

**Proposed new SEBI (Share Based Employee Benefits and Sweat Equity)
Regulations, 2021 based on the recommendation of Expert Group**

1. Objective

1.1. This memorandum seeks the approval of the Board to review and merge SEBI (Issue of Sweat Equity) Regulations, 2002 and SEBI (Share Based Employee Benefits) Regulations, 2014 into a single regulation, called the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

2. Background and need for review

2.1. In order to provide an enabling framework for issuance of sweat equity shares by listed companies to its promoters/employees, etc., SEBI (Issue of Sweat Equity) Regulations, 2002 (in short "Sweat Equity Regulations") were notified on September 24, 2002.

2.2. SEBI had initially issued the Employee Stock Option Scheme and Employee Stock Purchase Scheme guidelines in 1999, to enable listed entities to reward their employees through stock option schemes and stock purchase schemes. These guidelines subsequently evolved into the SEBI (Share Based Employee Benefits) Regulations, 2014 (in short "SBEB Regulations") which were notified on October 28, 2014. The SBEB Regulations regulate Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefit schemes.

2.3. SEBI has been receiving feedback from the stakeholders requesting streamlining and rationalization of provisions of the SBEB Regulations, towards making them more robust, bringing in greater ease of doing business and alignment with best global practices. It was also suggested that since both Sweat Equity Regulations and SBEB Regulations regulate employee benefits based on issuance of the equity shares of listed companies, the possibility of merging the regulations could be explored.

3. Constitution of an Expert Group and its Report

3.1. Accordingly, on October 22, 2020, SEBI constituted an Expert Group under the chairmanship of Shri Sandip Bhagat (“Expert Group / Group”), a member of the Primary Market Advisory Committee, comprising of experts from law, company secretaries, merchant banking, etc.

3.2. The terms of reference of the Expert Group were as under -

- Reviewing the framework of the SBEB Regulations and suggesting policy changes thereto;
- Reviewing the framework of the Sweat Equity Regulations and suggesting policy changes thereto; and
- Suggesting, whether it is advisable to combine both the regulations and if so, providing a draft of combined regulations.

3.3. The Expert Group, after incorporating recommendations of PMAC, submitted its report (placed at Annexure I) to SEBI on June 18, 2021, including the draft of the proposed combined Share Based Employee and Sweat Equity Regulations. This report was published on SEBI’s website for soliciting public comments by July 25, 2021.

3.4. Sixty comments were received from seven persons / entities, which included stakeholders such as listed Companies, think tanks for the Indian software industries, advocates, merchant bankers and consultants. All commentators agreed with the proposals. Some of their comments are in the nature of seeking clarifications, which are largely procedural in nature. These shall be addressed through suitable FAQs. The analysis of the public comments on the recommendations of the Expert Group is placed at Annexure – II.

3.5. The relevant extracts of the provisions of the existing SBEB and Sweat Equity Regulations under consideration are placed at Annexure – III.

4. Key Recommendations of the Expert Group

The key recommendations of the Expert Group as detailed in Annexure I for amending/modifying some of the provisions of the SBEB Regulations and the Sweat Equity Regulations are highlighted below for consideration by the Board.

4.1. Definition of Employee

Existing Provision

4.1.1. Regulation 2 (1) (f) of the SBEB Regulations define employee to especially mean only 'permanent employees', thus restricting the eligibility for participation in SBEB schemes to such employees.

Issue for consideration

4.1.2. The Expert Group considered whether there is a need to amend the definition of employee under the SBEB Regulations to account for the new age economy, wherein recruiting non-permanent employees or employees on contract is prevalent amongst companies.

Recommendation of the Expert Group

4.1.3. The Expert Group, noted that in many companies today, there is a practice of engaging non-permanent employees who, while exclusively working for such companies may not be permanent employees on the payroll of such companies. These employees may otherwise be treated at par with permanent employees in terms of their remuneration, benefits and other rights.

4.1.4. In view of such prevalent employment practices, the Expert Group recommended that all employees should be considered eligible to receive share-based employee benefits under the SBEB Regulations and that companies should be accorded the flexibility to determine eligible employees.

Public comments and analysis

- 4.1.5. Six comments were received, with all of them supporting the above proposal.
- 4.1.6. The SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999, define employee as 'a permanent employee' of the company. The same definition was subsequently adopted in the Companies (Share Capital and Debentures) Rules, 2014. Therefore, the aforesaid recommendation would lead to a difference in the eligibility as an employee under the Rules and the SBEB Regulations.
- 4.1.7. It may be noted that the provision on issue of ESOPs under Companies (Share Capital and Debentures) Rules, 2014 specifically states that it applies to companies other than listed companies whereas the definition of the term Employee as per the above recommendation, shall be applicable for employees of a listed company. Nevertheless, in order to ensure harmonization, MCA may like to consider modifying the definition of employee along the above lines.

Proposal

- 4.1.8. In view of the above, it is proposed to delete the word 'permanent' in the definition of employee.
- 4.1.9. Further, a reference may be made to the Ministry of Corporate Affairs for considering similar changes in the Companies (Share Capital and Debentures) Rules, 2014.

4.2. Schemes through trust route

Existing Provision

- 4.2.1. Currently the route for implementation of the schemes, Direct or through Trust, is required to be decided upfront at the time of taking approval of the shareholders for setting up the schemes and once decided, the same cannot be changed subsequently.

Issue for consideration

4.2.2. The Expert Group considered the issue raised by stakeholders that there is difficulty in deciding the implementation route of schemes upfront, and whether, flexibility may be provided to the listed companies in deviating from the initial route of implementation of a scheme.

Recommendation of the Expert Group

4.2.3. The Expert Group, after deliberations, recommended that companies should have flexibility in switching the administration of a scheme from the trust route to the direct route and vice versa, if change in market conditions and other prevailing circumstances so warrant. However, such a change may be subjected to receipt of shareholders' approval by special resolution, and should not be prejudicial to the interest of the employees.

Public comments

4.2.4. Two comments were received, both supporting the proposal.

Proposal

4.2.5. The recommendation of the Expert Group (as at para 4.2.3) may be accepted.

4.3. Extended period for appropriation of shares in trust route

Existing Provision

4.3.1. At present, un-appropriated inventory of shares, that are not backed by grants, acquired by the trust through secondary acquisition, need to be appropriated not later than the end of the subsequent financial year.

Issue for consideration

4.3.2. The Expert Group considered whether there is any difficulty in appropriating the un-appropriated inventory of shares, that are not backed by grants, within the aforementioned prescribed period.

Recommendations of the Expert Group

4.3.3. The Expert Group, after deliberations, recommended extending the maximum time period for appropriation of shares that are not backed by grants, by an additional period of one year.

4.3.4. The Group recommended this to ensure that listed companies have adequate time to complete such appropriation where such grants lapse due to events such as cessation of employment or non-fulfilment of stipulated performance conditions, and other issues. Further, frequent activities of the trust to buy and sell in the secondary market is not a desirable practice.

4.3.5. The Group also noted that in any case, the shares held by the trust in all the schemes in aggregate cannot exceed the 5% of the entire diluted capital of the company.

Public comments

4.3.6. All the commentators are in favour of the proposed recommendation.

Proposal

4.3.7. In view of the above, the time-period provided for appropriating the un-appropriated inventory of the trust may be extended till the end of the second subsequent financial year, subject to the approval of the Compensation/ Nomination and Remuneration Committee for such extension.

4.4. Utilisation of excess funds on winding up of scheme

Existing Provision

4.4.1. At present, in case of winding up one scheme, excess / remaining funds can be utilized either for repayment of loan or distribution to employees as recommended by the compensation committee.

Issue for consideration

4.4.2. The Expert Group evaluated whether funds or shares remaining with a trust upon winding up of a scheme, may be utilized for another scheme for the benefit of the employees.

Recommendations of the Expert Group

4.4.3. The Expert Group deliberated that the assets of the trust are acquired and earmarked for the benefit of the employees of the company itself, and thus recommended that an option should be permitted to transfer the excess /remaining fund or shares of the wound up schemes to other schemes.

Public comments

4.4.4. Two comments were received, both supporting the proposal.

Proposal

4.4.5. It is proposed to permit transfer of excess shares or monies held by a trust upon its winding up, to other share-based employee benefit schemes under the Regulations, subject to approval of shareholders for such transfer.

4.5. Vesting

Existing Provisions

4.5.1. Extant regulatory provisions prescribe a minimum vesting period of one year in case of Employee Stock Option Schemes (“ESOS”).

4.5.2. In the event of the death of any employee, all the options, Stock Appreciation Rights (“SAR”) or any other benefit granted to the employee under a scheme till such date, shall vest in the legal heirs or nominees of the deceased employee.

Issue for consideration

4.5.3. The Expert Group evaluated representations for considering relaxation of the vesting period of the ESOS, SARs or any other benefits granted under the schemes to employees, especially in case of death or permanent incapacity while in employment.

Recommendations of the Expert Group

4.5.4. The Expert Group deliberated that a more lenient and humanitarian view may be taken, in case of death or permanent incapacity of an employee and recommended that vesting may be permitted immediately in such circumstances.

4.5.5. Further, flexibility may be given in defining the term “permanent incapacity” and it may be left to the listed company to frame an appropriate policy and definition, subject to compliance with applicable laws.

Circular issued by SEBI

4.5.6. Based on the above recommendations, in order to provide immediate relief to families of the deceased employees on account of Covid pandemic, SEBI issued a circular dated June 15, 2021 waiving the vesting period for ESOPS/ SARs or any other benefit schemes and stating that these benefits shall vest with legal heirs or the nominee as on the date of the death of the employee. This was applicable for all employees who have deceased on or after April 01, 2020.

Public comments

4.5.7. Three comments were received, welcoming the proposal. Few commentators have requested that similar relief may be provided to other benefit schemes, where lock in provisions are currently applicable. This would be in line with the relief granted in case of ESOPS.

Proposal

In view of the above, it is proposed that:

4.5.8. In the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and the stock options shall vest with immediate effect, on the date of death or permanent incapacity. Further, in such circumstances, the lock-in period of all benefit schemes shall also be waived off.

4.5.9. Companies shall frame an appropriate policy for determining the permanent incapacity as per the applicable laws and the same shall be included as part of the employee benefit schemes.

4.6. Certificate from Auditors

Existing Provisions

4.6.1. At present, the Board of Directors are required to place an auditor's certificate at each annual general meeting, certifying that schemes have been implemented in accordance with the applicable regulations.

Issue for consideration

4.6.2. There is a lack of clarity whether the term "auditors" under the regulations, refer to a statutory auditor, internal auditor or secretarial auditor.

Recommendations of the Expert Group

4.6.3. The Expert Group recommended that since the compliance certification is more in the nature of secretarial audit, the certificate should be provided by a secretarial auditor.

Public comments

4.6.4. All the comments received are in favour of the proposal.

Proposal

4.6.5. In view of the above, it is proposed that secretarial auditors shall certify that the employee benefit schemes have been implemented in accordance with the applicable regulations.

4.7. Purpose/ Objective of Sweat Equity Shares

Existing Provisions

4.7.1. Existing Sweat Equity Regulations do not specify the 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).

Issue for consideration

4.7.2. The Expert Group evaluated whether the Sweat Equity Regulations should specify the purposes/objectives for which issuance of sweat equity shares are offered.

Recommendations of the Expert Group

4.7.3. The Expert Group, deliberated that since the purpose of issuance of sweat equity shares is not specified in the regulations, it would be appropriate to provide clarity in this respect.

4.7.4. The Group accordingly recommended defining sweat equity as prescribed under section 2(88) of the Companies Act, 2013. As per the said definition, sweat equity is issued for providing the know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Public comments

4.7.5. No public comments were received on this proposal.

Proposal

4.7.6. The recommendation of the Expert Group may be accepted and the purpose for issuance of sweat equity shares for listed companies, may be defined in accordance with the Section 2(88) of Companies Act, 2013.

4.8. Quantum of Sweat Equity Shares

Existing Provisions

4.8.1. Existing Sweat Equity Regulations do not specify any maximum limit on a yearly basis or an overall ceiling upon the quantum of sweat equity shares that can be issued by a listed company.

Issue for consideration

4.8.2. The Expert Group evaluated whether the Sweat Equity Regulations should specify a maximum limit on the quantum of sweat equity shares that may be issued by a company.

Recommendations of the Expert Group

4.8.3. The Expert Group recommended that the maximum limit on quantum of sweat equity shares may be prescribed along the lines provided in the Companies (Share Capital and Debentures) Rules, 2014, for unlisted companies.

4.8.4. The expert group also recommended providing certain additional relaxations for the companies listed on the Innovators Growth Platform.

Public comments

4.8.5. No public comments were received on this proposal.

Proposal

4.8.6. Companies (Share Capital and Debentures) Rules, 2014 prescribe yearly limit for issuance of sweat equity shares by a company at higher of fifteen percent of paid up share capital or shares of the issue value of rupees five crores. However, in terms of value of such shares, keeping a lower limit of rupee five crores for listed companies may not be relevant. It is therefore proposed that only a maximum yearly limit for the quantum of sweat equity shares that may be issued by a company listed on the main board may be prescribed up to fifteen percent of the existing paid up equity share capital. The overall limit however, may not exceed twenty-five percent of the paid-up capital at any time.

4.8.7. Further, for the companies listed on the Innovators Growth Platform, a maximum yearly limit may be kept at fifteen percent of the existing paid up equity share capital and the overall limit of such shares may not exceed fifty percent of the paid up capital. This relaxation of the overall limit (50% instead of 25%) for the Innovators Growth Platform will be available up to ten years from date of the company's incorporation or registration. This relaxation is in line with the Companies (Share Capital and Debentures) Rules, 2014 for start-ups.

4.9. Pricing requirements prescribed under the Sweat Equity Regulations

Existing Provisions

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

Issue for consideration

4.9.2. The Expert Group considered the need to revisit the aforementioned pricing requirements prescribed under the Sweat Equity Regulations.

Recommendations of the Expert Group

4.9.3. The Expert Group noted that while the current pricing of sweat equity is in line with the calculation of floor price in case of preferential issue, the regulation in this regard is not specifically linked with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (“ICDR Regulations”). The Group recommended that the pricing guidelines of ICDR Regulations, as applicable for floor price of preferential issue may continue and the link to ICDR Regulations may be specifically provided in the sweat equity regulations.

Public comments

4.9.4. No public comments were received on this proposal.

Proposal

4.9.5. The recommendation of the Expert Group on pricing of sweat equity shares may be accepted.

4.10. **Lock-in requirements prescribed under the Sweat Equity Regulations**

Existing Provisions

4.10.1. At present, Sweat Equity shares need to be locked in for a period of three years from the date of allotment.

Issue for consideration

4.10.2. The Expert Group evaluated whether the lock-in requirements under the Sweat Equity Regulations need to be reviewed.

Recommendations of the Expert Group

4.10.3. The Expert Group recommended that as the pricing of the sweat equity is in line with that for preferential issue of shares under the ICDR Regulations, the lock-in period should also be consistent with the lock-in period prescribed in relation to preferential issue under ICDR Regulations.

Public comments

4.10.4. No public comments were received on this proposal.

Proposal

4.10.5. The Sweat Equity shares shall be locked in for such a 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 ("ICDR"), as amended from time to time.

4.11. **Combining the existing SBEB Regulations and the Sweat Equity Regulations.**

Recommendations

4.11.1. The Expert Group recommended that since both the regulations deal with employee benefits schemes arising out of securities of a listed company, it shall be meaningful to merge both SBEB Regulations and Sweat Equity Regulations into SEBI (Share Based Employee Benefits Regulations and Sweat Equity) Regulations, 2021.

5. Proposed Regulations vis-à-vis the Existing Regulations

5.1. The recommendations of the Group on the proposed provisions vis-à-vis the respective provisions of the existing SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002 are placed as Annexure - IV.

6. Proposal for consideration and approval

The Board is requested to:

6.1. Consider and approve the proposals as detailed under para 4 above along-with the draft SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 placed at Annexure.

6.2. Authorize the Chairman to take consequential and incidental steps to give effect to the decisions of the Board.

Annexure- I

Discussion paper is available at www.sebi.gov.in

Annexure- II

(This has been excised for reasons of confidentiality)

Relevant extracts of the provisions of the existing SBEB and Sweat Equity Regulations

1. 2.(1)(f): “employee” means, —
 - (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 ...”

2. 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, as amended or modified from time to time.”

3. Regulation 3(1): “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).”

4. Regulation 3(12): “The unappropriated 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.”

5. Regulation 7:

“(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 subregulation (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.”

6. Regulation 3(11): “...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.”

7. 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.”

8. Regulation 2(1)(n): ““grant date” means the date on which the compensation committee approves the grant;”
9. 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 vest in the legal heirs or nominees of the deceased employee.”
10. Regulation 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.”
11. Regulation 24(1): 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.”
12. 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:
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.”
13. 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:

(a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations;...”

14. 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.:

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.”

15. 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.”

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

17. “Regulation 12.(1) The Sweat Equity shares shall be locked in for a period of three years from the date of allotment.”

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

19. 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.”
20. 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:...
- j. the procedure for cashless exercise of options / SARs.”
21. 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.”

Recommendations of the Group on the proposed provisions vis-à-vis the respective provisions of the existing SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002

| Sl. No | Existing Regulations | Proposed Provisions of Regulations |
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| 1. Definition of Employee | | |
| | 2.(1)(f): “employee” means, — (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 ...” | “employee” means, — (i) <u>an</u> 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, <u>including a non-executive director (who is not a promoter or member of the promoter group)</u> , but excluding an independent director; or ...” |
| 2. Composition of Compensation Committee | | |
| | 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, as amended or modified from time to time.” | “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.: |

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| | | <p>Provided that a company may also opt to designate its nomination and remuneration committee as compensation committee for the purposes of these regulations.”</p> |
| <p>3. Implementation of schemes through trust.</p> | | |
| | <p>Regulation 3(1): “A company may implement schemes either directly or by setting up an irrevocable trust.</p> <p>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.</p> <p>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).”</p> | <p>“A company may implement schemes either directly or by setting up an irrevocable trust.</p> <p>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.</p> <p><u>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.</u></p> <p>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).”</p> |

4. Extension of period for appropriation;

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| <p>Regulation 3(12): “The unappropriated 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.”</p> | <p>“The unappropriated 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, <u>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.</u>”</p> |
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5. Variation of terms of the schemes

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| <p>Regulation 7:</p> <p>“(1) The company shall not vary the terms of the schemes in any manner, which may be detrimental to the interests of the employees:</p> <p>Provided that the company shall be entitled to vary the terms of the schemes to meet any regulatory requirements.</p> <p>(2) Subject to the proviso to subregulation (1), the company</p> | <p>(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.</p> <p>(2) <u>Notwithstanding the provisions of sub-regulation (1), the company shall be entitled to vary the terms of the schemes to meet any regulatory</u></p> |
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| <p>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.</p> <p>(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.</p> <p>(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.</p> <p>(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</p> | <p><u>requirement without seeking shareholders' approval by special resolution.</u></p> <p>(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.</p> <p>(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.</p> <p>(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 <u>by special resolution</u> has been obtained for such repricing.”</p> |
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| | <p>price of the shares in the stock market:</p> <p>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.”</p> | |
| 6. Calculation of limits of shareholding of trust under secondary acquisition | | |
| | <p>Regulation 3(11):</p> <p>“...Explanation</p> <p>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.”</p> | <p>“...Explanation</p> <p>1.- The above limits shall automatically include within their ambit the expanded <u>or reduced</u> capital of the company where such expansion <u>or reduction</u> has taken place on account of corporate action including issue of bonus shares, split, rights issue, <u>buy-back or scheme of arrangement.</u>”</p> |
| 7. Utilisation of trust funds on winding up of scheme | | |
| | <p>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</p> | <p>“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, <u>or,</u></p> |

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| | utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee.” | <u>subject to approval of the shareholders, transferred to another scheme under these regulations, as recommended by the compensation committee.”</u> |
| 8. Grants | | |
| | Regulation 2(1)(n): ““grant date” means the date on which the compensation committee approves the grant;” | Regulation 2(1)(n): ““grant date” means the date on which the compensation committee approves the grant; <u>Note: It is clarified that for accounting purposes, the grant date will be determined in accordance with applicable accounting standards;”</u> |
| 9. Vesting | | |
| | 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 vest in the legal heirs or nominees of the deceased employee.” | “(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, <u>with effect from the date of death</u> , in the legal heirs or nominees of the deceased employee.” |
| | Regulation 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 | “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 |

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| | <p>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.”</p> | <p>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.</p> <p><u>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.”</u></p> |
| | <p>Regulation 24(1): 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</p> | <p>There shall be a minimum vesting period of one year in case of SAR scheme:</p> <p>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</p> |

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| | <p>employee shall be adjusted against the minimum vesting period required under this sub-regulation.”</p> | <p>vesting period required under this sub-regulation.</p> <p><u>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.”</u></p> |
| | <p>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:</p> <p>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,</p> | <p>“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:</p> <p>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.</p> <p><u>It is clarified that cessation of employment due to retirement or superannuation would not be covered by this sub-regulation and</u></p> |

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| | SAR, or any other benefit covered by these regulations.” | <u>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.”</u> |
| 10. Cashless Exercise | | |
| | 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: (a). cashless exercise of options under the scheme covered by Part A of Chapter III of these regulations;...” | “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). <u>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;...</u> ” |
| | 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.: Provided that in case of ESOS or SAR, under cashless exercise, the | “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, <u>and subject to applicable law or regulations</u> , the company or the trustee may fund or permit the empanelled stock brokers to make suitable arrangements to fund the |

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| | <p>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.”</p> | <p>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,</p> |
| <p>10. Certificate from Auditors</p> | | |
| | <p>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.”</p> | <p>“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 <u>secretarial</u> 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.”</p> |
| <p>11. Purpose/Objective of Issuance of Sweat Equity</p> | | |
| | <p>Regulation 4: “A company whose equity shares are listed on a recognized stock exchange may issue sweat</p> | <p>“A company whose equity shares are listed on a recognized stock exchange may issue sweat equity shares in accordance with Section</p> |

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| | <p>equity shares in accordance with Section 79A of Companies Act, 1956 and these Regulations to its – (a) Employees; (b) Directors.”</p> | <p>54 of Companies Act, 2013 and these Regulations to its – (a) Employees (b) Directors, <u>for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.”</u></p> |
| 12. Maximum limit on a yearly basis and an Overall Ceiling limit | | |
| | <p>-</p> | <p>Introducing new Regulation 4A: <u>“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:</u></p> <p><u>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.</u></p> <p><u>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”</u></p> |
| 13. Lock-in Requirements | | |

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| | proposes to list the said shares.” | |
| 16. Settling the stock options in cash upon exercise | | |
| | <p>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:</p> <p>...</p> <p>j. the procedure for cashless exercise of options / SARs.”</p> | <p>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:</p> <p>...</p> <p>j. the procedure for <u>funding the exercise of options / SARs.</u></p> <p>k. <u>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.</u>”</p> |
| 17. Rationalising calculation of threshold of 10% in case for general employee benefits schemes. | | |
| | Regulation 26(2): “At no point in time, the shares of the company or | “The shares of the company or shares of its listed holding company shall <u>not</u> exceed ten per cent of the |

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| | <p>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.”</p> | <p>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 <u>(whether audited or limited reviewed)</u> for the purposes of GEBS.</p> <p><u>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.”</u></p> |
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