

Discussion Paper

Review of SEBI (Share Based Employee Benefit) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002

Objective

1. The objective of this discussion paper is to seek comments / views from the public on the proposals to amend SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue Of Sweat Equity) Regulations, 2002.

Background

2. SEBI (Issue of Sweat Equity) Regulations, 2002 (in short "Sweat Equity Regulations") and SEBI (Share Based employee benefits) Regulations, 2014 (in short "SBEB Regulations") were notified on September 24, 2002 and October 28, 2014 respectively.
3. The Sweat equity regulations provided framework for issuance of sweat equity shares by listed companies and the SBEB Regulations provided framework to regulate Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefits.
4. The stakeholders have been requesting SEBI to further streamline and rationalize the provisions of the regulations and make them more robust, sync with best global practices and ease of doing business.

Expert Group's constitution and recommendations

5. In view of the aforesaid, SEBI constituted an Expert Group with a mandate to provide its recommendations on the following issues:
 - a. Revisiting the framework of SBEB regulations and suggesting policy change thereto;
 - b. Revisiting the framework of SEBI Sweat equity regulations vis-à-vis the Companies Act, 2013 and suggesting policy changes thereto; and
 - c. Suggesting, whether it is advisable to combine both the regulations and if so, providing a draft of combined regulations.

6. The Expert Group after deliberations in its several meetings, has submitted its report to SEBI on June 18, 2021. The Group has made several policy recommendations including combining both the regulations (Sweat equity regulations and SBEB regulations) and also provided a draft of the combined regulations. A copy of the Expert Group's report is placed at Annexure – A.

Expert Group recommendations

7. Key recommendations of the Expert Group are as under:
 - a. In relation to the Sweat Equity Regulations, It is recommended that the objectives for which issuance of sweat equity shares are permitted be included in the Regulations, and the maximum limit on the quantum of sweat equity shares that may be issued by a company should also be incorporated in the Regulations. Additionally, relaxations with respect to quantum of sweat equity to be issued by companies which are listed on Innovators Growth Platform have also been provided. Further, it is also recommended that the lock-in period for sweat equity shares and its pricing formula should be consistent with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
 - b. With respect to scope of employees to be covered under the SBEB Regulations, it is recommended that keeping in mind the current employment practices, non-permanent employees may also be considered for eligibility to receive share-based employee benefits. Accordingly, "employees" as defined by companies shall be eligible for, under the SBEB Regulations, as opposed to earlier position of only for "permanent employees".
 - c. Flexibility accorded to the companies to switch routes (from trust to direct route or vice versa, subject to the approval of the shareholders by special resolution, subject to the condition that such switch is not prejudicial to the interests of the employees.
 - d. The maximum time period prescribed under the SBEB Regulations for appropriation of shares not backed by grants acquired through secondary acquisition by a trust, be extended by an additional period of one year, subject to the approval of the Compensation Committee. Thus, such shares may be held for two years.
 - e. Upon winding up of schemes / trust, transfer of shares or monies held by a trust should be permitted to be transferred to one or more existing share-based employee benefit schemes under the SBEB Regulations, subject to approval of shareholders.

Public comments

8. Public comments are invited on the recommendations made by the Expert Group in its report. Specific comments/ suggestions as per the format given below would be highly appreciated:

| Name of entity/ person/ intermediary: | | | |
|--|--------------------------------|-------------------------------|------------------|
| Name of organization (if applicable): | | | |
| Contact details: | | | |
| Sr. No. | Pertains to para number | Comments / Suggestions | Rationale |
| | | | |

9. Comments may please be sent at either sbebreview@sebi.gov.in or sent by post at the following address latest by July 25, 2021.

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REPORT OF THE EXPERT GROUP

ON

**THE SECURITIES AND EXCHANGE BOARD OF INDIA
(SHARE BASED EMPLOYEE BENEFITS) REGULATIONS,
2014**

AND

**THE SECURITIES AND EXCHANGE BOARD OF INDIA
(ISSUE OF SWEAT EQUITY) REGULATIONS, 2002**

June 18, 2021

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A. INTRODUCTION

i. Legislative History and Background

1. The SEBI had (i) issued the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 ("ESOS Guidelines") to enable listed companies to reward their employees through stock option schemes and stock purchase schemes, and (ii) notified the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") to regulate issuance of sweat equity shares by listed companies.
2. The SEBI had thereafter constituted a group comprising representatives from industry bodies, corporates, and trustee firms to frame a new set of regulations in relation to share-based employee benefits, with a view to ensure better enforceability, address concerns with respect to composition of employee welfare trusts, disclosures and other issues, and enable secondary market transactions with adequate safeguards. The report of such group was placed before the Primary Market Advisory Committee of the SEBI for deliberations, following which, a "Discussion Paper on 'Review of guidelines governing stock related employee benefit schemes'" was issued by the SEBI in 2013, seeking public comments on the suggested regulatory measures.
3. Subsequently, the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") were notified on October 28, 2014, which replaced the ESOS Guidelines. The SBEB Regulations regulate employee stock option schemes, employee stock purchase schemes and other share based employee benefits.
4. Since the introduction of the SBEB Regulations, stakeholders have requested the Securities and Exchange Board of India ("SEBI") to further streamline and rationalize certain provisions of the SBEB Regulations, towards making them more robust and in sync with best global practices, thereby improving ease of doing business.
5. Further towards improving ease of doing business from a regulatory perspective, it is observed that, both the SBEB Regulations and the Sweat Equity Regulations regulate employee benefits arising out of and/or relating

with the equity shares of listed companies, thus the possibility of merging both such regulations may be explored.

6. Accordingly, the SEBI constituted the “Expert Group on the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002” (“Expert Group”) to analyze the above proposals, and provide its recommendations thereon.

ii. Constitution of the Expert Group

The Expert Group was constituted by the SEBI on October 22, 2020. The composition of the Expert Group is given below:

| S. No. | Name | Designation and Firm/Organization | Capacity |
|--------|------------------------|--|----------|
| 1. | Shri Sandip Bhagat | Partner, S&R Associates | Chairman |
| 2. | Shri Santosh Haldankar | Company Secretary, HDFC Bank Limited | Member |
| 3. | Shri M. Sanaulla Khan | Company Secretary, Wipro Limited | Member |
| 4. | Shri Narayan Shankar | Company Secretary, Mahindra & Mahindra Limited | Member |
| 5. | Shri Vikram Shroff | Leader, Nishith Desai Associates | Member |
| 6. | Shri Pavan Kumar Vijay | Founder, Corporate Professionals | Member |
| 7. | Shri Jeevan Sonparote | Chief General Manager, SEBI (Secretary) | Member |

The Expert Group was assisted by Tarinee Sudan, S&R Associates; Mohini Varshneya, Corporate Professionals; and other members of the SEBI, including Neeraj K. Modi and Rohan Israni.

Due to circumstances arising out of the COVID-19 pandemic, all the meetings of the Expert Group were held through video conferencing.

iii. Scope

1. The terms of reference of the Expert Group were to provide its recommendations to the SEBI on the following issues:
 - (a) reviewing the framework of the SBEB Regulations and suggesting policy changes thereto;
 - (b) reviewing the framework of the Sweat Equity Regulations and suggesting policy changes thereto; and
 - (c) exploring the advisability of combining the SBEB Regulations and the Sweat Equity Regulations, and if considered advisable, preparing a draft of such combined regulations for the SEBI's consideration.

iv. Approach

1. The SEBI had furnished a preliminary compilation of issues brought out in interactions with various stakeholders to the Expert Group. The Expert Group in its meetings discussed these issues and provided its recommendations.
2. The Expert Group benefited from the e-survey conducted by Shri Pavan Kumar Vijay, which was primarily undertaken to assess the practical challenges faced by the industry and relevant stakeholders under the SBEB Regulations and the Sweat Equity Regulations.
3. The deliberations and recommendations on the various issues have been set forth in this report of the Expert Group.
4. A draft of this report dated April 29, 2021 was submitted to the members of the Primary Market Advisory Committee of the SEBI (PMAC). This report was subsequently revised to reflect comments received from members of the PMAC.

B. EXECUTIVE SUMMARY

Pursuant to detailed deliberations, the Expert Group has made its recommendations in relation to certain key aspects and practical issues involving the SBEB Regulations and the Sweat Equity Regulations, some of which are summarised below.

1. In relation to applicability of the SBEB Regulations to restricted stock units and phantom stock options, the Expert Group concluded that the provisions of the SBEB Regulations governing employee stock option schemes would apply *mutatis-mutandis* to restricted stock units. Further, an informal guidance from the SEBI in 2015 had already clarified the non-applicability of the SBEB Regulations to phantom stocks.
2. The Expert Group deliberated on the scope of the definition of “employee” under the SBEB Regulations and whether it included contractual employees, “gig workers” and employees on probation or deputation. The Expert Group concluded that companies should be given the flexibility to determine the persons that are categorized as “employees”. Further, the Expert Group also recommended amendment in the SBEB Regulations to delete the word “permanent” from the definition keeping in mind the prevalence of employment practices of engaging non-permanent employees and that such employees may be considered for eligibility to receive share-based employee benefits under the SBEB Regulations.
3. The Expert Group considered certain aspects involving administration of a scheme under the SBEB Regulations by the “Compensation Committee”. The Expert Group was of the view that the SBEB Regulations should be amended to provide further clarity on the composition for such committee and that a company should be permitted to designate its Nomination and Remuneration Committee as its Compensation Committee.
4. The Expert Group also considered various practical issues in relation to implementation of a scheme through a trust. On the flexibility to alter the route for administration of a scheme, the Expert Group concluded that companies should be permitted to switch routes (from trust to direct route or vice versa, after such route had been implemented) subject to the approval of the shareholders by special resolution and provided such switch is not prejudicial to the interests of the employees. The Expert Group also agreed with the position under the SBEB Regulations that independent directors are

not eligible to be appointed as trustees. Further, in relation to availing of loans by a trust, the Expert Group concluded that companies and their trusts should be entitled to identify and avail loans from or financing through legally permissible modes as they deem fit. Further, in relation to compliance by a trust with the PIT Regulations, the Expert Group agreed with the position of the SEBI that such regulation is required to ensure transparency and good governance, and accordingly, no relaxations were recommended in the SBEB Regulations.

5. In relation to voting of shares held by the trust, the Expert Group concluded that no regulatory change was required in this regard. Also, the Expert Group was of the view that such shares should be considered for determination of the percentage of voting rights under the SAST Regulations. The Expert Group also deliberated on whether shares held by the trust should be classified as “public” shareholding for determining minimum public shareholding (MPS) requirements under the SCRR. The Expert Group concluded that this matter had been expressly clarified under the SBEB Regulations and SCRR and such shares were excluded from such calculation.
6. The Expert Group also considered the lock-in restrictions imposed on trusts under the SBEB Regulations for shares acquired through the secondary market and concluded that such restrictions needed to be retained and did not require any amendment. The Expert Group also deliberated on the maximum time period prescribed under the SBEB Regulations for appropriation of shares not backed by grants acquired through secondary acquisition by a trust. The Expert Group recommended extension of such maximum time period by an additional period of one year, subject to the approval of the Compensation Committee/Nomination and Remuneration Committee.
7. Further, on whether any clarification is required under the SBEB Regulations for acquisition limits to apply to stock appreciation rights, the Expert Group concluded that from the provisions of the Regulation 3(11) (including the Explanations thereto) of the SBEB Regulations, trusts administering schemes of stock appreciation rights would need to comply with the limits prescribed thereunder. Separately, the Expert Group was also of the view that prescribing limits upon shares held pursuant to primary issuance by a trust was not required since the shares held by trusts do not carry voting rights and such shares are excluded from the “public” shareholding determination. Further, the Expert Group also recommended that similar to expansion of share capital,

the reduction of share capital should also be factored in the calculation of limits of shareholding of trusts under secondary acquisition.

8. In relation to disclosures to be made by a company in compliance with Rule 16 of the Companies (Share Capital and Debenture) Rules, 2014, the Expert Group deliberated on whether in the explanatory statement the requirement for disclosure of the trust of details of trustees and particulars of trust may be deleted since it would be more viable to constitute a trust after the approval from the shareholders has been sought. The Expert Group also recommended that the SEBI may consider inclusion of the provisions of the 2015 Circular as part of the SBEB Regulations. The Expert Group further suggested certain additional disclosure requirements for employee stock purchase schemes.
9. The Expert Group recommended certain clarifications in the language for variation of a scheme under the SBEB Regulations to make clear that while variations in schemes approved under the SBEB Regulations should not be detrimental or prejudicial to the interests of employees and require a special resolution of its shareholders, such requirements would not apply in case of a variation of the scheme for the purpose of meeting any regulatory requirement.
10. The Expert Group also deliberated on certain aspects involving grant, vesting and exercise of options and rights. In relation to grant date, based on feedback, the Expert Group recommended that a clarification should be included in the definition of “grant date” that for accounting purposes, the grant date will be determined in accordance with applicable accounting standards. The Expert Group also deliberated on the vesting period in case of death or permanent incapacity of the employee during the first year from date of grant. The Expert Group recommended that a more lenient view could be taken in such situations to allow for immediate vesting, instead of vesting of only such granted benefits that are in proportion to the period of service. Further, in relation to cessation of employment, the Expert Group was of the view that provisions under Regulation 9(6) of the SBEB Regulations that apply to resignation or termination would also apply to cessation of employment due to closure of business, layoffs or similar measures. However, cessation of employment due to retirement or superannuation would not be covered by Regulation 9(6) of the SBEB Regulations and such options, SAR or any other benefits granted to an employee would continue to vest in accordance with their respective vesting schedules even after

retirement or superannuation in accordance with company policies and applicable law.

11. In relation to the certification to be placed before the shareholders at an annual general meeting in compliance with Regulation 13 of the SBEB Regulations certifying that the scheme(s) is in compliance with the SBEB Regulations, the Expert Group concluded that such audit certificate should be procured from such secretarial auditor.
12. With respect to the issue of multiple approvals required from the stock exchanges, the Expert Group recommended that the SEBI and stock exchanges consider combining multiple approvals into composite approvals, where feasible.
13. In relation to settlement of cash in lieu of shares in certain circumstances, the Expert Group recommended that if due to regulatory requirement, a company is unable to issue shares, there should be an option to settle in cash (assuming this is already contemplated under the plan previously approved by shareholders). If not covered in the plan, this settlement in cash option should be approved by the shareholders.
14. The Expert Group also considered whether the threshold of 10% of the book value/market value/fair value of total assets for general employee benefits schemes should continue to be considered on an ongoing basis and recommended that such assessment should be made as on the date of the balance sheet.
15. In relation to the Sweat Equity Regulations, the Expert Group recommended that the purpose/objectives for which issuance of sweat equity shares should be permitted, and the maximum limit on the quantum of sweat equity shares that may be issued by a company should be incorporated in the Sweat Equity Regulations. The Expert Group further recommended that the lock-in period for equity shares and pricing formula should be consistent with the ICDR Regulations.
16. The Expert Group considered the issue that allotment of equity shares pursuant to exercise of stock options was not part of the methods prescribed by the SEBI for achieving MPS. The Expert Group recommended that even if the listed entity is yet to achieve MPS compliance after an initial public offering, and options have been granted prior to or after the initial public

offering in compliance with the SBEB Regulations and applicable law, then allotment of shares be permitted to the said employees exercising the options (provided these options are not held by the promoters and promoter group). However, such shares should not be included under the definition of “public shareholding” for purposes of meeting the MPS requirement. The Expert Group recommended that the SEBI may issue a clarification in this regard as part of the MPS circulars and/or the SCRR.

17. The Expert Group also recommended a draft of the proposed combined regulations comprising the SBEB Regulations and the Sweat Equity Regulations.

C. EXAMINATION OF ISSUES, DISCUSSIONS AND RECOMMENDATIONS

1. Restricted stock units and phantom stock options

Present framework

- 1.1. Regulation 1(3) of the SBEB Regulations states that the provisions of the SBEB Regulations apply to following:
- (a) employee stock option schemes;
 - (b) employee stock purchase schemes;
 - (c) stock appreciation rights schemes;
 - (d) general employee benefits schemes; and
 - (e) retirement benefit schemes.

Issue

- 1.2. The Expert Group was requested to consider whether restricted stock units and phantom stock options need to be specified and provided for under the SBEB Regulations.

Deliberations

- 1.3. “Restricted stock units” are a form of share-based employee benefits under which a company issues its equity shares to an employee subject to certain restrictions (such as vesting period) or fulfilment of prescribed performance conditions. It was discussed that in other jurisdictions, no amount is charged by the company as exercise price to issue the equity shares of the company, however, in India typically, a minimum amount equivalent to the face value of the shares is paid by the employee in case of restricted stock units.
- 1.4. “Phantom stock options” are a form of share-based employee benefits based on the underlying value of equity shares of the employer company. The settlement of such options is made in cash and not in equity shares of the company.

- 1.5. In respect of restricted stock units, the members of the Expert Group were of the view that the existing requirements and provisions under the SBEB Regulations governing employee stock option schemes would *mutatis-mutandis* be applicable to restricted stock units.
- 1.6. The Expert Group discussed the Interpretive Letter dated July 27, 2015 under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in the matter of Mindtree Limited, wherein the SEBI had emphasised the provisions of Regulation 1(4) of the SBEB Regulations, taking the view that “*one of the applicability criteria for an employee benefit scheme to be covered under the SBEB Regulations is that the scheme actually involve dealing in or subscribing to or purchasing securities of the company directly or indirectly*”. Accordingly, phantom stock options, which do not involve any actual purchase or sale of the equity shares of the listed company would not be covered under the SBEB Regulations.
- 1.7. Accordingly, the Expert Group concluded that there was no need to change the regulations since: (i) restricted stock units are covered under the SBEB Regulations; and (ii) the Interpretive Letter dated July 27, 2015 under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in the matter of Mindtree Limited (and in the matter of Natco Pharma Limited in 2009) continues to apply in respect of phantom stock options.

Recommendations

- 1.8. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.
- 2. Expanding applicability of the SBEB Regulations to schemes by other companies in its group**

Present framework

- 2.1. Regulation 1(4) of the SBEB Regulations states that: “*The provisions of these regulations shall apply to any company whose shares are listed on a recognized stock exchange in India, which has a scheme for direct or indirect benefit of employees, involving dealing in or subscribing to or purchasing securities of such listed company, which scheme, directly or indirectly, is:*

(a) *set up by the company or any other company in its group; or*

- (b) *funded or guaranteed by the company or any other company in its group;
or*
- (c) *controlled or managed by the company or any other company in its group.”*

Issue

- 2.2. The Expert Group considered whether schemes involving the extension of benefit to employees (or non-employees) based on value of shares of a listed company, set up by any trust established by such listed company or its promoters or group companies should be regulated under the SBEB Regulations.

Deliberations

- 2.3. The Expert Group discussed the issue and was of the view that the applicability criteria under Regulation 1(4) of the SBEB Regulations are broadly drafted, so as to include the entire group of the listed company on the basis of funding, guarantee, control or management. During discussions, a scenario considered was if a promoter forms and funds a trust (which is not set up or funded or managed by the company nor impacts the profit and loss statement of the company), would it be covered under the SBEB Regulations? Members of the Expert Group were of the view that such scenario would be beyond the remit of the SBEB Regulations.

Recommendations

- 2.4. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.

3. Definition of “employee”

Present framework

- 3.1. Regulation 2(f) of the SBEB Regulations defines “employee” as:

“(i) a permanent employee of the company who has been working in India or outside India; or

(ii) a director of the company, whether a whole time director or not but excluding an independent director; or

(iii) an employee as defined in clause (i) or (ii) of a subsidiary, in India or outside India, or of a holding company of the company but does not include –

(a) an employee who is a promoter or a person belonging to the promoter group; or

(b) a director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company;”

3.2. Regulation 9(7) of the SBEB Regulations states that: *“In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.”*

3.3. Regulation 17(6)(d) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) and Section 149(9) of the Companies Act, 2013 also prohibit granting of employee stock options to independent directors.

Issue

3.4. The Expert Group considered whether there was any need to amend the definition of “employee” under the SBEB Regulations to account for contractual employees, “gig workers” and employees on probation or deputation.

Deliberations

3.5. In the present market scenario, companies may hire employees on a non-permanent basis, who, while exclusively working for such companies may

not be “permanent” employees on the payroll of such companies. Such employees may otherwise be treated at par with permanent employees in terms of their remuneration.

- 3.6. Further, employees of certain companies are typically required under the terms of their employment to serve a probationary period, prior to being employed on a permanent basis.
- 3.7. The classes of persons described may not be considered “permanent” employees in terms of Regulation 2(f) of the SBEB Regulations, and may accordingly be excluded from the ambit of the SBEB Regulations.
- 3.8. The Expert Group also considered whether the words “*subsidiary and holding company*” should be included in Regulation 9(7) of the SBEB Regulations in relation to transfer or deputation of an employee. Upon deliberation, it was determined that the term “employee” under the SBEB Regulations already includes “employees” of a subsidiary or holding company and therefore, the vesting and exercise could always continue for such employees, whether or not they are deputed or transferred to a subsidiary or holding company of a company. Accordingly, no such change was proposed to be made to Regulation 9(7) of the SBEB Regulations.
- 3.9. The Expert Group discussed the scope of the term “employee” and the definition of such term across the SBEB Regulations and the Companies Act, 2013. The impact of labour laws (including the new labour codes) and taxation laws was also discussed.
- 3.10. The Expert Group also took note of other categories of persons who may provide services to the company, such as contractual or part-workers or gig workers that may not be “employed” by the company (such as delivery services, transport services, etc., provided to a web based platform). However, given the interplay with other laws and regulations, the Expert Group concluded that the term “employee” should continue to be retained in the SBEB Regulations and a listed company should be given the flexibility to determine the persons that are to be categorized as “employees”.
- 3.11. The Expert Group took note that keeping in mind the prevalence of such employment practices, non-permanent employees may be considered for eligibility to receive share-based employee benefits under the SBEB

Regulations. In the interest of simplicity, it was proposed that rather than including multiple categories of persons within the definition under Regulation 2(1)(f) of the SBEB Regulations, the word, “permanent” may be deleted.

- 3.12. There are also cases of service to a company by an employee transferred from another entity in its group on deputation basis, for a specified period. In terms of Regulation 9(7) of the SBEB Regulations, such transfer or deputation from an associate company will not affect such employee’s participation in employee stock option schemes.
- 3.13. The Expert Group further deliberated upon the restriction upon independent directors from being eligible to be issued stock options. The Expert Group discussed that independent directors were eligible in certain other jurisdictions to participate in employee stock option schemes, and that this matter had also been discussed in SEBI’s Consultation Paper on Review of Regulatory Provisions Related to Independent Directors published on March 1, 2021. Taking into consideration that SEBI is currently looking into this topic in consultation with the MCA, the Expert Group was of the view that depending on the outcome of SEBI’s deliberations in this regard, the final decision may be taken and the SBEB Regulations be amended accordingly. Further, reference of Clause 49 of the equity listing agreement may be updated in Regulation 2(1)(p) of the SBEB Regulations.
- 3.14. The Expert Group also discussed whether a clarification in the definition of “employee” under the SBEB Regulations is required to ensure that it covers a non-executive director (who is not a promoter or member of the promoter group). The Expert Group was of the view that it is permissible to include a non-executive director (who is not a promoter or member of the promoter group) and such clarification may be included in the regulation.

Recommendations

- 3.15. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|-------------------------------|
| 2.(1)(f): “employee” means, — | 2.(1)(f): “employee” means, — |

| | |
|--|--|
| <p>(i) a permanent employee of the company who has been working in India or outside India; or</p> <p>(ii) a director of the company, whether a whole time director or not but excluding an independent director; or ...”</p> | <p>(i) an permanent employee of the company who has been working in India or outside India; or</p> <p>(ii) a director of the company, whether a whole time director or not, including a non-executive director (who is not a promoter or member of the promoter group), but excluding an independent director; or ...”</p> |
|--|--|

3.16. The Expert Group further recommended that the word “permanent” may also be deleted from the scope of employee in other regulations of the SBEB Regulations and the Sweat Equity Regulations, as applicable.

4. Compensation Committee

Present framework

- 4.1. Regulation 5(2) of the SBEB Regulations states that: *“The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, as amended or modified from time to time.”*
- 4.2. Regulation 2(n) of the SBEB Regulations defines grant date as: *“the date on which the compensation committee approves the grant”*.
- 4.3. The second proviso to Regulation 5(1) of the SBEB Regulations states that: *“where the scheme is being implemented through a trust, the compensation committee shall delegate the administration of such scheme(s) to the trust”*.
- 4.4. Regulation 5(4) of the SBEB Regulations states that the *“compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, as amended from time to time, including Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable”*.

4.5. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 were repealed pursuant to the notification of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

Issue – 1

4.6. Section 178 of the Companies Act, 2013 provides for 2 (two) committees, viz., (i) nomination and remuneration committee; and (ii) stakeholders relationship committee, and further prescribes different compositions for such committees. Accordingly, the Expert Group was requested to evaluate whether any further clarification is required as to the composition of compensation committee under Regulation 5 of the SBEB Regulations.

Deliberations

4.7. The Expert Group was of the view that the SBEB Regulations may be amended to prescribe committee requirements. Since a listed company is already required to have a Nomination and Remuneration Committee (“NRC”), these requirements can be made part of the NRC, without the requirement to set up a separate committee.

Recommendations

4.8. Upon deliberations, the Expert Group recommended the following amendments to Regulation 5(2) of the SBEB Regulations for the consideration of the SEBI to prescribe appropriate requirements in terms of the composition of the Compensation Committee (by whatever name called), while allowing companies the flexibility to designate its NRC as the Compensation Committee.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|--|
| <i>Regulation 5(2): “The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the</i> | <i>Regulation 5(2): “The compensation committee shall be a committee of such members of the board of directors of the company as provided under section 178 of the Companies Act, 2013, regulation 19</i> |

Companies Act, 2013, as amended or modified from time to time.”

of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended or modified from time to time.:

Provided that a company may also opt to designate its nomination and remuneration committee as compensation committee for the purposes of these regulations.”

- 4.9. Also, as discussed in paragraph 9.5 below, all references to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 in the SBEB Regulations should be updated to the PIT Regulations.

Issue - 2

- 4.10. In the present industry scenario, employee stock options are offered to employees as incentives forming part of their remuneration at the time of joining. Since the grant of such employee stock options occurs at such time, listed companies are required to call meetings of the compensation committee for each individual grant, which gives rise to administrative as well as monetary burdens on companies. The Expert Group was requested to evaluate whether the compensation committee should be empowered to delegate its responsibilities under the SBEB Regulations, including the approval of grant of employee stock options, to any persons, such as directors or officers of the companies.

Deliberations

- 4.11. The Expert Group was of the view that approving the grant of employee stock options is an important decision for a listed company, requiring monitoring and oversight by its board of directors and/or the compensation committee constituted under the SBEB Regulations. While the implementation of such requirement has been left to each individual listed company, there is no need to dilute such requirement.

Recommendations

4.12. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.

Issue – 3

4.13. The Expert Group was requested to evaluate whether model policies for compliance with securities laws should be prescribed under the SBEB Regulations, which would form the template for the policies and procedures to be framed by the compensation committee under Regulation 5(4) of the SBEB Regulations.

Deliberations

4.14. The Expert Group was of the view that the respective compliance officers/NRCs of listed companies may independently frame such policies based on the relevant facts and circumstances applicable to them, and that a one-size-fits-all approach may not be feasible.

Recommendations

4.15. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.

5. Schemes through trust route

Present framework

5.1. Regulation 3(1) of the SBEB Regulations states that: “*A company may implement schemes either directly or by setting up an irrevocable trust. Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes. Provided further if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s)*”.

5.2. Regulation 3(4) of the SBEB Regulations states that: “*a person shall not be appointed as a trustee, if he- i. is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or*

any relative of such director, key managerial personnel or promoter; or ii. beneficially holds ten percent or more of the paid-up share capital of the company”.

- 5.3. Regulation 3(8) of the SBEB Regulations states that: “*subject to the requirements of Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, as amended from time to time, as may be applicable, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s)*”.

Issue – 1

- 5.4. While Regulation 3(8) of the SBEB Regulations permits a listed company to lend monies to the trust to acquire its shares, the SBEB Regulations do not currently provide a defined framework for the trust availing loans from the company. The Expert Group was requested to evaluate whether further clarity on the modes of financing acquisition of shares by trusts is required in the SBEB Regulations.

Deliberations

- 5.5. The Expert Group was informed that in the present industry scenario, multiple practices in this respect are followed, including the following:
- (a) Companies provide loans to trusts in compliance with the provisions of the Companies Act, 2013;
 - (b) Trusts avail of loans from promoters or third parties; and
 - (c) Companies collect a certain amount from employees on a monthly basis as contributions, and such money is transferred to trusts to finance acquisition of shares.
- 5.6. The Expert Group was of the view that the issue of financing of trust for acquisition of shares is commercial in nature, and that companies and their trusts should have the flexibility to identify for themselves and avail of loans or financing through such legally permissible and available modes as they deem appropriate. Accordingly, subject to adequate and timely disclosure

being made in this respect, stipulating further requirements was not viewed as warranted.

Recommendations

5.7. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.

Issue-2

5.8. The Expert Group was informed that certain stakeholders had expressed difficulty in deciding upfront whether a scheme is to be implemented through a trust due to the requirement under Regulation 3(1) of the SBEB Regulations. The Expert Group was accordingly requested to evaluate the feasibility of permitting flexibility in deviating from the route of implementation of a scheme under the SBEB Regulations chosen by the company upfront.

Deliberations

5.9. Members of the Expert Group were of the view that companies should have flexibility in switching the administration of a scheme under the SBEB Regulations from the trust route to the direct route and vice versa, if change in market conditions and other prevailing circumstances so warrant, provided that prior to its implementation, such change is approved again by the shareholders of the company by way a special resolution (which is similar to the nature of shareholders' approval for initial approval of a scheme), and is not prejudicial to the interests of the employees.

Recommendations

5.10. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|---|---|
| <i>Regulation 3(1): "A company may implement schemes either directly or by setting up an irrevocable trust.</i> | <i>Regulation 3(1): "A company may implement schemes either directly or by setting up an irrevocable trust.</i> |

| | |
|---|---|
| <p><i>Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes.</i></p> <p><i>Provided further if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).”</i></p> | <p><i>Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes.</i></p> <p><i>Provided further that, if prevailing circumstances so warrant, the company may change the mode of implementation of the scheme subject to fresh approval of the shareholders by special resolution prior to implementing such change, and, provided such change is not prejudicial to the interests of the employees.</i></p> <p><i>Provided further if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).”</i></p> |
|---|---|

Issue – 3

5.11. The Expert Group considered whether independent directors may be excluded from the restriction under Regulation 3(4) of the SBEB Regulations, pursuant to which, directors of a company, among others, are ineligible to be appointed as a trustee.

Deliberations

5.12. The Expert Group at the outset discussed that while an employee who is neither a director nor key managerial personnel may be appointed as a trustee, directors and key managerial personnel are not eligible to be appointed as a trustee. After discussions, the Expert Group agreed that no amendment is necessary in this regard.

5.13. The Expert Group also discussed the eligibility of independent directors to be appointed as a trustee and concluded that given the role of an independent director, no amendment was necessary.

Recommendations

5.14. Upon deliberations, the Expert Group concluded that no regulatory change was required.

6. Extension of period for appropriation

Present framework

6.1. Regulation 3(12) of the SBEB Regulations, 2014 states that: “*The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations (ESOP, ESPS and SAR), shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year.*”

Issue

6.2. The Expert Group was requested to evaluate whether the maximum time period currently prescribed under Regulation 3(12) of the SBEB Regulations for appropriation of shares not backed by grants acquired through secondary acquisition by a trust should be increased.

Deliberations

6.3. The Expert Group was informed that certain stakeholders had expressed that they were facing difficulty in relation to appropriation of shares acquired from secondary market by the trust that are not backed by grants within the prescribed time period. The Expert Group further discussed that listed companies would have to complete such appropriation within the prescribed period even where grants lapse due to events such as cessation of employment or non-fulfilment of stipulated performance conditions, and other issues. Accordingly, the Expert Group was of the view that it may be helpful to extend the maximum time period for appropriation of shares that are not backed by grants, by an additional period of one year, provided such extension by an additional year is approved by the Compensation Committee/NRC.

Recommendations

- 6.4. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|--|
| <i>Regulation 3(12): “The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations (ESOP, ESPS and SAR), shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year.”</i> | <i>Regulation 3(12): “The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations (ESOP, ESPS and SAR), shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year, or the second subsequent financial year subject to approval of the compensation committee/nomination and remuneration committee for such extension to the second subsequent financial year.”</i> |

7. Shareholding of trusts

Present framework

- 7.1. Regulation 3(5) of the SBEB Regulations prohibits the trustees of a trust under the SBEB Regulations from voting on shares held by the trust “so as to avoid any misuse arising out of exercising such voting rights”.
- 7.2. Regulation 3 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST Regulations”):

“(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

*.
. .*

Explanation: For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the preallotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.”

- 7.3. Regulation 3(9) of the SBEB Regulations states that: *“For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as ‘non-promoter and non-public’ shareholding. Explanation: For the removal of doubts, it is clarified that shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum*

of twenty-five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957.”

- 7.4. Rule 2(d) of the Securities Contracts (Regulation) Rules, 1957 (“SCRR”) defines “public” to mean “*persons other than – (i) the promoter and promoter group; (ii) subsidiaries and associates of the company. Explanation: For the purpose of this clause the words “promoter” and “promoter group” shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009*”.
- 7.5. Rule 2(e) of the SCRR defines “public shareholding” to mean “*equity shares of the company held by public including shares underlying the depository receipts if the holder of such depository receipts has the right to issue voting instruction and such depository receipts are listed on an international exchange in accordance with the Depository Receipts Scheme, 2014: Provided that the equity shares of the company held by the trust set up for implementing employee benefit schemes under the regulations framed by the Securities and Exchange Board of India shall be excluded from public shareholding*”.

Issue-1

- 7.6. The Expert Group was requested to revisit the restriction under Regulation 3(5) of the SBEB Regulations upon trustees from voting on shares held by trusts under the SBEB Regulations.

Deliberations

- 7.7. Members of the Expert Group were informed that certain stakeholders have suggested that the restriction upon trustees from voting on shares held by the trusts under the SBEB Regulations should be reconsidered, and that trustees should be allowed to vote on such shares since such shares rank *pari-passu* in all respects with other existing shares of the listed company.
- 7.8. The Expert Group noted that the issue has been specifically considered earlier by the SEBI during the formulation of the SBEB Regulations. As noted in the memorandum on “Review of SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999” (“2014 Memorandum”) forming part of the agenda papers for the board meeting of

the SEBI held on June 19, 2014, the SEBI noted that while “Majority of the commentators have argued against the proposal of non-exercise of voting rights on the ground that voting rights, being a statutory right, may not be alienated in case of Trusts... Considering the potential misuse which may arise out of voting rights being exercised by the Trusts funded / managed / controlled by the company, this issue is being further examined from a legal perspective.” This concern of the SEBI had been incorporated into Regulation 3(5) of the SBEB Regulations as well. Accordingly, the Expert Group was of the view that the position of the SEBI was clear and considered, and did not warrant re-evaluation.

Recommendations

- 7.9. Upon deliberations, the Expert Group concluded that no regulatory change is necessary.

Issue-2

- 7.10. Considering the restriction upon trustees from voting on shares held by trusts under the SBEB Regulations, the Expert Group was requested to evaluate whether shareholding of the trust should be considered for the purposes of calculating the percentage of voting rights by an acquirer, to determine whether an open offer would be required under Regulation 3 of the SAST Regulations.

Deliberations

- 7.11. The Expert Group noted that pursuant to the Interpretive Letter dated December 22, 2016 under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in the matter of Capital Trust Limited, the SEBI had expressed the view that “*Since trustees of the ESOP Trust are not entitled to vote in respect of the shares held by such trust, shares proposed to be held by ESOP Trust formed under ESOP scheme will not be taken into account for calculating the percentage of voting rights under the SAST Regulations*”.
- 7.12. However, upon deliberations, the Expert Group was of the view that while trustees are not entitled to vote in relation to shares held by a trust under the SBEB Regulations, given the different policy considerations under the two regulations, these shares held by the trust should be taken into account for the

determination of percentage of voting rights under the SAST Regulations, notwithstanding the earlier informal guidance in the Capital Trust interpretative letter.

Recommendations

7.13. The Expert Group's view is that shares held by the trust should be taken into account for the determination of percentage of voting rights under the SAST Regulations, notwithstanding the earlier informal guidance in the Capital Trust interpretative letter. Accordingly, if required a clarification may be issued by SEBI to the SAST Regulations in this regard.

Issue-3

7.14. The Expert Group was requested to evaluate whether shares held by a trust under the SBEB Regulations should be classified as "public" shareholding for reckoning minimum public shareholding ("MPS") requirements under the SCRR.

7.15. The ESOP shares held by trust are *pari-passu* in all respects with the existing shares of the company and thus carry voting rights. Pursuant to Regulation 3(5) of the SBEB Regulations, until the shares are held with the trust, the trustees cannot vote on behalf of such shares, however, as soon as the shares get transferred to the employees, the employees can vote as any general shareholders of the company. Thus, the shares have voting rights from day of their allotment, but the voting can be done as and when the employees gets those shares.

Deliberations

7.16. The Expert Group deliberated the above. The SBEB Regulations are clear and specifically exclude shares held by such trusts from the definition of "public". The proviso to Rule 2(e) of the SCRR also provides for a similar exclusion. Accordingly, given the specific intent of the SCRR, no further changes were required.

Recommendations

7.17. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

8. Shareholders' approval for variation in schemes

Present framework

8.1. Regulation 3(6) of the SBEB Regulations states that: *“The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).”*

8.2. Regulation 7 of the SBEB Regulations states that:

“(1) The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees: Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.

(2) Subject to the proviso to sub-regulation (1), the company may by special resolution in a general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.

(3) The provisions of regulation 6 shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

(4) The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market: Provided that the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders in general meeting has been obtained for such repricing.”

8.3. Section 11 of the Indian Trusts Act, 1882 states that the objectives of a trust can modified only by the consent of all beneficiaries.

Issue

- 8.4. The Expert Group was requested to evaluate whether any further clarity is required to be provided in respect of the existing provisions for variation of schemes under the SBEB Regulations.

Deliberations

- 8.5. The Expert Group considered that while Regulation 7 of the SBEB Regulations stipulates requirement of shareholders' approval variations to schemes, certain issues are unclear from the provisions in their current form, including the following:
- (a) Whether shareholders' approval would be required for a variation to meet regulatory requirements.
 - (b) Whether shareholders' approval would be required in instances where a pricing formula based on prevailing market price of the shares has been approved as a term of the scheme, and the exercise price changes due to change in such underlying market price.
- 8.6. The Expert Group concluded that the provisions of Regulation 7 may be modified to make clear that while variations in schemes approved under the SBEB Regulations should not be detrimental or prejudicial to the interests of employees and require a special resolution of its shareholders, such requirements would not apply in case of a variation of the scheme for the purposes of meeting any regulatory requirements.
- 8.7. The Expert Group further deliberated on the requirements under Regulation 7 of the SBEB Regulations and Section 11 of the Indian Trusts Act, 1882. The Expert Group concluded that while variations to schemes would be governed under the SBEB Regulations, the provisions of the Indian Trusts Act, 1882 would need to be separately adhered to. Accordingly, no amendment is necessary in this regard.

Recommendations

8.8. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|---|--|
| <p><i>Regulation 7:</i></p> <p><i>“(1) The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees:</i></p> <p><i>Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.</i></p> <p><i>(2) Subject to the proviso to sub-regulation (1), the company may by special resolution in a general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.</i></p> <p><i>(3) The provisions of regulation 6 shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.</i></p> <p><i>(4) The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details</i></p> | <p><i>Regulation 7:</i></p> <p><i>“(1)The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees:</i></p> <p><i>Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements</i></p> <p><i>(1) The company may by special resolution of shareholders of the Company vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.</i></p> <p><i>(2) Subject to the proviso to sub-regulation (1), the company may by special resolution in a general meeting vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.</i></p> <p><i>(2) Notwithstanding the provisions of sub-regulation (1), the company</i></p> |

of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market: Provided that the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders in general meeting has been obtained for such repricing.”

shall be entitled to vary the terms of the schemes to meet any regulatory requirement without seeking shareholders’ approval by special resolution.

(3) The provisions of regulation 6 shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

(4) The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market:

*Provided that the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders **by special resolution** has been obtained for such repricing.”*

9. Compliance by the trust with insider trading regulations

Present framework

9.1. Regulation 3(16) of the SBEB Regulations states that: *“The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the SEBI (Prohibition of Insider Trading) Regulations, 1992 or any modification or re-enactment thereto.”*

Issue

9.2. The Expert Group considered whether any relaxations should be provided to trusts under the SBEB Regulations for purposes of compliance with the requirements prescribed under the PIT Regulations for insiders and promoters.

Deliberations

9.3. The PIT Regulations prescribe various compliance requirements in relation to promoters and insiders, including disclosure requirements, pre-clearance of trades, trading window norms and others. The Expert Group discussed that due to inherent possibilities of misuse of the trust structure by the companies or its promoters, trusts should necessarily be treated at par with insiders and promoters for the purposes of compliance with the PIT Regulations, and no relaxation or waiver should be contemplated in this regard.

9.4. As noted in the 2014 Memorandum, the SEBI had agreed that *“For the sake of transparency and good governance, Trusts shall be subject to disclosure and other requirements applicable to Insiders / Promoters under the SEBI (Prohibition of Insider Trading) Regulations, 1992”*.

Recommendations

9.5. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue. However, reference of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 may be updated in Regulation 3(16) of the SBEB Regulations and all other places.

10. Lock-in of Shares Acquired through Secondary Market

Present framework

- 10.1. Regulation 3(13) of the SBEB Regulations states that: *“The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in clause (b) of sub-regulation (14) of this regulation whether off market or on the platform of stock exchange.”*
- 10.2. Regulation 3(14) of the SBEB Regulations states that: *“The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances: (a) transfer to the employees pursuant to scheme(s); and (b) when participating in open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.”*
- 10.3. Regulation 3(15) of the SBEB Regulations states that: *“The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances: (a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations; (b) on vesting or exercise, as the case may be, of SARs under the scheme covered by Part C of Chapter III of these regulations; (c). in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose - (i). the trustee shall record the reasons for such sale; and (ii). money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed. (d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required; (e).for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided under sub-regulation (12) of this regulation; (f). winding up of the scheme(s); and (g).based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered by Part A or Part B or Part C of Chapter III of these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application 3 [by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker’s cheque or demand draft payable at Mumbai in favour of the Board.”*

Issue

10.4. The Expert Group considered whether in light of the restrictions prescribed under Regulations 3(14) and 3(15) of the SBEB Regulations, lock-in requirements under Regulation 3(13) may be deleted.

Deliberations

10.5. The members of the Expert Group were of the view that one of the underlying principles of the SBEB Regulations was that the trust should not be used as a tool to manipulate the share price of the company. Thus, the Expert Group was of the view that planned acquisitions/sales of shares by trusts and reasonable lock-in requirements were appropriate and should be retained.

Recommendations

10.6. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

11. Disclosure in the explanatory statement under Rule 16(2) of the Companies (Share Capital and Debentures) Rules, 2014

Present framework

11.1. Regulation 3(8) of the SBEB Regulations states that: *“Subject to the requirements of Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).”*

11.2. Regulation 6(1) of the SBEB Regulations states that: *“No scheme shall be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.”*

11.3. Regulation 6(2) of the SBEB Regulations states that: *“The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall include the information as specified by SEBI in this regard.”*

11.4. Pursuant to circular (CIR/CFD/POLICY CELL/2/2015) dated June 16, 2015 (“**2015 Circular**”) issued by the SEBI, the explanatory statement attached to

the notice referred to under Regulation 6(2) of the SBEB Regulations should disclose: *“the amount of loan to be provided for implementation of the scheme(s) by the company to the trust, its tenure, utilization, repayment terms, etc.”*

- 11.5. Rule 16(1) of the Companies (Share Capital and Debenture) Rules, 2014 states that: *“The company shall not make a provision of money for the purchase of shares in the company/ holding company by trustees, if it is for the benefit of the employees of the company, unless it complies with the following conditions, namely:- (a) the scheme of provision of money as aforesaid is approved by the members by passing special resolution in a general meeting;”*
- 11.6. Rule 16(2) of the Companies (Share Capital and Debenture) Rules, 2014 further sets out the disclosure requirements to be included in the explanatory statement attached to the notice convening the general meeting where such special resolution is to be passed, which include, among other things, *“particulars of the trustee or employees in whose favor such shares are to be registered”* and *“particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any”*.

Issue

- 11.7. The Expert Group was informed that practically, it is simpler and administratively more convenient to constitute a trust after the approval from the shareholders has been sought. Accordingly, the Expert Group considered whether it would be appropriate to delete requirement for disclosure of details of trustees and particulars of trust in the explanatory statement attached to the notice for special resolution under Rule 16 of the Companies (Share Capital and Debenture) Rules, 2014.

Deliberations

- 11.8. Keeping in mind practical circumstances, the Expert Group was of the view that it may be more convenient for a company to constitute a trust for the purposes of share-based employee benefit schemes after the receipt of shareholders’ approval. However, this is not possible due to the requirement to disclose details of the trust and trustee are also under the Companies (Share Capital and Debenture) Rules, 2014.

Recommendations

- 11.9. After deliberations, the Expert Group recommended SEBI to review the 2015 Circular to confirm disclosure requirements prescribed in relation to the explanatory statement attached to the notice referred to under Regulation 6(2) of the SBEB Regulations. The SEBI may further consider rationalizing such disclosure requirements such that listed companies are only required to comply with the disclosure requirements prescribed by the SEBI and not also be required to comply with Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014.
- 11.10. The Expert Group also recommended that the SEBI may consider inclusion of the provisions of the 2015 Circular as part of the SBEB Regulations, by way of appropriate schedule(s).

12. Acquisition limit for stock appreciation rights

Present framework

- 12.1. Regulation 3(10) of the SBEB Regulations states that: “*Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.*”
- 12.2. Regulation 3(11) of the SBEB Regulations provides limits for total number of shares held under secondary acquisition in a financial year by trusts.
- 12.3. Explanation 1 to Regulation 3(11) of the SBEB Regulations states that: “*The above limits shall automatically include within their ambit the expanded capital of the company where such expansion has taken place on account of corporate action including issue of bonus shares, split or rights issue.*”
- 12.4. Explanation 4 to Regulation 3(11) of the SBEB Regulations states that: “*In the event that the options, shares or SAR granted under any of the schemes exceeds the number of shares that the trust may acquire through secondary acquisition, then such shortfall of shares shall be made up by the company through new issue of shares to the trust in accordance with the provisions of new issue of shares under the applicable laws.*”

Issue

12.5. The Expert Group considered whether clarity is required in relation to applicability of the limits prescribed under Regulation 3 on the shareholding under secondary acquisition in relation to stock appreciation rights,

Deliberations

12.6. The Expert Group noted that the provisions of Regulation 3(11) (including the Explanations thereto) clearly refer to schemes formulated under the SBEB Regulations, including in relation to stock appreciation rights, and it is understood that trusts administering schemes of stock appreciation rights would need to comply with the limits prescribed thereunder. Accordingly, no further clarification was needed. In this regard, the Expert Group further discussed that while limits have been prescribed under the SBEB Regulations upon the quantum of shares that may be acquired by a trust pursuant to secondary acquisition, similar limits have not been prescribed upon acquisition by way of primary issuance. Upon deliberation, the Expert Group concluded that there are sufficient safeguards under the existing SEBI regulations in relation to a preferential issue of shares, and the prescribed limits upon secondary acquisition of shares by a trust are sufficient. The Expert Group further noted that since the shares held by trusts in any event do not carry voting rights, and further, in light of the MPS requirements prescribed under the SCRR (which excludes shares held by a trust under the SBEB Regulations pursuant to the explanation to Regulation 3(9) of the SBEB Regulations), it would not be necessary to prescribe limits upon shares held pursuant to primary issuance by a trust.

Recommendations

12.7. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

Issue-2

12.8. The Expert Group examined Explanation 1 to Regulation 3(11) to evaluate whether similar to expansion of share capital, the reduction of share capital should also be factored in the calculation of limits of shareholding of trusts under secondary acquisition.

Deliberations

12.9. The Expert Group noted that similar to situations such as bonus issues, where the paid up share capital (and accordingly the shareholding of the trust) of the company increases proportionately, the reduction of capital may also take place due to corporate actions such as buy-backs. The Expert Group was of the view that Explanation 1 to Regulation 3(11) could be suitably amended to clarify the reduction of share capital pursuant to buy-backs or a scheme of arrangement would be covered as well.

Recommendations

12.10. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|---|---|
| Regulation 3(11): “... <i>Explanation 1.- The above limits shall automatically include within their ambit the expanded capital of the company where such expansion has taken place on account of corporate action including issue of bonus shares, split or rights issue.</i> ” | Regulation 3(11): “... <i>Explanation 1.- The above limits shall automatically include within their ambit the expanded or reduced capital of the company where such expansion or reduction has taken place on account of corporate action including issue of bonus shares, split, rights issue, buy-back or scheme of arrangement.</i> ” |

13. Utilisation of trust funds on winding up of scheme

Present framework

13.1. Regulation 8 of the SBEB Regulations provides that: “*In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.*”

Issue

13.2. The Expert Group was requested to evaluate whether funds or shares remaining with a trust upon winding up of a scheme may be utilized for another scheme under the SBEB Regulations.

Deliberations

13.3. The members of the Expert Group were of the view that since the assets of the trust are acquired and earmarked for the benefit of the employees of the company, if any surplus remains with the trust upon winding up, an option for deferring the utilisation of such funds or using it for the benefit of employees through a different scheme under the SBEB Regulations may be considered.

13.4. The members of the Expert Group were of the view that schemes under the SBEB Regulations would be equivalent to distributing the sum to employees. Accordingly, transfer of shares or monies held by such trust upon winding up should be permitted to be transferred to one or more existing share-based employee benefit schemes under the SBEB Regulations, subject to approval of shareholders for such transfer.

Recommendations

13.5. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|---|
| <i>Regulation 8: "In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee."</i> | <i>Regulation 8: "In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees, or, subject to approval of the shareholders, transferred to another scheme under these</i> |

| | |
|--|--|
| | <i>regulations, as recommended by the compensation committee.”</i> |
|--|--|

14. Grants

Present framework

14.1. Regulation 2(1)(n) of the SBEB Regulations defines grant date as: “*the date on which the compensation committee approves the grant*”.

Issue

14.2. The Expert Group was requested to evaluate whether the current definition of “grant date” should be revisited.

Deliberations

14.3. The Expert Group was informed that companies may seek to grant share-based employee benefits wherein the date on which such benefits become effective would be in future, *i.e.*, a date subsequent the date of approval of the grant. Based on prevailing market and employment practices in the relevant industry sector, the company may stipulate such future grant date for various reasons, including to account for the acceptance by the employee of the grant conditions and to enhance employee retention and prescribe performance conditions.

14.4. The Expert Group also considered whether the definition of “grant date” under the SBEB Regulations should be aligned with the definition of the term under applicable accounting standards (which under Ind AS is Ind-AS 102).

14.5. Based on discussions, the Expert Group was of the view that allowing for a future date to be considered as the “grant date” or attempting to align the two definitions under the SBEB Regulations and the applicable accounting standards may lead to confusion in interpretation and implementation. Accordingly, the Expert Group was of the view that no change to the definition under the SBEB Regulations was required.

14.6. However, given that accounting standards have a specific definition of the term “grant date” (whether or not benefits are granted in future) and this impacts the financial statements of the listed entity, the members of the Expert

Group were of the view that a clarification may be included in the definition of “grant date” under the SBEB Regulations that for accounting purposes, the grant date will be determined in accordance with applicable accounting standards.

Recommendations

14.7. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|---|
| <i>Regulation 2(1)(n): ““grant date” means the date on which the compensation committee approves the grant;”</i> | <p><i>Regulation 2(1)(n): ““grant date” means the date on which the compensation committee approves the grant;</i></p> <p><i>Note: It is clarified that for accounting purposes, the grant date will be determined in accordance with applicable accounting standards;”</i></p> |

15. Vesting

Present framework

15.1. Regulation 18(1) of the SBEB Regulations states that: “*There shall be a minimum vesting period of one year in case of ESOS...*”.

15.2. Regulation 9(4) of the SBEB Regulations states that: “*In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee...*”

15.3. Regulation 9(6) of the SBEB Regulations states that: “*In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire... ”.*

Issue-1

15.4. The Expert Group was requested to evaluate whether in case of death or permanent incapacity of the employee during the first year from date of grant, the granted benefits would vest in the legal heirs or nominees on the date of death/permanent incapacity itself, or whether the minimum vesting period of one year would be applicable even after death or permanent incapacity. The Expert Group further was requested to evaluate whether in such cases, listed companies could permit vesting of only such granted benefits that are in proportion to the period of service, and not all granted benefits.

Deliberations

- 15.5. The Expert Group discussed that the SEBI could take a more lenient view in the special circumstances of death or permanent incapacity, and permit vesting immediately in such circumstances.
- 15.6. The term “permanent incapacity” has not been defined under the SBEB Regulations and it is left to the listed company to frame an appropriate policy and definition, subject to compliance with applicable labour laws.

Recommendations

- 15.7. Upon deliberations, the Expert Group recommended that the SEBI consider amendment to the SBEB Regulations to clarify that the minimum vesting period of one year would not apply in case of death or permanent incapacity, and that in such instances, the vesting of options occur on the date of death or permanent incapacity. Further, the listed entity may frame an appropriate policy and definitions, subject to compliance with applicable labour laws.
- 15.8. The Expert Group accordingly recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|---|
| <i>Regulation 9(4): “In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall</i> | <i>Regulation 9(4): “(4) In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest, with effect from the date of</i> |

| | |
|---|--|
| <p><i>vest in the legal heirs or nominees of the deceased employee.”</i></p> | <p><i>death, in the legal heirs or nominees of the deceased employee.”</i></p> |
| <p><i>Regulation 18(1): “There shall be a minimum vesting period of one year in case of ESOS:</i></p> <p><i>Provided that in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.”</i></p> | <p><i>Regulation 18(1): “There shall be a minimum vesting period of one year in case of ESOS:</i></p> <p><i>Provided that in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.</i></p> <p><i>Provided further that in the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and in such instances, the options shall vest on the date of death or permanent incapacity. In this regard, a company shall frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to compliance with applicable labour laws.”</i></p> |
| <p><i>Regulation 24(1): There shall be a minimum vesting period of one year in case of SAR scheme:</i></p> <p><i>Provided that in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which</i></p> | <p><i>Regulation 24(1): There shall be a minimum vesting period of one year in case of SAR scheme:</i></p> <p><i>Provided that in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which</i></p> |

has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.”

has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.

Provided further that in the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and in such instances, the options shall vest on the date of death or permanent incapacity. In this regard, a company shall frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to compliance with applicable labour laws.”

Issue-2

15.9. The Expert Group was requested to evaluate whether there was a need to clarify that the provisions of Regulation 9(6) would apply to cessation of employment due to retirement, superannuation, closure of business, layoffs or similar measures.

Deliberations

15.10. The Expert Group was of the view that the provisions of Regulation 9(6) of the SBEB Regulations would be applicable in case of cessation of employment due to closure of business, layoffs or similar measures. However, upon discussions, the Expert Group agreed that cessation of employment due to retirement or superannuation would not be covered by Regulation 9(6) of the SBEB Regulations and such options, SAR or any other benefits granted to an employee would continue to vest in accordance with their respective vesting schedules even after retirement or superannuation in accordance with

company policies and applicable law. The Expert Group recommended that a clarification to the extent of the above may be issued in such Regulation.

Recommendations

15.11. Upon deliberations, the Expert Group recommended the following clarification to Regulation 9(6) of the SBEB Regulations:

| Current Provision in the SBEB Regulations | Proposed Changes |
|---|--|
| <p><i>Regulation 9(6): “In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire:</i></p> <p><i>Provided that an employee shall, subject to the terms and conditions formulated by the compensation committee under the sub-regulation (3) of regulation 5, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.”</i></p> | <p><i>Regulation 9(6): “In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire:</i></p> <p><i>Provided that an employee shall, subject to the terms and conditions formulated by the compensation committee under the sub-regulation (3) of regulation 5, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.</i></p> <p><i>It is clarified that cessation of employment due to retirement or superannuation would not be covered by this sub-regulation and such options, SAR or any other benefits granted to an employee would continue to vest in accordance with their respective vesting schedules even after retirement or superannuation in accordance with company policies and applicable law.”</i></p> |

16. Cashless Exercise

Present framework

- 16.1. Regulation 3(15) of the SBEB Regulations states that: *“The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:
(a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations;...”*
- 16.2. Regulation 9(2) of the SBEB Regulations states that: *“No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc.: Provided that in case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.”*

Issue – 1

- 16.3. Whether the term “cashless exercise” needs to be clarified under Regulations 3(15) and 9(2) of the SBEB Regulations. Also, it was noted that an employee stock option scheme involves the payment of consideration to acquire shares; however in case of stock appreciation right, the employee is given cash (not shares) representing the value of the stock appreciation right.

Deliberations

- 16.4. The members of the Expert Group were of the view that since the term “cashless exercise” was not specifically defined under the SBEB Regulations, it would be helpful to include language to clarify the process pursuant to which cashless exercise may be undertaken under Regulations 3(15) and 9(2) of the SBEB Regulations.

Recommendations

- 16.5. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|---|---|
| <p><i>Regulation 3(15): “The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:</i></p> <p><i>(a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations;...”</i></p> | <p><i>Regulation 3(15): “The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:</i></p> <p><i>(a). to enable the employee to fund the payment of the exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations; ...”</i></p> |
| <p><i>Regulation 9(2): “No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc.:</i></p> <p><i>Provided that in case of ESOS or SAR, under cashless exercise, the company may itself fund or permit the empanelled stock brokers to fund the payment of exercise price which shall be adjusted against the sale proceeds of some or all the shares, subject to the provisions of the applicable law or regulations.”</i></p> | <p><i>Regulation 9(2): “No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc.:</i></p> <p><i>Provided that in case of ESOS or SAR, and subject to applicable law or regulations under cashless exercise, the company or the trustee may itself fund or permit the empanelled stock brokers to make suitable arrangements to fund the employee for payment of exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS or SAR which amount shall be adjusted against the sale proceeds of some or all the shares of</i></p> |

| | |
|--|--|
| | <i>such employee, subject to the provisions of the applicable law or regulations.”</i> |
|--|--|

17. Approval for shares acquired by trust through secondary market acquisition

Present framework

17.1. Regulation 10 of the SBEB Regulations states that: “*In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions:... (b). A statement as specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges;*”

Issue

17.2. The Expert Group was requested to evaluate whether there is any necessity to introduce a requirement for any approval from the stock exchange for acquisition by a trust of shares pursuant to secondary acquisition.

Deliberations

17.3. The Expert Group was of the view that sufficient safeguards in respect of scheme to be implemented through trust route were already in place in the SBEB Regulations, including in relation to secondary market acquisition of shares by the trust. Further, since secondary acquisition of shares by the trust would not be considered as new shares, thus, no further stipulation was required to be introduced in this regard.

Recommendations

17.4. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

18. Certificate from Auditors

Present framework

- 18.1. Regulation 13 of the SBEB Regulations states that: *“In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.”*
- 18.2. Regulation 12(6) of the SBEB Regulations states that: *“The company shall appoint a registered merchant banker for the implementation of schemes covered by these regulations till the stage of obtaining in-principle approval from the stock exchanges in accordance with clause (b) of regulation 10.”*
- 18.3. Regulation 24A of the LODR Regulations: *“Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.”*

Issue

- 18.4. The Expert Group considered whether the term “auditors” in Regulation 13 should refer to a statutory auditor, internal auditor or secretarial auditor.

Deliberations

- 18.5. The Expert Group was of the view that a clarification may be provided as to whether such certificate should be provided by the statutory auditor, internal auditor or secretarial auditor.
- 18.6. The Expert Group further considered whether this certificate can be procured from the registered merchant banker appointed for the implementation of schemes under Regulation 12(6) of the SBEB Regulations.
- 18.7. The Expert Group, upon discussions, agreed that the secretarial auditor (being an independent practising company secretary) was more conversant with these laws compared to other categories of persons, and it is the secretarial auditor that is required under Regulation 24A of the LODR Regulations, to furnish a secretarial audit report on an annual basis. Accordingly, the audit certificate referred to under Regulation 13 should be procured from such secretarial auditor. The Institute of Company Secretaries of India has also sent a specific

request letter to the SEBI dated January 25, 2021, requesting the SEBI to authorise company secretaries in practice to provide the applicable certification under Regulation 13 of the SBEB Regulations.

Recommendation

18.8. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|---|
| <p><i>Regulation 13: “In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.”</i></p> | <p><i>Regulation 13: “In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the secretarial auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.”</i></p> |

18.9. The Expert Group further recommended that a similar amendment may be made to the other regulations of the SBEB Regulations and the Sweat Equity Regulations, as applicable.

19. Pricing of employee stock option schemes

Present framework

19.1. Regulation 17 of the SBEB Regulations states that: “*The company granting option to its employees pursuant to ESOS has the freedom to determine the exercise price subject to conforming to the accounting policies specified in regulation 15.*”

Issue

19.2. The Expert Group was requested to evaluate whether any pricing guidelines or disclosure requirements should be stipulated in relation to determination of exercise price.

Deliberations

19.3. The Expert Group noted that in their current form, the SBEB Regulations do not stipulate any guidelines or restrictions as to the exercise price determined by the company. The members of the Expert Group were informed that certain companies adopt an exercise price methodology wherein the board of directors or compensation committee is empowered to set the exercise price at a future date.

19.4. The members of the Expert Group were further informed that certain companies do not adequately disclose the methodology for determining the exercise price to the shareholders of the company while seeking their approval. Accordingly, the shareholders may not be aware of the actual benefit to be passed on to the employee, i.e., the capitalization of profits of the company, which could otherwise be available for distribution to the existing shareholders. The Expert Group considered that this may result in minority shareholders voting against such schemes.

19.5. However, after discussions, the Expert Group agreed that companies should have the flexibility to decide the exercise price, including by way of empowering their respective boards of directors/compensation committees to set the exercise price based on prevailing business requirements and industry practice, provided that adequate disclosures were made to the shareholders, while obtaining their approval.

Recommendations

19.6. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

20. Managerial Remuneration

Present framework

- 20.1. The SBEB Regulations do not prescribe any requirements in relation to recognition of employee stock options as managerial remuneration.
- 20.2. Sub-clause (i) of Rule 3(8) of the Income-tax Rules, 1962 states that: *“For the purposes of sub-clause (vi) of clause (2) of section 17, the fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in accordance with the provisions of clause (ii) or clause (iii).”* Sub-clause (ii) of Rule 3(8) of the Income-tax Rules, 1962 relates to calculation of the fair market value where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, and sub-clause (iii) of Rule 3(8) of the Income-tax Rules, 1962 relates to calculation of fair market value if, on the date of the exercising of the option, the share is not listed on a recognized stock exchange.

Issue

- 20.3. The Expert Group was requested to evaluate whether there is any need for a clarification in the SBEB Regulations as to when employee stock options should be recognized as managerial remuneration. Also, whether Regulation 17(6)(ca) of the LODR Regulations requires to be amended to clarify that remuneration excludes the perquisite value attributable on account of an exercise of stock options.

Deliberations

- 20.4. The members of the Expert Group noted that employee stock options are taken as a part of managerial remuneration. However, the method of calculation of such managerial remuneration is subject to the Companies Act and tax and accounting matters, and the method of calculation of employee stock remuneration should not be further legislated by the Expert Group.
- 20.5. On changes to Regulation 17(6)(ca) of the LODR Regulation, the Expert Group was of the view that since this impacts employee stock options granted only to non-executive directors (and non-executive directors that are either independent directors or promoters are not eligible to acquire stock options), no change to the SBEB Regulations was required at this stage.

Recommendations

20.6. No changes were recommended. Any changes to the definition of “remuneration” can be discussed separately with the Ministry of Corporate Affairs and other applicable authorities.

21. Corporate Actions

Present framework

21.1. Regulation 12(2) of the SBEB Regulations states that: *“No change shall be made in the terms of options or shares or SAR issued under such pre-IPO schemes, whether by repricing, change in vesting period or maturity or otherwise unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions made in accordance with these regulations.”*

Issue

21.2. The members of the Expert Group were requested to evaluate whether the term “corporate actions” should be defined to specify the corporate actions contemplated under Regulation 12(2) of the SBEB Regulations, and to consider whether any standard forms of adjustments should be prescribed for such corporate actions.

Deliberations

21.3. The Expert Group noted that while the SBEB Regulations require suitable adjustments to be made for employee stock options that have not been exercised, in case of corporate actions, the actions that may be covered have not been specified, such as bonus issue, consolidation or split of share capital, buyback, sale of division and mergers. Furthermore, the format of adjustments to be made in connection with such corporate actions has not been provided.

21.4. The members of the Expert Group also discussed the possibility of such adjustments resulting in holding of shares by a trust that may or may not be backed by grants.

21.5. After discussions, the Expert Group was of the view that there was sufficient clarity as to what corporate actions were contemplated under Regulation 12(2)

of the SBEB Regulations as well as the corresponding adjustments that would be required in such cases.

Recommendations

21.6. Upon deliberations, the Expert Group did not recommend any change to the SBEB Regulations on this issue.

22. Employee Stock Purchase Schemes

Present framework

22.1. Regulation 6(2) of the SBEB Regulations states that: *“The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall include the information as specified by SEBI in this regard.”*

22.2. Regulation 10 of the SBEB Regulations states that: *“In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions:... (b). A statement as specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges;”*

Issue

22.3. The Expert Group was requested to evaluate whether given the unique nature of employee stock purchase schemes, disclosure requirements in relation to such schemes should be provided in the SBEB Regulations should be enhanced.

Deliberations

22.4. The Expert Group noted that disclosure requirements in relation to schemes under the SBEB Regulations are currently prescribed under the 2015 Circular.

22.5. The Expert Group has separately, at Paragraph 11.10, suggested the inclusion of the 2015 Circular as part of the SBEB Regulations. The Expert Group further discussed that prescribed requirements under the 2015 Circular in this regard may be enhanced to include certain additional disclosure requirements.

Recommendation

22.6. Upon deliberations, the Expert Group recommended the following amendments in the 2015 Circular for the consideration of the SEBI.

| Current Provision in the 2015 Circular | Proposed Changes |
|--|--|
| <p><i>Regulation 6(2) - Contents of the explanatory statement to the notice and resolution for shareholders meeting</i></p> <p><i>The explanatory statement to the notice and the resolution proposed to be passed for the schemes in general meeting shall, inter alia, contain the following information: ...</i></p> <p><i>b. the total number of options, SARs, shares or benefits, as the case may be, to be granted;</i> ...</p> <p><i>g. exercise period and process of exercise;</i> ...</p> <p><i>i. maximum number of options, SARs, shares, as the case may be, to be issued per employee and in aggregate;</i> ..."</p> | <p><i>Regulation 6(2) - Contents of the explanatory statement to the notice and resolution for shareholders meeting</i></p> <p><i>The explanatory statement to the notice and the resolution proposed to be passed for the schemes in general meeting shall, inter alia, contain the following information: ...</i></p> <p><i>b. the total number of options, SARs, shares or benefits, as the case may be, to be offered and granted;</i> ...</p> <p><i>g. exercise period/offer period and process of exercise/acceptance of offer;</i> ...</p> <p><i>i. maximum number of options, SARs, shares, as the case may be, to be offered and issued per employee and in aggregate;</i> ...</p> <p><i>r. period of lock-in”</i></p> |

23. Sweat Equity Shares

Present framework

- 23.1. Regulation 4 of the Sweat Equity Regulations states that: *“A company whose equity shares are listed on a recognized stock exchange may issue sweat equity shares in accordance with Section 79A of Companies Act, 1956 and these Regulations to its – (a) Employees; (b) Directors.”*
- 23.2. Rule 8(1) of the Companies (Share Capital and Debentures) Rules, 2014 states that: *“A company other than a listed company, which is not required to comply with the Securities and Exchange Board of India Regulations on sweat equity, shall not issue sweat equity shares to its directors or employees at a discount or for consideration other than cash, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called, unless the issue is authorised by a special resolution passed by the company in general meeting.”*
- 23.3. Rule 8(4) of the Companies (Share Capital and Debentures) Rules, 2014 states that: *“The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher: Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.”*
- 23.4. Regulation 12(1) of the Sweat Equity Regulations states that: *“The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.”*
- 23.5. Regulation 7(1) of the Sweat Equity Regulations states that: *“The price of sweat equity shares shall not be less than the higher of the following: (a) the average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or (b) the average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.”*
- 23.6. Regulation 164 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR

Regulations”) prescribes pricing requirements for preferential issue of equity shares.

Issue – 1

23.7. The Expert Group was requested to evaluate whether the Sweat Equity Regulations should specify the purposes/objectives for which issuance of sweat equity shares should be permitted.

Deliberations

23.8. The members of the Expert Group noted that the Sweat Equity Regulations do not specify permissible purpose/objective for issuance of sweat equity shares, as are provided under the Companies (Share Capital and Debentures) Rules, 2014 (applicable only to unlisted companies). Since the purpose of issuance is not provided, the members of the Expert Group were of the view that listed companies may be unclear as to whether issuance of sweat equity shares is entirely discretionary or permitted only for certain purposes/objectives. The members of the Expert Group accordingly were of the view that the Sweat Equity Regulations should be modified to include permitted purpose/objective for issuance of sweat equity shares that may be made consistent with the current provisions of the Companies (Share Capital and Debentures) Rules, 2014. However, reference of Section 79A of Companies Act, 1956 may be updated in Regulation 4 of the Sweat Equity Regulations and all other places.

Recommendation

23.9. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the Sweat Equity Regulations | Proposed Changes |
|---|---|
| <i>Regulation 4: “A company whose equity shares are listed on a recognized stock exchange may issue sweat equity shares in accordance with Section 79A of Companies Act, 1956 and these</i> | <i>Regulation 4: “A company whose equity shares are listed on a recognized stock exchange may issue sweat equity shares in accordance with Section 79A 5479A of Companies Act, 20131956 and these Regulations to its – (a) Employees;</i> |

Regulations to its – (a) Employees; (b) Directors.”

(b) Directors, for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.”

Issue-2

23.10. The Expert Group was requested to evaluate whether the Sweat Equity Regulations should specify a maximum limit upon the quantum of sweat equity shares that may be issued by a company.

Deliberations

23.11. The members of the Expert Group noted that the Sweat Equity Regulations do not specify a maximum limit on the quantum of sweat equity shares that may be issued by a company. This is provided under the Companies (Share Capital and Debentures) Rules, 2014 (applicable only to unlisted companies). The members of the Expert Group accordingly were of the view that the Sweat Equity Regulations may be modified to include maximum limit upon the quantum of sweat equity shares that may be issued by a company.

Recommendation

23.12. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the Sweat Equity Regulations | Proposed Changes |
|--|---|
| - | <i>Introducing new Regulation 4A: “The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher: Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the</i> |

| | |
|--|--|
| | <p><i>paid up equity capital of the Company at any time.</i></p> <p><i>Provided further, for the companies listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid up equity share capital in a financial year subject to overall limit not exceeding fifty percent of the paid up equity capital of the company, up to ten years from date of its incorporation or registration”</i></p> |
|--|--|

Issue-3

23.13. The members of the Expert Group were requested to evaluate whether the lock-in requirements under the Sweat Equity Regulations need to be removed.

Deliberations

23.14. The members of the Expert Group considered that the lock-in period of 3 (three) years under the Sweat Equity Regulations may adversely impact the attractiveness of sweat equity shares. Accordingly, the Expert Group was of the view that the lock-in period for equity shares issued under the Sweat Equity Regulations should be consistent with the lock-in period prescribed in relation to preferential issue under the ICDR Regulations. Further, reference of Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 may be updated in Regulation 12 of the Sweat Equity Regulations and all other places.

Recommendation

23.15. Upon deliberations, the Expert Group recommended the following amendments in the Sweat Equity Regulations for the consideration of the SEBI.

| Current Provision in the Sweat Equity Regulations | Proposed Changes |
|--|-------------------------|
|--|-------------------------|

| | |
|--|---|
| <p>“12.(1) The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.”</p> | <p>“12.(1) The Sweat Equity shares shall be locked in for such a period of time <i>as prescribed in relation to a preferential issue under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended from time to time.</i> from the date of allotment.”</p> |
|--|---|

Issue-4

23.16. The Expert Group was requested to revisit the pricing requirements prescribed under the Sweat Equity Regulations and make its recommendations thereon.

Deliberations

23.17. The members of the Expert Group were of the view that issuance of sweat equity shares should be treated consistently with preferential allotment in terms of pricing. Accordingly, the pricing formula prescribed under the ICDR Regulations may be considered for pricing of sweat equity shares as well.

Recommendation

23.18. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| <p>Current Provision in the Sweat Equity Regulations</p> | <p>Proposed Changes</p> |
|--|---|
| <p><i>Regulation 7(1): “The price of sweat equity shares shall not be less than the higher of the following: (a) the average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or (b) the average of the weekly high</i></p> | <p><i>Regulation 7(1): “The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and</i></p> |

and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.”

*Disclosure Requirements)
Regulations, 2018 not be less than the higher of the following: (a) the average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or (b) the average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.”*

Issue-5

23.19. The Expert Group was requested to evaluate the advisability of combining the SBEB Regulations and the Sweat Equity Regulations.

Deliberations

23.20. The members of the Expert Group discussed that this issue forms part of the terms of reference of the Expert Group. Accordingly, the Expert Group discussed this proposal and agreed that a combined draft of the SBEB Regulations and the Sweat Equity Regulations may be prepared. Such combined regulations would be in the current form of the SBEB Regulations, with the provisions pertaining to sweat equity shares being incorporated as a separate chapter. The 2015 Circular would be incorporated as a schedule to the combined draft with certain changes for consistency with the recommendations of the Expert Group. Further, some of the common defined terms under the Sweat Equity Regulations and the SBEB Regulations, such as “employee”, “ESOS” and “promoter” would need to be aligned in the combined regulations. The Expert Group also considered deletion of certain provisions of the SBEB Regulations and the Sweat Equity Regulations that granted transition periods to companies for compliance where such transition periods have expired.

Recommendations

23.21. After deliberations, the Expert Group prepared a draft of the proposed combined regulations, with other amendments as discussed hereinabove

(annexed hereto as **Annexure-I**), which may be considered by the SEBI for review.

24. Issues relating to Depository Receipt Scheme (DR Scheme)

Present framework

24.1. The SEBI, pursuant to circular no. SEBI/HO/MRD/DOP1/CIR/P/2019/106 dated October 10, 2019, had provided a “*Framework for issue of Depository Receipts*” (“DR Circular”).

24.2. Paragraph 2.15 of the DR Circular:

“Permissible holder means a holder of DR, including its Beneficial Owner(s), satisfying the following conditions:

- (a) who is not a person resident in India;*
- (b) who is not a Non-Resident Indian (NRI)...*”

Issue

24.3. The Expert Group was requested to evaluate whether the existing provisions of the DR Circular should be amended to permit issuance of depository receipts to NRIs pursuant to grant of employee stock options.

Deliberations

24.4. The Expert Group was informed that the SEBI had issued circular dated December 18, 2020 which introduced the following proviso to Paragraph 2.1.5: “*Provided that the restriction under this Clause shall not apply in case of issue of DRs to NRIs, pursuant to share based employee benefit schemes which are implemented by a company in terms of SEBI (Share Based Employee Benefits) Regulations 2014*”.

Accordingly, the issue has been separately addressed.

25. Rationalising multiple approval process

Present framework

25.1. Regulation 10 of the SBEB Regulations states that: *“In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions:... (b). A statement as specified by SEBI in this regard, is filed and the company has obtained an in-principle approval from the stock exchanges;”*

25.2. Regulation 12(3) of the SBEB Regulations states that: *“For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares.”*

Issue

25.3. The members of the Expert Group noted that currently, listed companies are required to take multiple approvals from stock exchanges at different points of time during the life-cycle of employee stock options. Such approvals are:

- a) in-principle approval from stock exchanges under Regulation 10(b) at the time of instituting the scheme;
- b) in-principle approval for adjustment to the number of options due to corporate action by way of bonus or otherwise; credit of shares with depositories for every exercise of employee stock options/allotment of shares; and
- c) listing and trading approval every time an employee exercises options and shares are allotted.

25.4. The Expert Group was requested to evaluate whether the process of approvals required from stock exchanges in relation to employee stock options may be further simplified.

Deliberations

25.5. The members of the Expert Group were informed that in stock exchanges in certain jurisdictions, composite approvals are provided wherein one approval for listing of shares is received and the company is not required to make separate listing applications each time there is an issue of new shares upon exercise of the employee stock option.

- 25.6. The members of the Expert Group agreed that it may be suggested to the SEBI that wherever feasible, multiple approvals may be combined into composite approvals so as to reduce the burden of making multiple applications to stock exchanges, in the interest of efficiency. For instance, the Expert Group noted that stock exchanges receive the credit confirmation directly from the depositories for any allotments, based on which, the stock exchanges may directly notify listing and trading approval for such shares. Accordingly, separate approvals from the stock exchanges for credit of shares with depositories for each exercise of an option and allotment of a share and listing and trading approvals may be done away with or continued.
- 25.7. The Expert Group agreed, based on feedback from a stock exchange, that it should be clarified that the in-principle approval of the stock exchanges as contemplated under Regulation 12(3) of the SBEB Regulations should be obtained prior to the grant of the options, and not at the time of allotment of shares pursuant to exercise of such options. Seeking in-principle approval of the stock exchanges only prior to the allotment (after there has been a grant and exercise of an option) is not helpful from an employee or regulatory perspective if allotment is delayed or deferred because of non-receipts of such approval as the regulator may determine that the listed entities are non-compliant or the scheme is not in accordance with SBEB Regulations. To avoid such scenario, in-principle approval from the stock exchanges should be obtained prior to the grant of options under the ESOP Scheme.
- 25.8. Further, the members of the Expert Group deliberated on the approval process of the stock exchanges for ESPS, sweat equity shares and ESOP. Based on feedback from a stock exchange, while the approval process for ESPS and sweat equity shares involves three steps of approval (i.e. in-principle approval, listing approval and trading approval), the process for approval of ESOP involves only two steps (in-principle approval and trading approval). Accordingly, the Expert Group was of the view that the approval processes for each of ESPS, sweat equity shares and ESOP should be aligned and limited to two steps, i.e., in-principle approval and trading approval.

Recommendations

- 25.9. After deliberations, the Expert Group recommended that the current approval process from stock exchanges in relation to employee stock options to require only in-principle approval at the time of instituting the scheme and prior to the grant of the options, and for deemed approval to be applicable for credit

of shares with depositories for each exercise of an option and allotment of shares and listing and trading approvals for shares issued pursuant to a scheme under the SBEB Regulations. Also, when seeking in-principle approval for a corporate action, e.g., bonus issuance, the applicant company can seek approval for the impact on the stock options as a result of such corporate action such that the in-principle approval covers approval to take into account the impact on exercise of a stock option.

25.10. The Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI

| Current Provision in the Sweat Equity Regulations | Proposed Changes |
|---|---|
| <i>Regulation 12(3): “For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares.”</i> | <i>Regulation 12(3): “For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares prior to the grant of options / SARs.”</i> |

25.11. The Expert Group also recommended that the stock exchanges make the approval processes for ESOS, sweat equity shares and ESOP uniform and limit the process to in-principle approval and trading approval.

26. Whether a company is allowed to pay in cash for the stock options granted to its employees (i.e. buyback the stock options)

Present framework

26.1. Section 68(5) of the Companies Act, 2013: “*The buy-back under sub-section (1) may be—...(c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.*”

26.2. Regulation 2(1)(n) of the Securities and Exchange Board of India (Buy-back of Securities) Regulations 2018 (“Buy-back Regulations”) includes stock options within the definition of “specified securities”.

Issue

26.3. The Expert Group noted that pursuant to the Interpretive Letter dated February 27, 2009 under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in the matter of Natco Pharma Limited, the SEBI was of the view that *“ESOS essentially envisages allotment of shares to eligible employees by a listed company against exercise of employee stock options vested in such employees in terms of the ESOS. In view of the above, Natco Pharma Limited cannot pay cash equivalent to its employees under the SEBI (ESOS & ESPS) Guidelines.”* Accordingly, the Expert Group was requested to evaluate permissibility of buy-back of stock options.

Deliberations

26.4. The members of the Expert Group noted that the SEBI had clarified that its views in the Natco Informal Guidance are *“only with respect to the interpretation of SEBI (ESOS and ESPS) Guidelines, 1999 and does not affect applicability of any Act, Rules or Regulations, Guidelines and Circulars administered by SEBI or any other authority or the provisions of the rules, regulations and bye laws or Listing Agreement of the stock exchange”*. However, the Companies Act, 2013 and the Buy-back Regulations both contemplate buy-back of employee stock options without providing a framework.

26.5. The Expert Group further noted that while the Buy-back Regulations contains specific provisions with respect to buy-back of equity shares, they do not provide a defined framework for buy-back of stock options.

26.6. The Expert Group discussed the following:

- since stock options are ultimately result into shares, the general conditions for buy-back provided under Chapter II of the Buy-back Regulations, to the extent applicable, should be complied with by listed companies undertaking buy-back of stock options as well;
- however, since stock options are held by employees, and are not listed and traded on the stock exchanges, the permissible modes of undertaking buy-back under the Buy-back Regulations, i.e., tender offer through stock exchange mechanism, open market, and from odd-lot holders, would not be applicable; and

- furthermore, since stock options may be settled without being exercised by various means, including by way of cash disbursements in lieu of exercise, or settled by way of processes similar to cashless exercise, the Expert Group discussed that rather than setting out a framework requiring all listed companies to follow a standard procedure in this regard, it would be more meaningful for the procedures and terms and conditions applicable to any buy-back of stock options to be included in the scheme itself, and approved by the compensation committee and the shareholders of the listed company. The Expert Group noted that the 2015 Circular sets out the detailed terms and conditions to be included in schemes. The Expert Group has separately, at Paragraph 11.10, suggested the inclusion of the 2015 Circular as part of the SBEB Regulations.

26.7. The members of the Expert Group noted that, if as a result of a regulatory requirement, a listed company is unable to issue shares upon exercise of a stock option, such company should be given the option to settle the stock options in cash upon exercise, provided however, such option to settle in cash is already part of the stock option plan approved by the shareholders. However, if the plan approved by the shareholders does not include an option for such cash settlement, the listed company would require the approval of the shareholders.

Recommendations

26.8. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the 2015 Circular | Proposed Changes |
|---|---|
| <i>Regulation 5(3) - Terms and Conditions of schemes to be formulated by the Compensation Committee: “The Compensation Committee is required to formulate the detailed terms and conditions of the schemes which shall, inter alia, include the following provisions: ...</i> | <i>Regulation 5(3) - Terms and Conditions of schemes to be formulated by the Compensation Committee: “The Compensation Committee is required to formulate the detailed terms and conditions of the schemes which shall, inter alia, include the following provisions: ...</i> |

| | |
|--|--|
| <p><i>j. the procedure for cashless exercise of options / SARs.”</i></p> | <p><i>j. the procedure for funding the exercise of options / SARs.</i></p> <p><i>k. the procedure for buy-back of options, if to be undertaken at any time by the company, and the applicable terms and conditions, including: (i) permissible sources of financing for buy-back of options; (ii) any minimum financial thresholds to be maintained by the company as per its last financial statements; and (iii) limits upon quantum of stock options that the company may buy-back in a financial year.”</i></p> |
|--|--|

27. General Employee Benefits Scheme

Present Framework

27.1. Regulation 26(2) of the SBEB Regulations states that: “At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.”

Issue

27.2. The Expert Group was requested to consider whether the threshold of 10% of the book value/market value/fair value of total assets for general employee benefits schemes should continue to be considered on an ongoing basis.

Deliberations

27.3. The members of the Expert Group noted that while Regulation 26(2) of the SBEB Regulations states that such threshold should “at no point in time” be exceeded, practically, this approach may not be feasible due to fluctuating share prices, and that it would be helpful to delete the words “at no point in

time” so that it is clear that these metrics are measured as on the date of the balance sheet. Accordingly, the Expert Group was of the view that Regulation 26(2) of the SBEB Regulations be amended appropriately.

Recommendation

27.4. Upon deliberations, the Expert Group recommended the following amendments in the SBEB Regulations for the consideration of the SEBI.

| Current Provision in the SBEB Regulations | Proposed Changes |
|--|--|
| <p><i>Regulation 26(2): “At no point in time, the shares of the company or shares of its listed holding company shall exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.”</i></p> | <p><i>Regulation 26(2): “At no point in time, The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of GEBS. Further, the secretarial auditor of the company shall certify compliance with this provision at the time of adoption of such balance sheet by the company.”</i></p> |

27.5. The Expert Group also recommended that a similar amendment may be made to Regulation 27 of the SBEB Regulations.

28. Exempting exercise of employee stock options for the purpose of Regulation 17(6)(ca) of the ESOP Regulations

Present Framework

28.1. Regulation 17(6)(ca) of the LODR Regulations requires approval of shareholders by way of special resolution in which the annual remuneration payable to a single non-executive director exceeds 50% of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.

Issue

28.2. Though Regulation 17(6)(c) of the LODR Regulations requires maximum number of options that can be granted to a non-executive Director to be specified in the approval of the shareholders, post such grant and upon exercise if the annual remuneration payable to a single non-executive director exceeds 50% cent of the total annual remuneration payable to all non-executive directors in any financial year in aggregate, fresh shareholders' approval shall be required. The Expert Group was requested to consider whether a clarification can be provided stating that Regulation 17(6)(ca) will not be applicable for grant or exercise of stock options.

Deliberations

28.3. The Expert Group discussed that the requirements under Regulation 17(6)(c) of the LODR Regulations. Once the maximum number of grants are approved by the shareholders, no further approval of the shareholders would be required at the time of exercise by a non-executive director (chairman in certain cases) of the employee stock options at a future date, unless the perquisite value of employee stock options cross more than 50% of the total remuneration payable to all other non-executive directors. Since the perquisite value is a derivative of market price, it may be difficult to monitor the prescribed limits on an ongoing basis, and if the stock price increases, it may require another shareholder approval.

28.4. The Expert Group noted that the requirements prescribed under the LODR Regulations under Regulation 17(6) extend to options as well that are granted under the SBEB Regulations. Since this is a LODR Requirement, the Expert Group was of the view that no regulatory change should be prescribed to the SBEB Regulations. Also, such approach on the requirement for a shareholders approval at the time of grant, and not exercise (with the exception as set out in the LODR Regulations) was also aligned with the "grant date" model prescribed under Ind-AS 102 of the Indian Accounting Standards.

Recommendations

28.5. Upon deliberations, the Expert Group did not recommend any change on this issue.

29. Exercise of options and allotment of equity shares for a listed entity yet to achieve compliance with minimum public shareholding

Issue

29.1. Based on feedback from a stock exchange, the Expert Group was requested to consider whether option holders should be permitted to exercise and have allotted equity shares for the options granted to them prior to and after an initial public offering of a listed entity that is yet to achieve its MPS in compliance with Regulation 38 of the LODR Regulations, read with Rule 2(e), Rule 19(2)(b) and Rule 19A of the SCRR and circulars dated November 30, 2015 and February 22, 2018 issued by the SEBI.

Deliberations

29.2. The Expert Group discussed that Regulation 38 of the LODR Regulations, read with Rule 19(2)(b) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 and circulars issued by the SEBI on November 30, 2015 and February 22, 2018 set out the requirement for MPS of a listed entity and the permissible methods by which a listed entity can achieve such MPS. The list of permissible methods does not include increase in public shareholding through allotment of equity shares to employees through exercise of options that have been previously granted.

29.3. The Expert Group noted that allotment of equity shares of a listed entity pursuant to exercise of options granted to employees prior to an initial public offering has not been permitted by the stock exchanges until such time as the listed entity achieves the required MPS. The Expert Committee also discussed that such a restriction on employees from exercising their options would also apply to options granted to employees after an initial public offering pursuant to a new stock option plan approved by the public shareholders of such listed entity.

29.4. The Expert Group was of the view that such a restriction on employees from exercising their options was not in their best interests. However, since this is not a permitted method to achieve MPS, the Expert Group considered that these shares should not be classified as public to meet the MPS requirement. The Expert Group considered whether a clarification may be issued by the SEBI in this regard.

Recommendations

29.5 The Expert Group recommended that even if the listed entity is yet to achieve the MPS compliance after an initial public offering, and options have been granted prior to or after the initial public offering in compliance with the SBEB Regulations and applicable law, then shares be allotted to the said employees who have exercised the options (provided these options are not held by the promoters and promoter group). However, such shares should not be included under the definition of “public shareholding” for purposes of the MPS requirement. The Expert Group recommended that the SEBI may issue a clarification in this regard as part of the MPS circulars and/or the SCRR.

D. GLOSSARY

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|-----------------------|---|
| 2014 Memorandum | Memorandum on “Review of SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999” forming part of the agenda papers for the board meeting of the SEBI held on June 19, 2014 |
| 2015 Circular | Circular (CIR/CFD/POLICY CELL/2/2015) dated June 16, 2015 issued by the SEBI |
| Buy-back Regulations | Securities and Exchange Board of India (Buy-back of Securities) Regulations 2018 |
| Delisting Regulations | Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 |
| DR Circular | Circular no. SEBI/HO/MRD/DOP1/CIR/P/2019/106 dated October 10, 2019, on “ <i>Framework for issue of Depository Receipts</i> ” issued by the SEBI |
| ESOP | Employee Stock Option Schemes |
| ESOS Guidelines | Securities and Exchange Board of India (Employee Stock Option Scheme & Employee Stock Purchase Scheme) Guidelines, 1999 |
| ESPS | Employee Stock Purchase Schemes |
| Expert Group | “Expert Group on the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and the Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002” constituted by the SEBI |
| GEBS | General Employee Benefits Schemes |
| ICDR Regulations | Securities and Exchange Board of India (Issue Of Capital And Disclosure Requirements) Regulations, 2018 |
| LODR Regulations | Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 |
| PIT Regulations | Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 |
| RBS | Retirement Benefit Schemes. |
| SARS | Stock Appreciation Rights Schemes |
| SAST Regulations | Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 |

| | |
|--------------------------|--|
| SBEB Regulations | Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 |
| SCRR | Securities Contracts (Regulation) Rules, 1957 |
| SEBI | Securities and Exchange Board of India |
| Sweat Equity Regulations | Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002 |
| Takeover Regulations | Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 |

Draft Consolidated
Share Based Employee Benefits Regulations, 2014
and
Issue of Sweat Equity Regulations, 2002

**SECURITIES AND EXCHANGE BOARD OF INDIA (SHARE BASED
EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, [2021]**

In exercise of the powers conferred by section 11, section 11A, section 30 of the Securities and Exchange Board of India Act, 1992 read with sections 54 and 62 of Companies Act, 2013 and rules 8 and 12 of Companies (Share Capital and Debentures) Rules, 2014, the Securities and Exchange Board of India hereby makes the following regulations to provide for regulation of sweat equity shares and all schemes by companies for the benefit of their employees involving dealing in shares, directly or indirectly, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

CHAPTER I

PRELIMINARY

Short title, commencement and application.

1.

(1) These regulations may be called the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021].

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

(3) The provisions of these regulations shall apply to following, -

- (i) employee stock option schemes;
- (ii) employee stock purchase schemes;
- (iii) stock appreciation rights schemes;
- (iv) general employee benefits schemes;
- (v) retirement benefit schemes; and
- (vi) sweat equity shares.

(4) The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock exchange in India, and seeks to issue sweat equity shares or has a scheme:

- (i) for direct or indirect benefit of employees; and
- (ii) involving dealing in or subscribing to or purchasing securities of the company, directly or indirectly; and
- (iii) satisfying, directly or indirectly, any one of the following conditions:
 - a. the scheme is set up by the company or any other company in its group;
 - b. the scheme is funded or guaranteed by the company or any other company in its group;
 - c. the scheme is controlled or managed by the company or any other company in its group.

(5) Nothing in these regulations shall apply to shares issued to employees in compliance with the provisions pertaining to preferential allotment as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

(6) The provisions pertaining to preferential issue as specified in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

Definitions.

2.

(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under-

- a. “Act” means the Securities and Exchange Board of India Act, 1992;
- b. “appreciation” means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price;
- c. “associate company” shall have the same meaning as defined under section 2(6) of the Companies Act, 2013;
- d. “Board” means the Securities and Exchange Board of India or SEBI;
- e. “company” shall have the same meaning as defined under section 2(20) of the Companies Act, 2013;

- f. "control" shall have the same meaning as defined under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- g. "director" shall have the same meaning as defined under section 2(34) of the Companies Act, 2013;
- h. "emergency" means the need of funds by the trust to meet the commitment arising out of the objective of the scheme;
- i. "employee" means, —
- (i) an employee of the company who has been working in India or outside India; or
 - (ii) a director of the company, whether a whole time director or not, including a non-executive director (who is not a promoter or member of the promoter group), but excluding an independent director; or
 - (iii) an employee as defined in clause (i) or (ii) of a subsidiary, in India or outside India, or of a holding company of the company
- but does not include—
- (a) an employee who is a promoter or a person belonging to the promoter group; or
 - (b) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company;
- j. "employee stock option scheme or ESOS" means a scheme under which a company grants employee stock option directly or through a trust;

- k. “employee stock purchase scheme or ESPS” means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme;
- l. “exercise” means making of an application by an employee to the company or to the trust for issue of shares or appreciation in form of cash, as the case may be, against vested options or vested SARs in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as applicable;
- m. “exercise period” means the time period after vesting within which an employee should exercise his right to apply for shares against the vested option or appreciation against vested SAR in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as applicable;
- n. “exercise price” means the price, if any, payable by the employee for exercising the option or SAR granted to him in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be;
- o. “general employee benefits scheme or GEBS” means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company;

- p. “grant” means the process by which the company issues options, SARs, shares, or any other benefits under any of the schemes;
- q. “grant date” means the date on which the compensation committee approves the grant;

Note: It is clarified that for accounting purposes, the grant date will be determined in accordance with applicable accounting standards;

- r. “group” means two or more companies which, directly or indirectly, are in a position to, —
 - (i) exercise twenty-six per cent. or more of the voting rights in the other company; or
 - (ii) appoint more than fifty per cent. of the members of the board of directors in the other company; or
 - (iii) control the management or affairs of the other company;
- s. “ICAI” means the Institute of Chartered Accountants of India;
- t. “insider” shall have the same meaning assigned to it under the Securities and Exchange Board of India (Insider Trading) Regulations, 2015;
- u. “independent director” shall have the same meaning assigned to it under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
- v. “Initial public offer or IPO” shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

- w. “key managerial personnel” shall have the same meaning as defined under section 2(51) of the Companies Act, 2013;
- x. “market price” means the latest available closing price on a recognised stock exchange on which the shares of the company are listed on the date immediately prior to the relevant date.

Explanation.- If such shares are listed on more than one stock exchange, then the closing price on the stock exchange having higher trading volume shall be considered as the market price;

- y. “merchant banker” means a merchant banker registered under section 12 of the Act;
- z. “option” means the option given to an employee which gives him a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly, at a pre-determined price;
- aa. “option grantee” means an employee having a right but not an obligation to exercise an option in pursuance of ESOS;
- bb. “promoter” shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- cc. “promoter group” shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018:

Provided where the promoter or promoter group of a company is a body corporate, the promoters of that body corporate shall also be deemed to be promoters of such company;

dd. "recognised stock exchange" means a stock exchange which has been granted recognition under section 4 of the Securities Contracts (Regulation) Act, 1956;

ee. "registrar" means a registrar to an issue and includes a share transfer agent registered under section 12 of the Act;

ff. "relative" shall have the same meaning as defined under section 2(77) of the Companies Act, 2013;

gg. "relevant date" means,-

(i).in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or

(ii).in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee;

hh. "retirement benefit scheme or RBS" means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India;

ii. "SAR grantee" means an employee to whom SAR is granted;

- jj. “SAR price” means the base price defined on the grant date of SAR for the purpose of computing appreciation;
- kk. “scheme” means a scheme of a company proposing to provide share based benefits to its employees under Chapter II and Chapter III of these regulations, which may be implemented and administered directly by such company or through a trust, in accordance with these regulations;
- ll. “securities” means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- mm. “secondary acquisition” means acquisition of existing shares of the company by the trust on the platform of a recognised stock exchange for cash consideration;
- nn. “secretarial auditor” means a company secretary in practice appointed by a company under Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 to conduct secretarial audit pursuant to Regulation 24A of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015;
- oo. “share” means equity shares and securities convertible into equity shares and shall include American Depository Receipts (ADRs), Global Depository Receipts (GDRs) or other depository receipts representing underlying equity shares or securities convertible into equity shares;
- pp. “statutory auditor” means an auditor appointed by a company under section 139 of the Companies Act, 2013;

qq. “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.

Explanation.- An SAR settled by way of shares of the company shall be referred to as equity settled SAR;

rr. “stock appreciation right scheme or SAR scheme” means a scheme under which a company grants SAR to employees;

ss. “sweat equity shares” means sweat equity shares as defined in sub-section (88) of section 2 of the Companies Act, 2013;

tt. “Schedule” means a schedule annexed to these regulations.

uu. “trust” means a trust established under the provisions of Indian Trusts Act, 1882 including any statutory modification or re-enactment thereof, for implementing any of the schemes covered by these regulations;

vv. “trustee” means the trustee of the trust;

ww. “valuer” means an independent chartered accountant or a merchant banker appointed to determine the valuation of know-how or intellectual property rights or value addition;

xx. “vesting” means the process by which the employee becomes entitled to receive the benefit of a grant made to him under any of the schemes;

yy. “vesting period” means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place;

(2) Words and expressions used and not defined in these regulations but defined in the Act, the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 2013 and any statutory modification or re-enactment thereto, shall have the meanings respectively assigned to them in those legislation.

CHAPTER II

SCHEMES - IMPLEMENTATION AND PROCESS

Implementation of schemes through trust.

3.

(1) A company may implement schemes either directly or by setting up an irrevocable trust(s):

Provided that if the scheme is to be implemented through a trust the same has to be decided upfront at the time of taking approval of the shareholders for setting up the schemes:

Provided further that, if prevailing circumstances so warrant, the company may change the mode of implementation of the scheme subject to fresh approval of the shareholders by special resolution prior to implementing such change, and, provided such change is not prejudicial to the interests of the employees.

Provided further that if the scheme involves secondary acquisition or gift or both, then it is mandatory for the company to implement such scheme(s) through a trust(s).

(2) A company may implement several schemes as permitted under these regulations through a single trust:

Provided that such single trust shall keep and maintain proper books of account, records and documents, for each such scheme so as to explain its transactions and to

disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

(3) The trust deed under which the trust is formed, shall contain provisions as specified in the Schedule – I and such trust deed and any modifications thereto shall be mandatorily filed with the stock exchange in India where the shares of the company are listed.

(4) A person shall not be appointed as a trustee, if he-

- i. is a director, key managerial personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
- ii. beneficially holds ten percent or more of the paid-up share capital of the company.

Provided where individuals or 'one person companies' as defined under the Companies Act, 2013 are appointed as trustees, there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.

(5) The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

- (6) The trustee should ensure that appropriate approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).
- (7) The trust shall not deal in derivatives, and shall undertake only delivery based transactions for the purposes of secondary acquisition as permitted by these regulations.
- (8) Subject to the requirements of Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, as amended from time to time, as may be applicable, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purposes of implementation of the scheme(s).
- (9) For the purposes of disclosures to the stock exchange, the shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding.

Explanation: For the removal of doubts, it is clarified that shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under Securities Contracts (Regulation) Rules, 1957.

- (10) Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as at the end of the previous financial year.
- (11) The total number of shares under secondary acquisition held by the trust shall at no time exceed the below mentioned prescribed limits as a percentage of the paid up equity capital as at the end of the financial year immediately prior to the

year in which the shareholder approval is obtained for such secondary acquisition:

| Sr. No. | Particulars | Limit |
|----------------|--|--------------|
| A | for the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations | 5% |
| B | for the schemes enumerated in Part D, or Part E of Chapter III of these regulations | 2% |
| C | for all the schemes in aggregate | 5% |

Explanation 1.- The above limits shall automatically include within their ambit the expanded or reduced capital of the company where such expansion or reduction has taken place on account of corporate action including issue of bonus shares, split, rights issue, buy-back or scheme of arrangement.

Explanation 2.- If a company has multiple trusts and schemes, the aforesaid ceiling limit shall be applicable for all such trusts and schemes taken together at the company level and not at the level of individual trust or scheme.

Explanation 3.- The above ceiling limit will not be applicable where shares are allotted to the trust by way of new issue or gift from promoter or promoter group or other shareholders.

Explanation 4.- In the event that the options, shares or SAR granted under any of the schemes exceeds the number of shares that the trust may acquire through secondary acquisition, then such shortfall of shares shall be made up by the company through new issue of shares to the trust in accordance with the provisions of new issue of shares under the applicable laws.

- (12) The un-appropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year, or the second subsequent financial year subject to approval of the compensation committee/nomination and remuneration committee for such extension to the second subsequent financial year.
- (13) The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in clause (b) of sub-regulation (14) of this regulation, whether off-market or on the platform of stock exchange.
- (14) The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances:
- (a). transfer to the employees pursuant to scheme(s);
 - (b). when participating in open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or when participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.
- (15) The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:

- (a). to enable the employee to fund the payment of the exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS;
 - (b). on vesting or exercise, as the case may be, of SAR under the scheme covered by Part C of Chapter III of these regulations;
 - (c). in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose -
 - (i) the trustee shall record the reasons for such sale; and
 - (ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
 - (d). participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
 - (e). for repaying the loan, if the un-appropriated inventory of shares held by the trust is not appropriated within the timeline as provided under sub-regulation (12) of this regulation;
 - (f). winding up of the scheme(s); and
 - (g). based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of the schemes covered by Part A or Part B or Part C of Chapter III of these regulations, upon payment of a non-refundable fee of rupees one lakh along with the application by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board.
- (16) The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the Securities and

Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

Eligibility.

4. An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

Explanation.- Where such employee is a director nominated by an institution as its representative on the board of directors of the company –

- (i) The contract or agreement entered into between the institution nominating its employee as the director of a company, and the director so appointed shall, *inter alia*, specify the following:
 - a. whether the grants by the company under its scheme(s) can be accepted by the said employee in his capacity as director of the company;
 - b. that grant if made to the director, shall not be renounced in favour of the nominating institution; and
 - c. the conditions subject to which fees, commissions, other incentives, etc. can be accepted by the director from the company.
- (ii) the institution nominating its employee as a director of a company shall file a copy of the contract or agreement with the said company, which shall, in turn file the copy with all the stock exchanges on which its shares are listed.
- (iii) the director so appointed shall furnish a copy of the contract or agreement at the first board meeting of the company attended by him after his nomination.

Compensation committee.

5.

- (1) A company shall constitute a compensation committee for administration and superintendence of the schemes:

Provided that the company may designate such of its other committees as compensation committee if they fulfil the criteria as provided in sub-regulation (2) of this regulation:

Provided further that where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

- (2) The compensation committee shall be a committee of such members of the board of directors of the company as provided under regulation 19 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended or modified from time to time.

Provided that a company may also opt to designate its nomination and remuneration committee as compensation committee for the purposes of these regulations.

- (3) The compensation committee shall, *inter alia*, formulate the detailed terms and conditions of the schemes which shall include the provisions as specified in the Schedule – I.

- (4) The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws, as amended from time to time, including the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the trust, the company and its employees, as applicable.

Shareholders approval.

6.

- (1) No scheme shall be offered to employees of a company unless the shareholders of the company approve it by passing a special resolution in the general meeting.
- (2) The explanatory statement to the notice and the resolution proposed to be passed by shareholders for the schemes shall contain the information as specified in the Schedule – I or as otherwise specified by the Board.
- (3) Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:
 - (a). Secondary acquisition for implementation of the schemes. Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;
 - (b). Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five per cent. cap as prescribed under sub-regulation (11) of regulation 3 of such increased capital of the company;
 - (c). Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;
 - (d). Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one

per cent. of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

Variation of terms of the schemes.

7.

- (1) The company may by special resolution of shareholders of the company vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employee provided such variation is not prejudicial to the interests of the employees.
- (2) Notwithstanding the provisions of sub-regulation (1), the company shall be entitled to vary the terms of the schemes to meet any regulatory requirement without seeking shareholders' approval by special resolution.
- (3) The provisions of regulation 6 shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.
- (4) The notice for passing special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefore, and the details of the employees who are beneficiaries of such variation.
- (5) A company may reprice the options, SAR or shares, as the case may be which are not exercised, whether or not they have been vested if the schemes were rendered unattractive due to fall in the price of the shares in the stock market:

Provided that the company ensures that such repricing shall not be detrimental to the interest of the employees and approval of the shareholders by special resolution has been obtained for such repricing.

Winding up of the schemes.

8. In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees, or, subject to approval of the shareholders, transferred to another scheme under these regulations, as recommended by the compensation committee.

Non-transferability.

9.

(1) Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person.

(2) No person other than the employee to whom the option, SAR or other benefit is granted shall be entitled to the benefit arising out of such option, SAR, benefit etc. :

Provided that in case of ESOS or SAR, and subject to applicable law or regulations, the company or the trustee may fund or permit the empanelled stock brokers to make suitable arrangements to fund the employee for payment of exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS or SAR which amount shall be adjusted against the sale proceeds of some or all the shares of such employee.

(3) The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

- (4) In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest, with effect from the date of death, in the legal heirs or nominees of the deceased employee.
- (5) In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him under a scheme as on the date of permanent incapacitation, shall vest in him on that day.
- (6) In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire:

Provided that an employee shall, subject to the terms and conditions formulated by the compensation committee under the sub-regulation (3) of regulation 5, be entitled to retain all the vested options, SAR, or any other benefit covered by these regulations.

It is clarified that cessation of employment due to retirement or superannuation would not be covered by this sub-regulation and such options, SAR or any other benefits granted to an employee would continue to vest in accordance with their respective vesting schedules even after retirement or superannuation in accordance with company policies and applicable law.

- (7) In the event that an employee who has been granted benefits under a scheme is transferred or deputed to an associate company prior to vesting or exercise, the vesting and exercise as per the terms of grant shall continue in case of such transferred or deputed employee even after the transfer or deputation.

Listing.

10. In case new issue of shares is made under any scheme, shares so issued shall be listed immediately in any recognised stock exchange where the existing shares are listed, subject to the following conditions:

- (a). the scheme is in compliance with these regulations;
- (b). A statement as specified in the Schedule – I, is filed and the company has obtained an in-principle approval from the stock exchanges;
- (c). As and when an exercise is made, the company notifies the concerned stock exchange as per the statement as specified in the Schedule – I.

Schemes implemented by unlisted companies.

11. The shares arising after the IPO of an unlisted company, out of options or SAR granted under any scheme prior to its IPO to the employees shall be listed immediately upon exercise in all the recognised stock exchanges where the shares of the company are listed subject to compliance with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 and where applicable, sub-regulation (1) of regulation 12.

Compliances and conditions.

12.

(1) No company shall make any fresh grant which involves allotment or transfer of shares to its employees under any schemes formulated prior to its IPO and prior to the listing of its equity shares ('pre-IPO scheme') unless:

- (i) Such pre-IPO scheme is in conformity with these regulations; and
- (ii) Such pre-IPO scheme is ratified by its shareholders subsequent to the IPO.

Provided that the ratification under clause (ii) may be done any time prior to grant of new options or shares or SAR under such pre-IPO scheme.

- (2) No change shall be made in the terms of options or shares or SAR issued under such pre-IPO schemes, whether by repricing, change in vesting period or maturity or otherwise unless prior approval of the shareholders is taken for such a change, except for any adjustments for corporate actions made in accordance with these regulations.
- (3) For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the stock exchanges where it proposes to list the said shares prior to the grant of options / SARs.
- (4) When holding company issues option, share, SAR or benefits to the employee of its subsidiary, the cost incurred by the holding company for issuing such option, share, SAR or benefits shall be disclosed in the 'notes to accounts' of the financial statements of the subsidiary company.
- (5) In a case falling under sub-regulation (4), if the subsidiary reimburses the cost incurred by the holding company in granting option, share, SAR or benefits to the employees of the subsidiary, both the subsidiary as well as the holding company shall disclose the payment or receipt, as the case may be, in the 'notes to accounts' to their financial statements.
- (6) The company shall appoint a registered merchant banker for the implementation of schemes covered by these regulations till the stage of obtaining in-principle approval from the stock exchanges in accordance with clause (b) of regulation 10.

Certificate from auditors.

13. In the case of every company that has passed a resolution for the schemes under these regulations, the board of directors shall at each annual general meeting place before the shareholders a certificate from the secretarial auditors of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

Disclosures.

14. In addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified in Schedule – I.

Accounting policies.

15.

- (1) Any company implementing any of the share based schemes shall follow the requirements of the 'Guidance Note on Accounting for employee share-based Payments' (Guidance Note) or Accounting Standards as may be prescribed by the ICAI from time to time, including the disclosure requirements prescribed therein.
- (2) Where the existing Guidance Note or Accounting Standard do not prescribe accounting treatment or disclosure requirements for any of the schemes covered under these regulations then the company shall comply with the relevant Accounting Standard as may be prescribed by the ICAI from time to time.

CHAPTER III

ADMINISTRATION OF SPECIFIC SCHEMES

PART A: EMPLOYEE STOCK OPTION SCHEME (ESOS)

Administration and implementation.

16.

- (1) Subject to the provisions of these regulations, the ESOS shall contain the details of the manner in which the scheme will be implemented and operated.
- (2) No ESOS shall be offered unless the disclosures, as specified in the Schedule – I, are made by the company to the prospective option grantees.

Pricing.

17. The company granting option to its employees pursuant to ESOS will have the freedom to determine the exercise price subject to conforming to the accounting policies specified in regulation 15.

Vesting period.

18.

- (1) There shall be a minimum vesting period of one year in case of ESOS:

Provided that in case where options are granted by a company under an ESOS in lieu of options held by a person under an ESOS in another company which has merged or amalgamated with that company, the period during which the options granted by the transferor company were held by him shall be adjusted against the minimum vesting period required under this sub-regulation.

Provided further that in the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and in such instances, the options shall vest on the date of death or permanent incapacity. In this regard, a company shall frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to compliance with applicable labour laws.

(2) The company may specify the lock-in period for the shares issued pursuant to exercise of option.

Rights of the option holder.

19. The employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him, till shares are issued upon exercise of option.

Consequence of failure to exercise option.

20. The amount payable by the employee, if any, at the time of grant, vesting or exercise of option,

- (a). may be forfeited by the company if the option is not exercised by the employee within the exercise period; or
- (b). may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

PART B: EMPLOYEE STOCK PURCHASE SCHEME (ESPS)

Administration and implementation.

21. Subject to the provisions of these regulations, the ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.

Pricing and lock-in.

22.

(1) The company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under regulation 15.

(2) Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment:

Provided that in case where shares are allotted by a company under an ESPS in lieu of shares acquired by the same person under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period required under this sub-regulation.

(3) If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

PART C : STOCK APPRECIATION RIGHTS SCHEME (SARS)

Administration and implementation.

23.

(1) Subject to the provisions of these regulations, the SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated.

(2) Subject to the provisions of these regulations, a company shall have the freedom to implement cash settled or equity settled SAR scheme:

Provided that in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

(3) No SAR shall be offered unless the disclosures, as specified in the Schedule – I, are made by the company to the prospective SAR grantees.

Vesting.

24. There shall be a minimum vesting period of one year in case of SAR scheme:

Provided that in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the same person under a SAR scheme in another company which has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period required under this sub-regulation.

Provided further that in the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and in such

instances, the options shall vest on the date of death or permanent incapacity. In this regard, a company shall frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to compliance with applicable labour laws.

Rights of the SAR holder.

25. The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

PART D : GENERAL EMPLOYEE BENEFITS SCHEME (GEBS)

Administration and implementation.

26.

(1) Subject to the provisions of these regulations, GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.

(2) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of GEBS. Further, the secretarial auditor of the company shall certify compliance with this provision at the time of adoption of such balance sheet by the company.

PART E: RETIREMENT BENEFIT SCHEME (RBS)

Administration and implementation.

27.

- (1) Retirement benefit scheme may be implemented by a company provided it is in compliance with these regulations, and provisions of any other law in force in relation to retirement benefits.
- (2) The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.
- (3) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of RBS. Further, the secretarial auditor of the company shall certify compliance with this provision at the time of adoption of such balance sheet by the company.

CHAPTER IV

ISSUE OF SWEAT EQUITY BY A LISTED COMPANY

PART –A

28. Nothing contained in these chapter shall apply to an unlisted company; Provided that an unlisted company coming out with initial public offering and seeking listing of its securities on the stock exchange, pursuant to issue of

sweat equity shares, shall comply with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) Regulations, 2018.

29. For the purpose of this chapter, the term ‘employee’ means,

- (i) a employee of the company working in India or abroad; or
- (ii) a director of the company whether a whole time director or not.

Issue of sweat equity shares to employees and directors.

30. A company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares in accordance with section 54 of Companies Act, 2013 and these regulations to its –

- (a) employees; and
- (b) directors,

for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Maximum quantum of sweat equity shares

31. A company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher:

Provided that the issuance of sweat equity shares in the company shall not exceed twenty five percent, of the paid up equity capital of the company at any time.

Provided further, for the companies listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid up equity

share capital in a financial year subject to overall limit not exceeding fifty percent of the paid up equity capital of the company, up to ten years from date of its incorporation or registration.

Special resolution.

32.

(1) For the purposes of passing a special resolution under clause (a) of sub-section (1) of section 54 of the Companies Act, 2013 the explanatory statement to be annexed to the notice for the general meeting pursuant to section 102 of the Companies Act, 2013 shall contain disclosures as specified in the Schedule - II.

(2) However, the issue of sweat equity shares to employees who belong to promoter or promoter group shall be approved by way of resolution passed by a simple majority of the shareholders in general meeting:

Provided that for passing such resolution, voting through postal ballot and/or e-voting as specified under Companies (Management and Administration) Rules, 2014 shall also be adopted;

Provided further that the promoters to whom such sweat equity shares are proposed to be issued shall not participate in such resolution.

(3) Each transaction of issue of sweat equity shall be voted by a separate resolution.

(4) The resolution for issue of sweat equity shall be valid for a period of not more than twelve months from the date of passing of the resolution.

Pricing of sweat equity shares.

33. The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Valuation.

34.

- (1) The valuation of the know-how or intellectual property rights or value addition shall be carried out by a merchant banker.
- (2) The merchant banker may consult such experts and valuers, as he may deem fit having regard to the nature of the industry and the nature of the valuation of know-how or intellectual property rights or value addition.
- (3) The merchant banker shall obtain a certificate from an independent chartered accountant that the valuation of the know-how or intellectual property rights or value addition is in accordance with the relevant accounting standards.

Accounting treatment.

35.

- (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.

Placing of auditors certificate before annual general meeting.

36. In the general meeting subsequent to the issue of sweat equity, the board of directors shall place before the shareholders, a certificate from the secretarial auditors of the company that the issue of sweat equity shares has been made in accordance with these regulations and in accordance with the resolution passed by the company authorizing the issue of such sweat equity shares.

Ceiling on managerial remuneration.

37. The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 196, 197 and other applicable provisions of the Companies Act, 2013, 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.

Lock-in of sweat equity shares.

38.

(1) The sweat equity shares shall be locked in for such period of time as prescribed in relation to a preferential issue under the Securities and Exchange Board of

India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended from time to time.

(2) The Securities and Exchange Board of India (Issue of Capital and Disclosures Requirements) Regulations, 2018 on public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued sweat equity.

Listing.

39. The sweat equity shares issued by a listed company shall be eligible for listing only if such issues are in accordance with these regulations.

Applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

40. Any acquisition of sweat equity shares shall be subject to the provision of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

PART – B GENERAL OBLIGATIONS

Obligations of the company.

41.

(1) The company shall ensure that -

- (a) The explanatory statement to the notice for general meeting shall contain disclosures as are specified under clause (b) of sub-section (1) of section 54 of the Companies Act, 2013 and sub-regulation (1) of regulation 32.

- (b) The secretarial auditor's certificate required under regulation 36 shall be placed in the general meeting of shareholders.
- (c) The company shall within seven days of the issue of sweat equity, issue or send statement to the exchange, disclosing:
 - (i) number of sweat equity shares;
 - (ii) price at which the sweat equity shares are issued;
 - (iii) total amount invested in sweat equity shares;
 - (iv) details of the persons to whom sweat equity shares are issued; and
 - (v) the consequent changes in the capital structure and the shareholding pattern after and before the issue of sweat equity shares.

Action against intermediaries.

42. The Board may, on failure of the merchant banker to comply with the obligations under these regulations or failing to observe due diligence in respect of valuation of know-how or intellectual property rights or value addition, initiate action against merchant banker in terms of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

PART – C: PENALTIES AND PROCEDURE

Power of the Board to order inspection or investigation.

43.

(1) The Board may, *suo-motu* or upon information received by it, cause an inspection to be made of the books of account or other books and papers of any company or an investigation to be made in respect of the conduct and affairs of any person associated with the process of sweat equity, by appointing an officer of the Board

not below the rank of Assistant General Manager for the purpose of conducting inspection and not below the rank of Division Chief for the purpose of conducting an investigation: Provided that no such inspection or investigation shall be made except for the purpose specified in sub-regulation (2).

(2) The purpose referred to in sub-regulation (1) are the following, namely:-

(a) to ascertain whether there are any circumstances which would render any person guilty of having contravened any of these regulations or any directions issued thereunder;

(b) to investigate into any complaint of any contravention of the regulation, received from any investor, or any other person;

(3) An order passed under sub-regulation (1) shall be sufficient authority for inspecting or investigating officer to undertake the inspection or investigation as the case may be and on production of an authenticated copy of the order, the person concerned shall be bound to carry out the duty imposed in regulation 44.

Duty to produce records etc.

44.

(1) It shall be the duty of every person in respect of whom an inspection or investigation has been ordered under regulation 43, to produce before the inspecting or the investigating officer, such book, accounts and other documents in his custody or control and furnish him with such statements and information

as the said officer may require from the purposes of the inspection or investigation.

(2) Without prejudice to the generality of the provisions of sub-regulation (1) such person shall -

- (a) extend to the inspecting or investigating officer reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the inspection or investigation;
- (b) provide such inspecting or investigating officer copies of such books, accounts and records which, in opinion of the officer, are relevant to the inspection or investigation or, as the case may be, allow him to take out computer printouts thereof; and
- (c) provide such assistance and co-operation as may be required in connection with the inspection or investigation and to furnish information relevant to such inspection or investigation as may be sought by such officer.

(3) The inspecting or investigating officer shall for the purpose of inspection or investigation, have the full powers;

Submission of report to the Board.

45.

- (1) The inspecting or investigating officer shall, on completion of the inspection or investigation after taking into account all relevant facts and circumstances, submit a report to the Board.
- (2) On the receipt of report under sub-regulation (1), the Board may initiate such action as it may be deemed fit to do in the interests of investors and the securities market.

Power of the Board to issue directions.

46. The Board may in the interests of the securities market and without prejudice to its rights to initiate action, including criminal prosecution under section 24 of the Act or section 439 of Companies Act, 2013 give such directions as it deems fit including:-

- (a) directing the person concerned not to further deal in securities in any particular manner;
- (b) directing the person concerned to sell or divest the sweat equity shares acquired in violation of the provisions of these regulations or any other law or regulations;
- (c) prohibiting the persons concerned, from accessing the securities market;
- (d) directing the disgorgement of any ill-gotten gains or profits or avoidance of loss; or
- (e) restraining the company from making a further offer for sweat equity.

CHAPTER V

POWER TO RELAX STRICT ENFORCEMENT OF THE REGULATIONS

Exemption from enforcement of the regulations in special cases.

47.

- (1) The Board may exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc., in live environment of regulatory sandbox in the securities markets.
- (2) Any exemption granted by the Board under sub-regulation (1) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation. — For the purposes of these regulations, "regulatory sandbox" means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board.

CHAPTER VI
MISCELLANEOUS PROVISIONS

Power to remove difficulties.

48.

- (1) In order to remove any difficulties in the interpretation and application of the provisions of these regulations, the Board shall have the power to issue clarifications through guidance notes or circulars.
- (2) The Board shall have power to specify such disclosure and process requirements through guidance notes or circulars, as may be necessary for protection of interest of investors, securities market and for regulation of all schemes, by listed companies for the benefit of their employees, involving dealing, directly or indirectly, in shares and matters connected therewith or incidental thereto.

Power to relax strict enforcement of the regulations.

49.

- (1) The Board may *suo motu* or on an application made by a company, for reasons recorded in writing, grant relaxation from strict compliance with any of these regulations subject to such conditions as the Board deems fit to impose in the interests of investors in securities and the securities market.
- (2) A company making an application under sub-regulation (1), shall pay a non-refundable fee of rupees one lakh by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable at Mumbai in favour of the Board.

Directions by the Board and action in case of default.

50. The Board may issue any direction or order or undertake any measure in the interests of the investors or the securities market, and deal with any contravention of these regulations, in exercise of its powers under the Act, the Securities Contracts (Regulation) Act, 1956 or the Companies Act, 2013 and any statutory modification or re-enactment thereto.

Repeals and savings.

51.

(1) The Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002 are hereby repealed.

(2) Notwithstanding such repeal, -

(a) prohibition on acquiring securities from the secondary market as provided in SEBI circular CIR/CFD/POLICYCELL/3/2014 dated June 27, 2014 shall continue till the existing schemes are aligned with these regulations;

(b) the previous operation of the repealed guidelines or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed guidelines, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed guidelines, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed guidelines had never been repealed;

(c) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed guidelines prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; and

(d) after the repeal of Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 and Securities and Exchange Board of India (Issue of Sweat Equity) Regulations, 2002, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Schedule – I

[Under regulation 3(3) - Minimum Provisions in Trust Deed]

The trust deed shall, *inter alia*, cover the following:

Details of the trust, including:

- (i) Name of the trust;
- (ii) Object of the trust;
- (iii) Details of settlor;
- (iv) Details of scheme(s) administered;
- (v) Source of funds;
- (vi) Description of the manner in which the trust funds shall be used for meeting object of the trust;
- (vii) Description of the classes of beneficiaries along with their rights and obligations;
- (viii) Details of trustee(s);

2. Powers and duties of trustee(s), including:

- (i) Frame rules for administration of the scheme(s) in compliance with the scheme documents, object of the trust and the regulations;
- (ii) Maintain books of accounts of trust as required under law including the regulations;

3. Provisions on dissolution of the trust;

4. Trust deed shall provide that it would be the duty of the trustees to act in the interest of employees who are beneficiaries of the trust and subject to provisions of the regulations, it shall not act in any manner or include any provision in the trust deed that would be detrimental to the interests of the beneficiaries.

5. Such other clauses which are necessary for safeguarding the interests of the beneficiaries.

[Under regulation 5(3) - Terms and Conditions of schemes to be formulated by the Compensation Committee]

The Compensation Committee is required to formulate the detailed terms and conditions of the schemes which shall, *inter alia*, include the following provisions:

- a. the quantum of option, SAR, share or benefit as the case may be, per employee and in aggregate under a scheme;
- b. the kind of benefits to be granted under a scheme covered by Part D and Part E of Chapter III of the regulations;
- c. the conditions under which options, SAR, shares or other benefits as the case may be, may vest in employees and may lapse in case of termination of employment for misconduct;
- d. the exercise period within which the employee can exercise the options or SARs and that options or SARs would lapse on failure to exercise the same within the exercise period;
- e. the specified time period within which the employee shall exercise the vested options or SARs in the event of termination or resignation of an employee;
- f. the right of an employee to exercise all the options or SARs, as the case may be, vested in him at one time or at various points of time within the exercise period;
- g. the procedure for making a fair and reasonable adjustment to the entitlement including adjustment to the number of options/SARs and to the exercise price in case of corporate actions such as rights issues, bonus issues, merger, sale of division and others. In this regard, the following shall, *inter alia*, be taken into consideration by the compensation committee:
 - i. the number and price of options / SARs shall be adjusted in a manner such that total value to the employee of the options / SAR remains the same after the corporate action;
 - ii. the vesting period and the life of the options / SAR shall be left unaltered as far as possible to protect the rights of the employee(s) who is granted such options / SARs;
- h. the grant, vesting and exercise of shares, options or SARs in case of employees who are on long leave;
- i. eligibility to avail benefits under schemes covered by Part D and/or Part E of Chapter III of the regulations in case of employees who are on long leave;
- j. the procedure for funding the exercise of options / SARs; and
- k. the procedure for buy-back of options, if to be undertaken at any time by the company, and the applicable terms and conditions, including: (i) permissible sources of financing for buy-back of options; (ii) any minimum financial thresholds to be maintained by the company as per its last

financial statements; and (iii) limits upon quantum of stock options that the company may buy-back in a financial year.

[Under regulation 6(2) - Contents of the explanatory statement to the notice and resolution for shareholders meeting]

The explanatory statement to the notice and the resolution proposed to be passed for the schemes in general meeting shall, *inter alia*, contain the following information:

- a. brief description of the scheme(s);
- b. the total number of options, SARs, shares or benefits, as the case may be, to be offered and granted;
- c. identification of classes of employees entitled to participate and be beneficiaries in the scheme(s);
- d. requirements of vesting and period of vesting;
- e. maximum period (subject to regulation 18(1) and 24(1) of the regulations, as the case may be) within which the options / SARs / benefit shall be vested;
- f. exercise price, SAR price, purchase price or pricing formula;
- g. exercise period/offer period and process of exercise/acceptance of offer;
- h. the appraisal process for determining the eligibility of employees for the scheme(s);
- i. maximum number of options, SARs, shares, as the case may be, to be offered and issued per employee and in aggregate;
- j. maximum quantum of benefits to be provided per employee under a scheme(s);
- k. whether the scheme(s) is to be implemented and administered directly by the company or through a trust;
- l. whether the scheme(s) involves new issue of shares by the company or secondary acquisition by the trust or both;
- m. the amount of loan to be provided for implementation of the scheme(s) by the company to the trust, its tenure, utilization, repayment terms, etc.;
- n. maximum percentage of secondary acquisition (subject to limits specified under the regulations) that can be made by the trust for the purposes of the scheme(s);
- o. a statement to the effect that the company shall conform to the accounting policies specified in regulation 15;
- p. the method which the company shall use to value its options or SARs;
- q. the following statement, if applicable:
'In case the company opts for expensing of share based employee benefits using the intrinsic value, the difference between the employee

compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value, shall be disclosed in the Directors' report and the impact of this difference on profits and on earnings per share ("EPS") of the company shall also be disclosed in the Directors' report';

- r. period of lock-in.

[Under regulation 10(b) - Information required in the statement to be filed with Stock Exchange(s)]

Description of Schemes

- 1 Authorized Share Capital of the Company.
- 2 Issued Share Capital of the Company as on date of Institution of the scheme/ amendment of the scheme.
- 3 Date of institution of the scheme/ amendment of the scheme.
- 4 Validity period of the scheme.
- 5 Date of notice of AGM/EGM for approving the scheme/for amending the scheme/for approving grants under regulation 6(3) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 6 Date of AGM/EGM approving the scheme/amending the scheme/approving grants under regulation 6(3) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 7 Kind of benefit granted under the scheme.
- 8 Identity of classes of persons eligible under the scheme:
 - a. employees
 - b. employees outside India
 - c. employees of subsidiary
 - d. employees of holding company
 - e. directors, whether a whole time directors or not, other than those excluded from the definition of "employee" under these regulations
- 9 Total number of shares reserved under the scheme, as applicable.
- 10 Number of shares entitled under the grant.
- 11 Total number of grants to be made.

- 12 Maximum number of shares, options, SARs or benefits to be granted per employee per grant and in aggregate.
- 13 Exercise price or pricing formula.
- 14 Whether any amount payable at the time of grant? If so, quantum of such amount.
- 15 Lock-in period under the scheme.
- 16 Vesting period under the scheme.
- 17 Maximum period within which the grant shall be vested.
- 18 Exercise period under the scheme.
- 19 Whether employee can exercise all the options or SARs vested at one time? Yes/No
- 20 Whether employee can exercise vested options or SARs at various points of time within the exercise period? Yes/No
- 21 Whether scheme provides for the procedure for making a fair and reasonable adjustment to the number of options or SARs and to the exercise price in case of rights issues, bonus issues and other corporate actions? Clause in scheme describing such adjustment.
- 22 Description of the appraisal process for determining the eligibility of employees under the scheme.
- 23 The specified time period within which vested options or SARs are to be exercised in the event of termination or resignation of an employee.
- 24 The specified time period within which options or SARs to be exercised in the event of death of the employee.
- 25 Whether scheme provides for conditions under which options, SARs, or benefits vested in employees may lapse in case of termination of employment for misconduct? Clause in Scheme describing such adjustment.
- 26 Whether scheme provides for conditions for the grant, vesting and exercise of options, SARs or benefits in case of employees who are on long leave? Clause in scheme describing such adjustment.
- 27 Whether amount paid/payable by the employee at the time of the grant, vesting or exercise of the options, SARs or benefits will be forfeited if the employee does not exercise the same within the exercise period? Clause in scheme describing such adjustment.

- 28 Details of approval of shareholders pursuant to regulation 6(3) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021] with respect to:
- a. Grant to employees of subsidiary or holding or associate company.
 - b. Grant to identified employees, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.
- 29 Details of the variation made to the scheme along with the rationale therefor and the details of the employees who are beneficiary of such variation:

Sd/-

Company Secretary

Place:

Date:

Documents to be filed with registration statement

- 1 Copy of scheme, certified by the Company Secretary.
- 2 Copy of notice of AGM/EGM approving the scheme/for amending the scheme/for approving grants under regulation 6(3) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021] certified by the Company Secretary.
- 3 Copy of resolution of shareholders for approving the scheme/ for amending the scheme/for approving grants under regulation 6(3) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021] certified by the Company Secretary.
- 4 List of Promoters as defined under the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 5 Copy of latest Annual Report.
- 6 Certificate of Secretarial Auditor on compliance with of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 7 Specimen copy of share certificate, if applicable.
- 8 Any other relevant documents.

Undertakings

The undersigned company hereby undertakes:

- 1 To file, a post-effective amendment to this statement to include any material information with respect to the scheme of distribution not previously disclosed in the statement or any material change to such information in the statement.
- 2 To notify, the concerned stock exchanges on which the shares of the company are listed, of each issue of shares pursuant to the exercise of options or SARs under the scheme mentioned in this statement, in the prescribed form, as amended from time to time.
- 3 That the company shall conform to the accounting policies specified in regulation 15 of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 4 That the scheme conforms to the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]
- 5 That the company has in place systems / codes / procedures to comply with the Securities and Exchange Board of India (Insider Trading) Regulations, 2015 or any modification or re- enactment thereto.

Signatures

1. Pursuant to the requirements of the SEBI Act / Regulations, the company certifies that it has reasonable grounds to believe that it meets all the requirements for the filing of this form and has duly caused this statement to be signed on its behalf by the undersigned, thereunto, duly authorized

Name of the

company Sd/-

Name of the Compliance

Officer Designation

Date:

Place:

2. Certification by Registered Merchant Banker, pursuant to regulation 12(6) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]

“Certified that the scheme conforms to the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021]”

Date:

Authorised Signatory

Place:

Name of the Merchant Banker

[Under regulation 10(c) - Format of notification for issue of shares]

1. Company name and address of Registered Office :
2. Name of the Stock Exchanges on which the company's shares are listed
:
3. Filing date of the statement referred in regulation 10(b) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, [2021] with Stock Exchange :
4. Filing Number, if any :
5. Title of the Scheme pursuant to which shares are issued, if any:
6. Kind of security to be listed :
7. Par value of the shares :
8. Date of issue of shares :
9. Number of shares issued :
10. Share Certificate No., if applicable :
11. Distinctive number of the share, if applicable :
12. ISIN Number of the shares if issued in Demat :
13. Exercise price per share:
14. Premium per share :
15. Total Issued shares after this issue :
16. Total Issued share capital after this issue :
17. Details of any lock-in on the shares :
18. Date of expiry of lock-in :
19. Whether shares identical in all respects to existing shares if not, when will they become identical? :
20. Details of listing fees, if payable :

Signature of Company Secretary/Compliance Officer

Date:

Place:

[Under regulation 14 - Disclosures by the board of directors]

The board of directors in their report shall disclose any material change in the scheme(s) and whether the scheme(s) is / are in compliance with the regulations.

Further, the following details, *inter alia*, shall be disclosed on the company's website and a web-link thereto shall be provided in the report of board of directors.

A. Relevant disclosures in terms of the 'Guidance note on accounting for employee share-based payments' issued by ICAI or any other relevant accounting standards as prescribed from time to time.

B. Diluted EPS on issue of shares pursuant to all the schemes covered under the regulations shall be disclosed in accordance with 'Accounting Standard 20 - Earnings Per Share' issued by ICAI or any other relevant accounting standards as prescribed from time to time.

C. Details related to ESOS

- (i) A description of each ESOS that existed at any time during the year, including the general terms and conditions of each ESOS, including -
 - (a) Date of shareholders' approval
 - (b) Total number of options approved under ESOS
 - (c) Vesting requirements
 - (d) Exercise price or pricing formula
 - (e) Maximum term of options granted
 - (f) Source of shares (primary, secondary or combination)
 - (g) Variation in terms of options
- (ii) Method used to account for ESOS - Intrinsic or fair value.
- (iii) Where the company opts for expensing of the options using the intrinsic value of the options, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of the options shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.
- (iv) Option movement during the year (For each ESOS):

| Particulars | Details |
|---|----------------|
| Number of options outstanding at the beginning of the period | |
| Number of options granted during the year | |
| Number of options forfeited / lapsed during the year | |
| Number of options vested during the year | |
| Number of options exercised during the year | |
| Number of shares arising as a result of exercise of options | |
| Money realized by exercise of options (INR), if scheme is implemented directly by the company | |
| Loan repaid by the Trust during the year from exercise price received | |
| Number of options outstanding at the end of the year | |
| Number of options exercisable at the end of the year | |

- (v) Weighted-average exercise prices and weighted-average fair values of options shall be disclosed separately for options whose exercise price either equals or exceeds or is less than the market price of the stock.
- (vi) Employee wise details (name of employee, designation, number of options granted during the year, exercise price) of options granted to -
- (a) senior managerial personnel;
 - (b) any other employee who receives a grant in any one year of option amounting to 5% or more of option granted during that year; and
 - (c) identified employees who were granted option, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.
- (vii) A description of the method and significant assumptions used during the year to estimate the fair value of options including the following information:

- (a) the weighted-average values of share price, exercise price, expected volatility, expected option life, expected dividends, the risk-free interest rate and any other inputs to the model;
- (b) the method used and the assumptions made to incorporate the effects of expected early exercise;
- (c) how expected volatility was determined, including an explanation of the extent to which expected volatility was based on historical volatility; and
- (d) whether and how any other features of the option grant were incorporated into the measurement of fair value, such as a market condition.

Disclosures in respect of grants made in three years prior to IPO under each ESOS

- (i) Until all options granted in the three years prior to the IPO have been exercised or have lapsed, disclosures of the information specified above in respect of such options shall also be made.

D. Details related to ESPS

- (i) The following details on each ESPS under which allotments were made during the year:
 - (a) Date of shareholders' approval
 - (b) Number of shares issued
 - (c) The price at which such shares are issued
 - (d) Lock-in period
- (ii) The following details regarding allotment made under each ESPS, as at the end of the year:

| Particulars | Details |
|---|----------------|
| The details of the number of shares issued under ESPS | |
| The price at which such shares are issued | |
| Employee-wise details of the shares issued to; | |
| (i) senior managerial personnel; | |

| | |
|--|--|
| (ii) any other employee who is issued shares in any one year amounting to 5% or more shares issued during that year; | |
| (iii) identified employees who were issued shares during any one year equal to or exceeding 1% of the issued capital of the company at the time of issuance; | |
| Consideration received against the issuance of shares, if scheme is implemented directly by the company | |
| Loan repaid by the Trust during the year from exercise price received | |

E. Details related to SAR

- (i) A description of each SAR scheme that existed at any time during the year, including the general terms and conditions of each SAR scheme, including -
- (a) Date of shareholders' approval
 - (b) Total number of shares approved under the SAR scheme
 - (c) Vesting requirements
 - (d) SAR price or pricing formula
 - (e) Maximum term of SAR granted
 - (f) Method of settlement (whether in cash or equity)
 - (g) Choice of settlement (with the company or the employee or combination)
 - (h) Source of shares (primary, secondary or combination)
 - (i) Variation in terms of scheme
- (ii) Method used to account for SAR - Intrinsic or fair value.
- (iii) Where the company opts for expensing of SAR using the intrinsic value of SAR, the difference between the employee compensation cost so computed and the employee compensation cost that shall have been recognized if it had used the fair value of SAR, shall be disclosed. The impact of this difference on profits and on EPS of the company shall also be disclosed.

(iv) SAR movement during the year (For each SAR scheme):

| Particulars | Details |
|---|---------|
| Number of SARs outstanding at the beginning of the year | |
| Number of SARs granted during the year | |
| Number of SARs forfeited / lapsed during the year | |
| Number of SARs vested during the year | |
| Number of SARs exercised / settled during the year | |
| Number of SARs outstanding at the end of the year | |
| Number of SARs exercisable at the end of the year | |

- (v) Employee-wise details (name of employee, designation, number of SAR granted during the year, exercise price) of SAR granted to -
- (a) senior managerial personnel;
 - (b) any other employee who receives a grant in any one year of amounting to 5% or more of SAR granted during that year; and
 - (c) identified employees who were granted SAR, during any one year, equal to or exceeding 1% of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant.

Disclosures in respect of grants made in three years prior to IPO under each SAR scheme

- (i) Until all SARs granted in the three years prior to the IPO have been exercised or have lapsed, disclosures of the information specified above in respect of such SARs shall also be made

F. Details related to GEBS / RBS

- (i) A description of each GEBS / RBS scheme that existed at any time during the year, including the general terms and conditions of each such scheme, including -

- (a) Date of shareholders' approval
- (b) Kind of benefits to be granted under the scheme
- (c) Beneficiaries of the scheme
- (d) Total assets of the scheme
- (e) Quantum of holding in own shares / listed holding company shares (both absolute and in percentage)
- (f) Whether scheme is in compliance of regulation 26(2) / 27(3) of the regulations, as applicable
- (g) Variation in terms of scheme

G. Details related to Trust

The following details, *inter alia*, in connection with transactions made by the Trust meant for the purpose of administering the schemes under the regulations are to be disclosed:

(i) **General information on all schemes**

| Sl. No. | Particulars | Details |
|----------------|---|----------------|
| 1. | Name of the Trust | |
| 2. | Details of the Trustee(s) | |
| 3. | Amount of loan disbursed by company / any company in the group, during the year | |
| 4. | Amount of loan outstanding (repayable to company / any company in the group) as at the end of the year | |
| 5. | Amount of loan, if any, taken from any other source for which company / any company in the group has provided any security or guarantee | |
| 6. | Any other contribution made to the Trust during the year | |

(ii) Brief details of transactions in shares by the Trust

- (a) Number of shares held at the beginning of the year;
 - (b) Number of shares acquired during the year through (i) primary issuance (ii) secondary acquisition, also as a percentage of paid up equity capital as at the end of the previous financial year, along with information on weighted average cost of acquisition per share;
 - (c) Number of shares transferred to the employees / sold along with the purpose thereof;
 - (d) Number of shares held at the end of the year.
- (iii) In case of secondary acquisition of shares by the Trust

| Number of shares | As a percentage of paid-up equity capital as at the end of the year immediately preceding the year in which shareholders' approval was obtained |
|--|--|
| Held at the beginning of the year | |
| Acquired during the year | |
| Sold during the year | |
| Transferred to the employees during the year | |
| Held at the end of the year | |

[Under regulations 16(2) and 23(3) - Disclosure Document]

Part A: Statement of Risks

All investments in shares, options or SARs are subject to risk as the value of shares may go down or go up. In addition, the options / SARs are subject to the following additional risks:

1. Concentration: The risk arising out of any fall in value of shares is aggravated if the employee's holding is concentrated in the shares of a single company.
2. Leverage: Any change in the value of the share can lead to a significantly larger change in the value of the options / SARs.

3. Illiquidity: The options / SARs cannot be transferred to anybody, and therefore the employees cannot mitigate their risks by selling the whole or part of their benefits before they are exercised.
4. Vesting: The options / SARs will lapse if the employment is terminated prior to vesting. Even after the options / SARs are vested, the unexercised options / SARs may be forfeited if the employee is terminated for gross misconduct.

Part B: Information about the company

- 1 Business of the company: A description of the main objects and present business of the company.
- 2 Abridged financial information: Abridged financial information, for the last five years for which audited financial information is available, as prescribed by the Board from time to time. The last audited accounts of the company shall also be provided unless this has already been provided to the employee in connection with a previous option or SAR grant or otherwise.
- 3 Risk Factors: Management perception of the risk factors for the company (i.e., sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of products, cost/time overrun etc.).
- 4 Continuing disclosure requirement: The option or SAR grantee shall be provided copies of all documents that are sent to the members of the company. This shall include the annual accounts of the company as well as notices of meetings and the accompanying explanatory statements.

Part C: Salient Features of the Scheme

This Part shall contain the salient features of the scheme of the company including the conditions regarding vesting, exercise, adjustment for corporate actions, and forfeiture of vested options / SARs as the case may be. It shall not be necessary to include this Part if it has already been provided to the employee in connection with a previous grant, and no changes have taken place in the scheme since then. If the scheme administrator (whether the company itself or an outside securities firm appointed for this purpose) provides advisory services to the grantees in connection with the exercise of options or SAR, as the case may be, or sale of resulting shares, such advice must be accompanied by an appropriate disclosure of concentration and other risks. The scheme administrator shall conform to the code of conduct appropriate for such fiduciary relationships.

SCHEDULE - II

[Under regulation 32(1)]

The explanatory statement to the notice and the resolution proposed to be passed in the general meeting for approving the issuance of sweat equity shall, *inter alia*, contain the following information:

- a) The total number of shares to be issued as sweat equity.
- b) The current market price of the shares of the company.
- c) The value of the valuation of know-how or intellectual property rights or value addition to be received from the employee or director along with the valuation report/basis of valuation.
- d) The names of the employees or directors or promoters to whom the sweat equity shares shall be issued and their relationship with the company.
- e) The consideration to be paid for the sweat equity.
- f) The price at which the sweat equity shares shall be issued.
- g) Ceiling on managerial remuneration, if any, which will be affected by issuance of such sweat equity.
- h) A statement to the effect that the company shall conform to the accounting policies as specified by the Board.
- i) Diluted Earnings Per Share pursuant to the issue of securities to be calculated in accordance with International Accounting Standards/standards specified by the ICAI.
