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New ESOP guidelines notified by SEBI

3 Nov 2014

On 28th October 2014, SEBI has notified new ESOP regulations, including for purchase of shares by employee welfare thrusts from secondary market with safeguard measures. The Securities Exchange Board of India has allowed that companies can have employment stock option programmes where they can buy their own company shares by following certain conditions.

The salient features of the guidelines are as follows:

1. The company can set up scheme directly or by setting up of irrevocable trusts. Under the Companies Act,2013 read with Companies(Share Capital and Debenture) Rules, 2014 the company can lend monies to the trust on appropriate terms and conditions to acquire shares by new issue or by secondary acquisition.
2. A compensation committee shall be formed by the company for administration and implementation of the schemes. The compensation committee shall be formed by members of the Board of Directors of the company under section 178 of the Companies Act, 2013.
3. The scheme can be offered to the employees only by passing of special resolution in general meeting by the shareholders. When there is secondary acquisition for implementation of the scheme then shareholder's approval is required by separate resolution in the general meeting.
4. The scheme shall not be varied by the company which may be against the interest of the employees. Valid variations in the scheme shall be made by the Company by passing a special resolution in general meeting.
5. In case of winding up of the scheme by the company through the trusts, the excess monies or shares remaining with the trust after all the obligations are met will be utilized for repayment of loan or in the manner of distribution to the employees as recommended by the compensation committee.
6. Option, SAR or any other benefit that the employee enjoys under the regulations are not transferable to any person. Under this other than the employee to whom SAR or other benefit is granted no one else is entitled to the benefits arising out of the SAR, benefit etc.
7. Under any scheme if there is new issue of shares then the new shares shall be listed immediately in the recognized stock exchange where the existing shares are listed subjected to certain conditions.
8. The regulations include safeguards for stricter disclosure and other regulatory

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obligations, i.e. a limit of 10 per cent of the assets held by general employee benefit schemes other than ESOS type of schemes and certain limits on secondary market acquisitions.

9. Another change in regulation is that a longer transition period of five years has been provided for re-classifying shareholding of existing employee benefit schemes separately from 'promoter' and 'public' category.
10. For secondary acquisition for a minimum period of six months the trust is required to hold shares. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital as the end of the previous financial year.
11. With the information that the company is required to disclose in respect to the employee benefit under Companies Act, 2013 the board of directors shall also disclose the details of the schemes that are being implemented.
12. Retirement Benefit can be implemented by a company provided it is in accordance with these regulations and relevant provisions with respect to retirement benefits. For the purpose of RBS the shares of the company or shares of its listed holding company shall not exceed ten percent of book value or market value of the total assets of the scheme.
13. The minimum vesting period in case of SAR scheme is one year. Under this scheme the employ does nothave the right to vote or receive dividend or enjoy any such benefit as that of a shareholder.

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