

Technology Development Board (Equity capital) Regulations, 1998

CONTENTS

1. Short title and commencement
2. Definitions
3. Equity participation
4. Pre-subscription conditions
5. Issue of share certificates
6. Utilisation of subscription amount
7. Nominee directors
8. Disinvestment by the Board
9. Contractual formality

Technology Development Board (Equity capital) Regulations, 1998

In exercise of the powers conferred by sub-section (2) of Section 22 of the Technology Development Board Act, 1995 (44 of 1995), read with clause (a) of Section 6, the Technology Development Board hereby makes the following regulations, namely :-

1. Short title and commencement :-

(1) These regulations may be called the Technology Development Board (Equity Capital) Regulations, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :-

In these regulations, unless the context otherwise requires :-

(a) "Act" means the Technology Development Board Act, 1995 (44 of 1995);

(b) "Board" means the Technology Development Board constituted under sub- section (1) of Section 3 of the Act;

(c) "Board of Directors", in relation to a company, means the Board of Directors of the company;

(d) "Company" means a company as defined in Section 3 of the

Companies Act, 1956 (1 of 1956);

(e) "Director" includes any person occupying the position of director, by whatever name called;

(f) "Paid-up capital" or "capital paid-up" includes capital credited as paid-up;

(g) "Share" means share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied;

(h) All other words and expressions used in these regulations, but defined in the Act or the Research and Development Cess Act, 1986 (32 of 1986) shall have the meanings respectively assigned to them in those Acts.

3. Equity participation :-

(1) The Board may provide financial assistance by way of equity capital to an industrial concern, being a company, on its commencement, start-up and/or growth stages according to the requirements as assessed by the Board and keeping in view the debt-equity ratio of the industrial concern.

(2) The Board may invest in equity shares of a company up to 25 per cent of the project cost, including margin money for working capital, provided such investment does not exceed the capital paid-up by the promoters.

(3) The Board may, after examining the application of the company and after making such enquiries as it deems necessary by order in writing, either approve the equity participation or refuse to approve the same.

4. Pre-subscription conditions :-

(1) The promoters should have subscribed and fully paid up their portion of the share capital in the company.

(2) The promoters of the company shall pledge shares to the Board of a value equal to the equity subscription by the Board in the company.

(3) The promoters, Directors and shareholders of the company, shall undertake to bring in funds in the form of additional share capital unsecured loans and/or deposits, if and when required, to

cover any cost overrun of the project or any shortfall that may arise in financing the project and for working capital on terms and conditions acceptable to the Board.

(4) The promoters, Directors and shareholders referred to (3) above shall undertake not to withdraw from the company any unsecured loan(s) and deposits brought by them as per (iii) above without prior written approval of the Board as long as the Board holds shares in the company.

(5) In the event of any overrun in the cost of the project or shortfall in the means of finance or in case the company incurs any cash losses, the Board shall not be liable to finance any such overruns, shortfalls, cash losses; nor shall the Board subscribe to any additional capital for this purpose. If the financial institutions providing financial or other assistance for the project, stipulate that any guarantees/undertakings be furnished by the promoters of the company, the Board shall not be liable to provide any such guarantee including 'no default guarantee' or undertaking.

(6) The company shall not recognise or register any transfer of shares in the company's capital made or to be made by the promoters and such other persons as may be specified by the Board. The company shall obtain and furnish to the Board suitable undertakings from such persons as may be specified by the Board for giving effect to the stipulations.

5. Issue of share certificates :-

The company shall issue, at par, its share certificates to the Board, equivalent to the amount subscribed, by way of equity capital, by the Board. No brokerage shall be charged by the company on such issue.

6. Utilisation of subscription amount :-

The company shall earmark this subscription amount of the Board solely for the project and covenants that the capital goods and services acquired from the subscription amount shall be used exclusively for implementing the project.

7. Nominee directors :-

(1) The Board shall have the right to nominate, from time to time, a person or persons to be a Director or Directors on the Board of Directors of the company; such director(s) is (are) hereinafter referred to as 'nominee director(s)'.

(2) The 'nominee director(s)' shall not be required to hold qualification shares and shall not be liable to retire by rotation.

(3) The 'nominee director(s)' shall be entitled to all the rights and privileges of other director(s) including the sitting fees and expenses as payable to other director(s) but if any other fees, commission, monies or remuneration in any form is payable to the director(s). the fees, commission, monies or remuneration in relation to such nominee director(s) shall accrue to the Board and the same shall accordingly be paid by the company directly to the Board. Any expenditure incurred by the Board or the nominee director(s) in connection with his appointment or directorship be borne by the company.

(4) If, at any time, the nominee director(s) is (are) not able to attend a meeting of the Board of directors or any of its committees of which he is a member, the Board may depute an observer to attend the meeting. The expenses incurred by the observer in this connection shall be borne by the company.

8. Disinvestment by the Board :-

(1) The company shall get its equity shares listed with the Stock Exchange(s)/Over-The-Counter Exchange of India (OTCEI).

(2) The Board may, in its discretion, disinvest its shareholdings in the company after three years of completion of the project by the company or after five years from the date of subscription.

(3) The Board shall dispose of its shares at the market value if the shares are listed.

(4) If the shares are not listed, the price, at which the shares may be disposed of by the Board, shall normally be arrived at by taking the minimum yield of 10 per per cent annum or on the basis of the net asset value of the share, as may be considered prudent by the Board.

(5) The first option to buy back the Board's shares shall be given to the promoters of the company.

9. Contractual formality :-

In every case of equity participation by the Board, the company concerned shall be required to enter into a formal agreement with the Board stipulating the various terms and conditions, including the returns to be submitted under Section 15(1) of the Act.

