

<b>SEBI</b> CA. Bhavesh Vora, CA Jayant Thakur	
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The Company Law Committee has released its report dated 31st March 2022 making recommendations for amendments to the Companies Act, 2013 in several areas. Some of the important subjects on which amendments are proposed are summarized below.

#### **Amendments relating to independent directors and other provisions on corporate governance**

Amendments are proposed relating to role of independent directors and corporate governance generally. They are primarily to take into account developments and concerns that have arisen over a period of time. However, note that with such amendments being made, the divergence with SEBI Regulations becomes even further, as far as listed companies are concerned. It is submitted that it would have been better if the Companies Act, 2013 restricts itself to unlisted companies and power to make provisions relating to listed companies be given exclusively to SEBI. Otherwise, there will be dual/overlapping requirements.

#### **Variants of Employees Stock Options**

The Report recommends regulating two particular variants of employees stock options. These are Restricted Stock Units (RSUs) and Stock Appreciation Rights (SARs). RSUs provide for issue of shares if certain conditions/restrictions are met. Stock Appreciation Rights (SARs) provide for payment of appreciation in value of shares from the date of their grant to the date of their exercise. This appreciation can be given even in the form of shares. Since there is no clarity or specific provisions in the Act on how these variants are governed, leaving scope for misuse, the Report suggests that these be specifically regulated.

#### **Fractional shares**

The Report recommends that shares may be issued even in fractions. Under the current law, shares can be issued in whole units and of a specified face value. Fractional shares are not allowed to be issued generally but they may arise in special situations, such as, for example, on issue of bonus shares. If a company issues 1 bonus share for every two shares held, then the person holding, say, 5 shares would get 2.50 shares. Issue arises of the half share. Typically, this is resolved by the company collecting all such fractional shares in a trust and selling them and then distributing the sale proceeds proportionately to the shareholders entitled to such fractional shares.

It is, however, now proposed to allow issue of fractional share directly and not merely as a consequence of corporate actions. The rationale for this offered can be seen by the example of shares in MRF. The market value of one share is around Rs. 70000. Thus, these are beyond reach of small shareholders. Small shareholders would thus be able to acquire such high value shares if there are fractional shares available. While it is not made clear, presumably, the voting would also be on a fractional basis on a proportionate basis.

#### **Amendments relating to powers of NFRA**

The National Financial Reporting Authority (NFRA) is now proposed to be given extra powers. Presently, they can take action against Chartered Accountants for professional misconduct. It is proposed that they be empowered take action against them even for violation of the Companies Act, 2013 and Rules made thereunder. There are other amendments focused at auditors including allowing, for specified classes of companies with no or low public interest, auditors to render non-audit services. Resignation by auditors would now require disclosure of any wrong doing/non-cooperation by management, etc. that they are aware of. Joint audit, i.e., audit by more than one firm of auditors, is also proposed to be mandated for companies beyond prescribed size.

#### **Enabling formation of special purpose vehicles**

A recent trend in the West is about Special Purpose Acquisition Companies (SPACs). In ordinary course, an operating company, with a track record, is only allowed to offer shares to the public and list them. SPACs reverse this procedure. A shell company is formed first in which a public issue is made. Businesses are then acquired with the funds so raised and merged with the SPAC. The Report recommends that SPACs be allowed and provisions made therefor in law. One trusts that since such SPACs would be listed companies, due consultation be had with SEBI and, preferably, power to make detailed rules governing such entities be given to SEBI.

There are several other amendments proposed. The MCA has invited comments on the recommendations. It is expected that, after considering the comments, a formal Companies Amendment Bill would be introduced in Parliament.