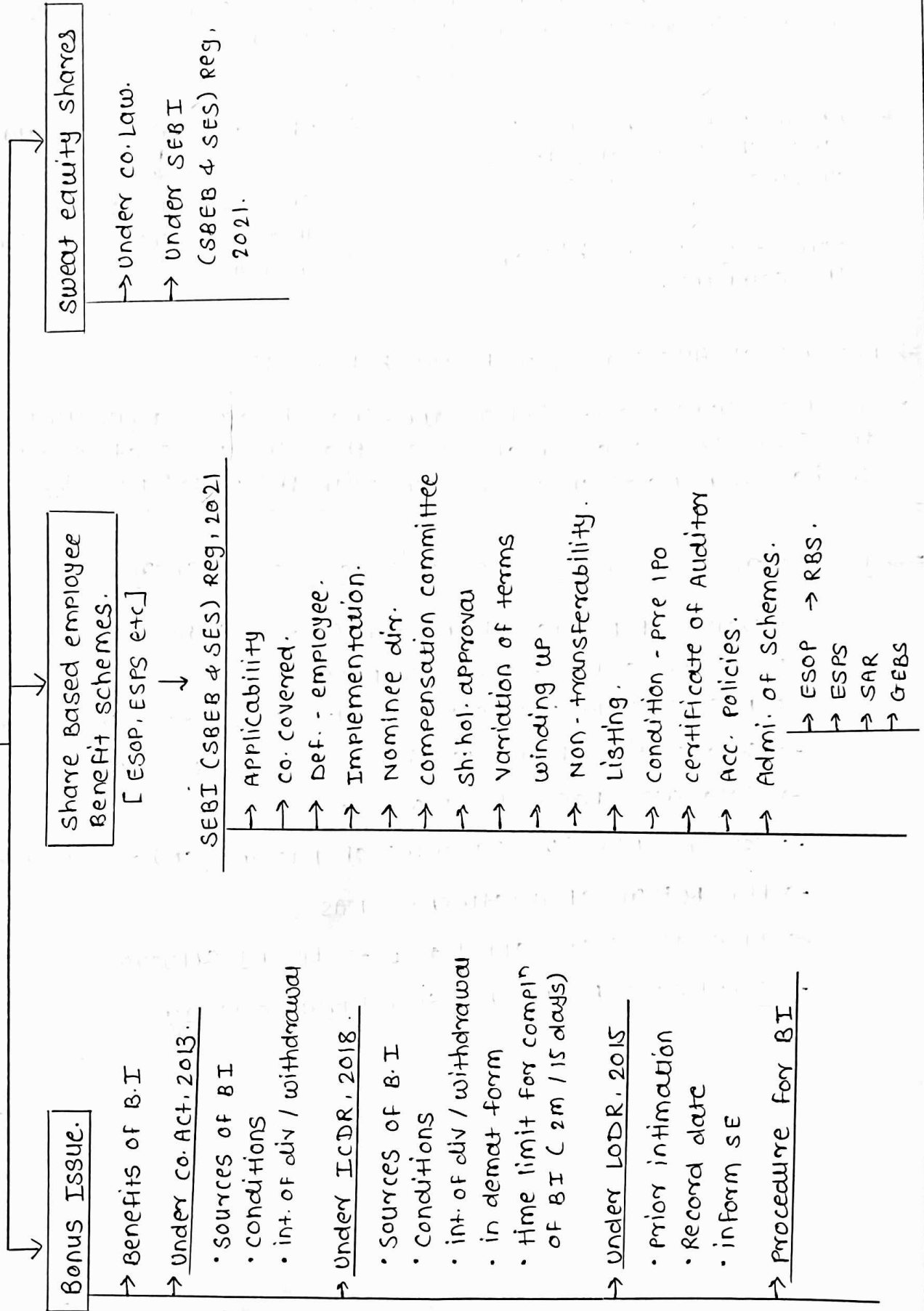


SYNOPSIS.



⇒ Bonus issue -

Provision under co. Act. [Sec. 63]

→ co. may issue fully paid up bonus shares out of:

- Free Reserve
- SP. Acc.
- CRR.

→ Conditions.

- Authorised by AOA
- Auth. by sh. hol. in GM.
- Not defaulted in payment of int. or principal
- def. (X) - statutory dues of ee.
- shares - fully paid up.

→ Bonus shall not be issued in lieu of dividend.

→ withdraw (X) - once announced.

• Benefits / Advt. of issuing B-Issue.

- Fund flow is not affected adversely.
- MV. of sh. comes down to their nominal v.
- B. sh. is not an income, not a taxable.
- paid up sh. cap increases with the issue of bonus shares.
- MV. of mem. sh. holding increases with ↑ No. of sh. in the co.

Provisions under SEBI (ICDR) Reg, 2018.

→ Eligibility -

- Auth. by AOA - if there is no such provision in the AOA issuer shall pass resolⁿ making provision in AOA.

- Approval from SE

- def. (X) - payment of int or pri. → FP or debt securities.

- shares - fully paid up.

- P/Dir - (X) - fug. eco. off.

→ B.I shall be made out of FR, SP, CRR

→ Not be issued in lieu of dividend

→ allotment of B.I - demat form

→ If sh. hol. approval is req. for capitalⁿ of profit for making bonus issue, get it within 15 days of Board app^{ro}. and complete bonus issue - 2 months of the Board meeting.

(If sh. hol. app^{ro}. is not required complete bonus issue directly within 15 days from B.M)

→ Provision AS PER SEBI (LODR) Reg, 2015

→ Prior int. to SE about meeting of BoD - 2 days prior int. → SE

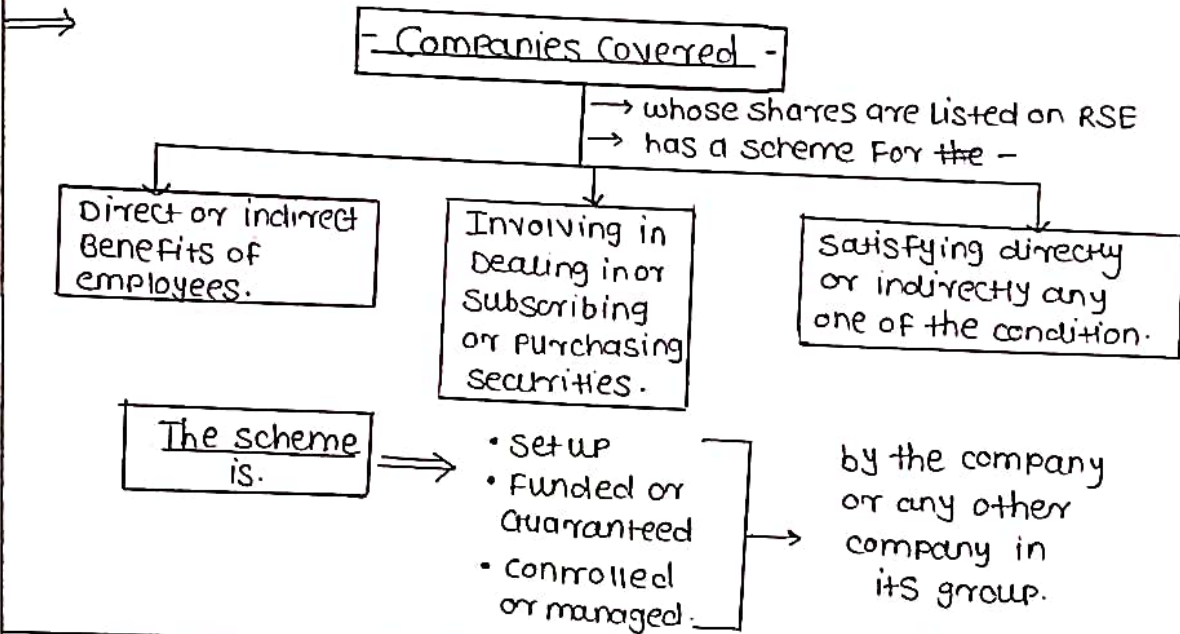
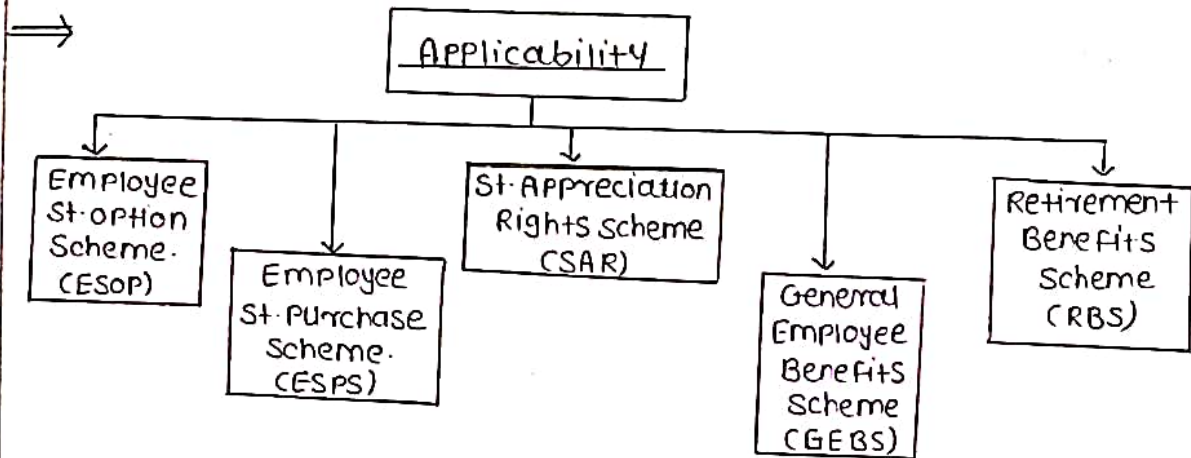
→ The listed entity shall intimate the record date for issue of bonus sh. to all the SE where it is listed.

→ AS PER Reg. 30, listed entity shall disclose events or informⁿ within 30 min of the closure of the meeting.

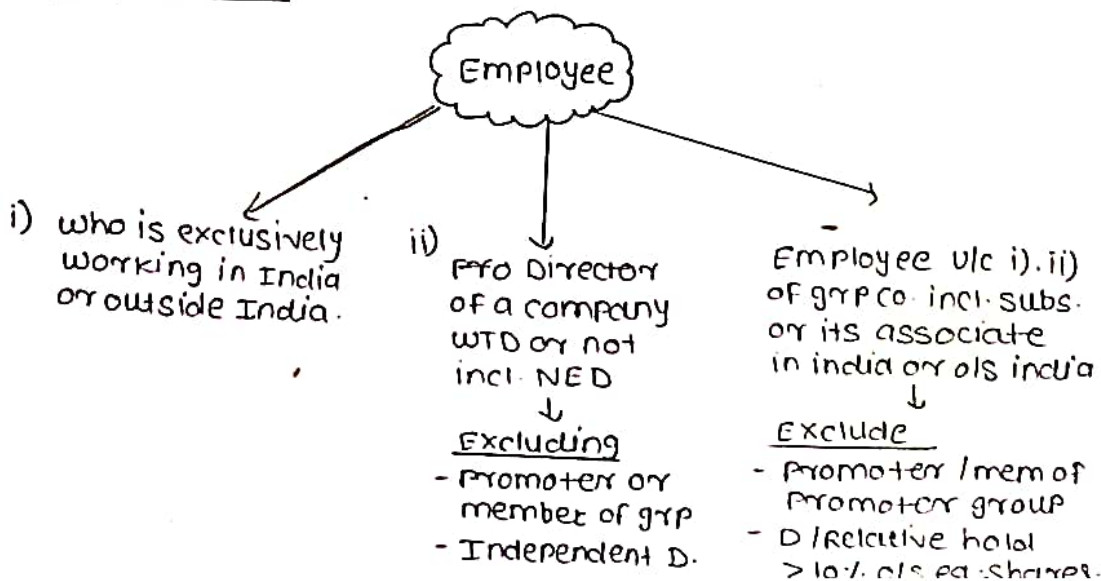
→ Procedure for issue of Bonus shares.

- check authorised sh. capital.
- send notice of BM (7 days before the BM)
- * → conduct a BM (decide and approve the particulars of BI)
- Inform SE (within 30 min)
- send notice of GM (21 days before the GM)
- * → conduct a GM. Pass a necessary resolution.
- Inform SE
- File MGT-14 (if required) with ROC
- obt. in principle approval from SE
- * → conduct BM for allotment.
- File PAS-3 (Return of allotment w-30 days)
- obtain final approval from SE for listing
- obtain necessary approval from NSDL, CDSL

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 :-

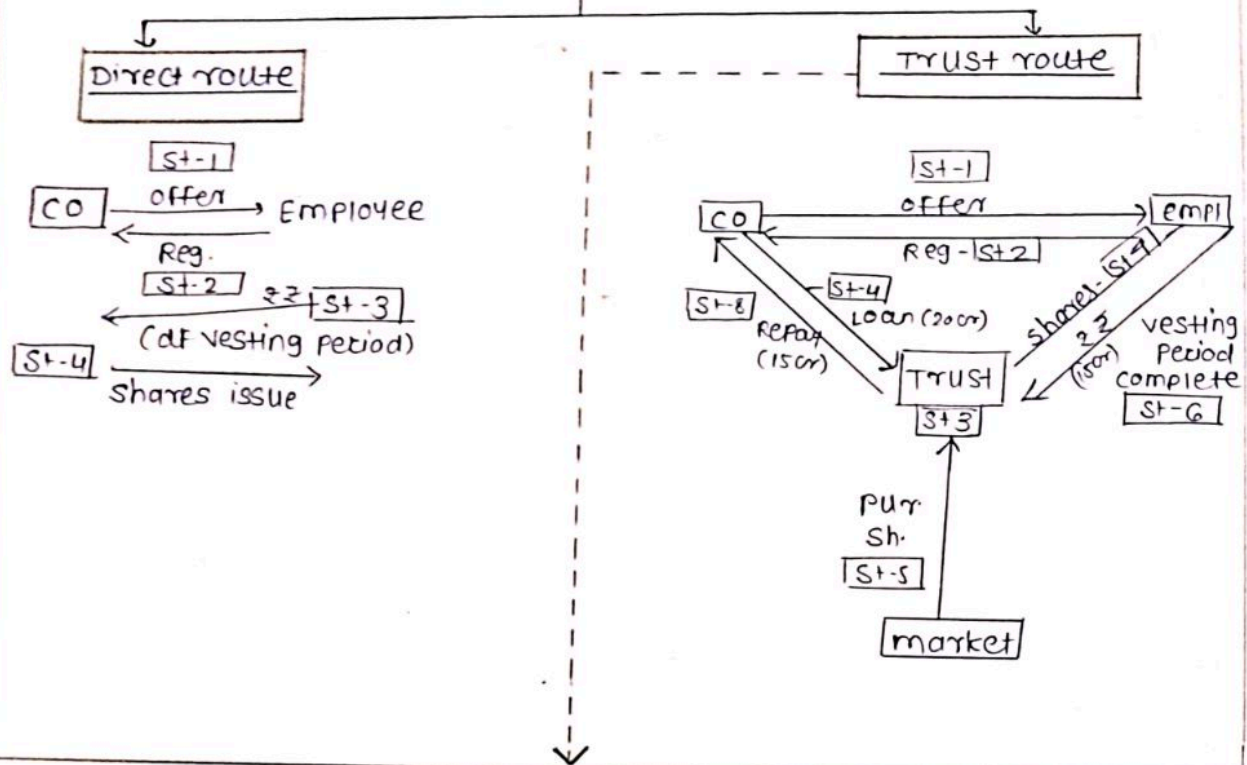
i) In case of grant - date of the meeting of the compensation committee on which the grant is made.

ii) 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>⑤ → any person can appoint as trustee except.</p> <ul style="list-style-type: none"> • 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 <p>as a I/OPC - minimum 2 trustees
 -I- corporate - A- sole trustee.</p> |
| <p>② Multiple scheme through a single trust - allowed → however such single trust shall keep & maintain</p> <ul style="list-style-type: none"> → proper books of account. → Record and document of each such scheme. | <p>⑥ the requisite approval from the shareholder has been obtained by the company to enable the trust, to implement the scheme and to undertake secondary acquisition.</p> |
| <p>③ 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 acquire 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 minimum period of 6 m.

⑭ The trust shall be permitted to undertake off market transfers 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 in 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 appn. 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.

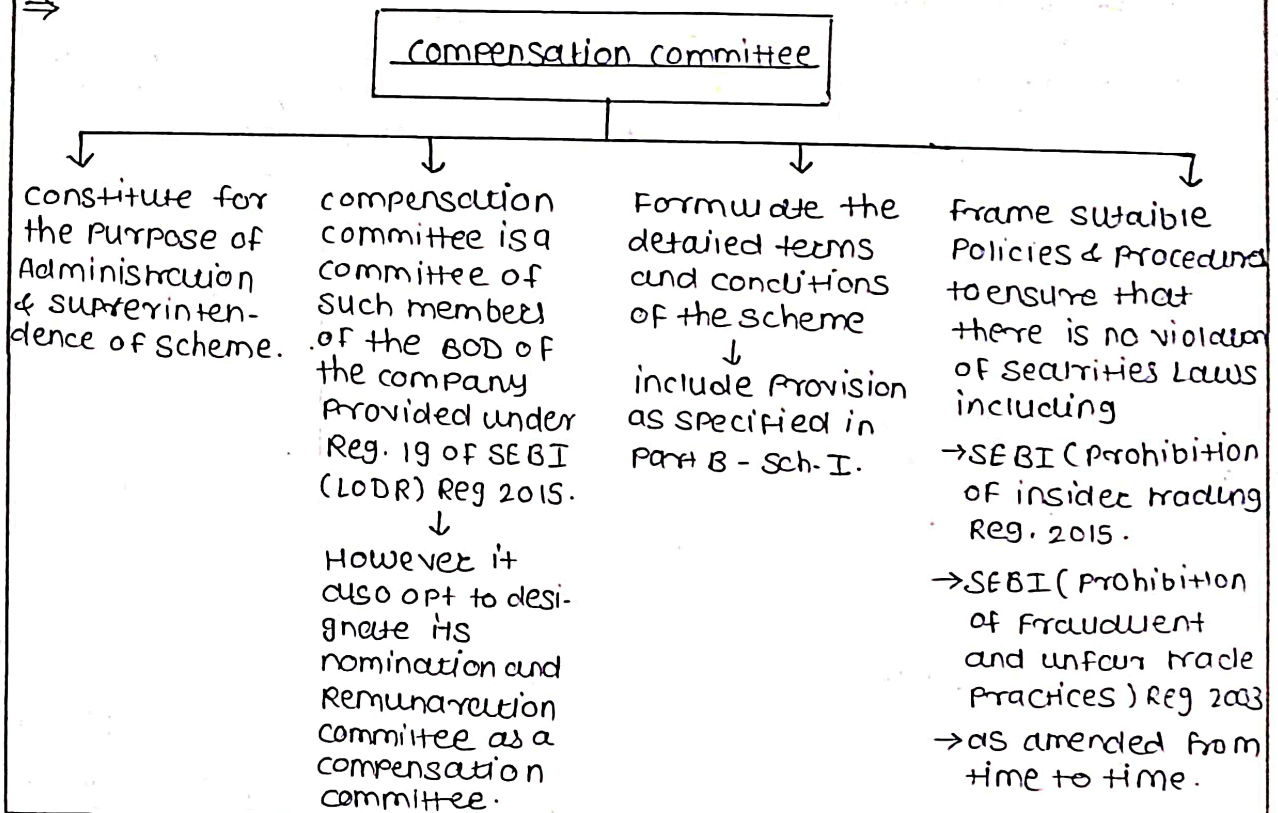
- An employee nominated as a director by an institution can participate in the company's scheme if approved by compensation committee.
- If institution nominates its employees as a director as its representative on the BOD of the co - the agreement / contract betⁿ the instiⁿ and co. should specify.

 - whether the grants by the co. can be accepted by said employee in his capacity as a dir. of the co.
 - The grant shall not be renounced in favour of the nominating institutions.
 - The condition sub. to which fees, commission or other incentives can be accepted by the dir.

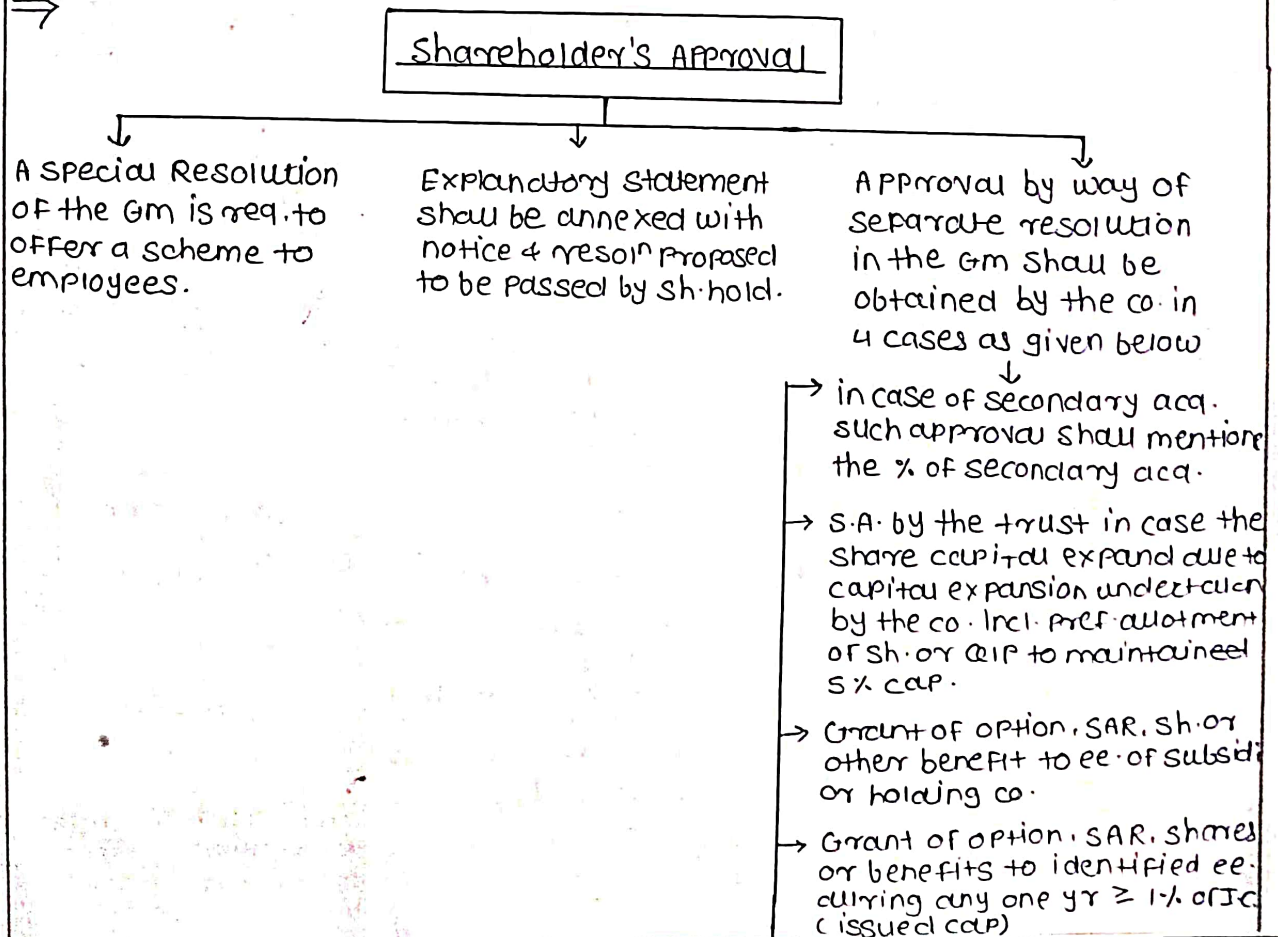
- Inst. shall file a copy of the contract / agreement → Co. CO. → file → SE (with all RSE) where its shares are listed
- Dir. copy of contract → BOD meeting (1st) after his nomination

⇒ Eligibility criteria :- AS determined by the compensation committee

⇒



⇒



→ Variation of Terms of the Sch. [Reg - 7]

- Co. by SR may vary the terms of the sch. if it is not prejudicial to the int. of the employees.
- To meet the regulatory req. without seeking sh.hol. app. by SR.
- The provision of Reg. 6 (sh.h. app.) of these reg. shall apply to such variation of term.
- The notice for passing a SR shall disclose full details of the variation and the details of ee who are beneficiaries of such variation.
- A co. may reprice unexercised options, SARs, shares if a st. price drop makes the scheme unattractive

⇒ winding up of the scheme [Reg. 8]

- on winding up a scheme, any excess money or shares left with the trust must be used to repay loans, distributed to employees or trf. to another scheme (with sh.hol. approval) as recommended by the compensation committee.

⇒ Non-Transferability - [Reg. 9]

- Benefits granted to the employees shall not be transferable to any person other than the ee to whom option / SAR / benefit is granted shall be entitled to benefit arising out of such option.
- shall not be pledged, hypothecated, mortgage or otherwise alienated
- In case of death of employee while in employment all the o / SAR / benefit → legal heirs from the date of his death.

- In case of resignation / terminⁿ all O / SAR / B → shall expire.

⇒ Listing -

- New shares to be immediately listed
- procedure -
 - st. file to SEBI
 - app^r for approval to SE

⇒ schemes implemented by unlisted companies.

- Shares arising after the IPO of an unlisted co. out of O / SAR granted under any scheme prior to its IPO



shall be listed imm. on all RSE where the sh. of the co. are listed

⇒ compliances and conditions.

- Company shall not make any fresh grant which involves allot. or trf. of sh. prior to its IPO unless -

→ such pre-IPO scheme is in conformity with these regulation

→ Ratified by its sh.hol. subseq. to the IPO

- changes shall not be made in the terms of option or shares or SAR issued under such pre-IPO sch unless prior app. of sh.h. → SR is taken for such a change.

- when the holding co. issue opⁿ / SAR / Ben. to ee, the cost incurred by the holding co shall be disclosed in the notes to accounts of the FS of the subsidiary co.

⇒ 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 thee 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>

→ ESPS / ESOS / SAR / GEBS / RBS - pre issue - post issue formalities.

Pre-issue formalities -

- certified copies of stock option / st. pur. sch / SARs / GEBS / RBS certified by CS.
- certified copies of statement to be filed with SE.
- compliance certificate - M.B.
- certificate from secretarial auditor.
- copy of latest annual report
- Undertakings as req. by SEBI
- Reconciliation statement
- certified copy of irrevocable trust deed
- Processing fees.

Post-issue formalities.

- Docs. required for listing eq. sh. issued to ex. options.
- Letter of appⁿ and listing appⁿ
- certified true copy of st. as per format prescribed under reg.
- Applicable addⁿ listing fees.
- certified copy of the B. Res.
- List of allottees, specifying the name of the allottee.
- certificate from statutory auditor.

→ procedure for issuing ESOP by a listed co.

- Prepare the draft ESOP plan in accordance with the co. Act
- send the notice of BM to all the dir (7 days before)
- Hold BM, pass resolⁿ for issuance of sh. through ESOP
- Appoint the Merchant Banker and approve the notice of GM
- Hold GM, pass SR, MGT-14 (30 days from SR)
- APPⁿ - SE for in-principle approval
- issue of letter of grant of option to all the eligible employees along with letter of accept. of opⁿ
- After expiry of vesting period (1 yr) the opⁿ shall
- co. shall issue letter of vesting along with letter of exercise of opⁿ
- Receipt to letter of excc. from ee.
- Notice - BM → all dir. (7 days before BM)
- Hold BM for allotment of sh.
- Dispt. letter of allotment + sh. certificate / cr. sh. with depositor
- appⁿ for listing of sh. so allotted → SE.

⇒ 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 T.A. } ↓ ↓ Total Asset.</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>→ 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>→ [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 I&P

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 P&P 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.
 P&P - 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 AS.

⇒ 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.

⇒ Accounting treatment.

→ where sweat equity shares are issued for a Non-cash consideration such shall be treated in the following manner.

a) where non-cash considⁿ takes the form of depreci. or amortisable asset

↓
carried out to the b/s of the company.

b) IF clause a) is not applicable

↓
shall be expressed as provided in the relevant Acc. Std.
P&L A/c

⇒ Placing of Auditor's certificate before AGM

- The BOD shall place before the share holders, a certificate from the secretarial auditor of the co. that the issue of sweat eq. sh. has been made in accordance with the resolⁿ pass by the co.

⇒ Procedure for the issuance of sweat equity shares.

- Notice of BM to all the dir. (7 days before BM)
- convene a BM - consider proposal of sweat eq. sh.
- File MGT-14 with copy of BR (w-30 days from BR)
- send Notice of GM to sh. hol. (21 days clear)
- Hold GM - Pass SR + MGT-14
- convene BM (w-12 months of passing SR) → allotment + SES
- File Return of allotment - PAS-3
- IF co. is listed - apply → SE → Listing approval.
- certificate from the secretarial auditor.