

Article



Employee Stock Options: Understanding the regulatory aspects

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Introduction

“If you want to go fast, go alone; if you want to go far, go together”

A company is composed of its people. The assets are not what reflect on the balance sheet of an entity, the assets are the people who actualize what reflects numerically on the financials of an entity. The old adage, therefore holds true for the human resources management in an entity. While a company looks for value add from its people, “giving back” to the human resources is also quintessential for a company. It helps imbibe the feeling of belongingness towards the company.

To this end and intent, companies offer share based employee benefit schemes for employees which facilitates the employees to participate in the growth of the companies and directly reap benefits out of the growth of the company as well. Such programs are designed as a win-win for both the employees and the companies. The schemes do the following:

- a. Gives a sense of belongingness to the company, as the employee has the opportunity to participate in the wealth creation of the company. It also gives a sense that the employees are responsible for the growth of the company.
- b. The employee understands that the growth of the employee is directly proportionate to the growth of the company. The more the company grows, the more does it add value to the employee as well and in turn also brings about satisfaction of working towards a ‘purpose’.
- c. The company in turn retains employees whose vision is aligned with that of the company.
- d. The company is able to retain its employees more in relativity against such companies who do not offer such schemes to their employees.

In this write-up we will be discussing some of the aspects of such employee share-based payments (ESBP) that are offered by the companies and try to give a holistic view on the regulatory, accounting and taxation aspects pertaining to some of these programs.

Most ESBPs are incentive payments to employees in form of shares.

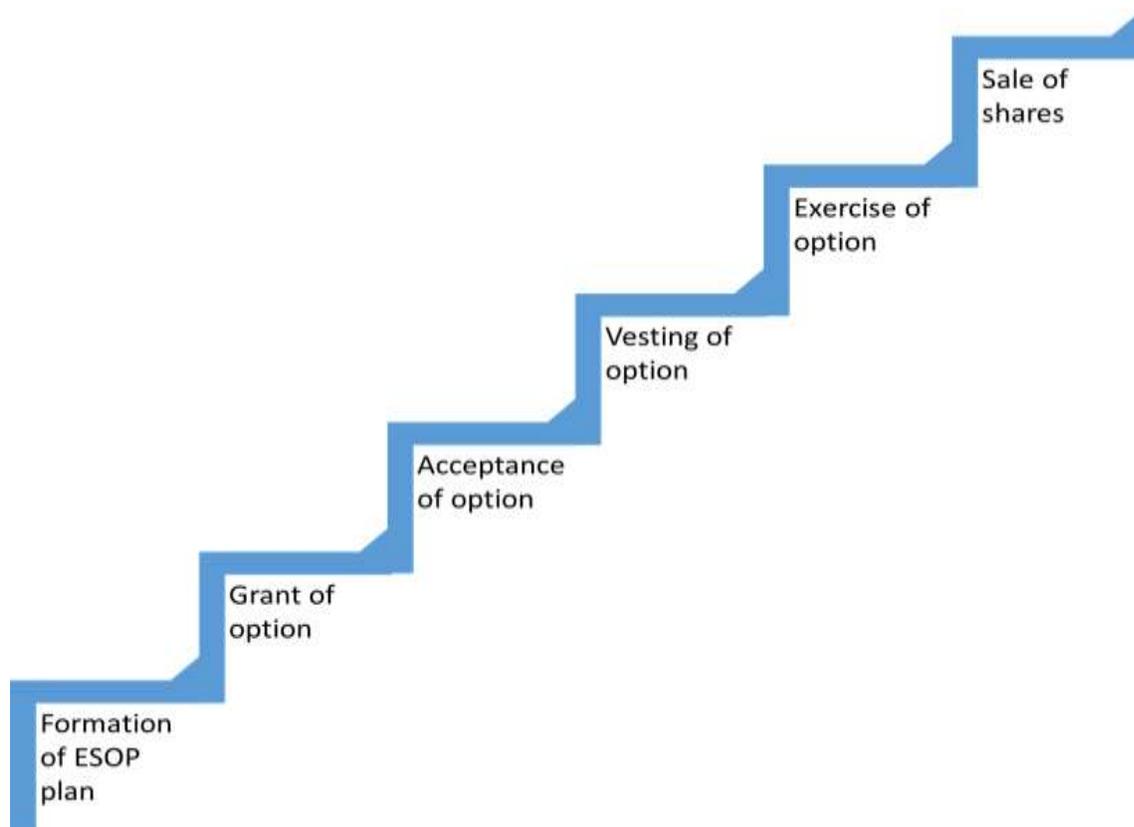
One of the ESBPs schemes for employees is Employee Stock Option Plan (ESOP). Under ESOP the employees have the right to acquire shares of the company in future at a pre-determined price. The right to acquisition of shares (option) is provided under a scheme (grant of option) and the option may be exercised after a certain number of years (vesting period) at a pre-determined price (exercise price).

Therefore, if the company over the years (vesting period) does well, then the employees will be able to encash on the increment in wealth of the company by acquiring shares. The difference between the exercise price and the-then value of the shares is effectively the value addition the



employees have been able to contribute and therefore participate in the same. Sometimes these schemes also allow the employees to extract the value additions in hard cash terms rather than holding shares in the company. Some of these ESOPs have been discussed in brief in the article. Typically companies float schemes encapsulating these schemes for a particular class of employees (eligible employees).

A typical process flow in case of an ESOP issuance is explained graphically below:



Types of Employee Share Based Payment Plans

Some of the ESOPs have been explained briefly below:

- a. **Employee Stock Option Plans (ESOPs)** - ESOP is a contract that gives employees the right, but not obligation, to purchase or subscribe to a specified number of shares of the company at a fixed price, that is, the exercise price. The exercise price remains fixed even if the market price goes up in future.
- b. **Employee Stock Purchase Plans (ESPPs)** -- ESPP is a plan under which the company offers shares to its employees at a discounted price as part of public issue or otherwise.



- c. **Stock Appreciation Rights (SARs)** -- SARs are rights that entitle the employees to receive cash or shares for an amount equivalent to the excess of market price on exercise date over a stated price.

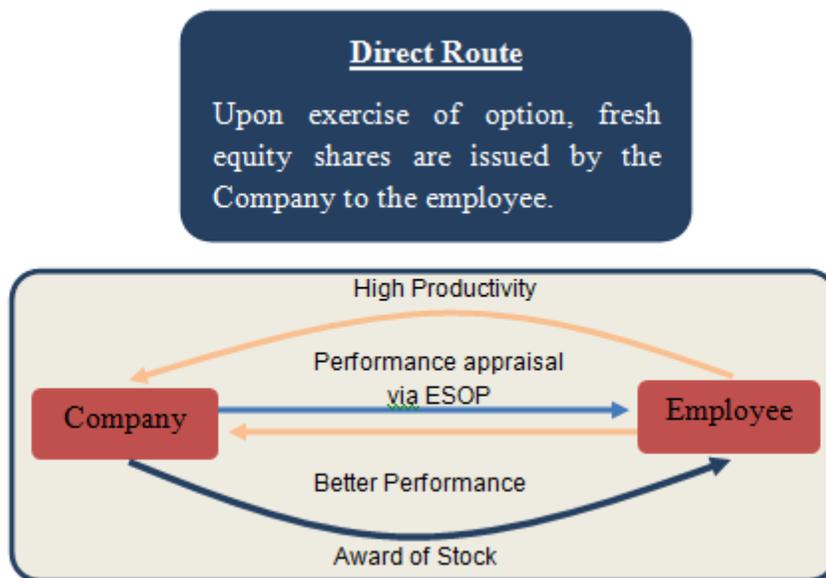
The focus of the article is on ESOP schemes floated by companies.

ESOP structures

ESOPs typically are issued by the company directly or are done through the trust route. Each of the structures are explained below:

Direct Route

In case of direct route, the company grants the option and at the time of exercise, fresh equity issuance is undertaken to allocate equity to the eligible employees. In case the employee decides to exercise the option, the employee also becomes the shareholder of the company.



Direct route is preferred by unlisted companies. The only issue with direct route structures is as and when the employee intends to monetize the shares, the company may have to buy-back the shares, specifically so in case of private limited companies or wait for the company to go for a public offering to get an exit from the company (as a shareholder).

Trust route brings in several complexities in the ESOP structures, the same is discussed in the next section.



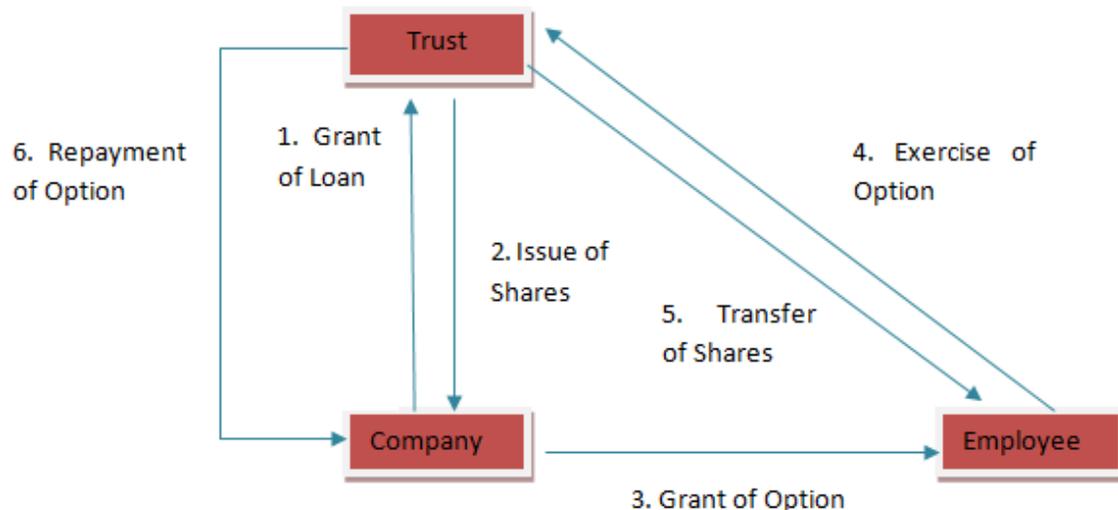
Trust Route

In the trust route structures, the company creates a trust specifically for the purpose of running the ESOP schemes. Where the employees decide to exercise the option to acquire the shares, the trust would first acquire the shares from the secondary market and then transfer the shares in the name of the employees.

Under the trust route, the company does not have to dilute its existing capital base and the structure is largely preferred by listed entities for secondary market acquisition of the shares.

These employee welfare trusts are funded by the company to acquire the shares in the secondary market to be transferred to the employees upon exercise of the options. In essence, the company is indirectly funding the acquisition of the shares of the company for the employees.

When the employees leave the company, the employees have the option of selling back the shares to the trust or in the secondary market and monetizing the wealth creation by way of subscribing to the shares. The exit route is far easier in case of trust mechanism than in case of direct route structures.



In case of trust route of issuance of ESOPs, the trust on its own will not have funds to be able to acquire the shares from the secondary market as the trust is not a business trust and is a specifically created with the objective of issuance of ESOPs to the employees.

The Companies Act, 2013 facilitates the company to on-lend to the trust for it to acquire shares from the secondary market to be allocated to the employee shareholders.

Section 67 of Companies Act, 2013 read with Rule 16 of the Companies (Share Capital and Debentures) Rules, 2014 allows the unlisted public companies to make provisions of money involving purchase or subscription of its own shares or shares of the company subject to the



fulfilment of the conditions specified below.

Conditions

(1)

- (a) the scheme of provision of money shall be separately passed by special resolution in a general meeting;
- (b) In case of listed Company, the Trust shall purchase the shares from the secondary market.
- (c) In case of unlisted Company, valuation of the shares purchased by the trust shall be done by an Independent Registered valuer.
- (d) the total value of shares in the trust shall not exceed 5% of the aggregate of paid up capital and free reserves of the company;

(2) The explanatory statement to be annexed to the notice of the general meeting to be convened pursuant to section 102 shall, in addition to the particulars mentioned in sub-rule (1) of rule 18, contain the following particulars, namely:-

- (a) the class of employees for whose benefit the scheme is being implemented and money is being provided for purchase of or subscription to shares;
- (b) the particulars of the trustee or employees in whose favor such shares are to be registered;
- (c) the particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any;
- (d) the any interest of key managerial personnel, directors or promoters in such scheme or trust and effect thereof;
- (e) the detailed particulars of benefits which will accrue to the employees from the implementation of the scheme;
- (f) the details about who would exercise and how the voting rights in respect of the shares to be purchased or subscribed under the scheme would be exercised;

Who can be the trustees

In the trust structures, the law prohibits the following people from being trustees in the company:

- a. The directors, KMPs and their relatives of the company, its holding, subsidiary or association company;
- b. Any person beneficially holding more than 10% of the paid-up share capital of the company.



Regulatory aspects pertaining to issuance of ESOPs

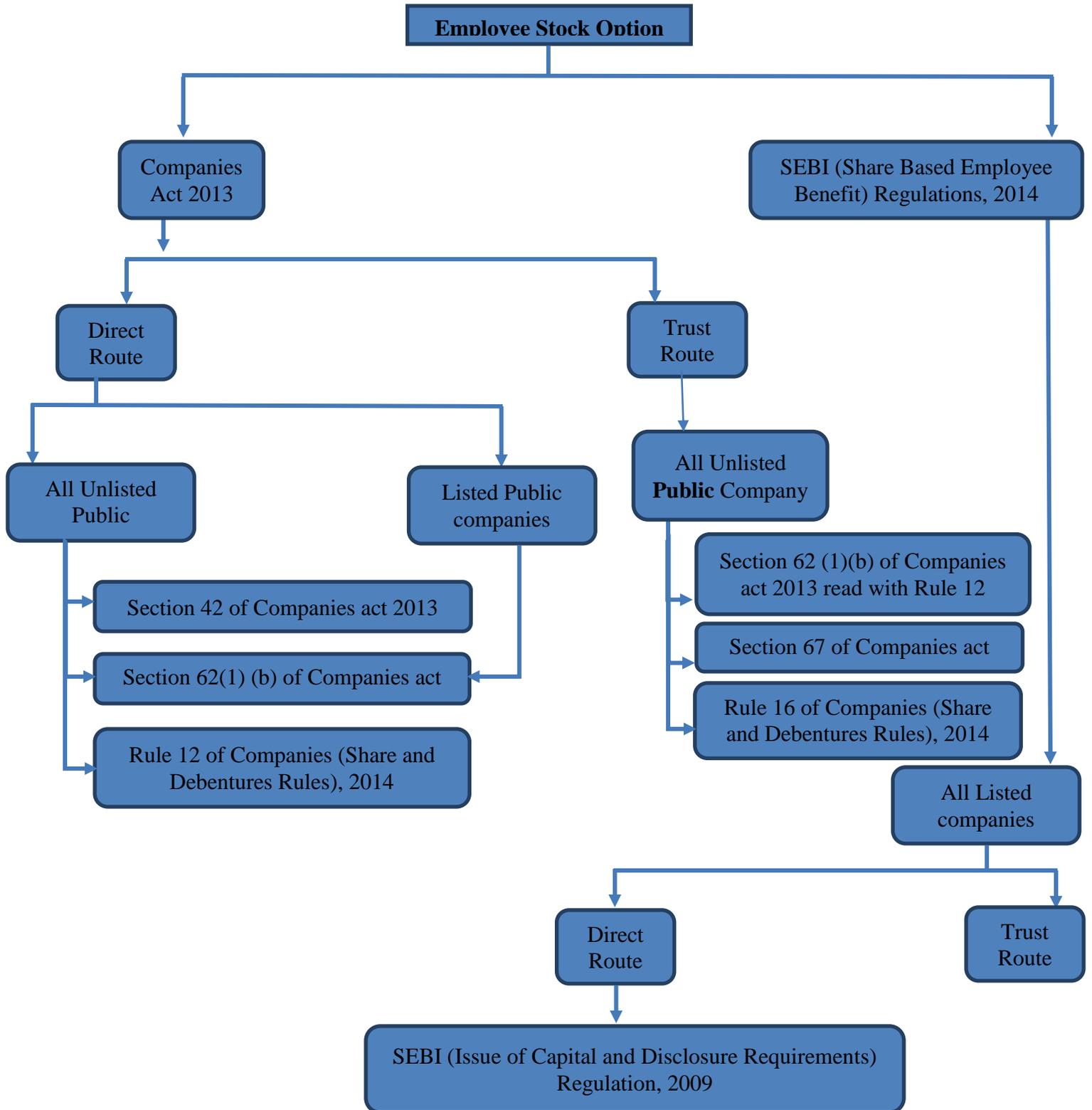
The provisions of law applicable for an ESOP issuance are listed below:

- a. Companies Act, 2013 and the allied rules
- b. Foreign Exchange Management Act (FEMA), 1999
- c. Income Tax Act, 1961
- d. Department of Public Enterprise (DPE) Guidelines (additional Guidelines for PSUs only)
- e. SEBI (Share Based Employee Benefit) Regulations, 2014 (In case of listed entities only)
- f. ICDR Regulations, 2009 (in case of listed companies only)

Companies Act, 2013, for the first time entailed the provisions of ESOPs. Section 2 (37) of the Act, 2013 defines:

“employees stock option” as the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

In case any company whether listed or otherwise, decides to undertake an ESOP scheme, the following provisions shall become applicable:





ESOP Procedures and Eligibility

Criteria for eligible employees

The intent of granting ESOPs is to keep employees motivated and also to let them be a part of the progress of the company. ESOPs will not be offered to all employees of the company. The company will be carving out a selection criteria basis which it will determine who will be eligible employees for availing the scheme.

The extant regulations pertaining to ESOPs lays down some criteria for who eligible employees could be. For instance, Explanation to Rule 12 (1) of Companies (Share Capital and Debentures) Rules, 2014 states that --

“For the purposes of clause (b) of sub-section (1) of section 62 and this rule ‘Employee’ means-

- (a) a permanent employee of the company who has been working in India or outside India; or*
- (b) a director of the company, whether a whole time director or not but excluding an independent director; or*
- (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside company but does not include-*
 - (i) an employee who is a promoter or a person belonging to the promoter group; or*
 - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.”*

Over and above the regulatory requirements, a company may set down certain criteria subject to which eligible employees will be identified. Most companies offer ESOPs to employees above a particular grade, number of years of service. In case of start-ups, the employees who joined the founders at the early stage of running the company may be offered ESOPs.

Procedure for issuance of ESOP under Companies Act, 2013

Once a company has identified employees who shall be eligible to avail the benefits under ESOP schemes, the company needs will carry out the following:

- 1) Prepare an ESOP Scheme.
- 2) Approval of the Scheme by Nomination and Remuneration Committee (where a company has one)
- 3) Convene a board meeting to approve the scheme.



- 4) Convene the shareholders' meeting for approving the scheme.
 - a. The notice to the shareholders' meeting shall give out details with regard to the scheme. Some of these details are specified in Rule 12 of the Companies (Share Capital and Debentures) Rules, 2014 and include:
 - i. Total number of stock options to be granted;
 - ii. Identification of classes of employees who shall be eligible under the scheme
 - iii. Appraisal process for determining the eligibility of employees
 - iv. Details of vesting and vesting period
 - v. Determination of exercise price and the process of exercise
 - vi. Lock-in period
 - vii. Maximum number of options to be granted per eligible employee and in aggregate etc.
 - b. A separate shareholders' resolution is required where:
 - i. Grant of option to employees of subsidiary or holding company
 - ii. Grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option
- 5) Grant letter of option to eligible employees.
- 6) Once the option is accepted by the eligible employees, execute the ESOP agreement with each eligible employee.
- 7) On expiry of vesting period, where an employee has exercised the option to acquire shares, allot shares.

Content of the Directors' Report

Once the scheme is afloat, the company shall in its Directors' Report for the year also specify the details of the ESOP scheme. The contents of the Directors' Report shall include the following:

- a. options granted;
- b. options vested;
- c. options exercised;
- d. the total number of shares arising as a result of exercise of option;
- e. options lapsed;
- f. the exercise price;
- g. variation of terms of options;
- h. money realized by exercise of options;
- i. total number of options in force;
- j. employee wise details of options granted to:-
 - i. key managerial personnel;
 - ii. any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.
 - iii. identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants



and conversions) of the company at the time of grant;

Maintenance of Register

The company shall maintain a Register of Employee Stock Options in Form no. SH.6 and shall forthwith enter therein the particulars of option granted. The Register shall be maintained at the registered office of the company or such other place as the board may decide. The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.

✚ The SEBI (Share Based Employee Benefits) Regulations, 2014 ('the Regulations')

a. Types of share based benefits

Listed companies may provide share based benefits to its employees under the following schemes:

1. Employee Stock Option Schemes (ESOS)
2. Employee Stock Purchase Schemes (ESPS)
3. Stock Appreciation Rights Schemes (SARS)
4. General Employee Benefits Schemes (GEBS)
5. Retirement Benefit Schemes (RBS)

A company is required to satisfy **any one** of the following conditions with regard to the aforesaid schemes:

- the scheme is set up by the company or any other company in its group; or
- the scheme is funded or guaranteed by the company or any other company in its group; or
- the scheme is controlled or managed by the company or any other company in its group.

b. Employees covered under the Regulations

Regulation 2(1)(f) of the Regulations defines the term 'employee' which is similar to the definition provided under the Companies Act, 2013.

c. Eligible employees

Compensation Committee determines eligibility of the employees to participate in the schemes under these Regulations. However, in case of a director nominated by any institution the following conditions shall have to be fulfilled:

- The agreement to specify that any grants of option under these schemes can be accepted by the person, such grant shall not be renounced to the institution and conditions subject to which any fees, commission etc. can be accepted.



- The agreement is filed by the nominating institution with the company and the company also files the same with the stock exchanges.
- The director furnishes a copy of the agreement at the first board meeting in which he participates.

d. Scheme implementation and process

Compensation Committee

A Company which intends to implement the aforesaid schemes requires constituting a Compensation Committee for administration and superintendence of the said schemes. The member of the said Committee shall be constituted with such members of the Board of Directors as prescribed for the Nomination and Remuneration Committee in terms of Section 178 of the Companies Act, 2013. Therefore, the Nomination and Remuneration Committee as constituted in terms of Section 178 may act as the Compensation Committee for the purpose of these Regulations if the Company does not decide to designate such other committee for this purpose.

However, if the implementation of the schemes is decided to be done through trust route, then the administrative power of the Compensation Committee is required to be delegated to the Trust formed under these Regulations.

The role of the Compensation Committee is to formulate detailed terms and conditions of the schemes including provisions specified by SEBI and to frame suitable policies and procedures in order to ensure compliance under Prohibition of Insider Trading Regulations and the Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003 by the Trust, company and its employees.

Role of Compensation Committee

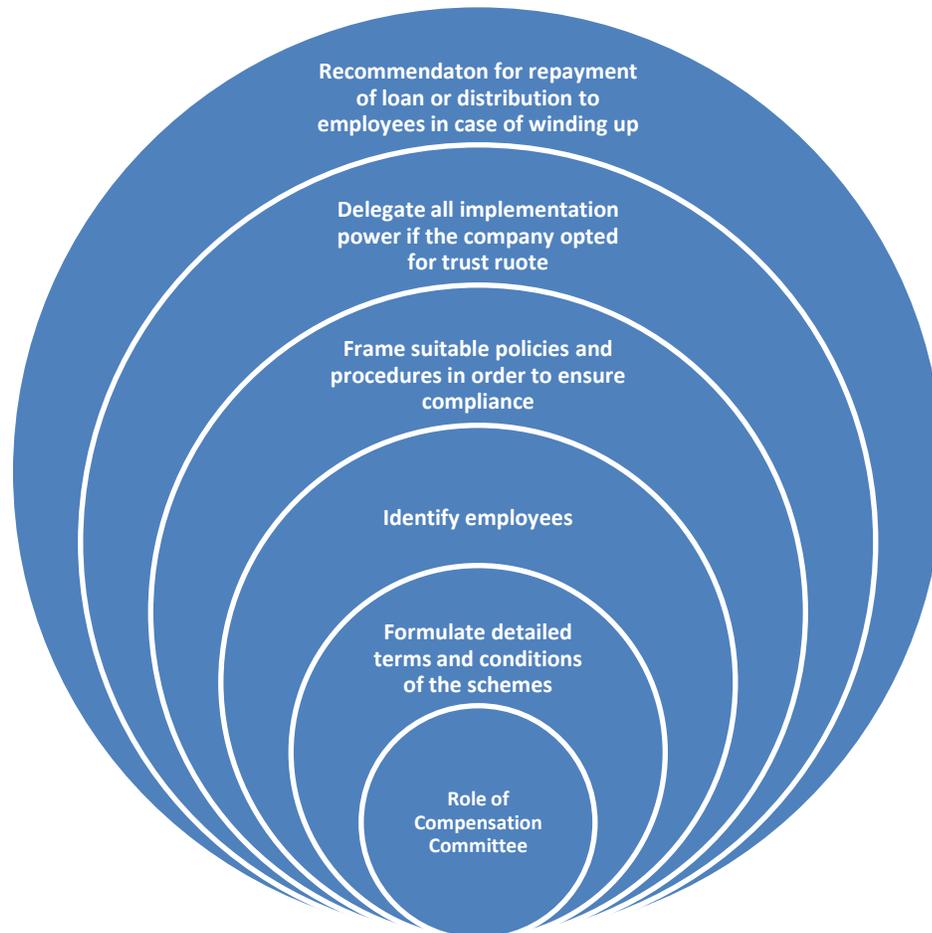


Figure 1: Role of Compensation Committee

e. Shareholders' Approval

A company cannot offer options, rights etc. under the aforesaid schemes to employees or vary any terms and conditions thereof offered by virtue of an earlier resolution, unless the same is approved by the shareholders by passing a special resolution. With this regard, the compliances with respect to the information to be included in the explanatory statement and the resolution as prescribed by SEBI vide its Circular dated June 16, 2015 ('SEBI Circular') shall be observed:

- a) brief description of the scheme(s);
- b) the total number of options, SARs, shares or benefits, as the case may be, to be 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 these Regulations within which the options / SARs / benefit shall be vested;
- f) exercise price, SAR price, purchase price or pricing formula;
- g) exercise period and process of exercise;
- 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 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 of conformity with the accounting policies specified in these Regulations;
- 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.'

f. Separate approval of shareholders

In case of the following circumstances, approval of the shareholders shall be required by way of separate resolutions:

- a) Secondary acquisition for implementation of the aforesaid schemes and the resolution shall mention the percentage of such acquisition that could be undertaken subject to limit fixed under these Regulations;
- b) Secondary acquisition by the Trust in case of expansion of share capital to maintain the maximum 5% cap as prescribed under these Regulations;
- 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 1 year, equal to or exceeding 1% 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.



g. Mode of implementation

A company may implement schemes either directly or by setting up an irrevocable trust(s). If the scheme is to be implemented through trust route then the same has to be decided upfront at the time of taking approval of the shareholders. However, if the scheme involves secondary acquisition or a gift or both, then the scheme is mandatorily required to be implemented through trust route only.

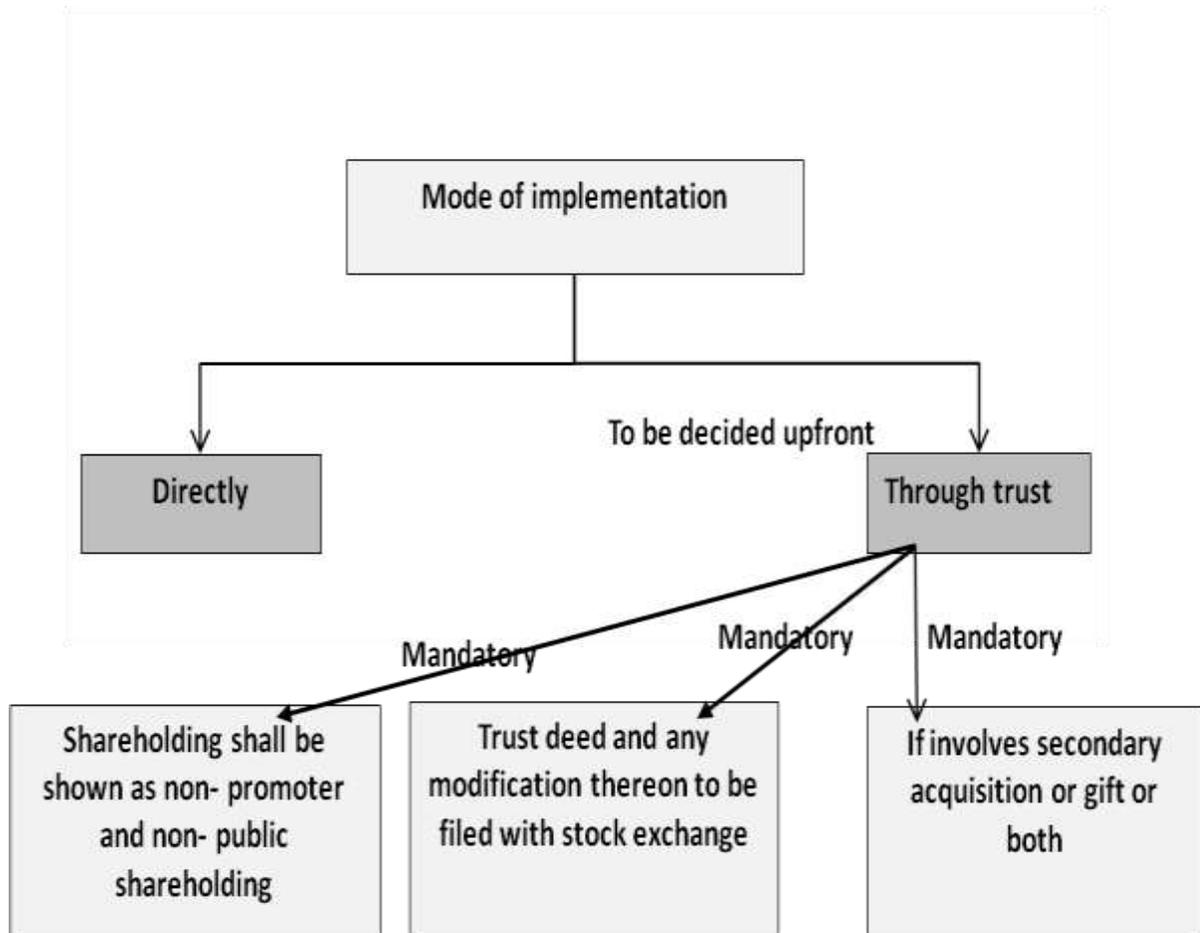


Figure 2: Implementation of the Scheme



A company may implement the aforesaid schemes through a single trust. In such case, the trust shall have to

- keep and maintain proper books of accounts, 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

The trust deed is required to contain all the provisions specified by SEBI 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.

h. Who cannot be trustees?

A person shall not be a trustee who:

- is a director, KMP or promoter of-
 - the company or
 - its holding,
 - subsidiary or
 - associate company or
 - any relative of such director, KMP or promoter; or
- beneficially holds 10% or more of the paid-up share capital of the company.

Persons ineligible to be Trustees

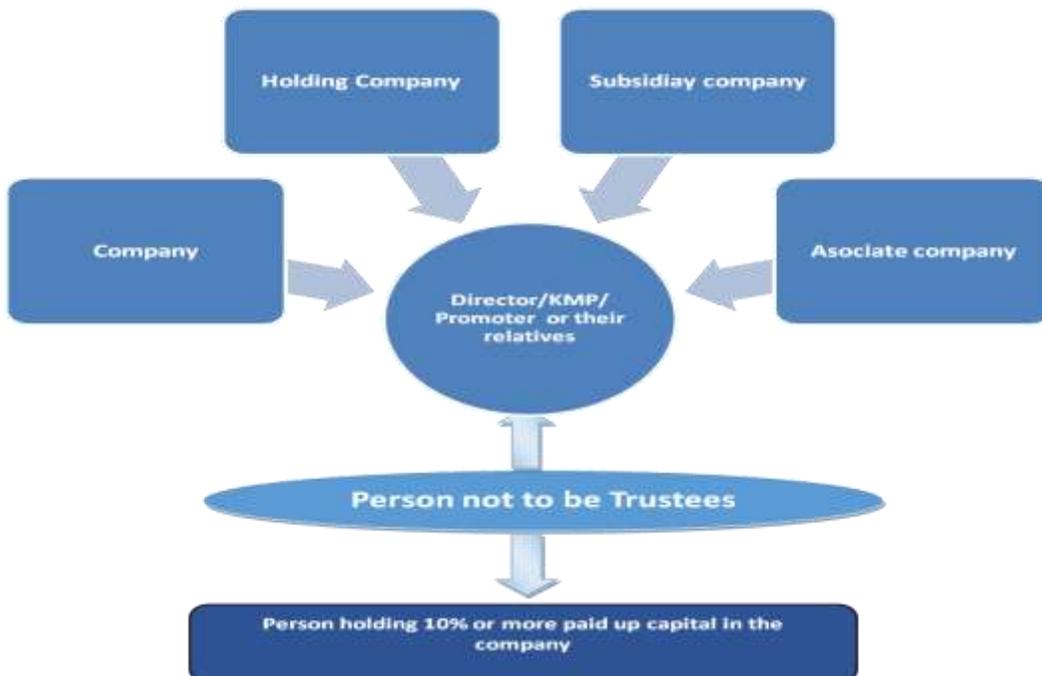




Figure 3: Persons ineligible to become trustees

i. Implementation of the Scheme Through Trust

The company may lend money 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) subject to the provisions prescribed under the Companies Act and allied rules made thereunder. Additionally, the company is required to fulfill the following conditions:

- the scheme of provision of money to be approved by the shareholders by way of a special resolution;
- the Trust shall purchase the shares only through recognized stock exchange;
- the value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed 5% of the aggregate of paid up capital and free reserves of the company.
- the explanatory statement to be annexed to the notice of general meeting shall be required to contain-
 - the class of employees for whose benefit the scheme is being implemented and money is being provided for purchase of or subscription to shares
 - the particulars of the trustee or employees in whose favor such shares are to be registered;
 - the particulars of trust and name, address, occupation and nationality of trustees and their relationship with the promoters, directors or key managerial personnel, if any
 - the any interest of key managerial personnel, directors or promoters in such scheme or trust and effect thereof;
 - the detailed particulars of benefits which will accrue to the employees from the implementation of the scheme;
 - the details about who would exercise and how the voting rights in respect of the shares to be purchased or subscribed under the scheme would be exercised
- If the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board's Report shall disclose the following:
 - the names of the employees who have not exercised the voting rights directly and reason thereon;
 - the name of the person who is exercising such voting rights
 - the number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company
 - the date of the general meeting in which such voting power was exercised;
 - the resolutions on which votes have been cast by persons holding such voting power;
 - the percentage of such voting power to the total voting power on each resolution;



- whether the votes were cast in favour of or against the resolution

j. Conditions for secondary acquisition by Trust

i) Limit on secondary acquisition for one financial year

Secondary acquisition in a financial year by the trust shall not exceed 2% of the paid up equity capital as at the end of the previous financial year.

ii) Limit of total number of shares under secondary acquisition

The Trust cannot hold at any time total number of shares under secondary acquisition as mentioned below:

Particulars	Limits on the basis of the paid up equity capital as at the end of the financial year immediately prior to the year in which shareholders approval is obtained
For ESOS, ESPS & SARS	5%.
For GEBS & RBS	2%
For all the schemes in aggregate	5%

Table 1: Secondary acquisition by Trust

k. Treatment of expanded capital in the aforesaid limit

Any expansion taken place on account of corporate action shall automatically include within the limit aforesaid.

l. 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.

m. Shares issued by way of new issue or gift from promoter or promoter group or other shareholders

The above ceiling limit calculated with respect to the percentage of paid up equity capital will not be applicable.

n. What if the aforesaid limits are exceeded?

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.



Limits of Secondary Acquisition

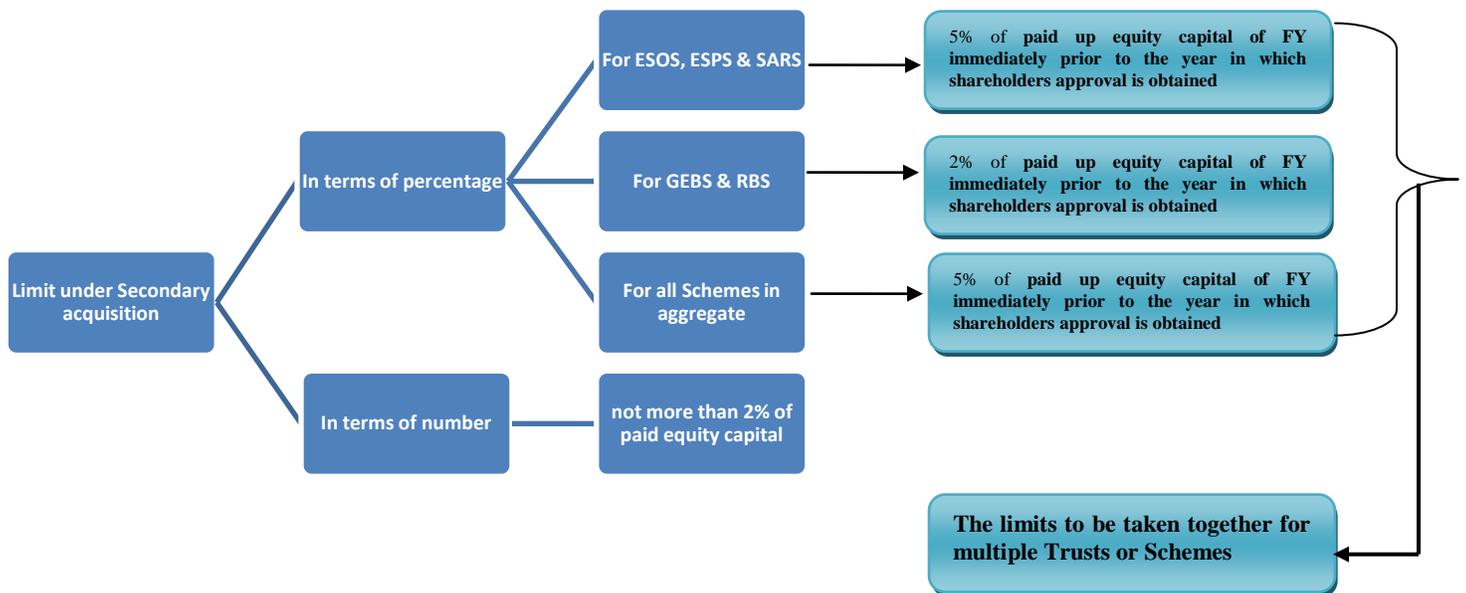


Figure 4: Limits of Secondary Acquisition

o. Unappropriated inventory of shares under ESOS, ESPS and SARS

If the un-appropriated shares are not backed by grants, the same shall be appropriated within the end of the subsequent financial year.

p. Lock in period for shares acquired through secondary acquisition

The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of 6 months except off-market transfer of shares-

- by participating in open offer under Takeovers Regulations, 2011; or
- by participating in buy-back, delisting or any other exit offered by the company generally to its shareholders.

Also, the Trust shall be eligible to make off market transfer to employees pursuant to the scheme subject to the lock in period as mentioned above.

q. Restriction on sale of shares in secondary market

The sale of the shares by the Trust in secondary market is not permitted except under the following circumstances-

- cashless exercise of options under ESOS;
- on vesting or exercise of appreciation rights under SARS;



- in case of emergency for implementing the schemes under RBS and GEBS subject to the record of reasons for such sale by the trustees and money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.
- participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
- 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;
- winding up of the scheme(s); and
- based on approval granted by SEBI to an applicant, for the reasons recorded in writing in respect of ESOS, ESPS and SARS upon payment of a non-refundable fee of rupees 1 lakh along with the application.

r. Disclosures by the Trust

The Trust is 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.

s. Variation in the terms of the scheme

For variation of terms of the schemes already approved by an earlier resolution including repricing of options, SARs etc. can be made only with the approval of the shareholders by way of a fresh special resolution subject to the condition that such variation shall not be detrimental to the interests of the employees. The notice shall contain-

- Full details of the variation,
- The rationale therefore, and
- The details of the employees who are beneficiaries of such variation.

t. Winding-up of the scheme implemented through Trust

The company to meet all outstanding obligations and the excess money or shares remaining with the trust thereafter shall be utilised for repayment of loan or by way of distribution to employees as recommended by the compensation committee

u. Schemes implemented prior to IPO

If any shares arise out of options or SAR granted under any scheme prior to initial public offer to the employees after the initial public offering ('pre-IPO scheme') such shares 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 SEBI (ICDR) Regulations, 2009 and the following conditions:



- a. Any fresh grant which involves allotment or transfer of shares under any schemes formulated prior to its IPO and prior to the listing of its equity shares only if the scheme is-
 - i. in conformity with these regulations; and
 - ii. ratified by its shareholders subsequent to the IPO at any time prior to grant of new options under such scheme.
- b. No change should have taken place in the terms of such schemes (except for any adjustments for corporate actions) unless prior approval of the shareholders is taken for such a change.

v. Compliances to be observed

A company will have to observe the applicable provisions of the Companies Act, 2013 and rules made thereunder, SEBI Act, 1992 and applicable guidelines, regulations made thereunder, these Regulations and any other applicable laws issued by various regulatory authorities for implementing any schemes related to employee benefits including-

1. Obtaining of in-principle approval of the stock exchanges.
2. Appointment of 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.
3. If the company issues options etc. to the employee of its subsidiary, the cost incurred by the company shall be disclosed in the 'notes to accounts' of the financial statements of the subsidiary company. In case of re-imburement, both the companies shall disclose in the notes of accounts.
4. 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.
5. The Board of Directors is required to disclose, in relation to employee benefits under the Companies Act, 2013 as specified by the SEBI Circular as follows:
 - a. any material change in the scheme(s) and whether the scheme(s) is / are in compliance with the regulations;
 - b. the web-link of the following disclosures disclosed on the website of the company:
 - i. 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;
 - ii. Diluted EPS on issue of shares pursuant to all the schemes in accordance with 'Accounting Standard 20 - Earnings Per Share' issued by ICAI or any other relevant accounting standards as prescribed from time to time;
 - iii. Details related to each scheme;
 - iv. Details related to Trust;



6. The company is to follow the 'Guidance Note on Accounting for employee share-based Payments' (Guidance Note) or Accounting Standards as may be prescribed by the Institute of Chartered Accountants of India (ICAI) from time to time, including the disclosure requirements prescribed therein.
7. The Option or SAR grantees are provided with the following details:
 - a. Statement with respect to risk of value of shares, concentration, leverage, illiquidity etc;
 - b. Information about the company;
 - c. Salient features of the scheme.
8. Any new shares issued shall be listed immediately in any recognized stock exchange where the existing shares are listed, subject to the following conditions:
 - a. Scheme is in compliance with these regulations;
 - b. A statement as specified by SEBI Circular in this regard, is filed regarding
 - i. description of the scheme signed by the Company Secretary and the following documents to be filed along with the statement:
 1. Copy of scheme, Copy of notice of AGM/EGM approving the scheme/for amending the scheme/for approving grants and Copy of resolution of shareholders for approving the scheme/ for amending the scheme/for approving grants duly certified by the Company Secretary;
 2. List of Promoters as defined under these Regulations;
 3. Copy of latest Annual Report;
 4. Certificate of Auditor on compliance with of the Regulations;
 5. Specimen copy of share certificate
 - ii. an undertaking for compliances under these Regulations, SEBI(PIT) regulations etc.
 - iii. a certificate with respect to meeting of requirements under these Regulations signed by the Compliance Officer;
 - iv. a certificate from registered Merchant Banker.
 - c. Has obtained an in-principle approval from the stock exchanges;
 - d. Whenever an exercise is made, the company requires to notify the concerned stock exchange as per the statement specified by SEBI Circular in this regard signed by the Company Secretary or Compliance Officer as follows:
 - i. Company name and address of Registered Office;
 - ii. Name of the Stock Exchanges on which the company's shares are listed;
 - iii. Filing date of the statement referred in point (a) above;
 - iv. Filing Number, if any;
 - v. Title of the Scheme pursuant to which shares are issued, if any;
 - vi. Kind of security to be listed;
 - vii. Par value of the shares;
 - viii. Date of issue of shares;
 - ix. Number of shares issued;
 - x. Share Certificate No., if applicable;
 - xi. Distinctive number of the share, if applicable;



- xii. ISIN Number of the shares if issued in Demat;
- xiii. Exercise price per share;
- xiv. Premium per share;
- xv. Total Issued shares after this issue;
- xvi. Total Issued share capital after this issue;
- xvii. Details of any lock-in on the shares;
- xviii. Date of expiry of lock-in;
- xix. Whether shares identical in all respects to existing shares if not, when will they become identical?
- xx. Details of listing fees, if payable

Administration of ESBPs:

a. Price

The company may determine the price of shares to be issued under an ESOP, provided they conform to the provisions of accounting policies under the regulation

b. Lock-in period

The locked-in period is for a minimum period of one year from the date of allotment. In case of merger or amalgamation the period already undergone in respect of shares of the transferor company shall be adjusted against the lock in period as aforesaid.

If ESOP 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 ESOP shall not be subject to lock-in.

+ FEMA provisions on ESOPs

In case ESOPs are offered to employees working outside India, the FEMA provisions shall additionally apply.

Applicable provisions of FEMA (Transfer or issue of security to a person resident outside India) Regulations, 2000 (**FDI Regulations**) & Consolidated FDI Policy, 2015 issued from time to time are as under:

Definition under FDI Regulations:

“2 (iif) “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.”



Regulation 8 of FDI Regulations:

“¹(1) An Indian company may issue “employees’ stock option” and/or “sweat equity shares” to its employees/directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that :

- a. The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.*
- b. The “employee’s stock option”/sweat equity shares issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.*
- c. Issue of “employee’s stock option”/sweat equity shares in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.*
- d. Issue of “employee’s stock option”/sweat equity shares under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.*

(2) The Reserve Bank may require the company issuing “employees’ stock option” and/or “sweat equity shares” to submit such reports and at such frequency as it may consider necessary.”

Para 3.5.5 of Consolidated FDI Policy, 2015:

(i) “Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad, who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:

(a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and

(b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.

¹ Substituted vide Notification No. FEMA. 344/2015 RB dated 11th June, 2015



(ii) **Unlisted companies** have to follow the provisions of the Companies Act, as applicable. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB. Subject to this, Government approval is not required for issue of ESOPs in sectors under automatic route.

(iii) The issuing company is required to report (plain paper reporting) the details of granting of stock options under the scheme to non-resident employees to the Regional Office concerned of the Reserve Bank and thereafter the details of issue of shares subsequent to the exercise of such stock options within 30 days from the date of issue of shares in Form FC-GPR.”

Particulars	Listed		Unlisted	
	Person resident outside India	NRI	Person resident outside India	NRI
Granting of ESOP	Reporting to Regional Office of RBI			
Exercise of ESOP	Advance reporting to be filed with RBI within 30 days from receipt of amounts ² Form FC-GPR to be filed within 30 days from allotment of shares to the employees.			
Sale of shares granted under ESOP	Form FC-TRS to be filed within 60 days from the date of receipt or payment of the amount of consideration. The onus of submission of the form FC-TRS within the specified time shall be on the transferor / transferee, resident in India. However, in cases where the NR investor, including an NRI, acquires shares on the stock exchanges under the FDI scheme, the investee company would have to file form FC-TRS with the AD Category-I bank.			
		In case the investment is made under Schedule IV: The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall		In case the investment is made under Schedule IV: The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall

² <https://rbidocs.rbi.org.in/rdocs/Forms/PDFs/KYC020411.pdf>



		be credited only to NRSR account where the purchase consideration was paid out of funds held in NRSR account and to NRO or NRSR account at the option of the seller where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO/NRNR account.		be credited only to NRSR account where the purchase consideration was paid out of funds held in NRSR account and to NRO or NRSR account at the option of the seller where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO/NRNR account.
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