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MINISTRY OF FINANCE
(DEPARTMENT OF COMPANY AFFAIRS)

NOTIFICATION

New Delhi, the 4th December, 2003

G.S.R.923(E). - In exercise of the powers conferred by proviso to sub-section (1) of section 79A of the Companies Act, 1956 (1 of 1956) read with sub-section (1) of section 642 of the said Act, the Central Government hereby makes the following rules, namely :-

1. Short title and commencement.-

- (1) These Rules may be called the Unlisted Companies (Issue of Sweat Equity Shares) Rules, 2003.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

In these rules, unless otherwise defined,-

- (i) "Asset" means a resource controlled by the company and from which future economic benefits are expected to flow to the company;
- (ii) "employee" means :-
 - a) a permanent employee of the company working in India or out of India; or
 - b) a director of the company, employed as a whole time director or executive director of a company;
- (iii) "intangible Asset" means an identifiable non-monetary asset, without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes;
- (iv) "share price" means price of a share on a given date arrived on the net worth basis;
- (v) "value addition" means anticipated economic benefits derived by the enterprise from expert and/or professional for providing know-how or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is issued for which the consideration is not paid or included in -
 - (a) the normal remuneration payable under the contract of employment, in the case of an employee and/or

(b) monetary consideration payable under any other contract, in the case of non-employee.

3. Applicability.-

These Rules shall be applicable to issue of sweat equity shares by all unlisted companies.

4. Special resolution.-

(1) For the purpose of passing a special resolution under clause (a) of sub-section (1) of section 79A of the Companies Act, 1956 (1 of 1956), the explanatory statement to be annexed to the notice for the general meeting pursuant to section 173 of the said Act shall contain particulars as specified below.

- (i) the date of the meeting at which the proposal for issue of sweat equity shares was approved by the Board of Directors of the company;
- (ii) the reasons/justification for the issue;
- (iii) the number of shares, consideration for such shares and the class or classes of persons to whom such equity shares are to be issued;
- (iv) the value of the sweat equity shares alongwith valuation report/ basis of valuation and the price at the which the sweat equity shares will be issued;
- (v) the names of persons to whom the equity will be issued and the person's relationship with the company;
- (vi) ceiling on managerial remuneration, if any, which will be affected by issuance of such equity;
- (vii) a statement to the effect that the company shall conform to the accounting policies specified by the Central Government; and
- (viii) diluted earning per share pursuant to the issue of securities to be calculated in accordance with the Accounting Standards specified by the Institute of Chartered Accountants of India.

(2) Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of grant of shares to identified employees and promoters, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversion) of the company at the time of grant of the sweat equity shares.

5. Register of shares.-

The company shall maintain a Register of Sweat Equity Shares issued under section 79A in the Form specified in Schedule annexed to these rules.

6. Restriction on issue of sweat equity shares.-

The company shall not issue sweat equity shares for more than 15% of total paid up equity share capital in a year or shares of the value of 5 crores of rupees, whichever is higher except with the prior approval of the Central Government.

7. Disclosure in the Directors' Report.-

The Board of Directors, shall, inter alia, disclose either in the Directors' Report or in the annexure to the Director's Report, the following details of issue of sweat equity shares :-

- (a) Number of shares to be issued to the employees or the directors;
- (b) conditions for issue of sweat equity shares;
- (c) the pricing formula;
- (d) the total number of shares arising as a result of issue of sweat equity shares;
- (e) money realised or benefit accrued to the company from the issue of sweat equity shares;

- (f) diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

8. Pricing of Sweat Equity Shares.-

The price of sweat equity shares to be issued to employees and directors shall be at a fair price calculated by an independent valuer.

9. Issue of Sweat Equity Shares for consideration other than cash.-

Where a company proposes to issue sweat equity shares for consideration other than cash, it shall comply with following :

- (a) The valuation of the intellectual property or of the know-how provided or other value addition to consideration at which sweat equity capital is issued, shall be carried out by a valuer;
- (b) the valuer shall consult such experts, as he may deem fit, having regard to the nature of the industry and the nature of the property or the value addition;
- (c) the valuer shall submit a valuation report to the company giving justification for the valuation;
- (d) a copy of the valuation report of the valuer shall be sent to the shareholders with the notice of the general meeting;
- (e) the company shall give justification for issue of sweat equity shares for consideration other than cash, which shall form part of the notice sent for the general meeting; and
- (f) the amount of Sweat Equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 198, 309, 310, 311 and 387 of the Companies Act, 1956 if the following conditions are fulfilled:
 - (i) the Sweat Equity shares are issued to any director or manager; and
 - (ii) they are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

10. Lock-in of sweat equity shares.-

Sweat equity shares issued to employees or directors shall be locked in for a period of three years from the date of allotment.

11. Certificate from auditors.-

In the case of every company that has allotted shares under these Rules, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company/ practising company secretary that sweat equity shares have been allotted in accordance with the resolution of the company in the general meeting and these Rules.

12. Accounting policies.-

- (1) Where the sweat equity shares are issued for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company:
 - (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the relevant accounting standards; or
 - (b) where clause (a) is not applicable, it shall be expensed as provided in the relevant accounting standards.
- (2) In respect of sweat equity shares issued during accounting period, the accounting value of sweat equity shares shall be treated as another form of compensation to the employee or the director in the financial statement of the company.

SCHEDULE**REGISTER OF SWEAT EQUITY SHARES
(Pursuant to Rule 5)**

The register of sweat equity shares issued by the company to be kept in the following format:

S.No.	Folio No. / certificate No.	Date of passing of resolution	Date of issue of sweat equity shares
1	2	3	4

Name of the allottee	Status of the allottee - whether director or employee	Reference to entry in register of members	Number of sweat equity shares issued
5	6	7	8

Face value of the share	Price at which shares issued	Total consideration paid by employee/director	Lock in period till which date
9	10	11	12

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Rajiv Mehrishi, Jt. Secretary