CHAPTER III

LAWS AND REGULATIONS RELATING TO ESOP & IPO
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3.1 COMPANIES ACT 2013:

Formation of a company is the primary step for a company’s existence. A company can be formed either by converting a sole proprietor firm or partnership firm into a limited company, or by starting a new limited company, however, in both the cases it is essential that a company is to be incorporated as per Companies Act 2013, and earlier as per Companies Act 1956.

A sole proprietor firm is a business entity having one person as owner of business. There is no difference between owner and business. He is the one who brings capital, takes risk of business, appoints manpower i.e. employees or workers and manages day to day activities and has control over the organization. In a sole proprietary concern the owner takes risk as well as profit. Similarly he is solely responsible for losses and liable for all debts incurred. Only some part of business receipt is given to employees as salary and wages. The sole proprietor decide the salary to be paid to an employee, depending upon employees efficiency, turnover of firm, profitability and market conditions, etc. A sole proprietor motivates employees to work hard and increase sales and profit. He tries to retain good and efficient employees by giving them more salary and other monetary and non-monetary benefits.

(A.K.Mujumdar and Dr G.K.Kapoor, 2011) In a partnership type of business a few people join hands not more than 10 in banking business or 20 in other business as per Companies Act 1956,( Taxmann’s Company Act 2015) whereas as per Companies Act 2013 not more than 100 persons , and a start partnership business. In this type of organization partners are owners of business. They bring capital, employ workers and take risk jointly and severally, however, they take profit according to partnership agreement. Normally all partners take interest in day to day functioning of a partnership firm. Partners decide how much salary is to be paid to an employee, benefits to be given to them in form of medical facilities, lunch coupons, travelling facility etc.
In both sole proprietor as well as partnership business, owners are in contact with employees and can have direct control on employees and can solve problem of employees at individual level. But in the case of limited companies ownership and management are in different hands, as ownership is spread all over the country and in some cases throughout the world. Management is with professional people called Board of Directors. However as business expands, due to limitation on the number of partners in a partnership firm, partners decide to form a Limited company under Companies Act 2013.

(Dr. G.K. Kapoor and Sanjay Dhamija, 2015), Under Companies Act 2013, companies are of two types a) Private Limited b) Public Limited. Private Limited companies are those companies whose number of members does not exceed 200 under Companies Act 2013, under old Companies Act 1956 it was 50 members. However in case of Public Limited Companies there is no limit on the number of members and management is in the hands of Board of Directors. Private Limited Company restricts the right to transfer its shares, whereas in case of Public Limited Companies shares can be transferred easily. Private Limited Company cannot invite application from the public for securities of the company. Private Limited companies are of two types a) Small Company b) One Person Company. (www.companiesact.in) As per MCA a Small Company is company has a paid up capital is not more than 50 lakh (Maximum 5 Cr) or turnover not exceeding 2 cr (Maximum 20 Cr). In case of one Person Company, the number of shareholder is limited to one.

3.1.1 Incorporation of company:

Section 7 of Companies Act 2013 states provision of incorporation of a company. A company shall file following documents and information with the Registrar of Companies within whose jurisdiction the registered office of a company is proposed to be situated.
1) Memorandum and articles of association of the company. These two documents shall be duly signed by subscribers to the memorandum of association.

2) Declaration of an advocate, a chartered accountant, a cost accountant, a company secretary in practice, who is engaged in formation of a company that all the requirements of this act and rules in respect of registration are complied with.

3) Declaration of director whose name is mentioned in articles, manager or secretary of the company, that all the requirements of this act and rules in respect of registration are complied with.

4) An affidavit from subscribers to the memorandum and from first directors that he is not convicted of any offence in promotion, formation or management of any company or has been found guilty of any fraud or misfeasance or breach of duty under this companies Act or previous company law in last five years. Further they have to state that all documents filed contain correct and true information to the best of his knowledge and belief.

5) Address for communication till registered office is established.

6) Name, address, nationality of every subscriber to the memorandum with proof of identity. Similar information is to be given regarding the first directors of the company, with director’s identification number.

7) Particulars of firms and body corporate in which first directors are interested and consent to act as director of company.

3.1.2 Memorandum of Association:

( Dr. G.K.Kapoor and Sanjay Dhamija, 2015), The Memorandum of Association of Company is a legal document drafted for the formation of a private or public company. This document is the supreme document of the company consisting of

a) Name Clause- Company’s Name.

b) Registered Office Clause- Registered Office of the company.
c) Object Clause- Aims and objectives of the company.

d) Capital Clause- Face value of share and maximum share capital that can be raised.

e) Liability Clause- Limited liability of each member.

The Memorandum of Association is a legal document, which should not be contravened while dealing with outsiders. It is a mandatory document to be filed with the Registrar of Companies during the process of incorporation of the company. The Memorandum of Association of the company shall be drawn up in such form as is given in Tables A, B, C, D & E in schedule I to the act as may be applicable in the case of the company.

3.1.3 Articles of Association of the Company:

( Dr. G.K.Kapoor and Sanjay Dhamija, 2015), The Article of Association of a Company shall contain the regulation for management of the company. It is called ‘Article’. It contains internal rules and regulations for management of the company. Tables F, G, H, I and J of Schedule I of Companies Act 2013, contain model articles to be adopted by various companies. A company may or may not modify, change these articles according to the need of company. If there is no change or alteration it is presumed that model articles are followed by company. Both Memorandum and articles of association of the company should be within model regulation as laid down under Companies Act Schedule I Table A to J. However companies already registered under Companies Act 1956, may follow regulations as provided under the old act.

3.1.4 Share Capital:

( Dr. G.K.Kapoor and Sanjay Dhamija, 2015), Share capital is one of the important clauses of the Memorandum of Association of the company. The capital of a company is
divided into a number of indivisible units of a fixed amount called shares. According to section 2(84) of the Companies Act 2013 and corresponding to section 2(46) of the Companies Act 1956, a share is a share in the share capital of a company and includes stock. Hence if the capital of a company is Rs 10 lakh and the share are of Rs 1 each in such a case the number of shares will be 10 lakh. Similarly if share are of Rs 10 each in such a case the number of shares will be 1 lakh.

In India, a share is regarded as ‘goods’. Under Sale of Goods Act 1930, the definition of goods means any movable property excluding actionable claims and money but includes shares and stock. However shares cannot be transferred as normal movable property but transferred as per articles of association of a company.

3.1.5 Kinds of Share Capital:

Companies Act 2013 as well as Companies Act 1956 state that share capital of a limited company is of two types viz. Equity Capital and Preference Capital. Section 43 of Companies Act 2013 divides Share Capital of a company into two kinds:

a) Equity Share Capital- with voting rights or - differential rights as to voting , dividend

b) Preference Share Capital

Under Companies Act, equity shares are those shares which are not preference shares. Equity shareholders receive dividend only after payment of dividend to preference shareholders. In case of liquidation of a company, first preference shareholders are repaid their capital and then repayment is made to equity shareholder. Equity shareholders may or may not get dividend. The Board of Directors of a company recommends dividend and in an annual general meeting it is declared by equity shareholders. Equity shareholders have the right to vote on every resolution placed at a general meeting.

Preference Share capital is the type of capital which has both preference at declaration of dividend as well as preference at time of dissolution of the company. Preference
shareholders may receive a fixed rate of dividend or fixed amount of dividend, however, they will have preference over equity shareholders. Preference shares can either be cumulative or noncumulative as to dividend. Preference shareholder’s voting right is restricted only if their rights are affected.

3.1.6 Companies Act 2013 provisions relating to ESOP:

A Company can raise share capital at the time of incorporation by issue of equity shares or preference shares. Similarly a company can raise further capital after incorporation for expansion purpose and as per requirement of business. Section 62 of Company Act mentions that further issue of capital also includes issue of shares by way of Employee Stock Option Plan.

Section 62 of Companies Act 2013 corresponding to section 81 of Companies Act 1956 states further issue of shares can be made:

1) Existing Shareholder (Rights Issue)
2) ESOP
3) To any person.

However above conditions are not applicable in case of:

1) Converting debentures or loan into shares for option given at the time of issue
2) Converting debentures and loan into shares under a Government order.

3.2 SECURITIES CONTRACT (REGULATION) ACT, 1956.

(www.sebi.gov.in) Securities Contract (Regulation) Act, 1956 is established with a view to prevent undesirable transactions in securities by regulating the business of dealing therein and matters connected therewith.
Definition of ‘Securities’ include shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

Securities Contract (Regulation) Act 1956 deal with recognition of stock exchanges, corporatization and demutualization of stock exchanges, withdrawal or recognition of stock exchange, power of central government to call for periodical returns, annual returns, licensing of dealers in securities, listing and delisting of securities, appeal and penalty procedure etc.

The employee stock option plan schemes for benefit of employees, grants shares to employees at a pre-determined price after a certain period. Dealings of grant of shares to employees are also covered under Securities Contract (Regulation) Act 1956. As and when decision is taken to grant and allot shares to employees in case of listed companies, respective stock exchanges should be informed about it.

3.3 **IFRS 2- SHARE BASED PAYMENT:**

3.3.1 History:

History of IFRS 2 goes back to July 2000 when a discussion paper Accounting for Share Based Payments was published. A Share-based transaction is defined as a transaction in which an entity receives goods or services in consideration for its equity instruments or by incurring liabilities for amounts based on the price of the entity’s share or other equity instruments of the entity.

IFRS 2 was originally issued on 19th February 2004 and is made applicable for annual periods beginning on or after 1st January 2005. IFRS 2 deals with share based payments and requires the entity to recognize share based transactions in their financial statements including transactions with employees or other parties to be settled in cash, other assets
or equity instruments of the entity. These share based transactions include granted shares, share options, share appreciation rights.

The accounting requirement for share based payment depends on how the transaction will be settled i.e. by issuing equity, cash and equity and cash. Share based payment is a broader term than employees share options. IFRS 2 is applicable to share appreciation rights, employee share purchase plans, employee share ownership plans, share option plans and plans where the issuance of shares (or rights to shares) may depend on market or non-market related conditions. IFRS 2 is applicable to all entities including private and small companies. IFRS 2 is also applicable to subsidiaries using their parent’s shares or fellow subsidiary’s shares as consideration for goods or services.

However IFRS 2 is not applicable for issuance of shares in a business combination for which IFRS 3 is applicable as well as commodity based derivatives transactions for which IAS 32 and IAS 39 is applicable. IFRS 2 is not applicable other than for the acquisition of goods and services.

### 3.3.2 Recognition and measurement:

(www.iasplus.com) IFRS 2 requires the debit entry to be expensed (debited) when payment for goods or services does not represent an asset. The expense should be recognized as the goods or services are consumed. IFRS 2 states that as and when shares or right to purchase shares are given to employees in consideration of their services rendered, it should be debited or expensed in that period. In simple words when shares are given for services of employees it should be recorded in books of accounts.

For example if 1000 shares per employee are given for services rendered by 10 employee for a particular month at grant date price Rs 50 per share (for example), then 1000*10*Rs 50 = Rs 5,00,000 should be debited to profit and loss account. However if these shares are to be given after serving with entity for five years, free of cost, in such case Rs 1,00,000 per year to be debited as expense and treated as liability for shares to be issued at the end of 5th year.
Therefore entry on the date of grant, at the end of each year and issue ESOP will be as given in below table.

**Table No. 3.1**

**Journal Entries at the date of Grant of ESOP**

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Particulars</th>
<th>L.F.</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>On the date of grant of ESOP</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Deferred Employee Expenses</td>
<td>Dr</td>
<td>5,00,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Employee Share Option O/s</td>
<td></td>
<td></td>
<td>5,00,000</td>
</tr>
<tr>
<td></td>
<td>( Deferred employee expenses treated as liability )</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>At the end of each year for five years:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Employee Expense</td>
<td>Dr</td>
<td>1,00,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deferred Employee Expenses</td>
<td></td>
<td></td>
<td>1,00,000</td>
</tr>
<tr>
<td></td>
<td>(Being entry passed for writing of deferred expenses equally for five years)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>At the date of vesting period when option is exercised:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Share Option O/s</td>
<td>Dr</td>
<td>5,00,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Equity Share capital</td>
<td></td>
<td></td>
<td>5,00,000</td>
</tr>
<tr>
<td></td>
<td>( Issue of shares for consideration of services rendered by employee)</td>
<td></td>
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</table>

In the above example we have assumed that all employees remained with entity till the end and everyone exercised the option of shares, however if one employee at the end of the 3rd year leaves job and his 1000 shares lapse. Hence till 2nd year Rs 1,00,000 * 2 = Rs 2,00,000 are expensed to profit and loss account. In total 9 employees @ 1000 shares @ Rs 50= Rs 4,50,000 should be expensed for five years, per year Rs 90,000. Hence extra debit in the previous two years of Rs 20,000 will be adjusted in next 3 years by debiting
Rs 90,000 per year minus Rs 6,667 (Rs 20000/3 years) equal to Rs 83,333 per year in the next three years.

Table No. 3.2

<table>
<thead>
<tr>
<th>Sr No</th>
<th>Particulars</th>
<th>L.F.</th>
<th>Debit</th>
<th>Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Employee Expense</td>
<td>Dr</td>
<td>83,333</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deferred Employee Expense</td>
<td></td>
<td></td>
<td>83,333</td>
</tr>
<tr>
<td></td>
<td>One more entry to be passed for reversing Rs 30,000 expense</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Employee Share Option</td>
<td>Dr</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Deferred Employee Expense</td>
<td></td>
<td></td>
<td>50,000</td>
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</table>

Consolidated year-wise summary of Deferred Employee Expense, Employee Stock Option O/s and Employee Compensation Expense.

Table No. 3.3

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defe Eml</td>
<td>500000</td>
<td>-50000</td>
<td></td>
<td></td>
<td></td>
<td>450000</td>
</tr>
<tr>
<td>Empl Option</td>
<td>500000</td>
<td>-50000</td>
<td></td>
<td></td>
<td></td>
<td>450000</td>
</tr>
<tr>
<td>Emplo exp</td>
<td>100000</td>
<td>100000</td>
<td>83333</td>
<td>83333</td>
<td>83334</td>
<td>450000</td>
</tr>
<tr>
<td>Def Emp</td>
<td>-100000</td>
<td>-100000</td>
<td>-83333</td>
<td>-83333</td>
<td>-83334</td>
<td>450000</td>
</tr>
</tbody>
</table>

From the above table it can be seen that in all in five years Rs 4,50,000 are treated as expense by giving Rs 4,50,000 shares at end of the 5th year.

3.3.3. Measurement Guidelines:

IFRS 2 lays down a method of fair value to be determined by the value of shares or rights to shares given up, or by the value of the goods or services received.
3.3.3. ( i ) **General fair value measurement principle:** IFRS 2 lays down that generally if goods or services are received for share based payments then the fair value of such goods or services is treated as value of shares issued. Only if the value of goods or services cannot be measured in such a case the value of the equity instrument be used.

3.3.3. ( ii ) **Measuring employee share options:** IFRS 2 lays down that in case of employee services or similar services; if share options are given then fair value of shares be used for value of employee services as it is difficult to value employee services.

3.3.3. ( iii ) **When to measure fair value- in case of options:** IFRS 2 lays down that if options are granted to employees, fair value should be valued on date of grant of option to employees.

3.3.3. ( iv ) **When to measure fair value – in case of goods or services:** IFRS 2 lays down that in case of transaction having goods or services received, fair value on the date when goods or services are received should be valued.

3.3.3. ( v ) **If fair value cannot be measured:** IFRS 2 lays down that the share based payment transactions be measured at fair value for both listed and unlisted entities. IFRS 2 allows use of intrinsic value (fair value – exercise price) of equity in cases where fair value cannot be reliably measured. However this is not measured only at grant date but at each reporting date till final settlement. Hence if equity share of face value of Rs 10/- having fair value of Rs 50/- , to be issued at Rs 20/- per share, intrinsic value is Rs 30 (fair value of Rs 50 minus exercise price of Rs 20/-). However in this case intrinsic value is to be stated on each balance sheet date till settlement is done.

3.3.3. ( vi ) **Performance conditions:** IFRS 2 makes a distinction between market based performance conditions and non-market based performance conditions. Market based performance conditions are those conditions due to which an entity’s share price changes when share prices in the market of other entities change. These are taken in consideration
when fair value is calculated. Hence if share prices of other entities increases by 20% whereas the company’s share prices increase by 5%, factors for these are taken into account while calculating fair value.

Non-performance based conditions are not taken into account but are adjusted to the number of equity instrument vest under share based payment.

3.3.3. ( vii ) Modification, cancellation and settlement: IFRS 2 makes provision of cases due to modifications in the terms on which equity instruments are granted. If due to change in terms fair value is more than original fair value, difference should be recognized during balance vesting period. If change in terms takes place after vesting period it should be recognized immediately. If fair value of new instrument is less than original old instrument, the original fair value of the equity instrument granted should be expensed as if the change never took place. The cancellation or settlement of equity instrument is recognized as acceleration of the vesting period and unrecognized amount which otherwise would have been charged in future should be recognized immediately.

Any payments made with the cancellation or settlement should be accounted for as the repurchase of the equity interest.

According to IFRS 2 it is necessary to disclose nature and extent of share based payments existed during the accounting period, determination of value of goods and services received or the fair value of the equity instruments granted and effect of share based transaction on an entity’s profit or loss and its financial statements.

3.4 ICAI- SHARE BASED PAYMENT (IND AS 102)

(www.mca.gov.in) Ind AS 102 is Indian Accounting Standard hosted by Ministry of Corporate Affairs on its website. It is similar to IFRS 2 i.e. International Financial Reporting Standard 2.
3.4.1. Ind AS 102

India has not adopted IFRS. However, the Institute of Chartered Accountant of India in its Presidential message in July 2014 stated “There is an urgent need to converge the current Indian Accounting Standards with International Financial Reporting Standard” India has not adopted IFRS. India has adopted Indian Accounting Standards (Ind AS) Prior to Companies Act 2013 the Companies Act had given power to the Securities and Exchange Board of India (SEBI) to prescribe financial reporting requirements for companies whose securities trade in open market. The Securities and Exchange Board of India required all listed companies with subsidiaries to file consolidated statements to be prepared in conformity with Accounting Standards developed by the Institute of Chartered Accountant of India and approved by Central Government. However SEBI also gave the option to file a consolidated financial statement in conformity with IFRS as issued by IASB. Only 11 companies adopted IFRS but also prepared according to ICAI standards.

The Companies Act 2013 requires listed and large companies having Rs 500 Crs net worth of companies having turnover of Rs 500 Cr to prepare a consolidated financial statement in conformity with a new set of Indian Accounting Standards (Ind AS) to be adopted by ICAI. Ind AS is applicable from accounting period 1st April 2016 for above listed companies.

Indian Accounting Standard (Ind AS 102) Share based payment objective is to specify the financial reporting by an entity when it undertakes a share-based payment. It state that the effect of share-based payment on profit and loss account and on financial position should be disclosed. It is applicable to the following three share based payments

i. equity settled share based payment
ii. cash settled share based payment
transactions in which the entity receives goods or services and the entity has the choice to settle transactions in cash (or other assets) or by issuing equity instruments

This accounting standard also applies to share based payments made by a holding or subsidiary company even though goods or services are received by an entity in a group. Therefore if H Ltd is the holding company of S Ltd its subsidiary, H Ltd can give equity shares of H Ltd for services rendered to S Ltd, in such a case Ind AS 102 will be applicable.

However if an employee is receiving shares as a right due to his already being a shareholder of an entity, this Ind AS 102 is not applicable. Hence if Amir is employee of entity Reliance Ltd gets rights shares from company, in such a case he is receiving shares because he is already equity share holder of the company and not because of his being employee of the company. In such a case Ind AS 102 is not applicable. Similarly this Standard is not applicable in circumstances of Business Combination for which Ind AS 103 will be applicable.

3.4.2. Recognition: Ind AS 102 states that goods or services received or acquired in share based payment transaction when it obtains the goods or receives services. That means transactions in which instead of making payment by cheque or cash entity payment is made either by giving shares or share options or cash settled share based transactions. In such a case it should be treated as expense and the entity should increase corresponding equity. It lay down that an expense arises from consumption of goods or services. Normally services are consumed immediately whereas goods can be consumed immediately or in future in which case it is treated as inventory or stock.

Fair value of goods or services: Transactions in which shares are settled for payment of goods or services, in such a case they should be valued at FAIR VALUE. However if it is difficult to estimate reliably the fair value of goods or services received, the fair value of the equity should be considered. Hence services rendered by employees like part of
remuneration, incentive bonus, cannot be valued fairly in such circumstances. They should be valued on the basis of fair value of entity’s share.

For transactions with parties other than employees, fair value can be ascertained and be valued accordingly. However if it cannot be ascertained in such a case it should be valued according to **fair value of entity’s share**.

Hence when an employee receives shares for services rendered, services should be recognized on basis of fair value of entity’s shares.

For transactions measured by reference to the fair value of the equity instruments granted, an entity shall measure the fair value of equity instruments granted at the measurement date, based on market prices if available, taking into account the terms and conditions upon which those equity instruments are granted. If market prices are not available, the entity shall estimate fair value of the equity instrument granted using a valuation technique based on arm’s length transaction. The valuation technique should be consistent with generally accepted valuation methodologies.

### 3.4.3. Estimating Fair value of shares and share options:

For shares granted to employees, the fair value of the shares shall be measured at the market price of the entity’s share, adjusted to terms and conditions on which the shares are granted. Hence market price of entity’s share is considered as fair value of a share.

But if such share is not eligible for dividend during vesting period or if shares cannot be transferred after vesting date, such terms and conditions should be taken into account and adjusted to market price to find fair value.

In case of share options, option pricing model should be used to ascertain the fair value of share option, as terms and conditions on which share option is granted to employees is different from share options which are traded in the market. Many employee options have long lives, exercisable during the vesting period-vesting date and end of option life and are exercised early due to reason of job shifting. These factors should be taken into account while ascertaining fair value of option. Hence Black-Scholes-Merton formula cannot be applied as this formula does not permit exercise of option before end of option life. It also does not allow the possibility of expected volatility and other model inputs.
might vary over options life. However share options have to be exercised within a short period after vesting date, the factors above mentioned may not apply. In these instances the Black-Scholes-Merton formula may produce a value that is similar to more flexible option pricing model.

All option pricing models take into account, minimum following factors:

1) The exercise price of option
2) The life of the option
3) The current price of underlying shares
4) The expected volatility of share prices
5) The dividends expected on the shares
6) The risk free interest rate for the life of option

3.4.4. Fair value of shares and share options cannot be estimated reliably: Ind AS 102 states that if fair value of shares and share options cannot be estimated reliably in such circumstances entity measure

   a) The equity instruments at their intrinsic value, initially at the date the entity obtains goods or the services are rendered and subsequently at the end of reporting period and at the date of final settlement, with any change in intrinsic value recognized in profit or loss. For grant of share options, they are finally settled when options are exercised or forfeited or lapsed.
   b) The number of equity instruments that ultimately vest or are ultimately exercised.

3.4.5. Modifications to the terms and conditions on which equity instruments are granted: Ind AS 102 states that the entity shall recognize, as minimum, the services received measured at the grant date fair value of the equity instruments granted, unless those equity instruments do not vest because of failure to satisfy a vesting condition (other than market condition) that was specified at grant date. The entity shall recognize the effects of modifications that increase the total fair value of the share based payment or otherwise beneficial to employees.

In case grant of equity shares is cancelled or settled during the vesting period.
a) The entity shall account for the cancellation or settlement as an acceleration of vesting and therefore recognize immediately the amount that otherwise would have been recognized for services received over the remainder of vesting period.

b) Any payment made to employee on the cancellations or settlement of grant shall be accounted for as the repurchase of an equity interest

3.5 SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATION 2014.

(Gazette of India, 2014) SEBI has made regulation 2014 in accordance with powers conferred under section 11, section 11A, section 30 of SEBI Act 1992 for regulation of all schemes by companies for the benefit of their employees involving dealing in shares with a view to facilitate smooth operation of such schemes.

The provisions of these regulations are applicable to:

i) employee stock option scheme

ii) employee stock purchase scheme

iii) stock appreciation rights scheme

iv) general employee benefits scheme

v) retirement benefit scheme

SEBI has defined in its guidelines the above benefits in section 2. A company may implement the above schemes directly or through a trust. SEBI guidelines also give a definition of “employee”. It defines it as

i) A permanent employee – in India or outside

ii) Director-including whole time but excluding independent director

iii) Employee of holding or subsidiary excluding promoter or director having more than 10% equity share.

A Compensation Committee is constituted for preparing terms and conditions and to see that there is no violation of securities laws.
3.6 SCHEMES UNDER SEBI REGULATION 2014

3.6.1 Employee Stock Option Scheme/Plan (ESOS/ESOP):

(Gazette of India, 2014) SEBI guidelines chapter III describes administration of specific scheme. Employee Stock Option Scheme (ESOS) commonly called Employee Stock Option Plan (ESOP) means a scheme under which a company grants employee stock option directly or through a trust. In this case a company offering ESOP shares to employees grants its equity shares at predetermined price called as exercise price at equal to or less than its market price only after fulfilling specified conditions like number of years of service in a company, purchase of shares to be allowed after vesting.

Under ESOP, firstly the compensation committee decides terms and conditions of ESOP i.e. employees receiving option, price, period etc. ESOP should be approved by equity shareholders in its special meeting. Hence it may be decided in a meeting of shareholders by passing special resolution on 1st August 2015 that under ESOP each employee be given 100 options equity share of Rs 10/- for Rs 70/-, on that day the market price is Rs 200/-. Hence employees are at a profit of Rs 130/- (Rs200 - Rs70) per share if they subscribe for this option. It is right but no obligation for employees to purchase shares. However this option as per company’s terms will be given only after 1st August 2016 and available till 1st December 2016 at predetermined price of Rs 70/- when on 1st August 2016 market price of company share may be Rs 300. In this case employee receives not only profit of Rs 130 per share but additional profit of Rs 100(Rs 300- Rs 200) had he purchased those shares from the market. The only condition employee has to fulfill is he should remain in the company up to 1st August 2016 and purchase company shares. In this case additional profit of Rs 100 per share will be available only if market price becomes Rs 300. However it is possible that market price may fall to Rs 90, in which case employees may not take option given by company.

SEBI regulation lays down that:

1) Employee Stock Option Scheme shall contain the details of the manner in which the scheme will be implemented.

2) Proper disclosure to the prospective option grantees made.
3) Exercise Price of shares shall be decided according to Institute of Chartered Accountant of India’s Guidance Note on accounting for employee share-based payment or Accounting standard as may be prescribed by ICAI from time to time.

4) Minimum vesting period of one year in case of ESOS.

5) The company may specify the lock in period for shares issued under option.

6) The employee shall not have the right to receive any dividend or to vote or any benefits of a shareholder till shares are issued.

7) The amount paid by an employee under ESOS may be forfeited or refunded if the money is not paid according to ESOS scheme.

3.6.2. Employee Stock Purchase scheme:

Employee Stock Purchase Scheme means a scheme under which a company offers shares to employees. This issue of shares may be part of public issue or other than public issue. This may be directly or through a trust. In case of indirectly a trust may undertake secondary acquisition for the purpose of the scheme. In this case a company gives an option to employees to purchase shares immediately. This may be a part of a public offer or may be separate offer. In this case a company gives preference to its own employee to subscribe to its own company share without any conditions. In this case a company issues shares at same price at which they are issued to public, on similar conditions as to public. But since a company issuing share has value in the market, employees are interested in purchasing its own company’s shares. Hence a company like Tata, Reliance which are profitable and traded at much higher price than its face value, employees will be ready to purchase such company’s shares. ESPS can be given to employees indirectly through a trust also. In such a case trustees can subscribe on behalf of employees by purchasing from a company or purchasing shares from the secondary market.

SEBI regulation lays down that ESPS scheme shall contain the details of manner of implementation. The company may determine the prices of shares as per accounting policies guidance note and accounting standard issued by ICAI. Shares issued under ESPS shall be locked in for a minimum period of one year from the date of allotment,
except in case of amalgamation and if shares are issued at the same price at which shares are issued under public issue.

3.6.3 **Stock Appreciation Rights Scheme:**

Stock Appreciation Right scheme or SAR scheme means a scheme under which a company grants SAR to employees. Stock appreciation right or SAR means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

Under this scheme an employee has been given right to receive appreciation at market price of company’s share. Hence if market price at the date of grant of SAR is Rs 100 which increases at the end of the year to Rs 250, difference of Rs 150 is appreciation in shares, which can be given to employees by cash or by shares.

As per SEBI regulation appreciation can be given by cash or by shares to employees. There shall be minimum vesting period of one year in case of SAR scheme. Hence appreciation in shares will be given after minimum one year to employees. Employees shall not have any right to receive dividend or vote or to receive any benefit during vesting period.

3.6.4 **General Employee Benefits Scheme:**

General employee benefit scheme means any scheme of a company dealing in shares of the company or shares of its holding company, for the purpose of employee welfare including healthcare benefits, hospital care benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such a company.
3.6.5 Retirement Benefit Scheme:

Retirement benefit scheme means a scheme of a company, dealing in shares of the company or shares of its holding company, for providing retirement benefits to the employees.

This chapter deals with objective No. 2 “To make comparative study of legal framework of Initial Public Offer and Employees Stock Option Plan.” with the purpose of critically analysis of legal formalities to be followed at the time of issue of new shares or initial public offer and employees stock option plan documents to be submitted to the registrar, returns to be filed with MCA (Ministry of Corporate Affairs).

3.7 COMPANIES ACT – ISSUE OF SHARE CAPITAL:

Under Companies Act 2013 public company can issue shares in following three ways:

i) By issue of prospectus referred as “public offer”
ii) Through private placement.
iii) By issue of rights shares or bonus shares.

3.7.1 Issue of Prospectus:

(A.K.Mujumdar and Dr. G.K.Kapoor, 2012) Any company raising funds by issue of shares from public has to issue a prospectus. A Prospectus of the company should be dated and signed and shall contain information, report, declaration.

Prospectus shall contain information regarding:

1) Names and addresses of the registered office of the company, company secretary, chief financial officer, auditors, legal advisors, bankers, underwriters and trustees.
2) Dates of the opening and closing of the issue
3) Statement by the board of directors about separate bank account in which all monies on issue will be deposited and statement of account of last issue and its use.
4) Details of underwriting of issue and minimum subscription amount.
5) The main object of public offer, the present object and present business of company and its capital structure.
6) Particulars relating to risk factors according to management, gestation period, progress of project, any litigation or legal action pending against company in last five years.
7) Auditor’s report on profit and loss and balance sheet of the company, profit and loss account for last five years, profit and loss account of period not more than one hundred eighty days prior to issue of prospectus.
8) Declaration to be made that all provisions of Companies Act 2013, Securities Contracts (regulation) Act and SEBI act have been complied.
9) Prospectus should be submitted to the Registrar of Company before it is offered to the public and it should not be offered after ninety days of submission of Registrar of Company.
10) All securities should be issued in dematerialised form as per Depositories Act 1996.

3.7.2 Private Placement:

In addition to a public offer, a public company can make private placement by private placement offer letter, for not more than fifty persons or two hundred persons from 2014. These persons do not include qualified institutional buyer and employees to whom shares are issued under employee stock option scheme. If a company listed or unlisted, makes an offer to allot or invites subscription, or allots or enters into an agreement to allot, securities to more than 200 persons in a financial year, it shall be deemed to be an offer to the public.
The company should allot shares to persons who have applied under private placement within sixty days of application money received or else return the money within fifteen days from sixtieth day. If money is not returned within fifteenth day the company should pay interest to share applicant at the rate of twelve per cent per annum from sixtieth day.

In this case no public offer is made, hence no prospectus is required, but only private placement offer letter is issued to such persons whose names are recorded by the company and the company should file complete information regarding such private placement to the Registrar of Company within thirty days of issue of placement offer letter. As per regulation issued by SEBI, private placement of shares should not be made by subscription of shares from unrelated investors. Private placement of shares by friends, relatives and associates is allowed. Under Companies Act 1956 it was necessary to file statement in lieu of prospectus with Registrar of Company three days before allotment of shares.

3.7.3 Offer for sale through Issue House or Financial Institution: An Issue house or financial institution publishes document called offer for sale with application form attached to it, higher than par or price which it has paid to a company. This document is called deem prospectus. (Section 25)

3.7.4 Issue of Rights and Bonus shares:

Companies generally do not issue whole of its authorized capital at one time. Whenever directors feel the need of capital due to expansion, diversification etc., they may issue part of authorized capital which was not earlier issued to public. In order to control misuse of issue of shares by directors, further issue of shares should be offered first to the existing shareholders. According to Section 62 of Companies Act, further issue should be offered first to existing equity holders as circumstances admit and if they do not subscribe then as decided by directors, whatever should be in the interest of the company. This right of existing equity holders is called as right of pre-emption and shares issued as right share.
Similarly a company can raise its capital by converting its retained earnings in shares, by issue of bonus shares to existing equity holders. Section 63 of Companies Act 2013 contains provisions with respect to issue of bonus shares. Besides section 63 listed companies have to comply with SEBI regulations 2009. Bonus shares can be issued out of free reserves, security premium account and capital redemption reserves account. However a company cannot utilize its reserves created by revaluation reserves for declaring a bonus. (S.C.Kuchhal, 1980) The Oxford English Dictionary gives meaning of bonus shares as “an extra dividend paid to shareholders in a joint stock company from surplus profit” But in legal context bonus is not a dividend and Companies Act prohibits bonus shares to be issued in lieu of dividend. The declaration of bonus shares results in conversion of accumulated reserves into capital. It increases the market price of shares. It conserves company cash and an inexpensive method of raising capital for expansion. Shareholders gain doubly by issue of bonus shares. Firstly equity in the company increases and secondly it increases confidence of investing public in the soundness of the company.

A Company raising funds through public has to comply with provisions of
i) Companies Act 2013.
iii) Stock Exchange.
iv) SEBI regulations 2009.

The Management of a public issue involves coordination and cooperation of a number of agencies such as managers to issue, underwriters, brokers, registrars to issue, solicitors, auditors, advertising agencies, financial institutions, government agencies, RBI, stock exchange, etc.

3.8 SEBI (ISSUE OF CAPITAL & DISCLOSURE REQUIREMENT) REGULATIONS 2009:

These SEBI regulations mention companies who can issue capital, appointment of merchant bankers and lead bankers, underwriters, documents to be filed with SEBI and
Registrar of Companies, conditions to be fulfilled before opening of issue, minimum subscription amount, oversubscription and appointment of a monitoring agency.

3.8.1 SEBI has laid down the following regulation in respect of IPO, FPO and Rights Issue

1) An issuer company shall fulfil conditions of issue of capital and disclosure requirement regulations 2009 while filing
   a) draft offer document with SEBI,
   b) at the time of registering final offer document with registrar or designated stock exchange.

2) An issuer, any of its promoters, promoter group or director or person in control of issuer is not debarred by SEBI from accessing the capital market.

3) A promoter, director and person in control of issuer of any company which is debarred from accessing capital shall not be promoter, director, person in control of issue of Issuer Company.
   In point number two persons are debarred whereas in point number three it is another company in which these persons are promoter, director or person in control of Issuer, is debarred.

4) Issuer of Convertible Debt is not in list of willful defaulter published by RBI or defaulter in payment of interest or principal for period more than six months.

5) Company has made application to one or more stock exchanges for listing and chosen as one stock exchange as designated stock exchange.
   In case of IPO by company, application should be made to one recognized stock exchange which has nationwide terminals.
6) An issuer has entered into agreement with depository for dematerialization of securities already issued or proposed to be issued.

7) An issuer company shall make its partly paid shares into fully paid or should forfeit its partly paid shares.

8) Issuer Company should make firm arrangement to the extent of 75% of stated means of finance.

9) Share warrants may also be issued having tenure up to 12 months and one share warrant for every security.

3.8.2 Appointment of Merchant Bankers and intermediaries:

1) The issuer company shall appoint one or more Merchant bankers and one of them as lead merchant banker and also appoint other intermediaries to carry out the obligations relating to issue.

2) All intermediaries are registered with SEBI.

3) In case of more than one merchant banker, the offer document should specify rights, obligations and responsibilities of each merchant banker in Schedule I.

4) Lead merchant banker should advise issuer regarding capability of other merchant bankers and their appointments.

5) Issuer shall enter into an agreement with lead merchant banker in format Schedule II.

6) Issuer shall make appointment of syndicate bankers in case of issue made through book building process and appoint bankers to issue in any other case.
7) Issuer shall appoint a Registrar which has connectivity with all the Depositories.

8) Lead Merchant Banker should not be appointed as Registrar to Issue and if Registrar to issue is issuer then another Registrar should be appointed.

3.8.3 Filling of Offer Documents to SEBI

No issuer shall make a public issue unless the offer document is filed with SEBI. SEBI has laid down the following conditions in respect of issue of offer document.

1) Issuer Company should file a draft offer document 30 days before filing of prospectus, red herring prospectus, shelf prospectus with Registrar of Companies or filing of letter of offer with designated stock exchange. Draft offer document should be filed with SEBI through lead merchant banker.

2) SEBI may specify changes or observations within 30 days of
   a) Receipt of offer document
   b) Date of receipt of reply to clarification or information from lead merchant bankers
   c) Date of receipt of reply to clarification or information from regulator
   d) Date of receipt of in-principle approval letter issued by recognized stock exchange.

3) If SEBI specifies changes or issues observations – changes to be made in offer document before registering prospectus, red herring prospectus or shelf prospectus.
4) Lead merchant banker should file final copy with SEBI.

5) Soft copy of offer document to be filed with SEBI.

3.8.4 Documents to be submitted before Opening Issue:

Lead merchant bankers should submit following documents to SEBI.

1) Certificate confirming that agreement made between issuer and lead merchant banker.
2) Due diligence certificate by lead merchant banker along with draft offer document.
3) Due diligence certificate from debenture trustee along with draft offer document in case of issue of convertible debentures.
4) Certificate confirming all compliances completed from merchant banker while registering offer document with Registrar of Companies.

If SEBI made changes, observations, suggestions in such a case lead merchant banker should prepare the following documents:

1) Statement certifying that all changes, suggestions, observations made by SEBI are incorporated in offer documents.

2) Due diligence certificate by lead merchant banker at the time of registering offer document with the Registrar of Companies in form C schedule VI.

3) Resolution passed by board of directors of Issuer Company regarding allotment of shares to promoter as promoters’ contribution.
4) Chartered Accountant’s certificate with name and address of promoters regarding promoters’ contribution and amount contributed by promoters.

5) Due diligence certificate by merchant banker in form D schedule VI, before opening issue.

6) Due diligence certificate by merchant banker in form E schedule VI, after issue but before close of subscription.

7) While filing draft offer document with recognized stock exchange submit PAN, bank account number and passport number of promoters,

8) Offer document to be made public by hosting on SEBI, merchant bankers and recognized stock exchange’s website for 31 days and comments received informed to SEBI and changes made and newspaper publication English/Hindi & local language.

3.8.5 Opening of Issue:

Company should make public issue or rights issue within twelve months from the date of the observations made by SEBI or within three months of expiry of the stipulated period of 30 days, if SEBI has no observation. In case of shelf prospectus the first issue to be opened within three months of observation made by SEBI.Issuer should file updated offer document through lead merchant bankers before filing red herring prospectus or prospectus with registrar. Updated offer document to be filed with SEBI.

3.8.5.1 Underwriting:

Underwriters are agencies who help companies to introduce their new securities to the market. Hence if the public does not subscribe to an issue, it is responsibility of the underwriter to subscribe to issue to the extent of minimum subscription.
According to Palmer, underwriting is an expression used in company matters signifying a contract by which a person (known as underwriter) agrees (usually for a commission) that if the shares, debentures or debentures stock about to be offered for subscription or some specified portion thereof, are not, within a specified time, taken up by public or by that section of public to which they are to be offered, he will himself take them up and pay for what the public do not take up or some specified portion thereof.

Following are important provisions in respect of appointment and obligation of underwriters in case of public issue.

1) Issuer may appoint underwriters as per SEBI (Underwriters) Regulation 1993 in case of Public Issue (Other than book building) or right issue.
2) The payment of underwriting commission shall be authorized in the company’s articles of association.
3) The commission may be paid out of proceeds of the issue or the profit of the company or both.
4) The rate of commission in case of shares and debentures shall be five and two and half per cent or rate authorized by the articles, whichever is lower.
5) The prospectus of the company shall disclose the name of underwriters, rate and amount of the commission payable to the underwriter and number of securities which is to be underwritten or subscribed.
6) In case of public issue through book building process underwriters will not be responsible but it should be underwritten by book runners or syndicate members.
7) Underwriting agreement should mention the number of securities and price at which it will be subscribed. Book runner should in turn make agreement with syndicate members.
8) If syndicate members fail to underwrite an issue, in such a case the lead book runner will fulfill underwriting obligation.
9) Lead book runner and syndicate members should not subscribe to an issue except as underwriters.
10) A copy of the syndicate agreement to be filed with the board. Copy of contract for the payment of commission is delivered to Registrar at the time of the delivery of prospectus for registration.

11) Lead merchant bankers or lead book runners should take minimum underwriting obligation as specified in SEBI (Merchant Bankers) regulation.

12) Where 100% offer is underwritten, then underwriting obligation shall be for entire 100% and not limited to minimum subscription level.

3.8.5.2 Minimum Subscription:
Under Companies Act 1956 no allotment shall be made of any share capital of a company unless 90% of the size of issue is received. However, Companies Act 2013 did not mention any percentage as minimum subscription but requires mentioning amount to be received as minimum subscription. But circular dated 17th June 2014 clarifies that 75% of issue size be treated as minimum subscription and if it is not received till end of date of closure of issue, the amount applied should be refunded within 15 days of closure of issue.

Under old Companies Act 1956 if minimum subscription is not subscribed within 30 days of the date of issue of prospectus issuer company should return the amount applied within 15 days, in case issue is not underwritten. However if issue is underwritten but underwriter does not subscribe within 60 days after closure of issue, in such a case amount should be refunded within 7 days from 60th day of closure of issue.

The above conditions regarding minimum subscription are not applicable in case of
   i)  offer for sale of specified securities
   ii) Infrastructure companies.

3.8.5.3 Oversubscription: No company can collect money over and above issued by it to the public. However it can accept maximum of 10% of net offer to the public to make allotment in minimum lot.
3.8.5.4 Monitoring agency:
Monitoring Agency should be appointed in case of issue of more than 500 crore rupees. Public financial institution or scheduled commercial bank should give half-yearly report of monitoring to issuer. Report should contain monitoring of use of proceeds of the issue.

3.9 ISSUE OF INITIAL PUBLIC OFFER:

(A.K.Mujumdar and Dr.G.K.Kapoor, 2012) Initial Public Offer is made by a company at present not listed at any stock exchange makes either a fresh issue of shares or makes offer for sale of its existing shares or both for the first time to the public. Through a public offering, the issuer makes an offer for new investors to enter its shareholding family. The successful completion of an IPO leads to the listing and trading of the company’s shares at the designated stock exchange. Going for IPO provides opportunity to the companies to raise cash for setting up a project or for expansion or diversification or raising working capital or repay debts or acquire another company.

The company has to fulfil the following conditions before going for Initial Public Offer.

1) Following companies are allowed to issue IPO if,
   i) Net Tangible Assets not less than Rs 3 Crores in 3 preceding years of which not more than 50% in Monetary Assets. If more than 50% in monetary assets then issuer has firm commitment in business or project.
   ii) Pretax operating profit of Rs fifteen crores during three most profitable years out of 5 years preceding years, extraordinary item to be excluded.
   iii) Net worth of at least Rs 1 Crore in last 3 years.
   iv) Present issue as well as issue in this year should not exceed 5 times of pre issue net worth.
   v) If name changed in last year at least 50% revenue earned under new name.
2) If above conditions are not complied, issuer can issue shares through book building process and issuer undertakes to allot 75% to qualified institutional buyer or refund money if no allotment to institutional buyers.

3) Issuer may make an initial public offer of convertible debt instrument without making a prior public issue of its equity shares and listing therefore.

4) No allotment of initial public offer to be made if prospective allottees are less than 1000.

5) No issuer shall make an initial public offer, unless on the date of registering the prospectus or red hearing prospectus with the Registrar of Companies, the issuer has obtained grading for IPO from at least one credit agency registered with the board.

6) No IPO if any convertible securities or right is outstanding except:
   i) If conversion price of convertible debt issued through an earlier issue is disclosed in the prospectus.
   ii) ESOP outstanding and disclosed in prospectus.
   iii) Fully paid convertible securities required to be converted before date of filing of red herring prospectus or prospectus.

3.10 EMPLOYEES STOCK OPTION PLAN (ESOP)

Employee Stock Option Scheme commonly called as Employees Stock Option Plan is an option given to employees, officers and directors of a company or of its holding company or subsidiary company right to subscribe for company’s share at predetermined prices on a future date.

(www.sebi.gov.in) Companies Act 1956 and 2013 allows company to give option to its employees etc to subscribe for shares according to SEBI rules 1999, 2014 etc.

Following are SEBI’s Employee Stock Option Scheme guidelines:

1) Disclosure as specified in Schedule IV should be disclosed to prospective option grantee.
2) Compensation Committee should be constituted for administration and monitoring mainly consisting of independent directors.

3) Issue of stock option at discount should be treated as employee compensation and to be treated as per guidelines issued by Institute of Chartered Accountant of India.

4) Pricing provisions of SEBI’s preferential allotment regulation are not applicable for ESOP.

5) Special resolution of shareholders required, with notification of June 2015 ordinary resolution will be required.

6) No restriction of maximum shares to be granted unless more than 1% in one year and employees of subsidiary or holding company.

7) Option can be exercised after a minimum period of 1 year from grant date and exercise date.

8) Directors report should contain the total number of shares covered by ESOS, pricing formulae, options granted, vested, exercised, forfeited, extinguishment or modification, money realized on exercise, option in force, employee-wise details to senior managerial personnel and employee receiving more than 5% of grant and fully diluted EPS according to international accounting standard should be disclosed.

9) In case terms of ESOS are to be altered, a special resolution should be passed and it should be seen that such altered terms are not prejudicial to the interest of an employee who has not yet exercised option.

10) Employee Stock Options are not transferable and have to be subscribed only by the employee who has received it from the company. Similarly these options cannot be pledged, hypothecated, mortgaged or alienated.

11) In case of death of an employee during service of employee, if options are granted but not subscribed, they can be subscribed by employee’s legal successor or
nominee. Similarly in case of permanent incapacitation of employee, options will
be immediately vested after incapacitation.

12) In every AGM Auditor should give a certificate regarding ESOP scheme being
implemented as per SEBI guidelines.

3.11 FILLING OF FORMS ON ALLOTMENT OF SHARES:
Company should file various forms after allotment of shares.

3.11.1 Return of allotment:

Whenever a company having share capital makes any allotment of its securities the
compny shall, within 30 days, file with the registrar a return of allotment in Form
PAS-3(Format Attached) according to Companies (Prospectus of Securities) Rules 2014,
along with prescribed fee as per Company rules. Company Rules 2014 specifically
mention that in case of allotment of shares for consideration other than cash, not being
bonus shares, a copy of the contract pursuant to which the securities are allotted should
be attached. Format PAS 3 called as Return of Allotment is to be digitally signed and
uploaded online.

Return of allotment contains in addition to name, address, email address of company,
identity number called as CIN (Company Identity Number), Global identification
number (GIN). Format PAS 3 contains information regarding securities allotted in cash,
terms & conditions of securities, number of securities allotted, nominal amount per
security, total nominal amount, amount paid per security on application (excluding
premium), total amount paid on application (excluding premium), amount due and
payable on allotment per security and total, security premium per security due and
payable, total security premium due and payable, premium amount paid per security and
total premium paid, amount of discount per security and total discount, amount payable
on calls per security and total amount paid on calls.
Return of allotment also contains information regarding securities allotted other than cash, number of allotment, date of allotment, nominal amount per security, amount to be treated as paid-up on each security, premium amount per security, total premium amount, amount of discount per security, total discount amount.

Return of allotment also contains information regarding details of consideration, bonus shares issued, details of private placement, capital structure of company, debt structure of company, complete list of allottees, board or shareholders resolution, copy of contract, etc to be attached online and to be digitally signed by the director or managing director with his DIN (directors identification number) number.

### 3.11.2 Employees stock option plan issued by unlisted companies

Rule 12 of Companies (Share Capital and Debentures) Rules 2014 specifies rules for companies not listed on stock exchange and not required to comply with Securities Exchange Board of India but wants to grant employee stock option plan.

It lays down the definition of employee, which includes permanent employee whether in India or out of India, director excluding independent director, employee of subsidiary or holding company.

The company shall make an explanatory statement to the notice for passing a resolution of employees stock option plan in respect of total number of stock option granted, classes of employees entitled to participate in employee stock option plan, requirement for eligibility of employees for employees stock option plan, requirement of vesting and vesting period, maximum period in which options shall be vested, exercise price and exercise period, lock-in-period, maximum number of options to be granted per employee and total, method of valuation of options, conditions for lapse of options, accounting standards to be applied, etc.
Approval of shareholders by way of a separate resolution for grant of options to employees of subsidiary or of holding company, identified employees having 1% of the issued capital, at the time of grant of option be taken.

In case of variations in the terms of employee stock option scheme, a special resolution is obtained. Variation in terms should not be detrimental to the interest of employees. The notice for passing a special resolution for variation of terms of employee stock option scheme shall disclose full details of variation, reason behind variation and details of employees who are beneficiaries of such variations.

There shall be a minimum period of one year between the grant of option and vesting of option. However in case of amalgamation of companies, grant of option period of Transferor Company should also be included for a minimum period of one year. Companies have a right to specify lock in period after issue of shares on exercise of option. Employees do not have any right of dividend or voting in the period of grant of option.

Amount paid at the time of grant of option will be forfeited in case option is not exercised by employees. However it may be refunded if option is not vested due to non fulfillment of conditions relating to vesting.

Option granted to employees shall not be transferable, pledged, mortgaged. Conditions on termination of employment and death or incapacitation of employee are mentioned.

The board of directors shall disclose in the director’s report for the year, information relating to options granted, options vested, options exercised, total number of shares arising as a result of exercise of options, options lapsed, exercise price, variation in terms of option, money realized by exercise of option, total number of options in force,
employee-wise details of options granted to key personnel, more than 5% of option, identified employee having more than 1% of issued capital.

The company shall maintain form SH-6 regarding a register of employee stock option at the registered office of the employee.

Now researcher has made comparative difference between IPO and ESOP.

3.12 COMPARATIVE STUDY OF IPO AND ESOP:

Table No. 3.4
Comparative Statement of IPO and ESOP

<table>
<thead>
<tr>
<th>No.</th>
<th>IPO</th>
<th>ESOP</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To raise from public including employees</td>
<td>Only restricted to employees</td>
</tr>
<tr>
<td>2</td>
<td>Prospectus, red hearing prospectus to be submitted to the ROC</td>
<td>Compensation Committee appointed to draft &amp; administer ESOS scheme, shareholders resolution</td>
</tr>
<tr>
<td>3</td>
<td>Offer document approval of SEBI</td>
<td>As per SEBI Regulation 2014</td>
</tr>
<tr>
<td>4</td>
<td>Merchant banker, lead banker, Registrar to issue, underwriter, monitoring agency required</td>
<td>Not required</td>
</tr>
<tr>
<td>5</td>
<td>Minimum subscription required</td>
<td>At option of employee</td>
</tr>
<tr>
<td>6</td>
<td>Price fixed/ book building scheme</td>
<td>Price determined at time of sanctioning scheme</td>
</tr>
<tr>
<td>7</td>
<td>Shares to be raised immediately</td>
<td>Shares after minimum one year from grant date</td>
</tr>
<tr>
<td>8</td>
<td>No restriction on shareholder regarding sale</td>
<td>Company may specify lock-in-period.</td>
</tr>
<tr>
<td>9</td>
<td>Directors can issue IPO/FPO once in few years</td>
<td>ESOP can be given every year</td>
</tr>
<tr>
<td>10</td>
<td>Purpose of issue is to raise capital</td>
<td>Purpose of ESOP is to retain employees</td>
</tr>
<tr>
<td>11</td>
<td>Monitoring agency to report on utilization of application money.</td>
<td>Detailed director report and auditor’s report required</td>
</tr>
<tr>
<td>12</td>
<td>Shares are transferable</td>
<td>Options are not transferable</td>
</tr>
<tr>
<td>13</td>
<td>Loan can be obtained on shares</td>
<td>No loan on Options</td>
</tr>
<tr>
<td>14</td>
<td>Several formalities and cost of issue</td>
<td>Less formalities and cost of ESOP</td>
</tr>
</tbody>
</table>
3.13 CONCLUSIONS:

After going through Companies Act 1956, 2013, Securities Contract Act, SEBI guidelines researcher concluded that legal formalities to be completed under issue of IPO are more cumbersome than issue of ESOP. According to survey done by PWC, almost 50% companies the cost of doing IPO exceeded their expectations. In a case of IPO a company has to incur lot of expenses relating to legal cost regarding registration and preparing documents, external auditor to be conducted by independent registered public accounting firm related to offering regarding various comfort letter, review of registration and advices, financial reporting advisor, printing, registration expenses- ROC, state and rating agency expenses, exchange listing fees, etc. Recently because of few formalities at the time of granting ESOP it is favorite tool with companies even for start-ups.
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