Employee Stock Option Plan (ESOP) : The Finer Nuances

An Employee Stock Option Plan (ESOP) is an employee benefit plan that gives workers ownership interest in the company in the form of shares or stock of the company. One thing we should keep in mind that it is an option and it is not an obligation.

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INTRODUCTION

Employee Stock option plan or Employee Stock Ownership Plan (ESOP) is an employee benefit scheme that enables employees to own shares in the company. These shares are purchased by employees at price below market price, or in other words, a discounted price.

Thus, an Employee Stock Option Plan (ESOP) is an employee benefit plan that gives workers ownership interest in the company in the form of shares or stock of the company. One thing we should keep in mind that it is an option and it is not an obligation. If employee is willing to take such an option, he/she may take it and vice versa.

Such plans are given to existing employees as reward based on tenure or on the basis of their performance. The purpose of providing ESOP is to make the employee more committed towards the company and it also helps to retain employees. In other words, ESOP motivates the employees to be committed towards the company for a long term and also take ownership of the company.

Eligible employees are required to complete a specified period with the company, as mentioned in the scheme of ESOP to claim the benefit of the ESOP. This period is called vesting period. After the completion of the vesting period the employees become eligible to purchase the specified number of shares of the Company at pre-determined price. Generally, the duration of vesting period is one year from the date of issue/grant of options.

MEANING OF THE SPECIFIC TERMS USED

Option means: Means the option given to an employee that gives such an employee a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly, at a pre-determined price.

Employee Stock Option: Pursuant to clause (b) of Sub Section (1) of Section 62 of Companies Act, 2013, the Company can offer shares through employee stock option to their employees if shareholders approve such scheme by way of passing special resolution subject to the conditions specified under Rule 12, of Companies (Share Capital and Debentures) Rules, 2014.

However, a Specified IFSC Public Company can offer shares through employee stock option to their employees through ordinary resolution.

Option Grantee: It means an employee having a right but not an obligation to exercise an option in pursuance of an ESOS. Regulation 2(1) (aa) of SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021.

Meaning of Vesting Period: The ESOP vesting period is the time frame between when employees get their ESOPs and when they are able to exercise any attached rights to options or shares. The employees are only able to obtain these shares once the ESOP vesting term has completed.

Exercise period: It means the time period which starts after the completion of vesting period within which an employee can exercise his/her right to apply for shares against the vested options in pursuance of the scheme of ESOP approved by the shareholders in general meeting by way of Special Resolution.

Exercise price: Means the price payable by an employee for exercising the options granted in pursuance of the scheme of ESOP.

FAQs

Q. What is an ESOP?

A. Thus, we can say that 'ESOP' stands for 'Employee Stock Option Plan' which is a kind of employee benefit plan that gives employees the right to purchase shares of their employer company at a pre-determined price after a certain time period.

Q. Does the ESOP supplement the salary of an employee?

A. From the point view of monetary benefits, we can say that ESOPs are often used to supplement the salaries of employees. Instead of paying high salary, employees may be offered ESOPs, which may generate more wealth for employees if the Company is growing and generating good amount of earnings which is over and above break-even point.

Q. Is ESOP risky and having any possibility of monetary loss?

A. It may be risky, if an employee accepts ESOPs instead of a higher salary, and the organization where they are employed is not growing as per the market standards or in comparison to its competitors, ESOP may result in monetary loss.

Q. How does exercise price determine for ESOP?

A. Companies are free to decide the exercise price, which may be issued at a discount or premium but the exercise price determined by the Company shall not be less than the par value of the shares.

Q. Does it mandatory for the Company to issue and allot only fresh shares under ESOP scheme?

A. No, it is not mandatory for the company to issue and allot only fresh shares under ESOP scheme, but it may choose either option:

1. If Company is willing to issue fresh shares, it should adopt direct route to issue and allot shares under the scheme of ESOP.
2. If the Company is willing to channelize its existing share only, in such case Company should adopt Trust route to issue and allot shares under the scheme of ESOP.

Q. How are ESOP taxed in India?

A. ESOPs have dual tax effects:

1. When an employee exercises their rights and purchases company's stock.
2. When the employee sells the stock after exercising the option.

TAX TREATMENT AT THE TIME OF BUYING THE SHARES

Employees can exercise his option and purchase shares after the vesting date is over at a pre-determined price, which is usually less than the share's Fair Market Value (FMV). As a result, the difference between the FMV and the exercise price of the share is considered a perquisite in the employee's hands and taxed at his income tax slab rate. However, in the case of new businesses, the government has softened the tax implications of ESOPs.

Employees at the start-up would not have to pay the tax on the perk in the year in which they exercise the ESOP.

TDS on ESOPs would be delayed until the sooner of the following dates:

i. Five years from the date of the ESOP grant.

ii. When does the employee sell the ESOP?

iii. Date of departure from the company.

iv. Tax treatment at the time of selling the shares.

WHEN THE EMPLOYEE SELLS THE STOCK AFTER EXERCISING THE OPTION

If the employee sells the shares, difference between the selling price and the fair market value (FMV on the date when option was exercised to acquire shares) is taxable as capital gains.

If ESOP shares are sold after 12 months of buying them, it shall be deemed as long-term capital gain. If the shares are sold before completion of 12 months from the date of buying them, the income arise shall be deemed as Short-term capital gain.

Note: - Taxation of foreign ESOPs in India is also similar, and would be taxed in India on the perquisites earned from a foreign company.

Q. Whether ESOP may be considered as a part of managerial remuneration if ESOPs are offered to the Directors?

A. If the ESOPs are offered to the Directors it is treated as perquisite and hence it becomes part of managerial remuneration under section 197 & 198 of the Companies Act, 2013.

APPLICABILITY OF VARIOUS LAWS TO ISSUE SHARES UNDER EMPLOYEE STOCK OPTION (ESOP)

1. The Companies Act, 2013 and rules made thereunder.
2. SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
3. SEBI (Listing Obligations and Disclosure Requirements) Regulations,2015.

1. **PROVISIONS OF COMPANIES ACT, 2013:-** Section 62 (1) (b) of Companies Act, 2013 states that where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered:

to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed.

Such prescribed conditions are mentioned in Rule 12 of The Companies (Share Capital and Debentures) Rules, 2014.

Conditions as per the Rule 12 of The Companies (Share Capital and Debentures) Rules, 2014:

A company, other than a listed company, shall not offer shares to its employees under a scheme of employees' stock option (ESOP), unless it complies with the following requirements, namely: -

(1) The issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Explanation: 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 India, or of a holding company of the 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.

As per Rule 12 of the Company (Share Capital and debenture) Rules, 2014, Employees have no right to receive any dividend or to vote or in any manner or enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on the exercise of the option.

Rule 16 of The Companies (Share Capital and Debentures) Rules, 2014:

(1) The company shall not make a provision of money for the purchase of, or subscription for, shares in the company or its holding company, if the purchase of, or the subscription for, the shares by trustees is for the shares to be held by or for the benefit of the employees of the company, unless it complies with the following conditions, namely: -

(a) The scheme of provision of money for purchase of or subscription for the shares as aforesaid is approved by the members by passing special resolution in a general meeting;

(b) Such purchase of shares shall be made only through a recognized stock exchange in case the shares of the company are listed and not by way of private offers or arrangements;

(c) Where shares of a company are not listed on a recognized stock exchange, the valuation at which shares are to be purchased shall be made by a registered valuer;

(d) The value of shares to be purchased or subscribed in the aggregate together with the money provided by the company shall not exceed five percent 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;

(3) A person shall not be appointed as a trustee to hold such shares, if he-

(a) Is a director, Key Managerial Personnel or promoter of the company or its holding, subsidiary or associate company or any relative of such Director, Key Managerial Personnel or promoter; or

(b) Beneficially holds ten percent or more of the paid-up share capital of the company.

(4) Where the voting rights are not exercised directly by the employees in respect of shares to which the scheme relates, the Board of Directors shall, inter alia, disclose in the Board's report for the relevant financial year the following details, namely: -

(a) The names of the employees who have not exercised the voting rights directly;

(b) The reasons for not voting directly;

(c) The name of the person who is exercising such voting rights;

(d) 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;

(e) The date of the general meeting in which such voting power was exercised;

(f) The resolutions on which votes have been cast by persons holding such voting power;

(g) The percentage of such voting power to the total voting power on each resolution;

(h) Whether the votes were cast in favour of or against the resolution.

LISTING REGULATIONS -SEBI (SHARE BASED EMPLOYEE BENEFIT & SWEAT EQUITY) REGULATIONS, 2021

As per regulation 2(1) (J) of SEBI (Share Based Employee Benefit & Sweat Equity) Regulations, 2021:

"Employee stock option scheme or ESOS means a scheme under which a company grants stock options to its employees directly or through a trust".

Thus, it is clear from the above definition that a Listed Company may implement the scheme of ESOS 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 scheme.

Pursuant to the regulation 3(2) of SEBI (Share Based Employee Benefits & Sweat Equity) Regulations, 2021, A company may implement several schemes as permitted under these regulations through a single trust.

Provided that such single trust shall keep and maintain proper books of account, records and documents for each 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.

Employees eligible for ESOP: Employee who are eligible for ESOP are as under:

Employee except in relation to issue of sweat equity shares, means,

(i) An employee as designated by the company, who is exclusively working in India or outside India; or

(ii) A Director of the company, whether a whole-time Director or not, including a Non-Executive Director who is not a promoter or member of the promoter group, but excluding an Independent Director; or

(iii) An employee as defined in sub-clauses(i) or (ii), of a group company including subsidiary or its associate company, in India or outside India, or of a holding company of the company, but does not include—

(a) An employee who is a promoter or a person belonging to the promoter group; or

(b) A Director who, either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Note: Employee on probation shall also be eligible for ESOP. Employee on 3 years or 4 years contract etc. are also eligible for ESOP if they are on the payroll of the Company.

Employees/directors who are ineligible for ESOP: The following employees and Directors shall be ineligible for ESOP:

1. An employee or Director belonging to promoter or promoter group is ineligible to take part in ESOPs.
2. Any Director if he/she holds more than 10% of paid-up share capital of the Company individually or together with his relatives or Body Corporate in the company is also ineligible to take part in ESOP.

Exemption for Start-ups: - However, in case of Start-up Company, as defined in notification number GSR 180(E) dated 17th February, 2016, issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, the conditions mentioned in (i) and (ii) shall not apply upto five years from the date of its incorporation or registration.

BENEFITS OF EMPLOYEE STOCK OPTION PLAN (ESOP)

1. Helpful to increase Productivity of the Company.
2. Helpful in attracting fresh talent.
3. Employee Retention.
4. Helpful to generate the sense of ownership among the employees.
5. Strong public image of the Company.
6. Helps to motivate the employees to perform well against their roles in the Company.
7. Employee Stock Option Scheme (ESOP) also helps the organization to maintain long lasting relationship with the employees.
8. Increases the loyalty of its Employees.

9. Offers a sense of job security and satisfaction to the Employees.

10. Helps in wealth creation for the employees.

11. Helps to create motivated and committed workforce for the organization.

12. Special benefit from the point view of Company Secretaries.

    ESOP also provides special benefit to the Secretarial department, if employees of the Company will also be its shareholders, there will be no difficulty to meet the quorum requirements as prescribed for AGM & EGM under the Companies Act, 2013.

WAYS TO ISSUE SHARES UNDER ESOP

There are two ways to issue and allot shares to the employees under ESOP they are as follows:

1. Direct Route and 2. Trust Route

1. **Direct Route:** It is a route where the Company issues stock options under ESOP to the eligible employees and such employees after the vesting period is over directly exercise their options and Company allots shares against options exercised by the employees. Here in this route mainly fresh issue of shares is done thus employee becomes shareholder of the Company.

2. **Trust Route:** Under this route a separate entity is created, which is called employee welfare trust and this trust keeps shares in a fiduciary position for the employees and whenever employee exercises his option, trust transfers shares to the concern employee who has exercised his options.

Note: If Company is willing to shift or change the ESOP routes from direct to Trust or Trust to direct route it can be done.

Points to keep in mind if Trust Route is adopted:

1. Under trust route existing shares and fresh issue of shares both options may be taken.

2. If trust involves secondary market acquisition, in such case acquisition limit for each financial year is 2% of paid-up equity capital. And overall limit is 5% of paid-up equity capital at any point time.

3. If trust acquire shares directly from the Company, there is no limit of acquisition.

4. In the shareholding pattern shares issued to the trust shall be shown under non promoter non-public category.

5. If scheme is over or completed and trust has still some shares with it, as per the latest provisions such extra shares may be utilized for another scheme but after taking approval from shareholders Or sell the extra shares and utilize the money received as per the options available in the trust deed.

6. Section 67 provides that a Company may give loan to buy its own shares if such shares are for the purpose of ESOP.

7. If trust takes loan from the Company to buy shares from the secondary market the loan is repaid from the proceed received by the trust as exercised price paid by the employees.

8. As in the shareholding pattern shares acquired by trust is categorized non promoter non-public category. Trustees have no power to vote on behalf of the employees against the shares held by the trust.

FEMA ASPECTS OF ESOP

If a Company grants ESOPs to its foreign employees, it has to comply the Foreign Exchange & Management Act 1999.

In the context of FEMA regulations, investment received from the foreign employee is treated as FDI;

And any investment made by the foreign employee shall be subject to the entry routes (Automatic or Approval route), Sectoral Cap, investment limits, pricing guidelines.

In case of approval route, approval from RBI is mandatory prior to the grant of such ESOP to the foreign employees. But for automatic route there is no approval required.

Note: If Indian holding company issues ESOP to employees of its foreign subsidiary, who are working in the land sharing border countries such as Pakistan, Bhutan, China, Taiwan, Nepal, Macao, Hong Kong, Myanmar etc the approval from the Reserve Bank of India is mandatory.

Forms to be filed:

In case if FEMA regulations trigger there shall be filing in two ways:

1. At the time of granting of options issuer needs to file Form ESOP Reporting Form with RBI.

2. And at the time of issue and allotment of Capital Instruments the Form FCGPR shall be filed.

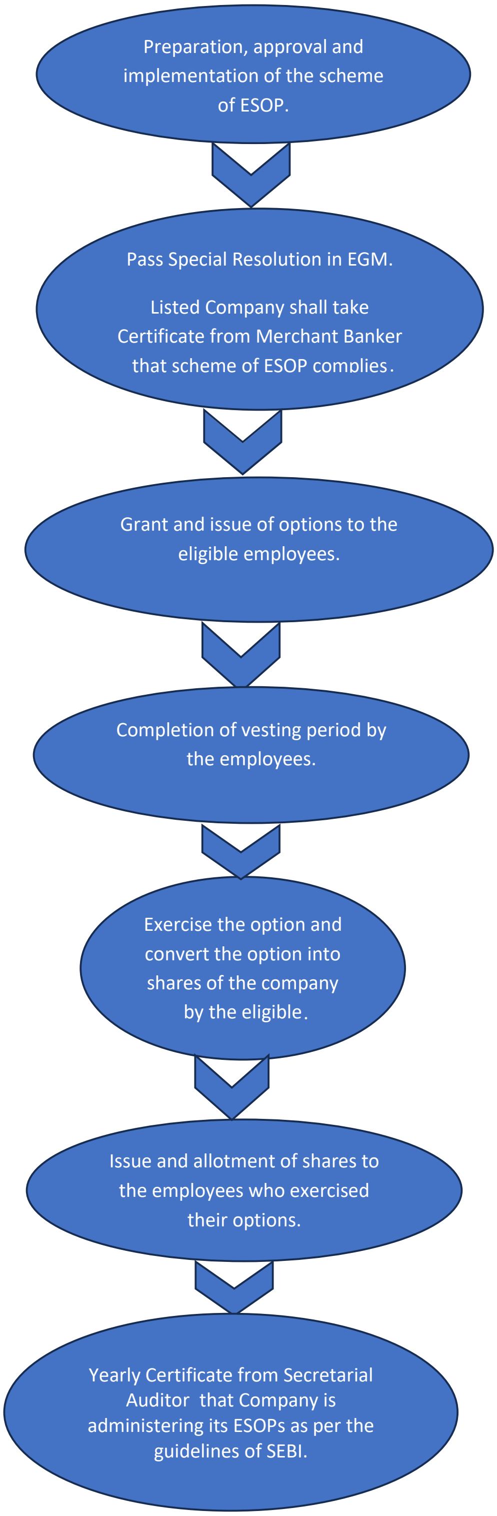
ISSUE OF ESOP

Before proceeding for Employee Stock Option Plan (ESOP) one aspect must be kept in mind, if a company plans to issue shares under the scheme of Employee Stock Option Plan (ESOP), it should ensure that the Articles of Association (AoA) authorizes for issuance of shares through ESOP. If the Articles does not authorize, the company should first hold an extraordinary general meeting to alter its Articles to include the provisions of issuance of shares through ESOP and then proceed with holding the Board Meeting for the passing of the resolution and getting the shareholder's approval for ESOP Scheme.

- Section 62(1)(b) of the Companies Act, 2013 and Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 govern the issuance of Employee Stock Option Plan (ESOP) in case of Private and Unlisted Companies.

In case of Listed Companies compliance requirements as specified under the Companies Act, 2013 and SEBI (Share Based Employee Benefit & Sweat Equity) Regulations, 2021, SEBI(LODR) Regulations, 2015 and rules made thereunder must be followed.

BRIEF SNAPSHOT OF THE FLOW OF ESOP



> Employees can exercise his option and purchase shares after the vesting date is over at a pre-determined price, which is usually less than the share's Fair Market Value (FMV). As a result, the difference between the FMV and the exercise price of the share is considered a perquisite in the employee's hands and taxed at his income tax slab rate.

THE PROCESS FOR ISSUING EMPLOYEE STOCK OPTIONS BY A COMPANY IS AS FOLLOWS

- Nomination & Remuneration Committee (if applicable), shall identify the employees and Directors eligible for ESOPs and shall determine the criteria for eligibility for ESOPs. (The approval of NRC committee is required. The Board may also authorize NRC to act as the Compensation Committee for the purpose of ESOPs.)
- Prepare the draft scheme of Employee Stock Option Plan (ESOP) and take valuation report issued by a Chartered Accountant or SEBI registered merchant banker.

  [Private and Unlisted Companies shall comply the provisions of the Companies Act, 2013, and Listed Companies shall comply, Companies Act, 2013 + SEBI (Share Based Employee Benefit & Sweat Equity) Regulations, 2021, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Rules made thereunder.]
- Prepare the notice for the Board Meeting along with the draft resolution to be passed in the Board Meeting and send draft notice and agenda to each Director at least 7 days in advance to each director.
- In case of Listed Company, give intimation to the Stock Exchange(s) at least two days in advance about the Board meeting in which scheme of ESOP and other details related to the ESOP shall be discussed. (excluding the day of intimation and day of meeting).
- Pass the Board resolution for the issuance of shares through ESOP, approve the draft scheme and valuation report to determine the price of shares to be issued pursuant to ESOP.
- Fix time, date and venue to convene the Extra Ordinary General Meeting to pass Special Resolution for issuing ESOP.
- Give outcome of Board meeting to Stock Exchange(s) within 30 minutes from the conclusion of the meeting.

- Send the draft minutes of the Board Meeting to all the Directors within fifteen days of its conclusion and file Form MGT-14 with the Registrar of Companies for the resolutions passed in Board meeting.

- In case of Listed Company, take certificate from Merchant Banker that scheme of ESOP complies the SEBI guidelines.

- Send notice of the General Meeting , 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; to all the directors, auditors, shareholders and secretarial auditors of the company at least twenty-one days in advance from the date of meeting by post or electronic means, if notice is sent by post in such case notice shall be sent still 48 hours earlier excluding the day of sending notice and day of meeting (e.g., 21 +2+2=25 days in advance).

MAIN CONTENT/DISCLOSURE OF EXPLANATORY STATEMENT U/S 102 OF THE COMPANIES ACT, 2013, AND RULES MADE THEREUNDER

1. The total number of stock options to be granted;
2. Identified classes of employees entitled to participate in the Employee Stock Option Scheme;
3. The appraisal process for determining the eligibility of employees to the Employee Stock Option Scheme;
4. The requirements of vesting and period of vesting;
5. Maximum period within which the options shall be vested;
6. Exercise price or the formula for arriving at the same;
7. Exercise period and process of exercise;
8. Lock-in period, if any;
9. The maximum number of options to be granted per employee and in aggregate;
10. Method which the company shall use to value its options;(Listed Company shall comply pricing requirements as prescribed in SEBI (Share Based Employee Benefit & Sweat Equity) Regulations, 2021;
11. Conditions under which option vested in employees may lapse e.g., in case of termination of employment for misconduct;
12. The specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and a statement to the effect that the company shall comply with the applicable accounting standards.

- Convene General Meeting and pass Special Resolution for issuance of shares under the Employee Stock Option Plan (ESOP). However, a Specified IFSC Public Company can offer shares through employee stock option to their employees through ordinary resolution.

- Pass the separate Special Resolution if any employee holds upto 1% of paid-up Share Capital of the Company in any financial year and the Company still wants to give him/her Employee Stock Option.

- Give outcome of EGM/AGM to the Stock Exchange(s) within 12 hours from the conclusion of meeting.

- Disclose voting results with scrutinizer's report to Stock Exchange(s) within 48 hours from the conclusion of the meeting.

- In case of Listed Company apply for the In-Principle approval of the Stock Exchange(s) for the proposed issue of shares under the scheme of employee stock option.

- File Form MGT-14 with the Registrar of Companies within thirty days of passing the special resolution along with the necessary documents.

- Give at least two days advance intimation to the Stock Exchange(s) (Excluding the day of intimation and the day of meeting in case of Listed entity).

- Convene Board Meeting to grant options to the eligible employees and pass Board Resolution.

  Note: A company may authorize its Nomination & Remuneration Committee to act as compensation committee for the purpose of ESOP.

- Give outcome of Board Meeting to the Stock Exchange(s) within 30 minutes from the conclusion of the meeting.

- Send options to the employees, directors and officers of the company for purchasing shares under ESOP.

- Maintain a 'Register of Employee Stock Options' in Form No.SH-6 and enter the particulars of the ESOP granted to the employees, Directors or officers of the company.

COMPLETION OF VESTING PERIOD AND EXERCISING OF OPTIONS

- After vesting period when eligible employees exercise their options; Company is required to convene Board Meeting to allot shares under the ESOP scheme to the employees who exercised the option.

- For convening Board Meeting for allotment, if Listed Company give at least two days advance intimation to the Stock Exchange(s) (Excluding the day of intimation and the day of meeting).
- Convene Board Meeting, authorize allotment of shares under ESOP and allot shares to eligible employees who exercised the options.
- Give outcome of Board Meeting to the Stock Exchange(s) within 30 minutes from the conclusion of the Meeting.
- Company now is required to apply for Listing Approval of Stock Exchange(s) to list the shares issued under the ESOP.

Note: Here one thing is necessary to keep in mind that in case of ESOP Listing Approval is Listing cum Trading Approval and no need to apply separately for Trading Approval.

- File Form MGT-14 and PAS-3 with the Registrar of Companies within 30 days from the date of Board Resolution.
- If there is no Lock-in applicable for ESOP, employees who exercised their options are free to trade their shares in market.
- Listed Company requires to take Certificate from Secretarial Auditor that Company is administering its Scheme of ESOPs as per the SEBI guidelines.

KEY POINTS TO KEEP IN MIND WHILE EXERCISING OF OPTIONS

- If an eligible employee exercises the option, it shall not be considered as trading.
- Sale of shares acquired pursuant to exercising of ESOP, will be considered as open market trade.
- Designated persons can only sell their shares acquired pursuant to exercising the ESOP, if they have not acquired the Company's shares (Except ESOP shares) prior to six months from the date of such selling.
- Designated persons cannot sell their shares when trading window is closed.

Note: If a Listed issuer issues and allots its shares to the eligible employees through ESOP and the scheme of ESOP is executed through a trust where acquisition of shares from secondary market is involved, Company may acquire shares only upto the extent of 2% of its paid-up capital in a financial year.

Pursuant to the regulation 3(11) of SEBI (Share Based Employee Benefit & Sweat Equity) Regulations, 2021:

The total number of shares under secondary acquisition held by the trust shall at no point of time exceed the below mentioned limits as a percentage of the paid-up equity capital of the company as at the end of the financial year immediately prior to the year in which the shareholders' approval is obtained for such secondary acquisition:

Sl. No	Particulars	Limit
A	For the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations	5%
B	For the schemes enumerated in Part D or Part E of Chapter III of these regulations	2%
C	For all the schemes in aggregate	5%

SHARE BASED EMPLOYEE BENEFIT SCHEMES UNDER SEBI (SHARE BASED EMPLOYEE BENEFIT SCHEME AND SWEAT EQUITY) REGULATIONS, 2021

1. Employee Stock Option Plan (ESOP)
2. Employee Stock Purchase Scheme (ESPS)
3. Stock Appreciation Rights Scheme (SAR)
4. General Employee Benefit Scheme (GEBS)
5. Restricted Stock Units Scheme (RUS)
6. Retirement Benefit Scheme (RBS)

RESTRICTIONS IF COMPANY DOES NOT COMPLY (MINIMUM PUBLIC SHAREHOLDING (MPS) CRITERIA/ REQUIREMENTS

If any Listed Company does not comply minimum public shareholding (MPS) criteria as prescribed under Securities (Contract and Regulation) Act, 1956 and ESOP is proposed as one of the ways to reduce promoters holding, in such case allotment of shares under ESOP pursuant to exercise of options by the eligible employees shall be limited to 2% of paid-up share capital of the Listed entity this restriction is pursuant to SEBI circular dated 3rd February, 2023:- ***SEBI circular No. SEBI/HO/CFD/PoD2/P/CIR/2023/18, dated 03, February, 2023.***

ROLE OF THE COMPANY SECRETARIES WITH RESPECT TO EMPLOYEE STOCK OPTION PLAN (ESOP)

The role of Company Secretaries for issue, implementation allotment and monitoring the successful ESOP Scheme is not only limited to convening meetings of Board, Committees and the Shareholders, but also in:

- The determination of criteria of employees and members of Board of Directors eligible for employee stock option;
- Conducting due diligence;
- Preparation of scheme of employee stock option plan (ESOP);
- Providing guidance to the Board of Directors regarding various legal aspects of issuing employee stock option plans (ESOP);
- Preparing and maintaining various secretarial records relating to ESOP, e.g. ESOP Scheme, ESOP Register, minutes of Board and Committee etc;
- Preparation and filing of various e-forms with the Registrar of Companies;
- Preparation of application to get in-principle approval, listing, trading approval of Stock Exchange(s) etc.

Thus, the Company Secretary plays a vital role in the issue, implementation, allotment and monitoring of ESOP Scheme.

DISCLOSURE REQUIREMENTS IN THE BOARD REPORT

- Total number of options granted under the scheme of ESOPs.
- Details of vesting, exercise price, route of ESOPs, source of shares (Fresh issue or acquisition from secondary market).
- Material changes in the Scheme if any during the year.
- Disclosure in terms of Accounting Standards.
- Diluted EPS on issue of ESOP shares.
- Method to compute intrinsic and fair value of shares.

CONCLUSION

We have reached the end and after a lot of research and analysis on the topic of Employee Stock Option Plan (ESOP), it can now be said that the one of the best ways to reward employees, enhance profitability, generate the spirit of ownership and make employees more loyal towards the Company is issue and allotment of shares to the eligible employees under the Employee Stock Option Plan (ESOP).

Thus, it becomes a way to attract the best talent for the Company and promises stability or stable career to the employees.

REFERENCES:

Secondary data was taken from the following sources:

i. *https://www.mca.gov.in/*

ii. *https://www.rbi.org.in/*

iii. *https://www.sebi.gov.in/*