

## PROCEDURE FOR ISSUE OF SWEAT EQUITY SHARES

56

{Section 54 read with Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014}

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### Relevant Sections, Rules and Forms at a Glance

Particulars	Section(s), Rule(s) and Name of e-Form(s)
The Companies Act, 2013	Sections 39, 46, 54, 62, 88, 117, 118, 173, 179, 247 and 403
The Companies (Share Capital and Debentures) Rules, 2014	Rules 5, 8 and 19
The Companies (Prospectus and Allotment of Securities) Rules, 2014	Rule 9A and 12
The Companies (Registered Valuers and Valuation) Rules, 2017	Rule 8 and 18
The Companies (Management and Administration) Rules, 2014	Rules 3, 5 and 24
The Companies (Registration Offices and Fees) Rules, 2014	Rules 7, 8 and 12
Secretarial Standard-1 of ICSI	Clauses 3, 4, 5, 6, 7 and 8
Secretarial Standard-2 of ICSI	Clauses, 1, 3, 4, 5, 6, 7 and 17
e-Forms to be filed	MGT-14 PAS-3

### Significant Relevant Approvals and Requirements

- ❖ Board resolution
- ❖ Special resolution
- ❖ Sweat equity shares
  - shall be allotted within a period of 12 months from the date of passing of special resolution in general meeting authorising the issue of sweat equity shares

- shall be issued to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights in the nature of intellectual property rights
- shall be issued in a year upto 15 % of it existing paid up equity share capital or shares of issue value of ₹ 5 crores, whichever is higher and the issuance of sweat equity shares in the company shall not exceed 25% of the paid-up equity capital of the company at any time
- issued to directors or employees shall be in a lock in period and non-transferable for a period of 3 years from the date of allotment and share certificates shall be properly stamped with remarks ‘under lock-in and the period of expiry of lock-in’
- shall be valued at a price determined by a registered valuer
- ❖ Valuation of intellectual property rights or of know-how shall be carried out by a registered valuer
- ❖ Copy of gist along with critical elements of the valuation report shall be sent to the shareholders with the notice of the general meeting
- ❖ 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
- ❖ Entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in case of unlisted public company, except Nidhi company, Government company or wholly owned subsidiary company
- ❖ Rights, limitations, restrictions and provisions as are applicable to equity shares shall be applicable to the sweat equity shares and the sweat equity shareholders shall rank pari passu with other equity shareholders

### **56.1 PROCEDURE WITH CHECK POINTS**

<b>S. No.</b>	<b>Particulars</b>
1.	<p>Ensure that—</p> <ul style="list-style-type: none"> <li>• the company which is not required to comply the SEBI Regulations on sweat equity, shall issue sweat equity shares to its directors or employees* at a discount or for consideration other than cash, for providing their know how or making available rights in the nature of intellectual property rights by passing a special resolution {<i>Rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014</i>}.</li> <li>* Employees means a permanent employee of the company who has been working in India or outside India; or a director of the company, including a whole-time director; or a such employee or a such director of a subsidiary, in India or outside India, or of a holding company of the company {<i>Expanation to rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014</i>}.</li> <li>• the company shall allot the sweat equity shares within a period of 12 (twelve) months from the date of passing of special resolution in general meeting authorising the issue of sweat equity shares {<i>Rule 8(3) of the Companies (Share Capital and Debentures) Rules, 2014</i>}.</li> <li>• the company shall issue the sweat equity shares in a year upto 15 (fifteen) % of it existing paid up equity share capital or shares of issue value of ₹ 5 (five) crores, whichever is higher and the issuance of sweat equity shares in the company shall not exceed 25%* of the</li> </ul>

S. No.	Particulars
	<p>The subscribers, who are individuals in the Memorandum of Association (MOA) shall be deemed as first directors until the directors are duly appointed by the members in accordance with Section 152 of the Companies Act, 2013 and rules made thereunder (Section 152 of the Act).</p> <ul style="list-style-type: none"> <li>• Not the person intended/proposed to be appointed a director of a company has a valid Director Identification Number (DIN) under section 174 or any other number as may be prescribed under section 174 of the Companies Act, 2013, however, in case of first directors of a new company, the DIN up to 3 (three) persons can be obtained through incorporation with integrated form SPICe-1 (INC-32) (Section 152 of the Act read with rule 152 of the Companies Incorporation Rules, 2014).</li> <li>• Not a total number of directors, at least one director has stayed in India for a total period of not less than 182 days during the financial year. Provided that in case of newly incorporated company, residential status shall be determined proportionately. However, it is not required in case the director is appointed by the Central Government or State Government (Section 152 of the Act).</li> <li>• A person, who is intended to be appointed, shall not be eligible for appointment, if he/she has any disqualification for appointment under section 164 of the Act (Section 164 of the Act read with companies prescribed a government company and regulations in COA 2012 about COA 2012).</li> <li>• A person proposed to be appointed as a director in a company other than a company registered under Section 8 (non-profit company) of the Companies Act, 2013 (Section 152 of the Act)             <ul style="list-style-type: none"> <li>- shall not hold office as a director including any alternate directorship in more than 20 companies including directorship in dormant <b>companies</b>.</li> <li>- shall not hold office in more than 10 public companies including the private companies which are holding or subsidiary of public companies.</li> </ul> </li> </ul>
1.	In case of one person company, an individual being sole member is deemed to be the first director of the company, if the articles of association has not mentioned the names of first directors (Section 152 of the Act).
2.	Forms created in writing, on or before appointment, from the appointed director to act as director in the company as Form <b>DIR-2</b> (Part 7 of the Companies Incorporation and Qualification of Directors Rules, 2014).
3.	Forms an certificate in writing, on or before appointment, from the appointed director as Form <b>DIR-3</b> regarding that he/she is not disqualified under Section 164 of Companies Act, 2013, to act as a Director (Section 164 of the Act read with rule 17 of the Companies Incorporation and Qualification of <b>Directors</b> Rules, 2014).
4.	The particulars of first directors to be integrated with Form SPICe-1 (INC-32) at the time of incorporation of company.

For the detailed procedure, please refer Company Law Procedures & Compliances by Dr. Sanjeev Gupta, 2nd edn, 2021. You can buy from your bookseller or online at [www.bharatlaws.com](http://www.bharatlaws.com)

**[COMPANY LAW Procedures & Compliances \(in 2 vols.\)](#)**