Contents

			PAGE
Abo	ut the A	uthors	I-5
Prej	face		I-7
		CHAPTER 1	
		INTRODUCTION ON ISSUE OF SECURITIES	
1.1	Introd	uction	1
	1.1.1	Analysis of the term "Securities"	2
1.2	Kinds	of Share Capital	3
1.3	Modes	of Issue of Securities	4
	1.3.1	Private Placement	4
	1.3.2	Preferential Issue	4
	1.3.3	Right Issue	6
	1.3.4	Bonus Issue	6
	1.3.5	Issue of Shares under Employees Stock Option Plans	6
	1.3.6	Sweat Equity	7
	1.3.7	Issue of Preference Shares	8
	1.3.8	Issue of Debentures	8
	1.3.9	Share Warrants	9
		CHAPTER 2	
		PRIVATE PLACEMENT	
2.1	Private	e Placement	10
2.2		ions as specified for Private Placement as specified under a 42 of the Companies Act, 2013	11

CONTENTS I-1	()
CONTENTS	ľ	,

			PAGE
	2.2.1	Number of Persons to whom the offer shall be made	11
	2.2.2	No Allotment shall be made unless allotment with respect to previous offer has been completed	12
	2.2.3	Offer to be made to the Identified Persons	12
	2.2.4	Private Placement shall be treated as Public Issue of Securities if the offer exceeds to two hundred persons	13
	2.2.5	Authorization by Prior Special Resolution	13
	2.2.6	Mode of Payment	14
	2.2.7	Time Limit for Allotment of Securities	15
	2.2.8	Offer should not be advertised	16
	2.2.9	Filing of Return	16
	2.2.10	Penalty	16
2.3	Exemp	tions	17
	2.3.1	Exemptions for NBFC & HFC	17
	2.3.2	Exemptions for Specified IFSC Public Company	17
	2.3.3	Exemptions for Specified IFSC Private Company	18
2.4	Importa Placem	ant Issues relating to Issue of Securities under Private ent	19
Ann	ex 2.1:	Draft Application Form	23
Ann	ex 2.2:	Draft Board Resolution for Issue of Securities	24
Ann	ex 2.3:	Draft Board Resolution for Allotment of Securities	25
Ann	ex 2.4:	Draft list of allottees	26
Ann		Draft special Resolution for Issue of Securities in General Meeting	27
Ann	ex 2.6:	Draft Explanatory Statement	28
		CHAPTER 3	
		PREFERENTIAL ISSUE OF SECURITIES	
3.1	Prefere	ential Offer	29
	3.1.1	Shares or other securities	29
3.2		ons as specified for Issue of Shares on Preferential basis Rule 13 of Companies (Share Capital and Debentures) 2014	30
	3.2.1	Non-Applicability of Rule 13 to Listed Companies	30
	3.2.2	Authorization by its Articles of Association	30

I-11 CONTENTS

			PAGE
	3.2.3	Authorization by Special Resolution	30
	3.2.4	Disclosures in Explanatory Statement	30
	3.2.5	Completion of Allotment of Shares or other convertible securities on Preferential basis	32
	3.2.6	Pricing of Shares or other convertible securities	32
	3.2.7	Issue of Shares or other convertible securities other than cash	32
	3.2.8	Price of Shares or other convertible securities	33
3.3		tion in case preferential offer to be made to one or more g members	33
	3.3.1	Exemptions for Specified IFSC Public Company	34
	3.3.2	Exemptions for Specified IFSC Private Company	35
3.4	Import ential (ant Issues relating to Issue of Securities under Prefer- Offer	35
Ann	ex 3.1:	Draft Application Form	41
Ann	ex 3.2:	Draft Board Resolution for Issue of Shares or other convertible securities under Preferential Issue	43
Ann		Draft Board Resolution for Allotment of Shares or other convertible securities	44
Ann	ex 3.4:	Draft list of allottees	45
Ann	ex 3.5:	Draft Special Resolution for Issue of Shares or other convertible securities in General Meeting	46
Ann	ex 3.6:	Draft Explanatory Statement	47
		CHAPTER 4	
		RIGHT ISSUE	
4.1	Right I	ssue	50
4.2	Condit Act, 20	ions as specified under section $62(1)(a)$ of the Companies 13	50
	4.2.1	Offer to Equity Shareholders	50
	4.2.2	Notice to Shareholders for subscription and Offer period	51
	4.2.3	Renunciation of Offer	52
	4.2.4	Power of the Board to dispose of the shares	52
	4.2.5	Can a Company allot additional Shares to existing shareholders more than his right in case the right issue is not fully subscribed	52

CONTENTS	[-]	2	2

			PAGE
	4.2.6	Dispatch of Notice	52
	4.2.7	Time Limit for Allotment of Securities	53
	4.2.8	Conversion of Loans or Debentures into Shares	53
4.3	Import	ant issues relating to issue of securities under right issue	54
Ann	ex 4.1:	Draft letter of offer	58
Ann	ex 4.2:	Draft application form	61
Ann		Draft Board Resolution for Issue of Securities by way of Right Issue	63
Ann	ex 4.4:	Draft list of allottees	65
Ann	ex 4.5:	Draft Board Resolution for Allotment of Securities	66
		CHAPTER 5	
		BONUS ISSUE	
5.1	Issue o	of Bonus Shares	67
5.2	5.2 Conditions as specified for Issue of Bonus Shares as per section 63 read with Rule 14 of Companies (Share Capital & Debentures) Rules, 2014		67
	5.2.1	Source of Issue of Bonus Shares	67
	5.2.2	Authorization by its Articles of Association	68
	5.2.3	Authorization of Bonus Issue in General Meeting	68
	5.2.4	Bonus Shares are not allowed in case of Partly paid shares	68
	5.2.5	Prohibition on issue of Bonus Shares	68
	5.2.6	Bonus shares in lieu of Dividend	68
	5.2.7	Bonus issue cannot be withdrawn	68
5.3	•	ant issues relating to issue of bonus shares	69
Ann	ex 5.1:	Draft Board Resolution for Issue of Bonus Shares	72
Ann	ex 5.2:	Draft Resolution of General Meeting	73
Ann		Draft explanatory statement pursuant to section 102 of the Companies Act, 2013	74
Ann	ex 5.4:	Draft list of allottees	75
Annex 5.5: Draft Board Resolution for Allotment of Bonus Shares			76

I-13 CONTENTS

			PAGE
		CHAPTER 6	
		ISSUE OF SHARES UNDER ESOPs	
6.1	Backgr	round	77
6.2	Condit Stock (ions as specified for Issue of Shares under Employees Option Plans (ESOPs) under section 62(1)(<i>b</i>) and Rule 12 apanies (Share Capital and Debentures) Rules, 2014	79
	6.2.1	Non-Applicability of Rule 12 to Listed Companies	79
	6.2.2	Authorization by Special Resolution	79
	6.2.3	Disclosures in Explanatory Statement	82
	6.2.4	Determination of Exercise price	82
	6.2.5	Separate Resolution in certain cases	83
	6.2.6	Variation in ESOPs Scheme	83
	6.2.7	Administration of ESOPs Scheme	83
	6.2.8	Disclosure in Boards' Report	84
	6.2.9	Register of Employee Stock Options	85
Ann	ex 6.1:	Draft Grant Letter	88
Ann	ex 6.2:	Draft Acceptance Letter	89
Ann	ex 6.3:	Draft Exercise Letter	90
Ann	ex 6.4:	Draft Nomination Letter	92
Ann	ex 6.5:	Draft Board Resolution for Issue of Shares under ESOPs	93
Ann	ex 6.6:	Draft list of allottees	95
Ann		Draft Board Resolution for Allotment of Shares under ESOPs	96
Ann		Draft Shareholders Resolution for Approval of Employees Stock Option Scheme	97
Ann	ex 6.9:	Draft employees stock option plan	99
		CHAPTER 7	
		ISSUE OF SHARES UNDER SWEAT EQUITY	
7.1	Introdu	action	114
7.2	Section	ions as specified for Issue of Sweat Equity Shares under a 54 and Rule 8 of Companies (Share Capital and Deben-Rules, 2014	115

CONTENTS	I-	1	4	ŕ
----------	----	---	---	---

			PAGE
7.3		ons as per Rule 8 of Companies (Share Capital and ures) Rules, 2014, for issue of sweat equity shares	116
	7.3.1	Non-Applicability of Rule 8 to Listed Companies	116
	7.3.2	Authorization by Special Resolution	116
	7.3.3	Disclosures in Explanatory Statement	116
	7.3.4	Limits of Sweat Equity Shares	117
	7.3.5	Lock-in Requirements	118
	7.3.6	Valuation of Sweat Equity	118
	7.3.7	Accounting Treatment of Sweat Equity Shares	118
	7.3.8	Disclosure in Boards' Report	119
	7.3.9	Register of Sweat Equity Shares	120
Anno		Oraft Board Resolution for Issue of Shares under Sweat Equity	123
Anno		Oraft special Resolution for Issue of Sweat Equity Shares n General Meeting	124
Anno	ex 7.3 : I	Oraft list of allottees	125
Anno	ex 7.4 : I	Oraft Board Resolution for Allotment of Shares	126
		CHAPTER 8	
	1991	JE AND REDEMPTION OF PREFERENCE SHARES	
8.1	Introdu		127
8.2	0 1	f Preference Shares	128
	8.2.1	On the basis of accumulation of dividend	128
	8.2.2	On the basis of participation in profits	129
	8.2.3	On the basis of convertibility	129
	8.2.4	On the basis of redemption	129
8.3	8.3 Interpretation and Technical Analysis of section 55 of the Companies Act, 2013 and Rules 9 and 10 of Companies (Share Capital and Debentures) Rules, 2014		130
	8.3.1	Issue of Irredeemable Shares	130
	8.3.2	Authorization by its Articles of Association	130
	8.3.3	Capital Clause in Memorandum of Association	130
	8.3.4	Redemption Period	130
	8.3.5	Conditions for issue & redemption of preference shares	131

I-15 CONTENTS

			PAGE
	8.3.6	Utilisation of Capital Redemption Reserve Account	133
	8.3.7	Premium payable on redemption	133
	8.3.8	Approval of Hon'ble National Company Law Board Tribunal (Tribunal)	134
	8.3.9	Redemption to Preference Shareholders who have not consented for issue of further redeemable preference shares	135
8.4	Import ential (ant Issues relating to Issue of Securities under Prefer- Offer	135
		CHAPTER 9	
		ISSUE AND REDEMPTION OF DEBENTURES	
9.1	Definiti	ion of Debentures	139
	9.1.1	Types of Debentures	139
9.2	When 1	Issue of Debentures shall be treated as Deposits	140
9.3		ions for issue and redemption of Debentures as specified the Companies Act, 2013	142
	9.3.1	Issue of Debentures with an option to convert into shares	142
	9.3.2	Debentures are issued without voting rights	142
	9.3.3	Conditions as specified for Issue of Secured Debentures	142
9.4	Debent	ture Trust Deed	147
	9.4.1	Format of Trust Deed	147
	9.4.2	Provisions in Trust Deed regarding liability of Debenture Trustees	147
	9.4.3	Inspection of Trust Deed	148
9.5	Debent	tures Redemption Reserve	148
9.6	Non-ap	oplicability of Rule 18 relating to Debentures	150
9.7	Redem	ption of Debenture	151
	9.7.1	Consequences when company fails to redeem debenture on the date of maturity or fails to pay interest thereon	151
	9.7.2	Debenture trustee may file petition before the Tribunal	151
	9.7.3	Prosecution on contravention of Tribunal order	151
	9.7.4	Specific Performance enforced by a decree	151

CONTENTS	I-16

			PAGE
9.8	Debenti	are-holders are treated as Creditors	152
Anne		Oraft Board Resolution for Appointment of Debenture Crustees	155
Anno		Oraft EGM Resolution for issue of Debentures of Non-con- certible debentures	156
		CHAPTER 10	
	ISS	SUE OF SHARES WITH DIFFERENTIAL RIGHTS	
10.1	Voting I	Rights	157
	10.1.1	Voting in case of Equity Shareholders	157
	10.1.2	Voting in case of Preference Shareholders	158
	10.1.3	Restriction on voting rights	159
	10.1.4	Exemption available to Private Limited Company	160
10.2	Variatio	n of Shareholders' Rights	160
10.3	Issue of	Shares with Differential Rights	161
	10.3.1	Applicability of Companies (Share Capital and Debentures) Rules, 2014	161
	10.3.2	Exemption available to Private Limited Companies	161
	10.3.3	Exemptions for Specified IFSC Public Company	162
10.4	Condition	ons for Issue of Shares with Differential Rights	162
	10.4.1	Authorisation in the Articles of Association	162
	10.4.2	Authorization by Ordinary Resolution	162
	10.4.3	Limits of Issue of shares with differential rights	163
	10.4.4	Track record of distributable profits	163
	10.4.5	No Default in filing of Financial Statement/Payment of Dividend etc.	163
	10.4.6	Disclosure in the Explanatory Statement	164
	10.4.7	Prohibition to convert Shares of voting rights into equity share capital carrying differential voting rights and <i>vice versa</i>	165
	10.4.8	Disclosure in the Board's Report	165
	10.4.9	Rights of holders of the equity shares with differential rights	165
	10.4.10	Recording in the Register of Members	165

I-17 CONTENTS

			PAGE
	10.4.11	Issue of equity shares with differential rights issued by company registered under Companies Act, 1956	166
Anne	ex 10.1:	Draft Board Resolution for Issue of Shares of differential rights	169
Anne	ex 10.2:	Draft Resolution for Issue of Equity shares with differential rights in General Meeting	170
Anne	ex 10.3:	Draft list of allottees	171
Anne	ex 10.4:	Draft Board Resolution for Allotment of Shares with differential rights	172
		CHAPTER 11	
		ISSUE OF SHARES AT PREMIUM	
11.1	Factors	while determination the amount of Share premium	173
	11.1.1	Companies Act, 2013	174
	11.1.2	Income-tax Act, 1961	174
11.2	Transfe	r of premium received on issue of shares	175
11.3	Applica	tion of premium received on issue of shares	176
		CHAPTER 12	
		ISSUE OF SHARES TO NON-RESIDENTS	
12.1	Foreign	Investment	177
12.2	Prohibit	ted sectors	178
12.3	Prohibit	ted persons	178
12.4	Capital Instruments		179
	12.4.1	Equity shares	179
	12.4.2	Partly paid shares	180
	12.4.3	Share warrants	180
	12.4.4	Debentures	181
	12.4.5	Preference shares	181
12.5	Entry R	oute	182
	12.5.1	Automatic Route	182
	12.5.2	Government Approval Route	182
12.6	_	Guideline for Capital instruments issued by a company son resident outside India	183

CONTENTS	I-18

			PAGE
12.7	Permitted Investments by persons resident outside India		183
	12.7.1	Issue of Rights/Bonus shares	183
	12.7.2	Issue of shares under Employees Stock Option Scheme (ESOPs)	185
	12.7.3	Issue of shares by a wholly owned subsidiary	186
	12.7.4	Issue of Shares against any funds payable	186
	12.7.5	Issue of Shares under other modes	187
12.8	Reporti	ng to Reserve Bank of India	188
	12.8.1	Reporting of inflow	189
	12.8.2	Reporting for issue of capital instruments	189
	12.8.3	Reporting of conversion of ECB into equity	190
	12.8.4	Reporting of ESOPs and sweat equity shares	190
12.9	Delay in	Reporting	191
	12.9.1	Calculation and Payment of Late Submission Fees	191
		CHAPTER 13	
		INCOME TAX ON ISSUE OF SHARES	
13.1		Tax Provisions related to issue of shares above fair value by Unlisted Company	193
	13.1.1	Taxability in the hand of Unlisted Company	193
	13.1.2	Amendment in section 56 and definition of Income <i>i.e.</i> section 2(24)	193
	13.1.3	Fair market value	194
13.2	issued u	Tax Provision related to taxability of shares allotted or inder Employee Stock Options (ESOP) Scheme and issue t equity shares	195
	13.2.1	Taxability in the hands of Employee	195
	13.2.2	Fair market value	195
	13.2.3	Applicability of Tax Deducted as Source (TDS) provisions	195
13.3		on related to deduction of ESOP/sweat equity share as ture of the company	196
13.4	Judgme	ents in favour of assessee	196
13.5	Judgment is in favour of revenue department		196

I-19 CONTENTS

	PAGE						
CHAPTER 14							
VALUATION OF ISSUE OF SHARES OF UNLISTED COMPANIES							
14.1 Issue of unquoted equity shares							
14.2 Terminal Value							
14.3 Discounting Rate							
14.3.1 Calculation of Discounting Factor	212						
14.4 Fair market value of unquoted shares and securities other than equity shares							
Annex 14.1: Sample Valuation Report	213						
APPENDICES							
Appendix 1: Relevant Sections							
Appendix 2: Relevant Rules							