COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

*In exercise of the powers conferred under clause (*a*)(*ii*) of section 43, sub-clause (*d*) of sub-section (1) of section 54, sub-section (2) of section 55, sub-section (1) of section 56, sub-section (3) of section 56, sub-section (1) of section 62, sub-section (2) of section 42, clause (*f*) of sub-section (2) of section 63, sub-section (1) of section 64, clause (*b*) of sub-section (3) of section 67, sub-section (2) of section 68, sub-section (6) of section 68, sub-section (9) of section 68, sub-section (10) of section 68, sub-section (3) of section 71, sub-section (6) of section 71, sub-section (13) of section 71 and sub-sections (1) and (2) of section 72, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:—*

Short title and commencement.

1. (1)These rules may be called the Companies (Share Capital and Debentures) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

IndiaCode

Definitions

2. (1) In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Companies Act, 2013 (18 of 2013);

(*b*) "Annexure" means the Annexure to these rules;

(*c*) "Fees" means the fees as specified in the Companies (Registration Offices and Fees) Rules, 2014;

(*d*) "Form" or "e-form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;

(*e*) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

(*f*) "section" means the section of the Act.

(2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

[1] **[Application.**

3. *The provisions of these rules shall apply to —*

*(*a*) all unlisted public companies;*

*(*b*) all private companies; and*

*(*c*) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India.* **]**

---

1. Substituted by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**. Prior to its substitution, rule 3 read as under :

"3. *Application.*—The provisions of these rules shall apply to—

(*a*) all unlisted public companies;

(*b*) all private companies; and

(*c*) listed companies,

so far as they do not contradict or conflict with any other provision framed in this regard by the Securities and Exchange Board of India."

Equity shares with differential rights

4. (1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:—

(*a*) the articles of association of the company authorizes the issue of shares with differential rights;

(*b*) the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders:

Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;

(*c*) the shares with differential rights shall not exceed twenty-six per cent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(*d*) the company having consistent track record of distributable profits for the last three years;

(*e*) the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;

(*f*) the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;

(*g*) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government:

[1] **[Provided** *that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which such default was made good*.**]**

(*h*) the company has not been penalized by Court or Tribunal during the last three years of any offence under the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act, 1999 or any other special Act, under which such companies being regulated by sectoral regulators.

(2) The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110 shall contain the following particulars, namely:—

(*a*) the total number of shares to be issued with differential rights;

(*b*) the details of the differential rights;

(*c*) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;

(*d*) the reasons or justification for the issue;

(*e*) the price at which such shares are proposed to be issued either at par or at premium;

India Code

(*f*) the basis on which the price has been arrived at;

(*g*) (*i*) in case of private placement or preferential issue—

(*a*) details of total number of shares proposed to be allotted to promoters, directors and key managerial personnel;

(*b*) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel;

(*ii*) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel;

(*h*) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(*i*) the scale or proportion in which the voting rights of such class or type of shares shall vary;

(*j*) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;

(*k*) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

(*l*) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

(3) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and *vice versa*.

(4) The Board of Directors shall, *inter alia*, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, the following details, namely:—

(*a*) the total number of shares allotted with differential rights;

(*b*) the details of the differential rights relating to voting rights and dividends;

(*c*) the percentage of the shares with differential rights to the total post issue equity share capital with differential rights issued at any point of time and percentage of voting rights which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

(*d*) the price at which such shares have been issued;

(*e*) the particulars of promoters, directors or key managerial personnel to whom such shares are issued;

(*f*) the change in control, if any, in the company consequent to the issue of equity shares with differential voting rights;

(*g*) the diluted Earning Per Share pursuant to the issue of each class of shares, calculated in accordance with the applicable accounting standards;

(*h*) the pre and post issue shareholding pattern along with voting rights in the format specified under sub-rule (2) of rule 4.

(5) The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

(6) Where a company issues equity shares with differential rights, the Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

[2][*Explanation.*—For the purposes of this rule it is hereby clarified that equity shares with differential rights issued by any company under the provisions of the Companies Act, 1956 (1 of 1956) and the rules made thereunder, shall continue to be regulated under such provisions and rules.]

1. First proviso inserted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**
2. Substituted by the Companies (Share Capital and Debentures) Amendment Rules, 2014, w.e.f. 18-6-2014. Prior to its substitution, *Explanation* read as under :

"*Explanation.*—For the purposes of this rule, it is hereby clarified that differential rights attached to such shares issued by any company under the provisions of Companies Act, 1956, shall continue till such rights are converted with the differential rights in accordance with the provisions of the Companies Act, 2013."

Certificate of shares (where shares are not in demat form)

5. (1) Where a company issues any share capital, no certificate of any share or shares held in the company shall be issued, except—

(*a*) in pursuance of a resolution passed by the Board; and

(*b*) on surrender to the company of the letter of allotment or fractional coupons of requisite value, save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares:

Provided that if the letter of allotment is lost or destroyed, the Board may impose such reasonable terms, if any, as to seek supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as it may think fit.

(2) Every certificate of share or shares shall be in **Form No. SH.1** or as near thereto as possible and shall specify the name(s) of the person(s) in whose favour the certificate is issued, the shares to which it relates and the amount paid-up thereon.

(3) Every share certificate shall be [3]**[***issued under the seal, if any, of the company***]**, which shall be affixed in the presence of, and signed by—

(*a*) two directors duly authorized by the Board of Directors of the company for the purpose or the committee of the Board, if so authorized by the Board; and

[4] **[** (b) *the secretary or any person authorised by the Board for the purpose :*

Provided *that in case a company does not have a common seal, the share certificate shall be signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary:*

Provided further *that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than a managing director or a whole time director:*

Provided also *that, in case of a One Person Company, every share certificate shall be issued under the seal, if any, of the company, which shall be affixed in the presence of and signed by one director or a person authorised by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorised by the Board for the purpose, and in case the One Person Company does not have a common seal, the share certificate shall be signed by the persons in the presence of whom the seal is required to be affixed in this proviso.* **]**

Explanation.—For the purposes of this sub-rule, a director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

IndiaCode

(4) The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

---

3. Substituted for "issued under the seal of the company" by the Companies (Share Capital and Debentures) Second Amendment Rules, 2015, w.e.f. **29-5-2015**.

4. Substituted by the Companies (Share Capital and Debentures) Second Amendment Rules, 2015, w.e.f. **29-5-2015**. Prior to its substitution, clause (*b*), as amended by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**, read as under :

"(*b*) the secretary or any person authorised by the Board for the purpose:

Provided that, if the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director:

Provided further that, in case of a One Person Company, every share certificate shall be issued under the seal of the company, which shall be affixed in the presence of and signed by one director or a person authorized by the Board of Directors of the company for the purpose and the Company Secretary, or any other person authorized by the Board for the purpose."

IndiaCode

Issue of renewed or duplicate share certificate.

6. (1)(*a*) The certificate of any share or shares shall not be issued either in exchange for those which are sub-divided or consolidated or in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out, or where the pages on the reverse for recording transfers have been duly utilised, unless the certificate in lieu of which it is issued is surrendered to the company:

Provided that the company may charge such fee as the Board thinks fit, not exceeding fifty rupees per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out:

(*b*) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated on the face of it and be recorded in the Register maintained for the purpose, that it is "*Issued in lieu of share certificate No. ..... sub-divided/replaced/onconsolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government:*

(*c*) A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered subject to compliance with clause (*a*) of sub-rule (1) of rule 5, sub-rule (2) of rule 5 and sub-rule (3) of rule 5.

(2)(*a*) The duplicate share certificate shall be not issued in lieu of those that are lost or destroyed, without the prior consent of the Board and without payment of such fees as the Board thinks fit, not exceeding rupees fifty per certificate and on such reasonable terms, such as furnishing supporting evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating the evidence produced:

(*b*) Where a certificate is issued in any of the circumstances specified in this sub-rule, it shall be stated prominently on the face of it and be recorded in the Register maintained for the purpose, that it is *"duplicate issued in lieu of share certificate No. .....*" and the word "duplicate" shall be stamped or printed prominently on the face of the share certificate:

(*c*) In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued [5]**[***within forty-five days***]**, from the

date of submission of complete documents with the company respectively.

(3)(*a*) The particulars of every share certificate issued in accordance with sub-rules (1) and (2) shall be entered forthwith in a Register of Renewed and Duplicate Share Certificates maintained in **Form No.SH.2** indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column.

(*b*) The register shall be kept at the registered office of the company or at such other place where the Register of Members is kept and it shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.

(*c*) All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorised by the Board for the purposes of sealing and signing the share certificate under the provisions of sub-rule (3) of rule 5.

---

5. Substituted for "within fifteen days" by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.

Maintenance of share certificate forms and related books and documents.

7. (1) All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and the blank form shall be consecutively machine-numbered and the forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms shall be kept in the custody of the secretary or such other person as the Board may authorise for the purpose; and the company secretary or other person aforesaid shall be responsible for rendering an account of these forms to the Board.

(2) The following persons shall be responsible for the maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms of share certificates referred to in sub-rule (1), namely: —

(*a*) the committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or

(*b*) where the company has no company secretary, a Director specifically authorised by the Board for such purpose.

(3) All books referred to in sub-rule (2) shall be preserved in good order not less than thirty years and in case of disputed cases, shall be preserved permanently, and all certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf:

Provided that nothing in this sub-rule shall apply to cancellation of the certificates of securities, under sub-section (2) of section 6 of the Depositories Act, 1996 (22 of 1996), when such certificates are cancelled in accordance with sub-regulation (5) of regulation 54 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, made under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) read with section 25 of the Depositories Act, 1996 (22 of 1996).

Issue of sweat equity shares.

8. (1) A company other than a listed company, which is not required to comply with the Securities and Exchange Board of India Regulations on sweat equity, shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called,

unless the issue is authorised by a special resolution passed by the company in general meeting.

Explanation.—For the purposes of this rule—

(*i*) the expressions "Employee" means—

(*a*) a permanent employee of the company who has been working in India or outside India, for at least last one year; or

(*b*) a director of the company, whether a whole time director or not; or

(*c*) an employee or a director as defined in sub-clause (*a*) or (*b*) above of a subsidiary, in India or outside India, or of a holding company of the company;

(*ii*) the expression 'Value additions' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.

(2) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following particulars, namely:—

(*a*) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved;

(*b*) the reasons or justification for the issue;

(*c*) the class of shares under which sweat equity shares are intended to be issued;

(*d*) the total number of shares to be issued as sweat equity;

(*e*) the class or classes of directors or employees to whom such equity shares are to be issued;

(*f*) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation;

(*g*) the time period of association of such person with the company;

(*h*) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel;

(*i*) the price at which the sweat equity shares are proposed to be issued;

(*j*) the consideration including consideration other than cash, if any to be received for the sweat equity;

(*k*) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with;

(*l*) a statement to the effect that the company shall conform to the applicable accounting standards; and

(*m*) diluted earning per share pursuant to the issue of sweat equity shares, calculated in accordance with the applicable accounting standards.

(3) The special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.

(4) The company shall not issue sweat equity shares for more than fifteen per cent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher:

Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five per cent, of the paid up equity capital of the Company at any time:

[1] **[Provided further** *that a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of lndia, may issue sweat equity shares not exceeding fifty per cent of its paid*

IndiaCode

*up capital up to five years from the date of its incorporation or registration.***]**

(5) The sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock-in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

(6) The sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

(7) The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

(8) A copy of gist along with critical elements of the valuation report obtained under clause (*6*) and clause (*7*) shall be sent to the shareholders with the notice of the general meeting.

(9) Where sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non-cash consideration shall be treated in the following manner in the books of account of the company—

(*a*) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(*b*) where clause (*a*) is not applicable, it shall be expensed as provided in the accounting standards.

(10) The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled, namely:—

(*a*) the sweat equity shares are issued to any director or manager*;* and

(*b*) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

(11) In respect of sweat equity shares issued during an accounting period, the accounting value of sweat equity shares shall be treated as a form of compensation to the employee or the director in the financial statements of the company, if the sweat equity shares are not issued pursuant to acquisition of an asset.

(12) If the shares are issued pursuant to acquisition of an asset, the value of the asset, as determined by the valuation report, shall be carried in the balance sheet as per the Accounting Standards and such amount of the accounting value of the sweat equity shares that is in excess of the value of the asset acquired, as per the valuation report, shall be treated as a form of compensation to the employee or the director in the financial statements of the company.

Explanation.—For the purposes of this sub-rule, it is hereby clarified that the Accounting value shall be the fair value of the sweat equity shares as determined by a registered valuer under sub-rule (6).

(13) The Board of Directors shall, *inter alia,* disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:—

(*a*) the class of director or employee to whom sweat equity shares were issued;

(*b*) the class of shares issued as Sweat Equity Shares;

(*c*) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one per cent or more of the issued share capital;

(*d*) the reasons or justification for the issue;

(*e*) the principal terms and conditions for issue of sweat equity shares, including pricing

formula;

(*f*) the total number of shares arising as a result of issue of sweat equity shares;

(*g*) the percentage of the sweat equity shares of the total post issued and paid up share capital;

(*h*) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;

(*i*) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

(14)(*a*) The company shall maintain a Register of Sweat Equity Shares in **Form No. SH.3** and shall forthwith enter therein the particulars of Sweat Equity Shares issued under section 54.

(*b*) The Register of Sweat Equity Shares shall be maintained at the registered office of the company or such other place as the Board may decide.

(*c*) The entries in the register shall be authenticated by the Company Secretary of the company or by any other person authorized by the Board for the purpose.

---

1. Second proviso inserted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

IndiaCode

9. Issue and redemption of preference shares.

(1) A company having a share capital may, if so authorised by its articles, issue preference shares subject to the following conditions, namely:—

(*a*) the issue of such shares has been authorized by passing a special resolution in the general meeting of the company.

(*b*) the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares.

(2) A company issuing preference shares shall set out in the resolution, particulars in respect of the following matters relating to such shares, namely:—

(*a*) the priority with respect to payment of dividend or repayment of capital *vis-a-vis* equity shares;

(*b*) the participation in surplus fund;

(*c*) the participation in surplus assets and profits, on winding-up which may remain after the entire capital has been repaid;

(*d*) the payment of dividend on cumulative or non-cumulative basis;

(*e*) the conversion of preference shares into equity shares;

(*f*) the voting rights;

(*g*) the redemption of preference shares.

(3) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall, *inter alia*, provide the complete material facts concerned with and relevant to the issue of such shares, including—

(*a*) the size of the issue and number of preference shares to be issued and nominal value of each share;

(*b*) the nature of such shares *i.e.* cumulative or non-cumulative, participating or non-participating, convertible or non-convertible;

(*c*) the objectives of the issue;

(*d*) the manner of issue of shares;

(*e*) the price at which such shares are proposed to be issued;

(*f*) the basis on which the price has been arrived at;
(*g*) the terms of issue, including terms and rate of dividend on each share, etc.;
(*h*) the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
(*i*) the manner and modes of redemption;
(*j*) the current shareholding pattern of the company;
(*k*) the expected dilution in equity share capital upon conversion of preference shares.

(4) Where a company issues preference shares, the Register of Members maintained under section 88 shall contain the particulars in respect of such preference shareholder(s).

(5) A company intending to list its preference shares on a recognized stock exchange shall issue such shares in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

(6) A company may redeem its preference shares only on the terms on which they were issued or as varied after due approval of preference shareholders under section 48 of the Act and the preference shares may be redeemed:—

(*a*) at a fixed time or on the happening of a particular event;
(*b*) any time at the company's option; or
(*c*) any time at the shareholder's option.

IndiaCode

10. Issue and redemption of preference shares by company in infrastructural projects.

A company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding twenty years but not exceeding thirty years, subject to the redemption of a minimum ten per cent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

11. Instrument of transfer.

(1) An instrument of transfer of securities held in physical form shall be in Form **No.SH.4** and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

(2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.

(3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in **Form No. SH.5** to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.

12. Issue of employee stock options.

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines[6] shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:—

(1) The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

*Explanation :*For the purposes of clause (*b*) of sub-section (1) of section 62 and this rule "Employee" means—

(*a*) a permanent employee of the company who has been working in India or outside India;

or

(*b*) a director of the company, whether a whole time director or not but excluding an independent director; or

(*c*) an employee as defined in clause (*a*) or (*b*) of a subsidiary, in India or outside India, or of a holding company of the company [7]**[***]**

but does not include—

(*i*) an employee who is a promoter or a person belonging to the promoter group; or

(*ii*) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company:

[8] **[Provided** *that in case of a startup company, as defined in notification number GSR 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, the conditions mentioned in sub-clauses (*i*) and (*ii*) shall not apply up to five years from the date of its incorporation or registration*.**]**

(2) The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution—

(*a*) the total number of stock options to be granted;

(*b*) identification of classes of employees entitled to participate in the Employees Stock Option Scheme;

(*c*) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;

(*d*) the requirements of vesting and period of vesting;

(*e*) the maximum period within which the options shall be vested;

(*f*) the exercise price or the formula for arriving at the same;

(*g*) the exercise period and process of exercise;

(*h*) the Lock-in period, if any;

(*i*) the maximum number of options to be granted per employee and in aggregate;

(*j*) the method which the company shall use to value its options;

(*k*) the conditions under which option vested in employees may lapse *e.g.* in case of termination of employment for misconduct;

(*l*) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and

(*m*) a statement to the effect that the company shall comply with the applicable accounting standards.

(3) The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.

(4) The approval of shareholders by way of separate resolution shall be obtained by the company in case of—

(*a*) grant of option to employees of subsidiary or holding company; or

(*b*) grant of option to identified employees, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.

(5)(*a*) The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.

(*b*) The notice for passing special resolution for variation of terms of Employees Stock Option Scheme

IndiaCode

shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.

(6)(*a*) There shall be a minimum period of one year between the grant of options and vesting of option:

Provided that in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;

(*b*) The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.

(*c*) The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

(7) The amount, if any, payable by the employees, at the time of grant of option—

(*a*) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or

(*b*) the amount may be refunded to the employees if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the Employees Stock Option Scheme.

(8)(*a*) The option granted to employees shall not be transferable to any other person.

(*b*) The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.

(*c*) Subject to clause (*d*), no person other than the employees to whom the option is granted shall be entitled to exercise the option.

(*d*) In the event of the death of employee while in employment, all *the options* granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

(*e*) In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

(*f*) In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

(9) The Board of directors, shall, *inter alia*, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

(*a*) options granted;
(*b*) options vested;
(*c*) options exercised;
(*d*) the total number of shares arising as a result of exercise of option;
(*e*) options lapsed;
(*f*) the exercise price;
(*g*) variation of terms of options;
(*h*) money realized by exercise of options;
(*i*) total number of options in force;
(*j*) employee wise details of options granted to:—
(*i*) key managerial personnel.
(*ii*) any other employee who receives a grant of options in any one year of option amounting to five per cent or more of options granted during that year.

IndiaCode

(*iii*) identified employees who were granted option, during any one year, equal to or exceeding one per cent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.

(10) (*a*) The company shall maintain a Register of Employee Stock Options in **Form No. SH.6** and shall forthwith enter therein the particulars of option granted under clause (*b*) of sub-section (1) of section 62.

(*b*) The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.

(*c*) The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

(11) Where the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

---

6. Now SEBI (Share Based Employees Benefits) Regulations, 2014.
7. Words "or of an associate company" omitted by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.
8. Proviso inserted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

IndiaCode

Issue of shares on preferential basis

13. (1) For the purposes of clause (*c*) of sub-section (1) of section 62, if authorized by a special resolution passed in a general meeting, shares may be issued by any company in any manner whatsoever including by way of a preferential offer, to any persons whether or not those persons include the persons referred to in clause (*a*) or clause (*b*) of sub-section (1) of section 62 and such issue on preferential basis should also comply with conditions laid down in section 42 of the Act:

[8] **[Provided** *that in case of any preferential offer made by a company to one or more existing members only, the provisions of sub-rule (1) and proviso to sub-rule (3) of rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014 shall not apply :* **]**

Provided [8] **[*further*]** that the price of shares to be issued on a preferential basis by a listed company shall not be required to be determined by the valuation report of a registered valuer.

Explanation.—For the purposes of this rule, (*i*) the expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities;

(*ii*) the expression, "shares or other securities" means equity shares, fully convertible debentures, partly convertible debentures or any other securities, which would be convertible into or exchanged with equity shares at a later date.

(2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:—

(*a*) the issue is authorized by its articles of association;
(*b*) the issue has been authorized by a special resolution of the members;

(c) [8a][***]

(*d*) The company shall make the following disclosures in the explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 of the Act:

(*i*) the objects of the issue;

(*ii*) the total number of shares or other securities to be issued;

(*iii*) the price or price band at/within which the allotment is proposed;

(*iv*) basis on which the price has been arrived at along with report of the registered valuer;

(*v*) relevant date with reference to which the price has been arrived at;

(*vi*) the class or classes of persons to whom the allotment is proposed to be made;

(*vii*) intention of promoters, directors or key managerial personnel to subscribe to the offer;

(*viii*) the proposed time within which the allotment shall be completed;

(*ix*) the names of the proposed allottees and the percentage of post preferential offer capital that may be held by them;

(*x*) the change in control, if any, in the company that would occur consequent to the preferential offer;

(*xi*) the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;

(*xii*) the justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer;

(*xiii*) The pre issue and post issue shareholding pattern of the company in the following format—

Sr. No.	*Category*	*Pre Issue*		*Post Issue*	
		No. of Shares held	*% of shareholding*	*No. of shares held*	*% of shareholding*
A	**Promoters' holding** :				
1	Indian :				
	Individual				
	Bodies Corporate				
	Sub-Total				
2	Foreign Promoters				
	Sub-Total (A)				
B	**Non-Promoters' holding** :				
1.	Institutional Investors				
2.	Non-Institution :				
	Private Corporate Bodies				
	Directors and Relatives				
	Indian Public				
	Others (Including NRIs)				
	Sub-Total (B)				
	GRAND TOTAL				

(*e*) the allotment of securities on a preferential basis made pursuant to the special resolution passed pursuant to sub-rule (2)(*b*) shall be completed within a period of twelve months from the date of passing of the special resolution.

IndiaCode

(*f*) if the allotment of securities is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.

(*g*) the price of the shares or other securities to be issued on a preferential basis, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer;

(*h*) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;

[8aa] **[** *where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined—*

(h)

(i) *either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or*

(ii) *at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:*

Provided *that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause* (v) *of clause* (d) *of sub-rule (2) of this rule*.**]**

(*i*) where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation;

(*j*) where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company—

(*i*) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or

(*ii*) where clause (*i*) is not applicable, it shall be expensed as provided in the accounting standards.

[9][*Explanation.*—For the purposes of these rules, it is hereby clarified that, till a registered valuer is appointed in accordance with the provisions of the Act, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent Chartered Accountant in practice having a minimum experience of ten years.]

[9][(3) The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.]

---

8. Inserted by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.

8a. Clause (*c*) omitted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.** Prior to its omission, said clause read as under :

"(*c*) the securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment."

8aa. Clause (*h*) substituted by the Companies (Share Capital and Debentures) Third

Amendment Rules, 2016, w.e.f. **19-7-2016.** Prior to its substitution, said clause read as under :

"(*h*) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;"

9. Inserted by the Companies (Share Capital and Debentures) Amendment Rules, 2014, w.e.f. 18-6-2014.

Issue of Bonus Shares

14. The company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Notice to Registrar for alteration of share capital

15. Where a company alters its share capital in any manner specified in sub-section (1) of section 61, or an order is passed by the Government increasing the authorized capital of the company in pursuance of sub-section (4) read with sub-section (6) of section 62 or a company redeems any redeemable preference shares, [1]**[***or a company not having share capital increases number of its members***]** the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in **Form No. SH.7** along with the fee.

indiacode

1. Inserted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

Provision of money by company for purchase of its own shares by employees or by trustees for the benefit of employees.

16. (1) The company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with the following conditions, namely:—

(*a*) the scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing special resolution in a general meeting;

(*b*) such purchase of shares shall be made only through a recognized stock exchange in case the shares of the company are listed and not by way of private offers or arrangements;

(*c*) where shares of a company are not listed on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a registered valuer;

(*d*) the value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed five per cent, of the aggregate of paid up capital and free reserves of the company.

(2) The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 shall, in addition to the particulars mentioned in sub-rule (1) of rule 18, contain the following particulars, namely:—

(*a*) the class of employees for whose benefit the scheme is being implemented and money is being provided for purchase of or subscription to shares;

(*b*) the particulars of the trustee or employees in whose favour such shares are to be registered;

(*c*) the particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any;

(*d*) any interest of key managerial personnel, directors or promoters in such scheme or trust and effect thereof;

(*e*) the detailed particulars of benefits which will accrue to the employees from the implementation of the scheme;

(*f*) the details about who would exercise and how the voting rights in respect of the shares to be purchased or subscribed under the scheme would be exercised;

(3) A person shall not be appointed as a trustee to hold such shares, if he—

(*a*) is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or

(*b*) beneficially holds ten per cent or more of the paid-up share capital of the company.

(4) Where the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, *inter alia*, disclose in the Board's report for the relevant financial year the following details, namely:—

(*a*) the names of the employees who have not exercised the voting rights directly;

(*b*) the reasons for not voting directly;

(*c*) the name of the person who is exercising such voting rights;

(*d*) the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;

(*e*) the date of the general meeting in which such voting power was exercised;

(*f*) the resolutions on which votes have been cast by persons holding such voting power;

(*g*) the percentage of such voting power to the total voting power on each resolution;

(*h*) whether the votes were cast in favour of or against the resolution.

Buy-back of shares or other securities.

17. Unless stated otherwise, the following norms shall be complied with by the private companies and unlisted public companies for buy-back of their securities—

(1) The explanatory statement to be annexed to the notice of the general meeting pursuant to section 102 shall contain the following disclosures, namely:—

(*a*) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;

(*b*) the objective of the buy-back;

(*c*) the class of shares or other securities intended to be purchased under the buy-back;

(*d*) the number of securities that the company proposes to buy-back;

(*e*) the method to be adopted for the buy-back;

(*f*) the price at which the buy-back of shares or other securities shall be made;

(*g*) the basis of arriving at the buy-back price;

(*h*) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;

(*i*) the time-limit for the completion of buy-back;

(*j*) (*i*) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel

as on the date of the notice convening the general meeting;

(*ii*) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (*i*) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;

(*iii*) the maximum and minimum price at which purchases and sales referred to in sub-clause (*ii*) were made along with the relevant date;

(*k*) if the persons mentioned in sub-clause (*i*) of clause (*j*) intend to tender their shares for buy-back—

(*i*) the quantum of shares proposed to be tendered;

(*ii*) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition;

(*l*) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;

(*m*) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion—

(*i*) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;

(*ii*) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and

(*iii*) the directors have taken into account the liabilities (including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013

(*n*) a report addressed to the Board of directors by the company's auditors stating that—

(*i*) they have inquired into the company's state of affairs;

(*ii*) the amount of the permissible capital payment for the securities in question is in their view properly determined;

(*iii*) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document:

[1] **[Provided** *that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company*.**]**

(*iv*) the Board of directors have formed the opinion as specified in clause (*m*) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

(2) The company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in **Form No. SH.8,** along with the fee:

Provided that such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

(3) The company shall file with the Registrar, along with the letter of offer, and in case of a listed company with the Registrar and the Securities and Exchange Board, a declaration of solvency in **Form No. SH.9** along with the fee and signed by at least two directors of the company, one of whom shall be the managing director, if any, and verified by an affidavit as specified in the said Form.

(4) The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than twenty days from its filing with the Registrar of Companies.

(5) The offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days from the date of dispatch of the letter of offer:

[2] **[Provided** *that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days*.**]**

(6) In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back:

(7) The company shall complete the verifications of the offers received within fifteen days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within twenty one days from the date of closure of the offer.

(8) The company shall immediately after the date of closure of the offer, open a separate bank account and deposit therein, such sum, as would make up the entire sum due and payable as consideration for the shares tendered for buy-back in terms of these rules.

(9) The company shall within seven days of the time specified in sub-rule (7) —

(*a*) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted; or

(*b*) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.

(10) The company shall ensure that—

(*a*) the letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document;

(*b*) the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments;

(*c*) the company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash;

(*d*) the company shall not withdraw the offer once it has announced the offer to the shareholders;

(*e*) the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and

(*f*) the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

(12)(*a*) The company, shall maintain a register of shares or other securities which have been bought-back in **Form No. SH.10.**

(*b*) The register of shares or securities bought-back shall be maintained at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized

by the board in this behalf.

(*c*) The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

(13) The company, after the completion of the buy-back under these rules, shall file with the Registrar, and in case of a listed company with the Registrar and the Securities and Exchange Board of India, a return in the **Form No. SH.11** along with the fee .

(14) There shall be annexed to the return filed with the Registrar in **Form No. SH.11**, a certificate in **Form No. SH.15** signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

---

1. Proviso inserted by the Companies (Share Capital and Debentures) Amendment Rules, 2016, w.e.f. **10-3-2016.**
2. Proviso inserted by the Companies (Share Capital and Debentures) Second Amendment Rules, 2016, w.e.f. **29-3-2016**.

IndiaCode

Debentures

18. (1) The company shall not issue secured debentures, unless it complies with the following conditions, namely:—

(*a*) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue :

[10][**Provided** that the following classes of companies may issue secured debentures for a period exceeding ten years but not exceeding thirty years,

(*i*) Companies engaged in setting up of infrastructure projects;

(*ii*) 'Infrastructure Finance Companies' as defined in clause (*viia*) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;

[10a] **[** *'Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (*b*)*

(iii) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;

(iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.**]**

[11] **[** *Such an issue of debentures shall be secured by the creation of a charge on the*

(b) properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.**]**

(*c*) the company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures, execute a debenture trust deed to protect the interest of the debenture holders; and

(*d*) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on—

[11a] **[** *any specific movable property of the company or its holding company or subsidiaries*

(i) or associate companies or otherwise.**]**

(ii) *any specific immovable property wherever situate, or any interest therein:*

Provided *that in case of a non-banking financial company, the charge or mortgage*

*under sub-clause (*i*) may be created on any movable property :***]**

[12] **[Provided further****that in case of any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement for creation of charge under this sub-rule shall not apply :*

Provided also†*that in case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company.***]**

(2) The company shall appoint debenture trustees under sub-section (5) of section 71, after complying with the following conditions, namely:—

(*a*) the names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;

(*b*) before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures;

(*c*) A person shall not be appointed as a debenture trustee, if he—

(*i*) beneficially holds shares in the company;

(*ii*) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

(*iii*) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

(*iv*) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

(*v*) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;

(*vi*) has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(*vii*) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

(*d*) the Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act:

Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

(*e*) any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than three fourth in value of the debentures outstanding, at their meeting.

(3) It shall be the duty of every debenture trustee to—

(*a*) satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(*b*) satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(*c*) call for periodical status or performance reports from the company;

(*d*) communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee

therefor;

(*e*) appoint a nominee director on the Board of the company in the event of—

(*i*) two consecutive defaults in payment of interest to the debenture holders; or

(*ii*) default in creation of security for debentures; or

(*iii*) default in redemption of debentures.

(*f*) ensure that the company does not commit any breach of the terms of issue of debentures or covenants of the trust deed and take such reasonable steps as may be necessary to remedy any such breach;

(*g*) inform the debenture holders immediately of any breach of the terms of issue of debentures or covenants of the trust deed;

(*h*) ensure the implementation of the conditions regarding creation of security for the debentures, if any, and debenture redemption reserve;

(*i*) ensure that the assets of the company issuing debentures and of the guarantors, if any, are sufficient to discharge the interest and principal amount at all times and that such assets are free from any other encumbrances except those which are specifically agreed to by the debenture holders;

(*j*) do such acts as are necessary in the event the security becomes enforceable;

(*k*) call for reports on the utilization of funds raised by the issue of debentures;

(*l*) take steps to convene a meeting of the holders of debentures as and when such meeting is required to be held;

(*m*) ensure that the debentures have been converted or redeemed in accordance with the terms of the issue of debentures;

(*n*) perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders.

IndiaCode

(4) The meeting of all the debenture holders shall be convened by the debenture trustee on—

(*a*) requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding;

(*b*) the happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

(5) For the purposes of sub-section (13) of section 71 and sub-rule (1) a trust deed in **Form No. SH.12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees [13]**[***within three months of closure of the issue or offer***]**.

(6) The provisions of sub-rules (2) to (5) of rule 18 shall not be applicable to the public offer of debentures.

(7) The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below—

(*a*) the Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

(*b*) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:—

(*i*) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (*72*) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(*ii*) For NBFCs registered with the RBI under section 45-IA of the RBI (Amendment) Act, 1997 [14][and for Housing Finance Companies registered with the National Housing

Bank], 'the adequacy' of DRR will be 25% [14a]**[***of the value of outstanding debentures***]** issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(*iii*) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% [14aa][*of the value of outstanding debentures*] issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% [14ab][*of the value of outstanding debentures*]:

[14ac] **[Provided** *that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even it it exceeds the limits specified in this sub-rule*.**]**

(*c*) every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent, of the amount of its debentures maturing during the year ending on the 31st day of March of the next year, in any one or more of the following methods, namely:—

(*i*) in deposits with any scheduled bank, free from any charge or lien;

(*ii*) in unencumbered securities of the Central Government or of any State Government;

(*iii*) in unencumbered securities mentioned in sub-clauses (*a*) to (*d*) and (*ee*) of section 20 of the Indian Trusts Act, 1882;

(*iv*) in unencumbered bonds issued by any other company which is notified under sub-clause (*f*) of section 20 of the Indian Trusts Act, 1882;

(*v*) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above:

Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below fifteen per cent of the amount of the debentures maturing during the year ending on the 31st day of March of that year;

(*d*) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule;

(*e*) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

(8) (*a*) A trust deed for securing any issue of debentures shall be open for inspection to any member or debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company; and

(*b*) A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within seven days of the making thereof, on payment of fee.

[15] **[** *(9) Nothing contained in this rule shall apply to any amount received by a company against issue of commercial paper or any other similar instrument issued in accordance with the guidelines or regulations or notification issued by the Reserve Bank of India.*

(10) In case of any offer of foreign currency convertible bonds or foreign currency bonds issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or regulations or directions issued by the Reserve Bank of India, the provisions of this rule shall not apply unless otherwise provided in such Scheme or regulations or directions. **]**

[16] **[** *(11) Nothing contained in this rule shall apply to rupee denominated bonds issued exclusively to*

overseas investors in terms of A.P. (DIR Series) Circular No.17 dated September 29, 2015 of the Reserve Bank of India.**]**

---

10. Substituted by the Companies (Share Capital and Debentures) Amendment Rules, 2014, w.e.f. 18-6-2014. Prior to its substitution, proviso read as under :

"**Provided** that a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding ten years but not exceeding thirty years;"

10a. Sub-clause (*iii*) substituted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2015, w.e.f. **6-11-2015**. Prior to its substitution, said sub-clause read as under :

"(*iii*) 'Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (*b*) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;"

11. Clause (*b*) substituted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.** Prior to its substitution, said clause read as under :

"(*b*) such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;"

11a. Sub-clause (*i*) substituted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.** Prior to its substitution, said sub-clause, as amended by the Companies (Share Capital and Debentures) Amendment Rules, 2013, w.e.f. 18-3-2015, read as under :

"(*i*) any specific movable property of the company; or"

12. Inserted, *ibid.*

*Word "further" be omitted.

†Word "also" be read as "further".

13. Substituted for "within sixty days of allotment of debentures" by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.

14. Inserted by the Companies (Share Capital and Debentures) Amendment Rules, 2014, w.e.f. 18-6-2014.

14a. Substituted for "of the value of debentures" by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

14aa. Substituted for "of the value of debentures" by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

14ab. Substituted for "of the value of debentures issued" by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

14ac. Proviso inserted by the Companies (Share Capital and Debentures) Third Amendment Rules, 2016, w.e.f. **19-7-2016.**

15. Inserted by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.

16. Sub-rule (11) inserted by the Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016, w.e.f. **12-8-2016**.

Nomination by securities holders.

19. (1) Any holder of securities of a company may, at any time, nominate, in **Form No. SH.13**, any person as his nominee in whom the securities shall vest in the event of his death.

(2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.

(3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in **Form No. SH.13** any person as nominee.

(4) The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.

(5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either—

(*a*) to register himself as holder of the securities; or

(*b*) to transfer the securities, as the deceased holder could have done.

(6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).

(7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

(8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company:

Provided that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

(9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in **Form No. SH.14**.

(10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.

(11) Where the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in [16]**[*Form No. SH.13*]** specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

---

16. Substituted for "Form No. SH.14" by the Companies (Share Capital and Debentures) Amendment Rules, 2015, w.e.f. **18-3-2015**.