

D M M Y Y reg 2021

## Share Base Employee benefit & Sweat Equity (reg 2021)

### \* Applicability

- employee stock option Schemes
- employee stock purchase Schemes
- stock appreciation right Schemes.
- general employee benefits Schemes
- retirement benefit Schemes &
- Sweat equity shares.

### \* Introduction

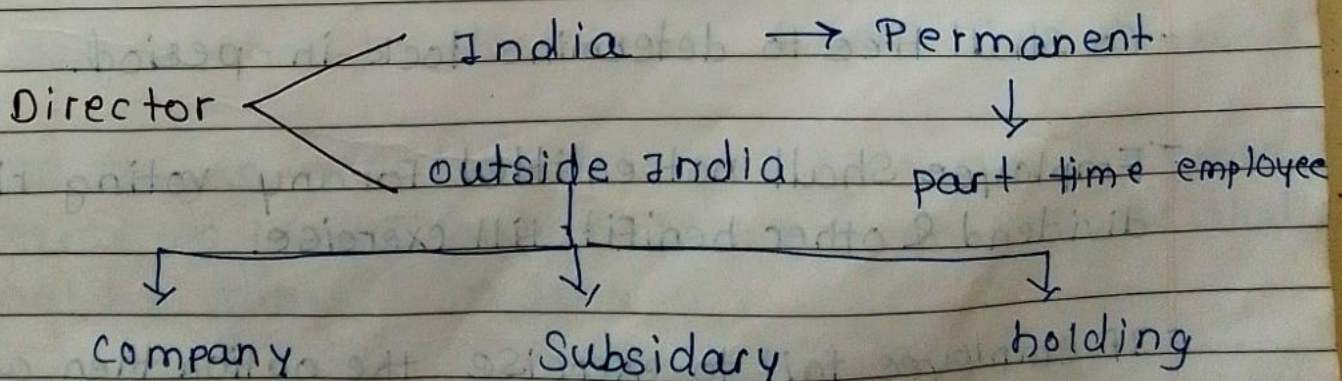
- Any scheme by listed company which provides directly or indirectly benefit to the employee.
- To deal, Purchase, Subscribe the Securities of the Company & scheme is set up or funded by or controlled by Company or group Companies.

### \* Employee.

↓  
D = Director

E = Employer

O = Officer.



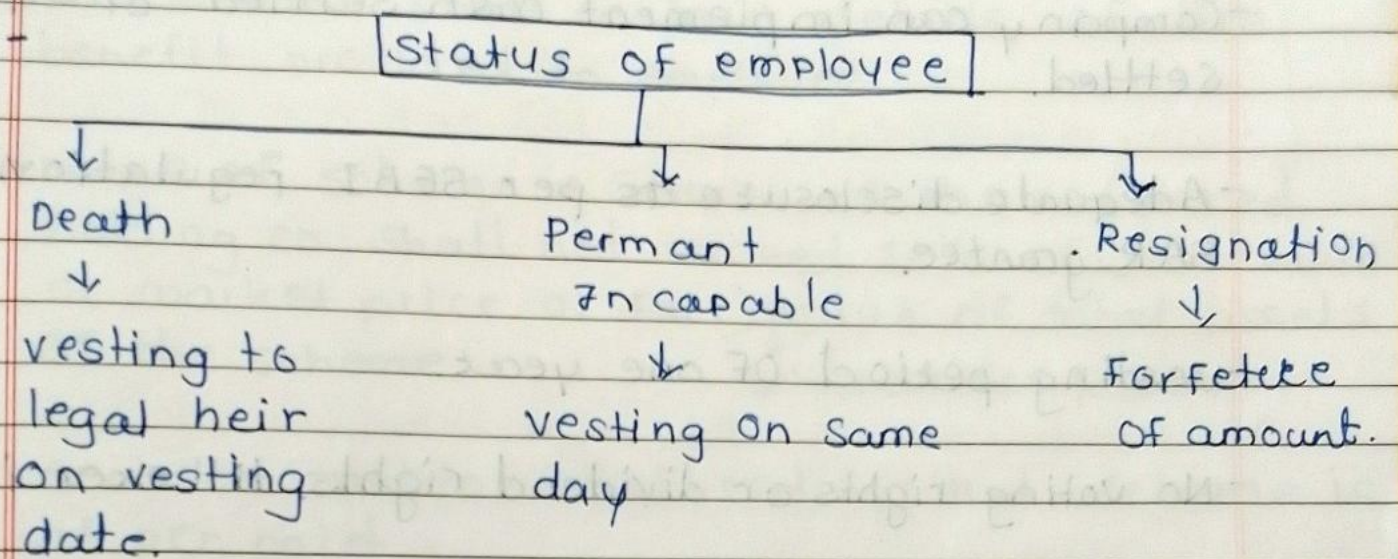
Exclude :

- Any Promoter employee who is a promoter or person belonging to promoter group
- Any director who either himself or through relative or through any it holds  $\geq 10\%$  of ES of the co.
- However this does not apply to startup company.

ESOP/ESOS

- If contain the details of the manner in which Scheme will be implemented.
- Disclosers as per Sebi regulation to prospective option grantee.
- Company shall be free to determine the exercise Price.
- vesting Period  $\rightarrow$  min 1 year.
- Co shall free to determine lock-in-period.
- Employee shall not entitled for any voting rights, dividend & other benefit till exercise.
- If employee fail to exercise the option then amt paid to employee can be forfeited.

- However if co failed to fulfil any condition then amt paid by employee may be refunded.



- In case of merger & Amalgamation the period shall be adjusted. \*

### - Employee stock purchase scheme.

- This scheme shall contain the details of the manner in which the scheme will be implemented.

- Company may determine the price of shares of but follow accounting policies.

- Shares shall be lock in for 1 year from allotment.

If shares are issued to employee at the same price as in the public issue then shares shall not be subject to lock-in.

- Death/Permanent incapability → req. of lock-in shall not be apply

\* Stock Appreciation Scheme (SAR).

- Company can implement cash settled or equity settled.
- Adequate disclosure as per SEBI regulation to SAR grantee.
- vesting period of one year.
- No voting rights or dividend rights till exercise.
- Death or incapability → vesting period shall not apply.

\* General employee benefit Scheme.

- It contain the details of the scheme in which the scheme shall be implemented.
- Shares of the company / listed holding co shall not exceed 10% of book value / market price or fair value of total assets of the Scheme.
- Secretarial auditor shall certify that scheme is as per point (2).

### \* Retirement Benefit Scheme.

- The scheme shall contain details of the benefit provided to employee.
- value of scheme  $\rightarrow$  Shares of the co/ listed holding co shall not exceed 10% of (book value or market price or fair) value of total assets of the scheme.   
  $\downarrow$  whichever is lower.
- sectional auditor shall certify that scheme is as per point

### \* Implementation of scheme.

- Trust  $\rightarrow$  irrevocable.
- Route  $\rightarrow$  shall be decided at the beginning of the scheme.
- In case change in mode  $\rightarrow$  obtain special resolution but change is not prejudicial to the interest of employee.
- In case of secondary acquisition or gift  $\rightarrow$  compulsory trust mode.
- Company may implemented several scheme through single trust however maintain separate books of acc & records.
- file trust deed with RSE, where the shares are listed.

Not appointed as trustee & their relative

- Director, kmp, Promoter of the company or holding; Subsidiary or Associate of company or relative of such diree
- Who beneficially hold 10% or more of paid up capital or voting rights.

No. of Trustee

- \* If individual or OPC is a trustee → Minimum 2
- \* Body corporate → Minimum 1

- Trustee cannot vote in respect of shares held by such trust.
- obtain shareholder approval to undertake secondary acquisition.
- Trustee cannot deal in derivative.
- shall undertake only equity based trading.
- Trust holding shall be considered as non-promoter holding.
- Secondary acquisition in financial year shall not exceed 2% of paid up capital.

- Total shareholding under secondary acquisition.

↓  
For scheme in Part A, B, C & others = 5%  
scheme in D & G → 2%.

↓ Gen bent → Retire benefit

- Trust shall req to hold such shares acquired through Secondary acquisition for min 6 months.

- Trust shall be permitted to undertake off market transfer, of shares

↓  
To the employee Pursuant to scheme

↓  
Participate in takeover

↓  
Buy-Back & De listing

- The trust shall not sell the shares & in secondary market except.

↓  
Winding up of the Scheme

↓  
To fulfill tax obligation & other related enterprise of grantee.

↓  
on vesting or exercise of SAR. (cash settled).

↓  
Emergency Buy-Back

↓  
for repayment of loan.

\* Compensation Committee.

- administration & superintendence of the Scheme.

- Where Scheme is implemented through trust the ~~cc~~ & Compensation Committee shall delegate the administration to the trust.

~~Compensation~~ NRC committee shall be designated as a cc.

- cc shall frame suitable policy to ensure that there is no violation of security law.

\* Shareholder approval.

- Scheme shall be approved by passing special resolution.

B) - Secondary acquisition → SR required.

- Secondary acquisition by trust ~~be~~ due to expansion to capital by company, including pref allotment / @ ZP, to maintain 5% of Cap.

- Grant of option, SAR shares to employee of subsidiary or holding co.

- Grant of option, shares or benefit to identified employee during any one year, equal to or exceeding 1%.

\* Variation of term.

- Special Resolution
- Variation must be favourable to the interest of the employee.
- Send notice to employee which disclose the variation
- In case of winding up, excess money utilise for repayment of loan.

\* Non-transferability

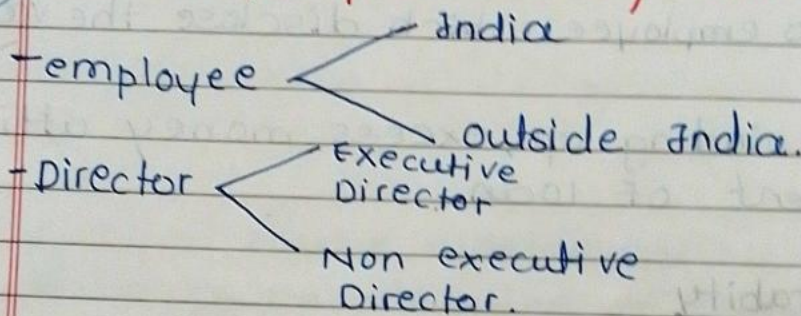
- Option/SAR/other benefit shall not be transferable
- Cannot be pledge, hypothecation mortgage, otherwise
- Resignation → option expire.
- Death → option benefit to legal heir on the actual death
- Permanent incable → allotment to legal heir on the same day
- Issue shall be listed on RSE.

\* certificate of Auditor.

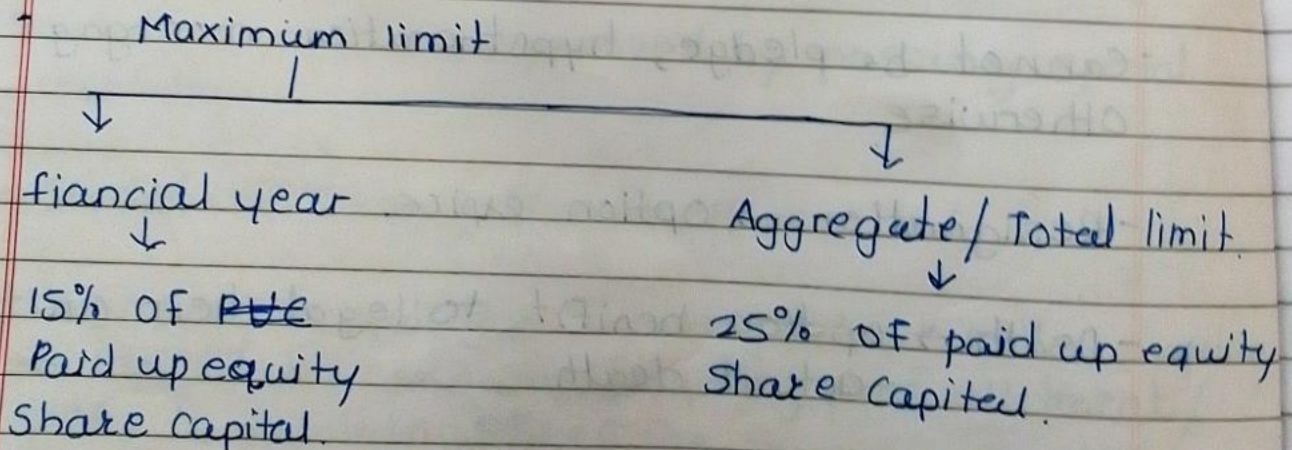
- obtain certificate from secretarial audit that Scheme has been implemented as per law.

\* ~~certificate~~

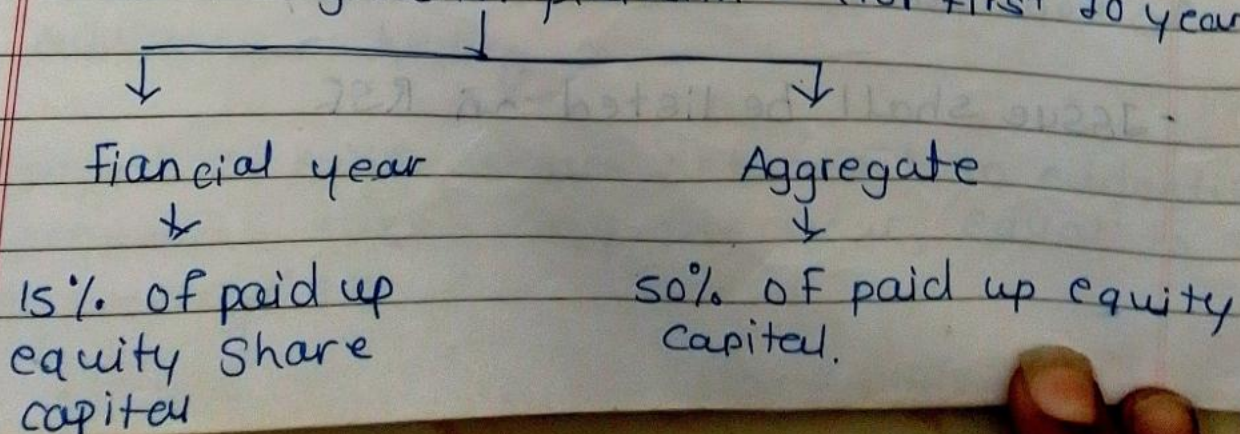
54 Sweat equity shares by listed company.



- Co' Act → section 54



\* Innovation growth platform ⇒ (for first 30 years.



- PART B  
NATURE OF CAPITAL MARKET
- |   |   |   |   |   |   |   |   |
|---|---|---|---|---|---|---|---|
|   |   |   |   |   |   |   |   |
| D | D | M | M | Y | Y | Y | Y |
- Pass SR.
  - Sweat equity shares to employee who belongs to Promoter or promoters grp → Pass OR. → however promoter shall not participate in such resolution.
  - validity of SR → 12 month.

\* Pricing of Sweat equity shares.

- Pricing shall be determine in accordance with the pricing requirement.

\* Valuation of Sweat equity shares.

- valuation by Merchant Banker.
- may consult to expert.
- Merchant Banker obtain valuation certificate from independent CA certified that valuation is in accordance with the regulation.

\* Accounting treatment.

- ~~B/S~~ B/S → Depreciable → consideration takes the form of depreciate or amortiable.

- ~~P&L~~ P&L → Books as expenses

- Sweat equity shares given to Manager or Director, consideration other than cash shall be treated as managerial remuneration, (secretarial auditor)
- place auditor's certificate (secretarial auditor) before AGM that issue of sweat equity shares has been made in accordance with regulation.

\* Lock-in of Sweat equity shares.

- lock-in for such period of time specified in relation to pref issue under ICDR regu.
- Counted in promoter contribution.

Intimation to stk exchange.

- Within 7 days From issue of sweat eq shares disclosing.

