

## About ESOP Direct

ESOP Direct is a leading solutions company in the space of Equity based compensation. ESOP Direct is a part of the Kirtane Pandit group, in existence for more than five decades, consisting of an Accounting and Consulting firm, a Software services company and a Business Process Consulting company. As a group, we employ over 5000 professionals and operate globally through subsidiaries at US, UK, Germany, France and Poland and strategic alliances in over 100 countries.

ESOP Direct is a team of 50 professionals. Our expert team of professionals brings experience in the preliminary analysis, planning, designing and implementation of ESOPs. Each of our consulting team members is a qualified Chartered Accountant/Company Secretary. The team also consists of CPAs and Management graduates including qualified CEPs (Certified Equity Professional) on board. CEP is a US qualification highly recognized in Equity based compensation space globally.

## About our Services

Our service offerings cover the entire life cycle of ESOPs including Plan conceptualization, Design, Documentation, Plan management, Participant Services, Compliance and reporting.

We are the first and the only company in India to offer a full spectrum of integrated on-line stock plan management services, including plan administration, compliance, employee communication and online transaction capabilities. This service is delivered using our proprietary platform My ESOPs.

At ESOP Direct we also offer a web based platform for financial reporting of stock options which includes valuation , expensing and reporting under IFRS, IGAAP & FAS 123R.

## About the write-up

We hope that you find the information in this note useful for the understanding of SEBI (Share Based Employee Benefits) Regulations, 2014. In addition, you should be aware that the information provided in the note is presented in a general format and is not a comprehensive summary of the new Regulation. With these factors in mind, it is important that you do not consider this note to be legal advice and do not rely solely on the information provided in the write-up. We would be pleased to help you review all pertinent information and can assist you in developing a comprehensive strategy to implement Share based employee benefits plan for your employees.

## For More Information

If you have any questions about the design, implementation, and maintenance of equity compensation programs, please contact :

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**SEBI (Share Based Employee Benefits) Regulations, 2014 - Key Highlights**

SEBI (Share Based Employee Benefits) Regulations, 2014, (Regulations) have come into force w.e.f. October 28, 2014 repealing the erstwhile Guidelines. The Regulations have formally recognized the concept of Stock Appreciation Rights (SAR) Scheme and also sought to embrace the General Employee Benefit and Retirement Benefit Schemes in addition to Employee Stock Option and Purchase Schemes, allowing secondary shares acquisition for the implementation of such Schemes. **Other welcome feature of these Regulations is that it is aligned with Guidance Note issued by Institute of Chartered Accountants of India (ICAI) and Companies Act, 2013 on overlapping topics. This should remove ambiguities and ensure consistency in compliance.**

Provisions relating to implementation of the Schemes contemplating primary shares are akin to that of the repealed Guidelines, whereas majority of the provisions deal with acquisition of secondary shares.

We are analyzing the Regulations in detail and would soon publish our views on the way forward for Companies through a Newsletter and Webinars.

**Key highlights of the Regulations are:**

- Regulations on cash /equity settled Stock Appreciation Rights are introduced.
- A permanent employee or Director of even an Associate Company has been covered in addition to those of the Company, its Subsidiary and Holding Company. Independent Directors are excluded.

**Trust set-up/ activities**

- Trust route of implementation (if intended) should be decided at the time of taking Shareholders approval for the Scheme.
- Trust Deed and any amendment thereof shall be filed with Stock exchange.
- Indication on appointment of independent Trustees with a prescription of negative list of persons who cannot be Trustees.
- Trust acquisition of secondary shares up to 2% per annum with an overall ceiling of 5% (2% for General Employee Benefit and Retirement Benefit Schemes).
- Trust not to hold shares exceeding 10% of the total value of all assets with the Trust in case of General Employee Benefit and Retirement Benefit Schemes.
- Manner, mode and ceiling on funding to the Trust shall be governed under the Companies (Share Capital and Debenture) Rules 2014.
- Going forward, secondary shares not represented by grant shall be disposed of latest by end of subsequent financial year.
- Trust holdings to be shown as non-promoter and non-public holding with no voting rights to the Trustees.
- Trust to hold secondary shares for at least 6 months (except disposal in an open offer, buy-back, etc.)
- Disposal of Trust holdings in the secondary market are prohibited except - to facilitate cashless exercise, incentivisation in a SAR Scheme, buy-back/ open offers, winding-up of the Scheme, etc.
- Prohibition of Insider Trading Regulations shall apply to the Trust/ Trustees.

## **Accounting**

- Accounting and related disclosure aspects have been referred to in the Guidance Note issued by ICAI.

## **Transition**

- The latest circular (dated June 27, 2014) prohibiting the acquisition of secondary shares shall continue to apply till existing Schemes are aligned.
- Trusts having shareholdings beyond the prescribed ceiling can be brought down within 5 years.
- Existing shareholding by the Trust shown either as promoter or public shareholding shall be allowed to be shown as such up to next 5 years.

## **Open Issues:**

- There are quite a few open issues in the Regulations and we hope that suitable clarifications / circulars would be issued by SEBI soon. Issues that need clarifications are as follows:
- Applicability of the Regulations in case a Scheme is set-up, funded, guaranteed, controlled or managed by a group Company of a listed Company.
- Minimum provisions in a Trust Deed.
- Powers or duties of Compensation Committee.
- Manner of adjustments in case of corporate action.
- Disclosures in the explanatory statement to the special resolution seeking approval of the Scheme and Trust.
- Disclosures in the Directors' Report.
- Format/ timing for applying to the stock exchange in connection with in-principle approval or listing of shares.
- Disclosure to be made to the prospective option grantees.