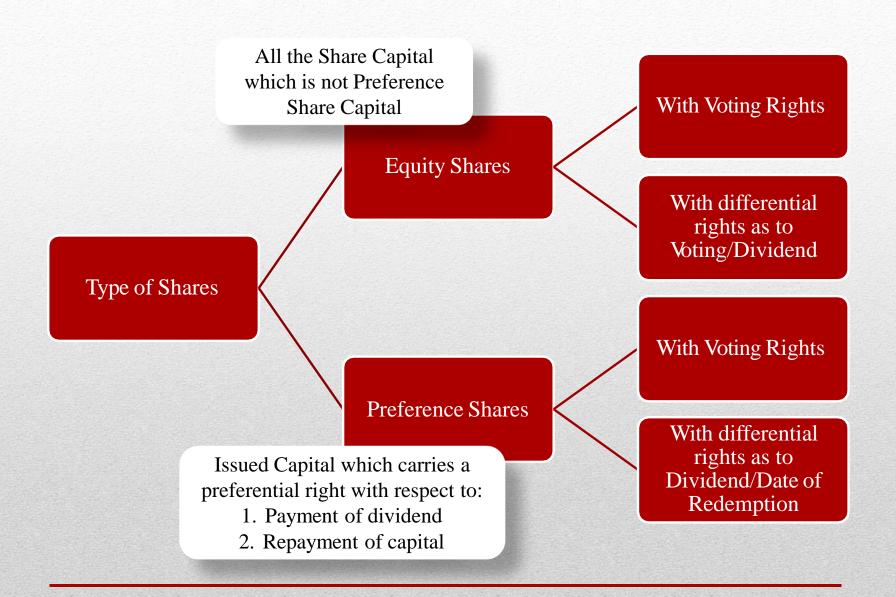
ISSUE OF SHARES

By:Asst.Prof.Agrawal R.M.



Equity Shareholders

- Right to vote on **EVERY** resolution placed before the company
- Voting Right **ON A POLL** = In proportion to his share in the paid-up equity share capital

Preference Shareholders

- Right to vote on **ONLY** following resolutions:
 - Directly affect the rights attached to his preference shares
 - Winding up
 - Repayment/reduction of equity/preference share capital
 - Voting Right **ON A POLL** = In proportion to his share in the paid-up preference share

<u>Voting Rights of Equity</u> Voting Rights of Preference = <u>Equity Share Capital</u> Preference Share Capital • **SECTION 47** (deals with Voting Rights) is not applicable to Private Companies where memorandum or articles of association of the private company so provides

DIFFERENTIAL RIGHTS

- RULE 4 of Companies (Share Capital and Debenture) Rules, 2014 (deals with Issue of Equity Shares with Differential Rights)
- SECTION 48 (deals with Variation of Shareholder's Right) applicable upon Private as well as Public Companies FOR BOTH: Equity & Preference

Rule 4 of Companies (Share Capital & Debenture) Rules, 2014

WHAT ARE DIFFERENTIAL VOTING RIGHTS (DVR)?

Shares with DVR are like ordinary shares but with fewer voting rights.

Important Features:

- Low priced
- Higher Returns/dividends
- Voting Rights sacrificed in favor of promoters

REASON FOR ISSUE?

- Raising capital without diluting their control
- Preventing hostile takeover by separating economic interests and voting rights

POINTS TO BE KEPT IN MIND BEFORE CONSIDERING SUCH ISSUE

- Voting Power in respect of shares with DVR shall be max 74% of Total Voting Power. (Disclosed in Explanatory Statement)
- No default:
 - □ AOC-4 & MGT-7 for 3 years
 - ☐ Payment of Declared Dividend
 - ☐ Repayment of Matured Deposits
 - ☐ Redemption of Due Preference Shares / Debentures
 - ☐ Payment of Interest on such deposits/debentures/dividend
 - ☐ Repayment of loan from PFI/SLI/Scheduled Bank/ interest thereon
 - ☐ Statutory payment to any Authority in relation to its employees
 - ☐ Crediting the amount to IEPF
- Cooling Period after default made good = 5 years
- Not been penalized in the last 3 year under RBI, SEBI, SCRA, FEMA or Special Act
- Cannot convert equity with VR to Equity with DVR & Vice-Versa

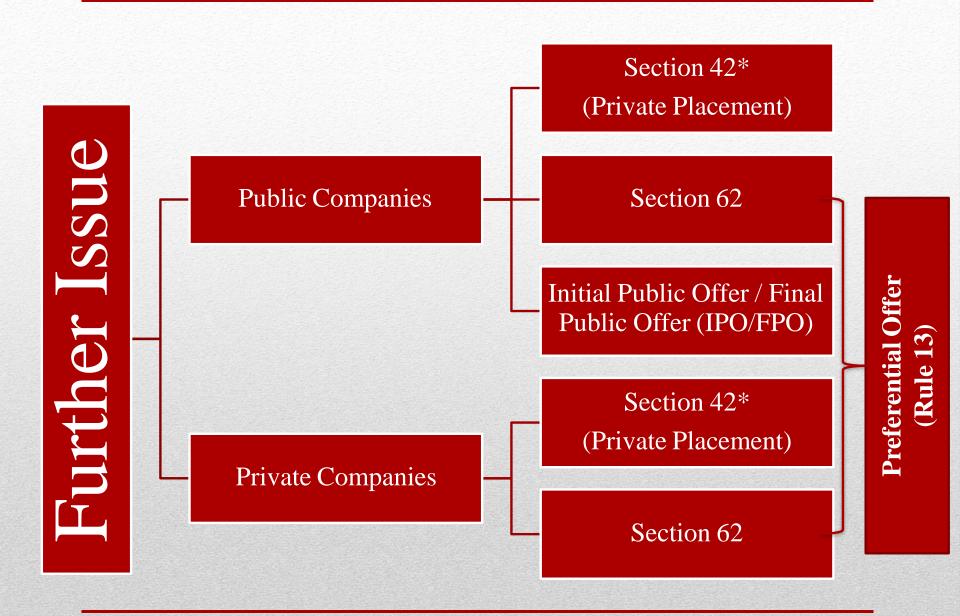
PROCEDURE & OTHER COMPLIANCES

- Company should ensure that there has been no default
- AoA should authorise. Else, amend AoA.
- Hold BM to approve the issue of Equity with DVR and also to issue notice calling EGM
- **Disclosures in Explanatory Statement** should be made in accordance with Section 102 and Rule 4(2)
- Ordinary Resolution (Listed Companies + Companies with Members exceeding 200 by Postal Ballot)
- Call Board Meeting for allotment & thereafter file PAS-3 within 30 days
- Issue share certificates and make necessary entry in the Register of Members
- Disclosure in Boards' Report in the year in which issue was completed

Section 48 of the Companies Act, 2013

PROCEDURE & OTHER COMPLIANCES

- MOA or AOA should not contain restrictive provision
- Call separate meeting of that class / meeting of all equity shareholders and take 3/4th approval from that class of shareholders (SPECIAL RESOLUTION 1: By Postal Ballot in case members exceed 200 & listed cos)
- If variation of one class affects rights of other class, then take 3/4th approval from that class too.
- File MGT-14 within 30 days from the date of the meeting
- 10% or more of such class of **DISSENTING** shareholders may apply to NCLT in form NCLT-1 within 21 days after the date of passing of the resolution for cancellation of variation



^{*}Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Section 62

Section 62(1)(a)

Section 62(1)(b)

Section 62(1)(c)

Rights Issue

Board Resolution

Employee Stock Option (ESOS)

Special
 Resolution. (For
 Pvt Cos,
 Ordinary
 Resolution)

Preferential Offer

- Special Resolution for all companies
- Valuation from Registered Valuer

Section 62(1)(a) of the Companies Act, 2013

Rights Issue

WHAT IS RIGHTS ISSUE?

An invitation to the existing shareholders to purchase additional shares of the Company in proportion to their Paid Up Capital at a discounted price (i.e., lower than the market price)

REASON FOR RIGHTS ISSUE?

- The control of the company remains in the hands of the existing shareholders.
- The Company is unable to borrow money from the outsiders but it has to meet its capital requirement
- The Company can raise more Debt as the DE ratio reduces

PROCEDURE FOR RIGHTS ISSUE

- Board Meeting to be called for approving such issue
- Offer Letter + Notice —— Shareholders *via* Regd Post / Speed Post / Electronic mode / Courier having proof of delivery at least 3 days before issue opening
- Issue to remain open for Min 15 days; Max 30 days. For Private Companies, if 90% of members agree in writing / electronically, lesser period can be taken
- Option of Renunciation can be given (Renunciation should not be restricted by the AoA).
- Call Board Meeting for allotment & thereafter file PAS-3 within 30 days and issue share certificates along with making entry in Register of Members
- Unsubscribed shares can be disposed off by the Board in any manner not dis-advantageous to the shareholders and the Company

Section 62(1)(b) + Rule 12 of Companies (Share Capital & Debenture) Rules, 2014

Employees Stock Option Scheme (ESOS)

Employees' Stock Option [Section 2(37)]:

OPTION given to the DIRECTORS, OFFICERS OR EMPLOYEES of a company / its holding company / subsidiary company to purchase, or to subscribe for, the shares of the company AT A FUTURE DATE AT A PRE-DETERMINED PRICE

WHO IS EMPLOYEE?

"Employee":

- Permanent Employee of the Company, its Holding & Subsidiary
- •Director of the Company, its Holding & Subsidiary

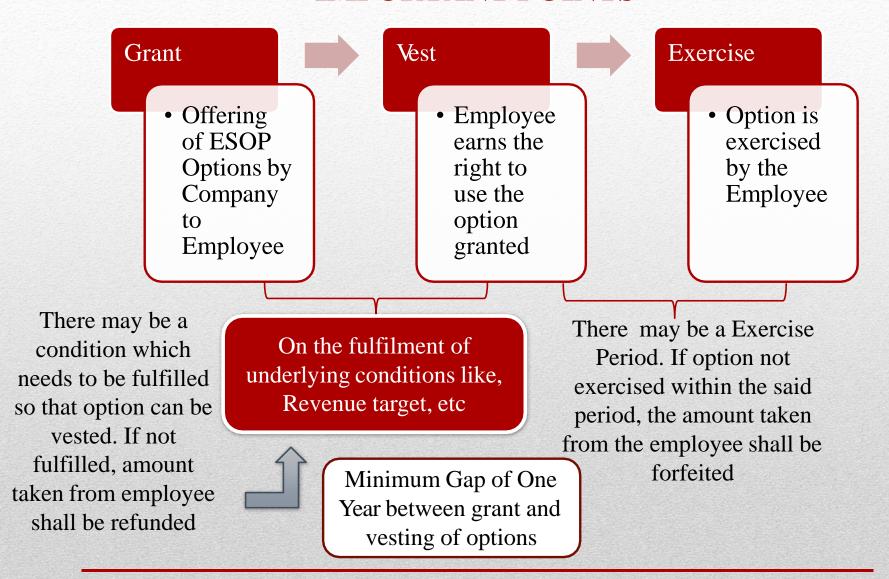
Excluding:

- **❖** Independent Directors
- Employee belonging to Promoter/Promoter Group
- ❖ Director, through himself / Relative / Body Corporate holds more than 10% of Outstanding Equity Shares of the Company
 - Above two NOTAPPLICABLE to Start Ups till 10 years

PROCEDURE FOR ISSUE OF ESOS

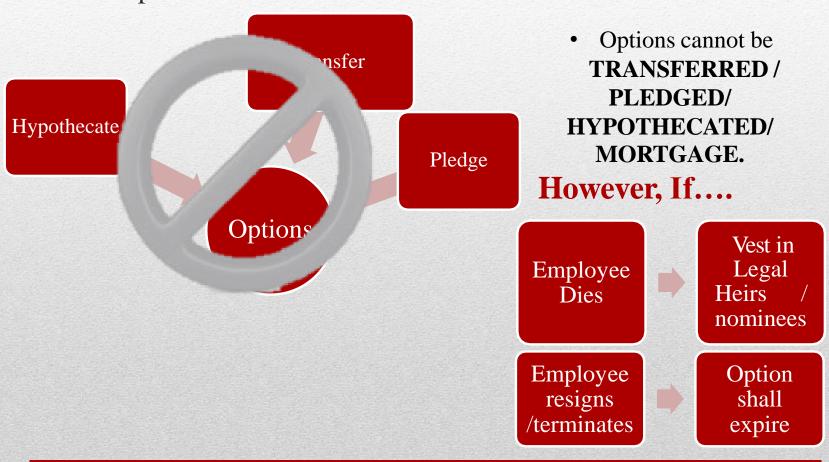
- Call Board Meeting for approving such issue & Notice of AGM + Explanatory Statement
- Pass approval by Ordinary Resolution for Pvt Co which has not defaulted in Annual Filing. Rest, SR
- Separate Resolutions for grant of options to:
 - Employees of Subsidiary
 - o Employees of Holding
 - o Identified Employees 1% or more of the Issued Capital during any one year
- File MGT-14 in case of Special Resolution within 30 days
- Make entries in SH-6 (Register of Employee Stock Option)
- Grant Options to the Employees
- After Right is vested, option can be exercised. Once Option is exercised, call BM to allot shares and they shall have all rights of shareholders
- File PAS-3 within 30 days of allotment AND Disclose in Boards' Report

IMPORTANT POINTS



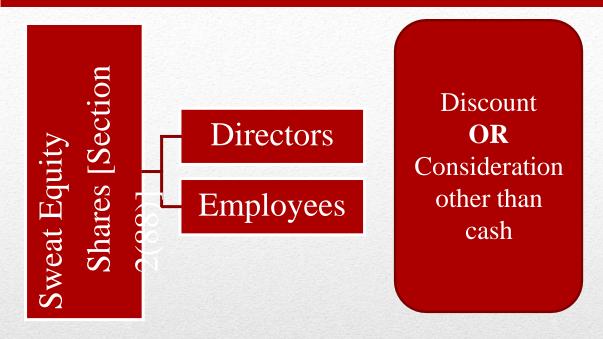
Terms of Options not exercised may be varied by passing SR provided it is not prejudicial

- Exercise Price can be determined by the Company in conformity with the applicable accounting policies
- Company at its discretion can specify LOCK IN of shares issued pursuant to ESOS



Section 54 + Rule 8 of Companies (Share Capital & Debenture) Rules, 2014

Sweat Equity Shares



REASON:

- 1. Providing Know-How
- 2. Making available rights in the nature of:
 - IPR
 - Value Addition

WHO IS EMPLOYEE?

"Employee":

- Permanent Employee of the Company, its Holding & Subsidiary
- Director of the Company, its Holding & Subsidiary

Exclusions mentioned in ESOS not mentioned here.

PROCEDURE FOR ISSUE OF SWEAT EQUITY

- Obtain Report from Registered Valuer with justification of valuation
- Call BM to approve such issue and Notice of EGM + Explanatory [File MGT-14 for Public Cos]
- Pass Special Resolution in EGM which is valid for one year*
- Hold BM to allot shares and thereafter file PAS-3 within 30 days
- Disclose in Boards' Report in the year when shares are issued
- Make entry in the Register of Sweat Equity Shares in SH-3
- Can be different from the existing class of equity shares
- Max Limit:
 - ❖ 15% of Paid Up Equity Capital in one year or Rs. 5 Crore, HIGHER
 - ❖ 25% of Paid Up Equity Capital in the lifetime.
 - ❖ 50% of Paid Up Capital for 5 years in Start Up Companies
- Mandatory LOCK IN for 3 years. Share Certificate shall be Stamped in Bold and Expiry of lock in shall be mentioned.

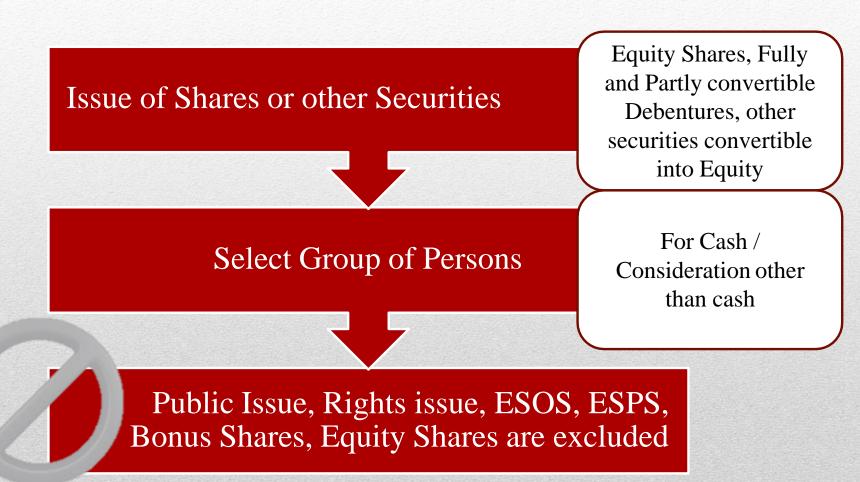
^{*}Allotment to be completed within 12 months, else another SR.

Section 62(1)(c) & 42 + Rule 13 of Companies (Share Capital & Debenture) Rules, 2014

Preferential Offer

What is Preferential Offer?

Rule 13 of Companies (Share Capital and Debentures) Rules, 2014



PROCEDURE

- AoA should authorise
- Obtain Report from Registered Valuer [Not required in case of listed companies]
- Call BM to approve such issue and Notice of EGM + Explanatory [File MGT-14 for Public Cos]
- Pass Special Resolution in EGM which is valid for one year*
- Open a separate bank account in a scheduled bank
- File MGT-14 and dispatch PAS-4 to proposed allottees within 30 Days [In case offer is to **one or more existing members only**, then requirement of PAS-4 shall not apply.]
- Once the amounts are received, convene BM to allot shares and thereafter file PAS-3 within 15 days from the date of allotment
- Issue share certificates
- Maintain complete record in PAS-5

^{*}Allotment to be completed within 12 months, else another SR.

Non - Cash Consideration

Disclosure in Balance
Sheet as per
Accounting Standard
if DEPRECIABLE
ASSET

Expensed according to Accounting Standards if **OTHERS**

Section 42

Section 62

Deals with Securities

Deals with Shares

There is a max limit of 200*

There is no limit

Section 42 + Rule 14 of the Companies (Prospectus & Allotment of Securities) Rules, 2014

Private Placement

PROCEDURE

- Issue of securities where offer is made only to "identified persons" not exceeding 200
- **Prior Special Resolution.** For NCD Limit exceeds Section 180(1)(c), SR valid for one year for all offer of NCDs
- Explanatory Statement pursuant to Section 102
- Issue Offer cum Application letter in PAS-4. Maintain complete record of Private Placement Offers in PAS-5.
- No renunciation of right.
- Payment be to received only from the bank account of subscriber
- Separate Bank Account in Scheduled Bank to be opened
- Securities to be allotted within 60 days from the date of receipt of application money
- File PAS-3 within 15 days from the date of allotment
- Amounts received can be utilized only after filing of PAS-3
- Valuation from Registered Valuer
- No Public Advertisement to be made

Consequence of Non-Compliance

- ☐ If allotment not made within 60 days, then repay within 15 days. Beyond 15 days, with interest @ 12% p.a. from the 16th day.
- ☐ If securities are allotted to more than 200, then the offer shall be deemed to be Public Offer and provisions of SCRA & SEBI shall be applicable
- PENALTY of Rs. 1000 per day for each day of default on Company, Promoters and Directors but not exceeding Rs. 25 Lakh, if PAS-3 not filed timely
- ☐ Contravention with the provisions, **PENALTY** may extend to **Amount Raised** OR **Rs. 2 Crore**, whichever is lower



+

Refund all monies with interest @12% p.a. within 30 days of the order imposing penalty

THANK YOU