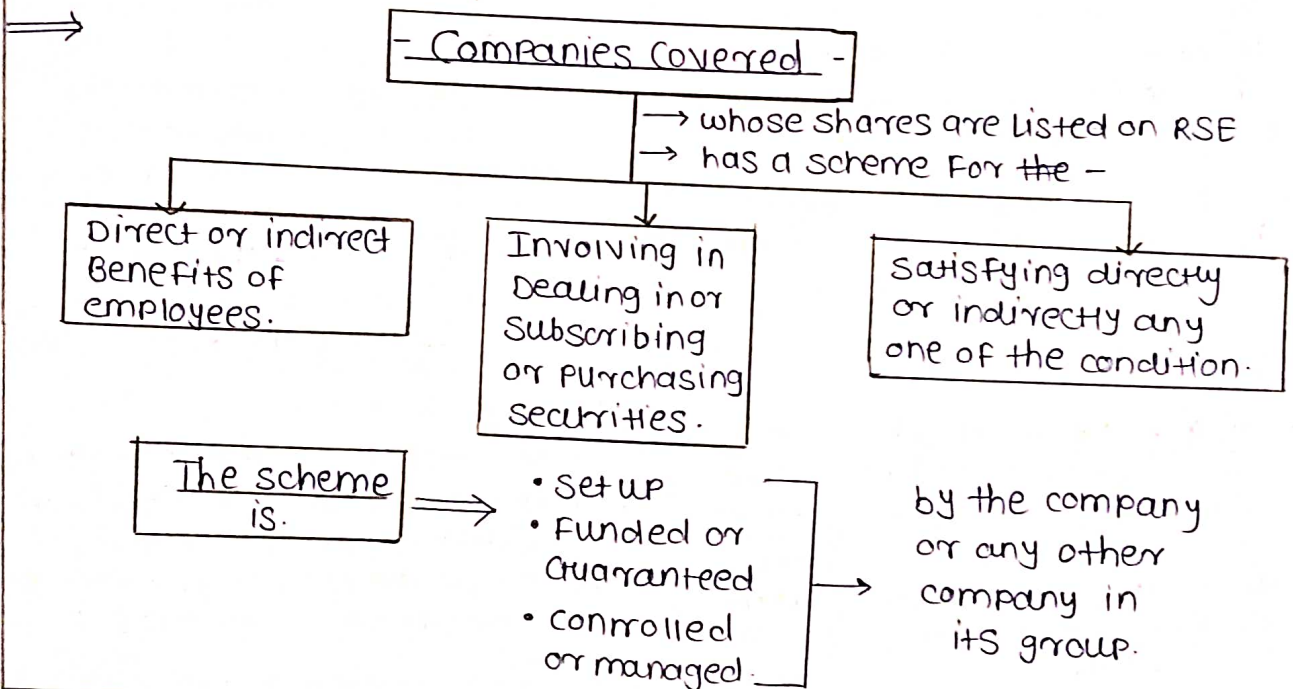
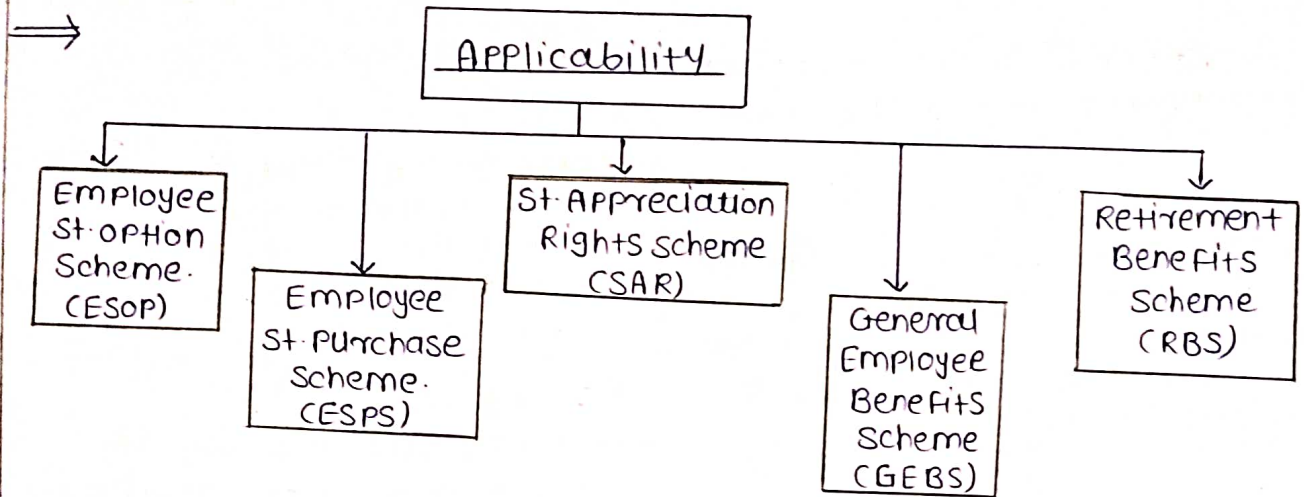
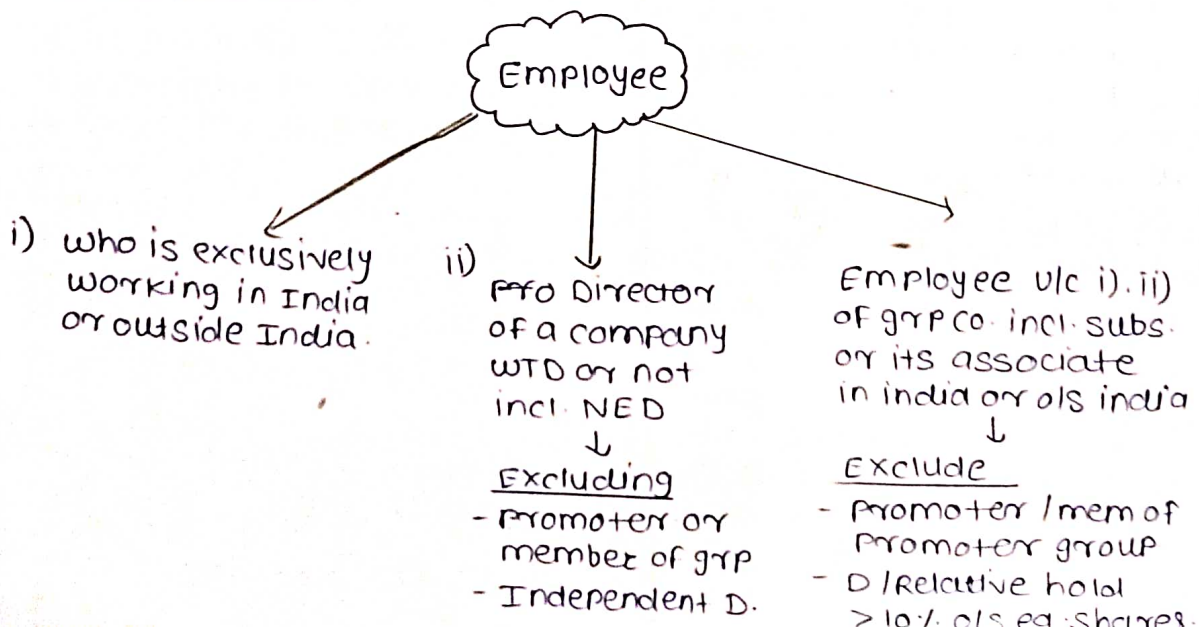


ch-9 SEBI (Share Based Employee & Sweat Equity) Reg. 2021



⇒ Definitions:-



⇒

ESOS

- Employee stock option scheme or ESOS
- co. grants employee stock options to employees directly or thr. Trust.

⇒

ESPS

- company offers shares to employees as a part of public issue.
- or through trust where trust may undertake secondary acquisition for the purpose of scheme.

⇒

GSBS

- Scheme dealing in shares of the co. or the shares of its listed holding co. for the purpose of employee welfare including healthcare benefits.
- Hospital care or benefits, benefits in the event of sickness, accident death or scholarship funds.

⇒

RBS

- Dealing in the shares of the co or the shares of its listed holding co. for providing retirement benefits to the employees sub. to compliance with existing rules and regulation

⇒

SAR

- means a right given to a SAR grantee entitling him to receive appreciation for specified no. of shares of the company where settlement of such appreciation may be made by way of cash payment or shares of the co.

⇒ Sweat equity Shares :-

- means a sweat equity shares defined u/s 2(88) of the co. Act 2013.

⇒ Appreciation :-

- Difference between M.P. of the shares of a company on the date of exercise of SAR or the date of vesting of SAR and SAR price.

⇒ Grant date :-

- means a date on which the compensation committee approves the grant.

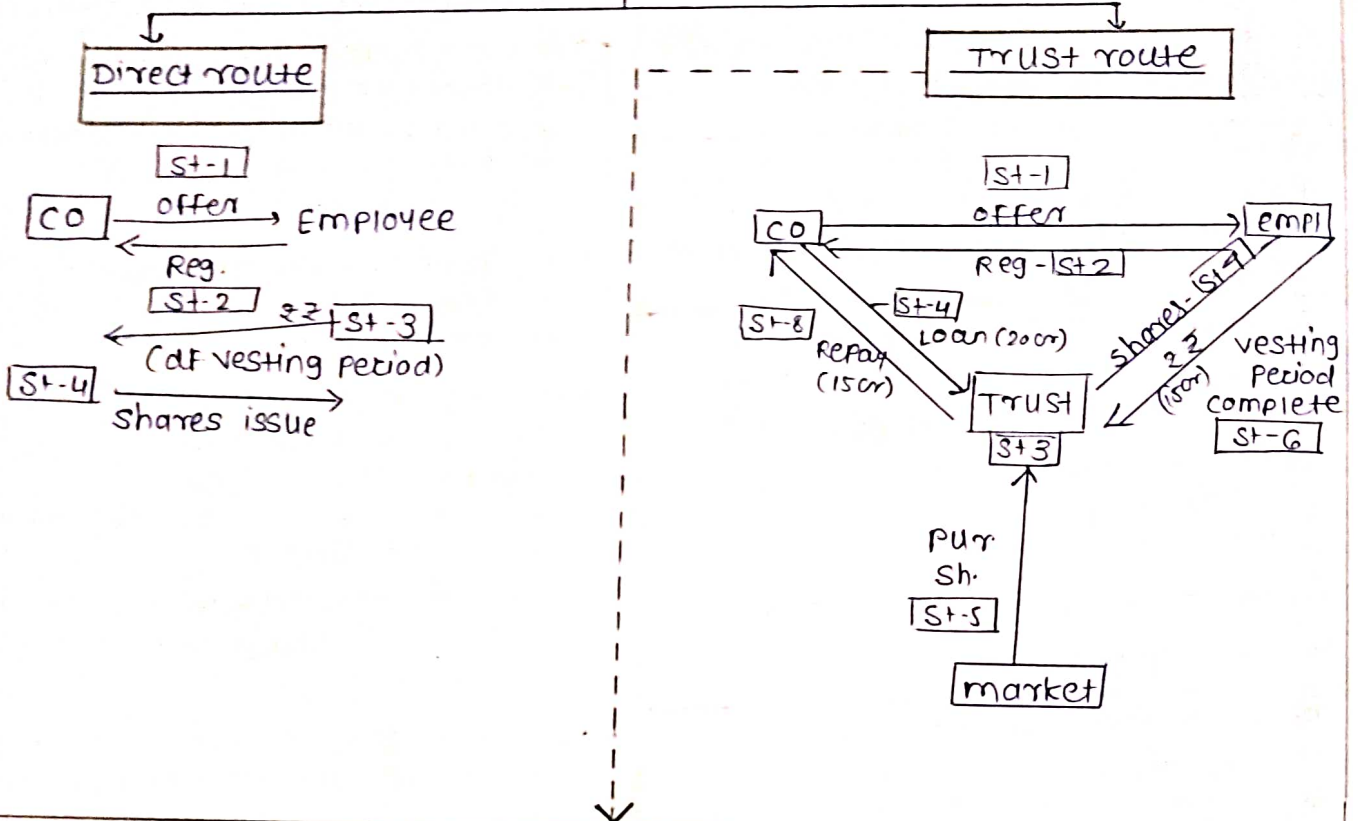
⇒ Relevant Date :-

- In case of grant - date of the meeting of the compensation committee on which the grant is made.
- In case of exercise - the date on which the notice of exercise is given to the company or to the trust

⇒ Option :-

- option which gives such an employee a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly at a pre-determined price.

Implementation of Scheme



⇒ Implementation of Scheme through trust.

- | | |
|---|---|
| <p>① → The scheme has to be decided upfront
 → company may change the mode of approval → SR
 → If the schemes involves secondary acquisition or gift or both → it shall be mandatory to the company to implement such scheme through trust.</p> | <p>③ → any person can appoint as trustee except.
 • D/KMP/P of CO or its group CO. Incl. its holding / sub / asso. or any relatives of such D/KMP/P
 • Beneficiary hold $\geq 10\%$ of PUSC or VR
 as a I/OPC - minimum 2 trustees
 - corporate - 14 sole trustee.
 entity</p> |
| <p>② Multiple scheme through a single trust - allowed → however such single trust shall keep & maintain
 → proper books of account.
 → Record and document of each such scheme.</p> | <p>⑥ The <u>requisite approval</u> from the shareholder has been obtained by the company to enable the trust, to implement the scheme and to undertake secondary acquisition.</p> |
| <p>⑤ The trust deed shall contained provisions as specified in part A of schedule-I of these regulation and it shall mandatorily filled with RSE.</p> | <p>⑦ The trust shall not deal in derivatives and shall undertake only delivery based transaction.</p> |
| <p>④ The trustees of the trust shall not vote in respect of shares held by such trust</p> | <p>⑧ Subject to the requirement of companies Act, 2013, company may lend monies to the trust on appropriate terms and conditions to acquired the shares either through new issue or secondary acquisition</p> |

⑨ For the purpose of disclosure to the RSE the share holding of the trust shall be shown as "Non-promoter and Non-public" shareholding.

⑩ secondary acquisition in a F.Y. by the trust shall not exceed 2% of paid up eq. share cap. of the co. at the end of P.F.Y.

⑪ Total No. of shares under secondary acquisition shall at no point of time exceed the below mentioned limit:

- | | |
|--|-----|
| → For the scheme in Part A, B, C of ch-III | 5 % |
| → Part D, E, ch-III | 2 % |
| → in aggregate | 5 % |

⑫ The unappropriated inventory of the shares shall be appropriated within a reasonable period, which shall not extend beyond the end of subsequent F.Y. or the second subseq. F.Y. subject to approval of compensation committee.

⑬ Trust shall be permitted to hold shares acquired through secondary acquisition for a min period of 6m.

⑭ The trust shall be permitted to undertake off market transfer only under following circumstances:

- transfer to the employees.
- while participating in an open offer under SEBI (substantial acquisition and takeovers) Reg. 2011 or while participating in buyback delisting.

⑮ Trust shall not sell shares in secondary market except ↓ circum.

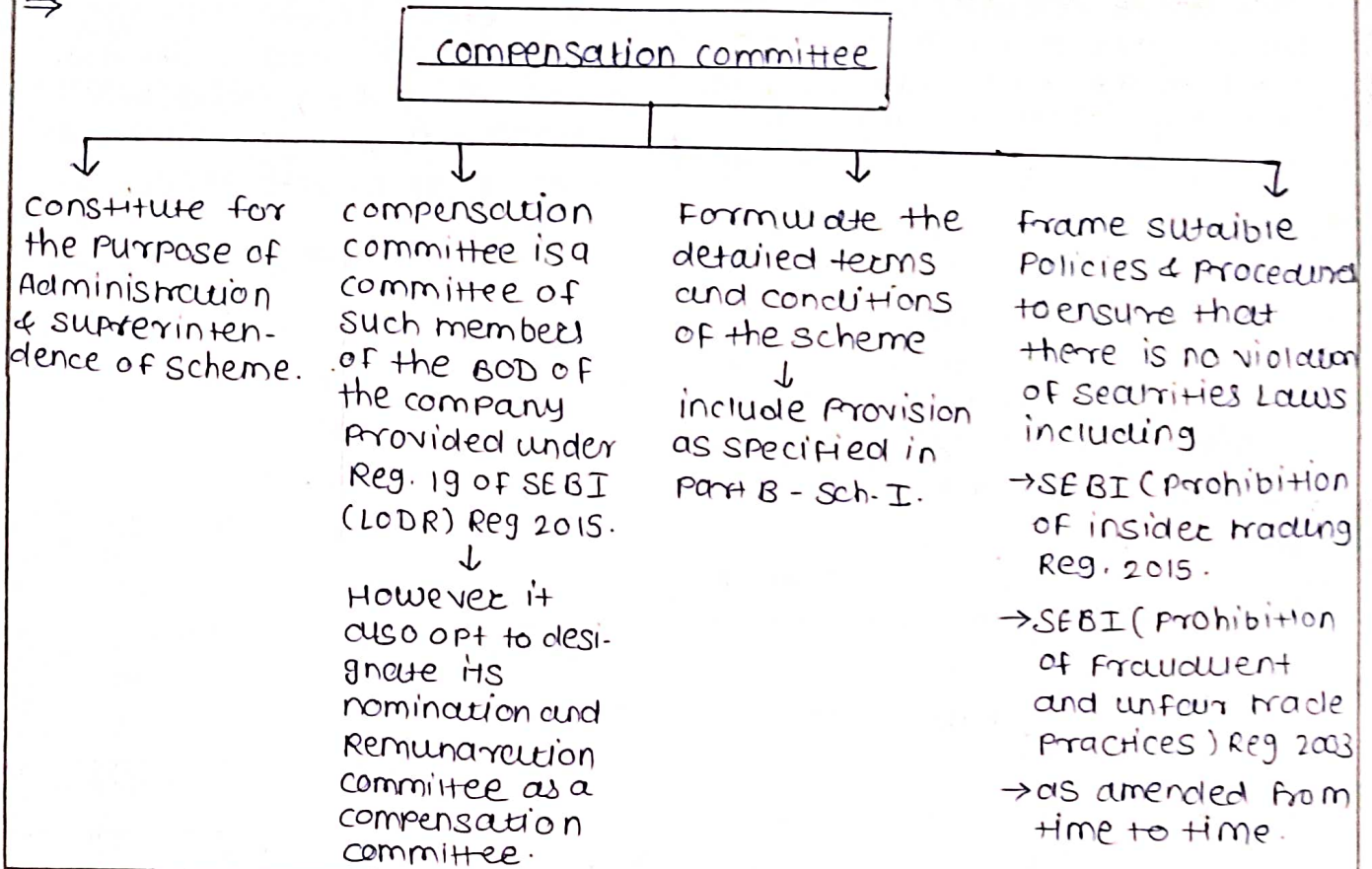
- to enable employees to fund the payment of exercise price, the amount necessary to meet tax obligation and other related exp. per. to option granted → ESOS.
- on vesting or exercise as the case may be of a SAR under the scheme covered by part C of ch-III
- in case of emergency for imple. the scheme - part D, part E - ch III and for this purpose.
 - trustee shall record the reason for such sale &
 - money realised on sale of sh. shall be utilised within a definite time.
- Participation in BB or open offer or delisting offer or exit offered by co.
- For repaying the loan
- winding up of the scheme.
- Based on approval granted by board to an applicant, for the reasons recorded in writing in respect of the scheme covered by part A, B, C of ch III upon payment of non refundable fees of 1 Lakh. to the board, along with the app.ⁿ by way of direct credit in the bank → NEFT / RTGS / IMPS

⑯ The trust shall be required to make disclosures and comply with the other requirement applicable to

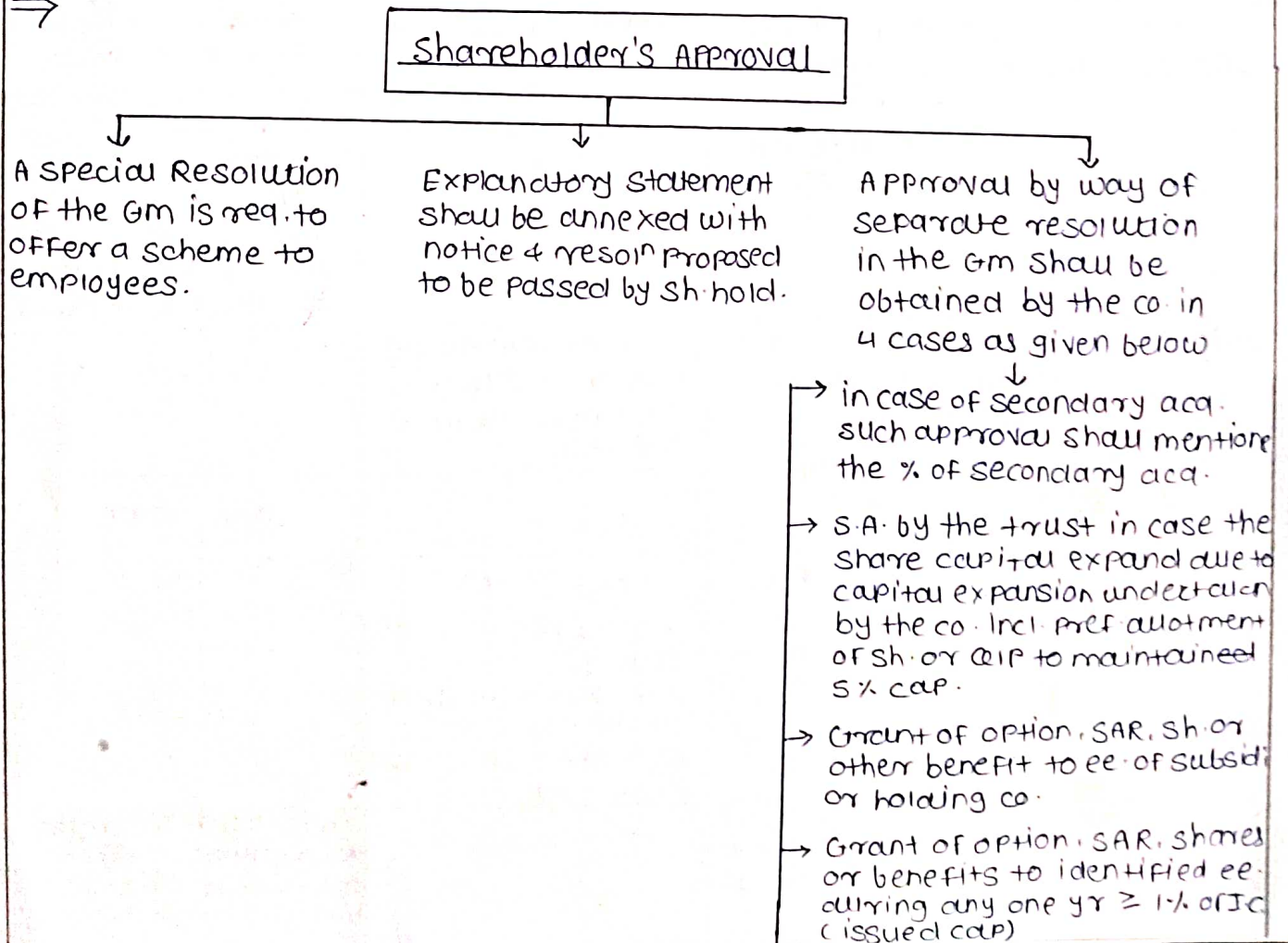
- Insiders or
- Promoters

⇒ Eligibility criteria :- AS determined by the compensation committee

⇒



⇒



⇒ Non-Transferability.

- Benefits granted to the employees shall not be transferable to any person other than the employee to whom the option/SAR, benefits is granted, shall be entitled to the benefit arising out of such option.
- shall not be pledged, hypothecated, mortgaged or otherwise alienated.
- In case of death of employee while in employment, all the option/SAR or any other benefit granted under scheme fr to his legal heirs from the date of his death.
- In case of permanent incapacity while in employment all o/SAR/B granted to his legal heirs / nominee.
- In case of resignation / termination all o/SAR/B → shall expire.

⇒ Certificate From Auditor.

- The BOD shall at each AGM place before the Shareholders a certificate from secretarial auditors of the co. that the scheme has been implemented in accordance with these regulations.

	ESOS	ESPS	SAR
<u>Administration and Implementation</u>	<p>shall contain the details of the manner in which scheme will be implemented</p> <p>- shall not offered unless disclosure is made by the co.</p>	<p>shall contain the details of the manner in which scheme will be implemented and operated.</p>	<p>- contain the details in which scheme will be implemented.</p> <p>- shall have freedom to implement cash settled or eq. settled SAR -</p> <p>- No SAR shall be offered unless the disclosure as specified by SEBI</p>
<u>Pricing</u>	<p>Free to determine subject to accounting policies.</p>	<p>co. may determine the price sub. to the provision of acc. policies.</p>	-
<u>vesting period</u>	<p>one year.</p>	-	<p>one year.</p>
<u>Lock in P.</u>	<p>co. may specify .</p>	<p>one year</p> <p>- if ESPS is a part of Public issue & sh. are issued to the ec at the same price as in the public issue</p> <p>→ No Lock in.</p>	
<u>Rights of option holder</u>	<p>shall not have right to receive dividend, or to vote or enjoy the benefits of sh. h. till optn is exercised.</p>	-	<p>shall not have right to receive dividend or to vote or enjoy benefits of sh. holder</p>

⇒ consequence of failure to exercise ESOS option } The amount paid by the employee may be forfeited by the company if the option is not exercised by the employees within the ex. period.

GEBS	RBS
<p>→ shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.</p> <p>→ The shares of the co / holding co. shall not exceed 10% of. Book value or market value or Fair value of FA. } ↓ Total Asset.</p>	<p>→ RBS may be implemented by a co. Subject to compliance with these regulations and provisions of any other law.</p> <p>→ shall contain the details of the scheme benefit under the scheme and the manner in which the scheme shall be implemented and operated.</p>
<p>→ The secretarial auditor of the co. shall certify the above point - compliance at the time of adopⁿ of such b/s.</p>	<p>→ [Same]</p> <p>→ [Same]</p>

⇒ SEBI (Share based employee benefits and sweat eq) Reg 2021

→ Introduction -

"sweat equity shares" are such equity shares, which are issued by company to its directors or employees at a discount or for consideration other than cash

For providing their knowhow or making available rights in the nature of intellectual prop rights or value addition by whatever name called

→ Applicability :-

shall not apply to unlisted company.

→ The term employee means -

- i) an employee of the co. working in India or abroad.
- ii) a director of the co. whether a WTD or not.

⇒ maximum quantum of sweat eq

→ co. can issue -

- max - 25% of paid up eq share
- max - 15% in a year. (FY)

→ co - listed on IGP

- max - 50% up to 10 yrs from the date of inco.
- max - 15% in a year (FY)

⇒ Special Resolution.

→ For the purpose of passing SR the explanatory statement to be annexed to the notice shall contain disclosure as specified in sch - II

→ The issue of SES (sweat eq share) to employees who belong to PPA Promoter / Promoter group shall be approved by way of resolution passed by a simple majority of the sh. holder in GM.

↓
 However for passing such resolⁿ voting through postal ballot / e-voting shall also be adopted.
 PPA - Not participate in resolⁿ

- each issue of sweat equity shares - voted by the separate resolution
- Resolution shall be valid - not more than 12m.

⇒ Pricing of sweat equity shares :-

- The price shall be determined in accordance with the pricing req. stipulated for a preferential issue to a person other than a QIB

⇒ Valuation :- of

- knowhow or intellectual property rights or value addition shall be carried out by a merchant banker.
- MB may consult such expert and valuers as it may deem fit having regard to the nature of the industry and the nature of the valuation of knowhow or intellectual property rights or value addition.
- The MB shall obtain a certificate from an independent CA certifying that the valuation of know how or IPR or value addition is in accordance with relevant A.S.

⇒ ceiling on Managerial Remuneration.

- The amount of SES issued shall be treated as a part of MR if following conditions are satisfied.
 - S.E.S. are issued to any director or manager and.
 - issued for non-consideration which does not take the form of an asset which can be carried to the balance sheet of the co. in accordance with relevant AS.

⇒ Lock in

- It shall be locked in for such period of time as specified in relation to a preferential issue under SEBI (ICDR) Reg. 2018.
- The provision of SEBI (ICDR) Reg. 2018 in respect of public issue in terms of lock in and computation of promoter's contribution shall apply if co. make public issue after it has issued S.E.S.

- ⇒ any acquisition of sweat equity shares shall be subject to the provision of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.