Allotment of Sweat Equity Shares

Sweat Equity Shares are Shares, as per Section 79A of the Companies Act, 1956, which are issued by the Company to its Employees or Directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Accordingly, Allotment of Sweat Equity Shares is governed by Unlisted **Companies (Issue of Sweat Equity Shares) Rules, 2003.** [Read with Section 79A (1) (d)]

!) To whom Sweat Equity Shares can be offered?

a) Permanent employees of the Company either in India or out of India and must be in the employment of the Company at the time of allotment of Sweat Equity Shares.

b) Director of the Company, employed as a whole time director of the Company or an executive director.

!!) Restrictions on the allotment of Sweat Equity Shares:

According to the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003, the Company shall not issue sweat equity shares

a) For more than 15% of total paid up equity share capital in a year or

b) Shares of the value of 5 crores of rupees, whichever is higher except with the prior approval of the Central Government.

!!!) General Conditions:

a) Company should mention reasons or justifications for such allotment to be made to particular employees or Directors of the Company.

b) Value of Sweat Equity Shares to be issued along with the Valuation Report (which is derived by **Independent Valuer** i.e. our auditor or Practising Chartered Accountant or Practising Company Secretary)

c) Sweat Equity Shares have **lock in period of Three Years** i.e. allottee cannot sell or transfer the shares issued as Sweat Equity Shares to any other person with in the period of three years from the date of such allotment.

d) Certificate from practising Company Secretary or Chartered Accountant for compliance of rules and regulation for allotment of Sweat Equity Shares.

e) If Sweat Equity Shares are issued to the Director, then the value of such issue shall be considered in **Managerial Remuneration**. And such allotment shall be treated as remuneration made to the Directors and shall come in the financial statement of the Company.

f) The price of sweat equity shares to be issued to employees and directors shall be at a fair Market Value (FMV) calculated by an independent Valuer. On the basis of value of intellectual property, know how or any other value addition tendered by the Allottee in formation of overall business etc. And such independent valuation report must be obtained from external Valuer i.e. practising chartered accountant or practising company secretary.

g) Allotment of Sweat Equity Shares should become part of Director's Report and shall include details of it like;

(1) Number of shares to be issued to the employees or the directors;

(2) Conditions for issue of sweat equity shares;

(3) The pricing formula obtained;

(4) The total number of shares arising as a result of issue of sweat equity shares;

(5) Money realized or benefit accrued to the company from the issue of sweat equity shares, if any;

(6) Diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

!v) Course of Action required:

a) Convene a board meeting for passing board resolution for approving scheme of allotment of Sweat Equity Shares and for calling Extra Ordinary General Meeting for taking approval of members of the Company for execution of such scheme.
b) Convening an Extra Ordinary General Meeting for passing Special Resolution along with an explanatory statement to that effect under section 173 of the Companies Act, 1956 approving the scheme of allotment of Sweat Equity Shares.
c) Form 23 for intimating Registrar of Companies by submitting Special Resolution along with explanatory statement.
d) Form 2 for submitting return of allotment for allotment of shares for other than consideration to the Registrar of Companies for such issue.

v) Tax treatment for allottee:

a) **As per section 17 (2) (vi) (b) & (c) of the Income Tax Act, Sweat Equity Shares issued to the person shall form part to his income as perquisite; and value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by or recovered from, the assessee in respect of such security or shares.**
b) **At the time of disposal of shares it may attract Capital Gain tax under Section 47 (2AAA).**

Regards,

CS Nilesh Vitekar

Company Secretary