

## New Share Based Employee Benefits Regulations

The Securities and Exchange Board of India (“SEBI”) had constituted an expert group to examine if SEBI (Share Based Employee Benefits) Regulations, 2014 (“**SBEB Regulations, 2014**”), and the SEBI (Issue of Sweat Equity) Regulations, 2002 (“**Sweat Equity Regulations, 2002**”), should be revised. The expert group submitted its report to SEBI. Based on the report, SEBI had issued a discussion paper inviting comments from the public. Pursuant to this process, the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (“**New Employee Benefit Regulations**”), were notified on August 13, 2021 governing all share based employee benefit schemes dealing in securities, including employee stock options, employee share purchase, stock appreciation rights, general employee benefits, retirement benefits and sweat equity. The New Employee Benefit Regulations replaces the SBEB Regulations, 2014, and the Sweat Equity Regulations, 2002. The key changes are set out below.

- 1. Expanded coverage of ‘employee’:** The definition of an employee, except in relation to sweat equity, has been amended to include an employee of the company, who is exclusively working in India or outside India. Further, the ambit of an employee has been expanded to include employees of group companies, including associate companies.
- 2. Implementation of share based employee benefit schemes through Trust:** Companies have been given the liberty to change the mode of implementation of the schemes, i.e. any scheme implemented by the Trust can be implemented directly by the company or vice-versa, provided that a fresh approval of the shareholders by a special resolution is obtained prior to implementing such a change, and that such a change is not prejudicial to the interest of the employees.



- 3. Time period to grant unappropriated inventory of shares:** The unappropriated inventory of shares lying with the Trust, which were not backed by grants, were required to be appropriated by the end of subsequent financial year, however, now such unappropriated inventory of shares can be appropriated by the second subsequent financial year, subject to the approval of the compensation committee/ nomination and remuneration committee.
- 4. Variation of the share based employee benefit schemes for regulatory reasons without shareholder approval:** Companies can vary the terms of the schemes to meet any regulatory requirement without seeking shareholders’ approval.
- 5. Vesting of options in case of death or permanent incapacity:** In the event of death or permanent incapacity of an employee who has been granted employee stock options or stock appreciation rights

(“SARs”), the minimum cliff period of one year as regards vesting will not apply, and the options or SARs (as the case may be) will vest immediately. In case of employee stock purchase scheme, in case of death or permanent incapacity, lock in period of one year will not be applicable. A company implementing an employee stock option scheme or stock appreciation rights is required to frame an appropriate policy with respect to the death or permanent incapacity of an employee, subject to applicable laws.

**6. Vesting in case of retirement or superannuation:** In the event of retirement or superannuation, the options, SARs, or any other benefits granted to an employee, which have not vested, will not expire, and will continue to vest in accordance with their respective vesting schedules as per company’s policies.

**7. Treatment of options in case of scheme of arrangement, amalgamation, merger or demerger (“Scheme of Arrangement”):** In the event that an employee who has been granted benefits under a scheme, is transferred

pursuant to a Scheme of Arrangement, or continues in the existing company, prior to the vesting or exercise, the treatment of options in such case is required to be specified in such Scheme of Arrangement, provided that such treatment should not be prejudicial to the interest of the employee.

**8. Inclusion of sweat equity related provisions:** The New Employee Benefit Regulations bring together the SBEB Regulations, 2014, and Sweat Equity Regulations, 2002. Chapter IV of the New Employee Benefit Regulations provides for sweat equity related provisions.

**9. Merging of the June 16, 2015, SEBI Circular:** The SEBI Circular No. CIR/CFD/POLICY CELL/2/2015, dated June 16, 2015, which supplemented the SBEB Regulations, 2014, and provided for the minimum provision to be included in a trust deed, items to be included in the explanatory statement while adopting a scheme, disclosures required to be made by the company, etc., have been added as Schedule I of the New Employee Benefit Regulations.

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