **Masala Bonds**
- **Conditions:**
 - Compliant with laws of incorporation
 - In accordance with jurisdictional law

DISQUALIFICATIONS FOR LISTING

Issuer/Promoters/Directors **NOT eligible** if:

- **Debarred** from capital market
- **Wilful defaulter**
- **Fugitive economic offender**

OTHER CONDITIONS

- Securities must be:
 - **Freely transferable**
 - **Held in dematerialised form**

Minimum Subscription – IPO (Startups/SMEs)

- a) **Minimum subscription** ≥ 75% of offer size
- b) **Minimum subscribers** = 50 (or as specified by IFSCA)

SPAC – Special Purpose Acquisition Company (IFSC Framework)

Definition

- **No operating business;** formed solely to **effect a business combination**
- Alternative to traditional IPOs, promoting **startup ecosystem** and **global capital access**

Entities Involved

- **Sponsors/Founders**
- **Investors**
- **Underwriters**
- **Institutional PIPE Investors**

Process Flow

1. **SPAC formation**
2. **IPO of SPAC**
3. **Deposit proceeds in escrow account**