

SEBI (Share Based Employee Benefits) Regulations, 2014

JK SHAH CLASSES



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- Employee stock option plan (ESOP) is an employee-ownership plan that provides an option with an opportunity to company's workforce to gain ownership interest in the company.
 - It develops the sense of belongingness between the workforce and company Section 2(37) of the Companies 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

Employees

Permanent employee in India and Outside India. Director (WTD or not). Employee of Subsidiary in India and Outside India or Holding.

➤ Exclude-

Employee cum Promoter. Director who himself or through relative holds more than 10% of the outstanding employee stock.

Note:

Does not apply for start-up company for first 10 years.

After this regulation independent directors are not entitled to ESOPs,

however Any grant already made prior to commencement of these provision shall remain valid.



SEBI (Share Based Employee Benefits) Regulations, 2014

This regulation provides for regulation of all schemes by companies for the benefit of their employees involving dealing in shares, **directly or indirectly**, with a view to facilitate smooth operation of such schemes while preventing any possible manipulation and matters connected therewith or incidental thereto.

APPLICABILITY

- Employee Stock Option Schemes
- Employee Stock Option Schemes
- Stock Appreciation Rights Schemes
- General Employee Benefits Schemes
- Retirement Benefit Schemes

NON- APPLICABILITY

- Shares issued to employees in compliance with the provisions pertaining to preferential allotment.
- The provisions pertaining to preferential allotment as specified in SEBI (ICDR) Regulations, 2018 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations.

IMPORTANT DEFINITION

APPRECIATION

“Appreciation” means the difference between the market price of the share of a company on the date of exercise of stock appreciation right (SAR) or vesting of SAR, as the case may be, and the SAR price.

EMPLOYEE Stock OPTION SCHEME

- Free to determine the price.
- Minimum vesting period- 1 year.
- No corporate benefit till exercise.
- If person failed to exercise the option then the amount already paid shall be forfeited.

GENERAL EMPLOYEE BENEFIT SCHEME.

Scheme framed by the company which deals in share of the company or its holding company for the purpose of employee welfare including health care benefits hospital care, accident, disability, death etc. At no point in time, the shares of the company or shares of its listed holding company shall exceed ten percent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

RETIREMENT BENEFIT SCHEME

Dealing in the shares of the company or its listed holding company for providing retirement benefits to the employee.

Relevant DATE

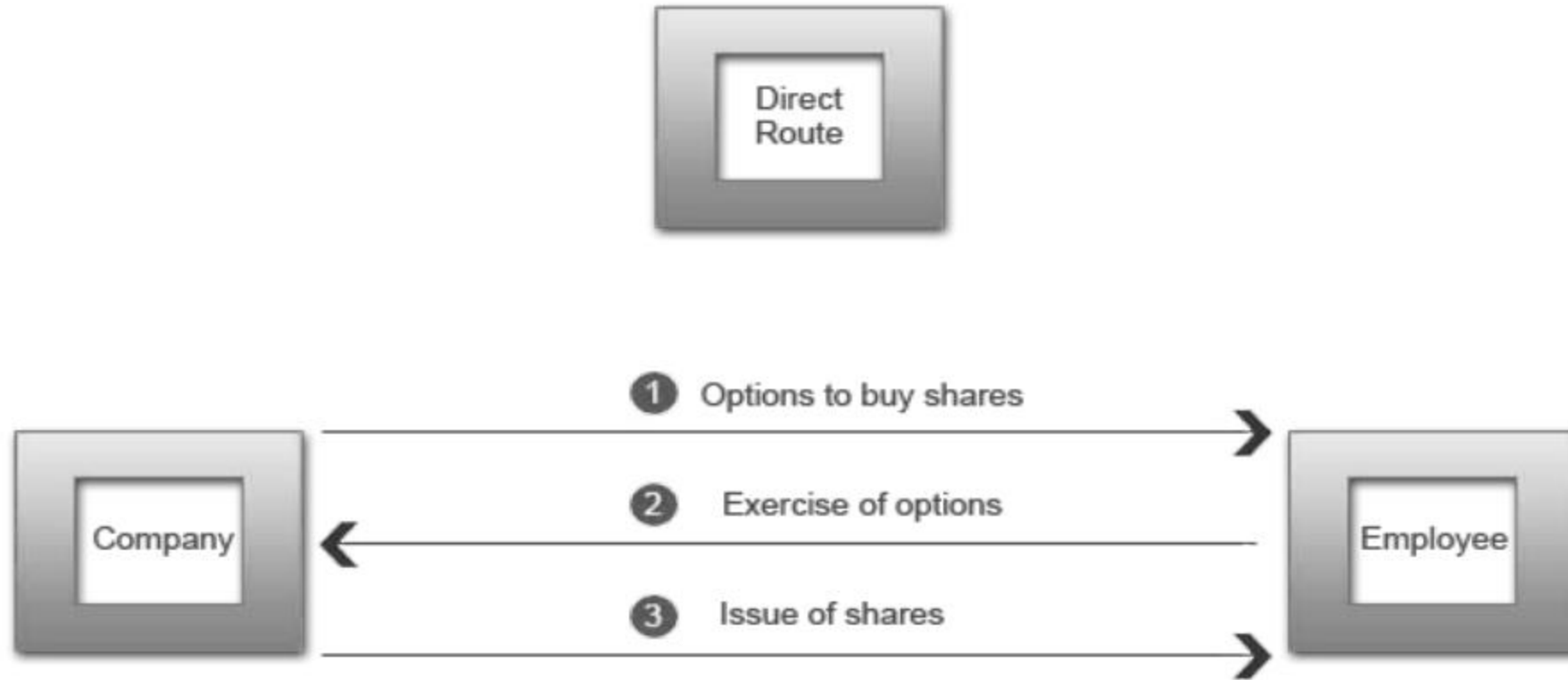
- a. Grant – date of the meeting of the compensation committee.
- b. Exercise- date on which the notice of exercise is given by employee.

vesting PERIOD-

Vesting period means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place.

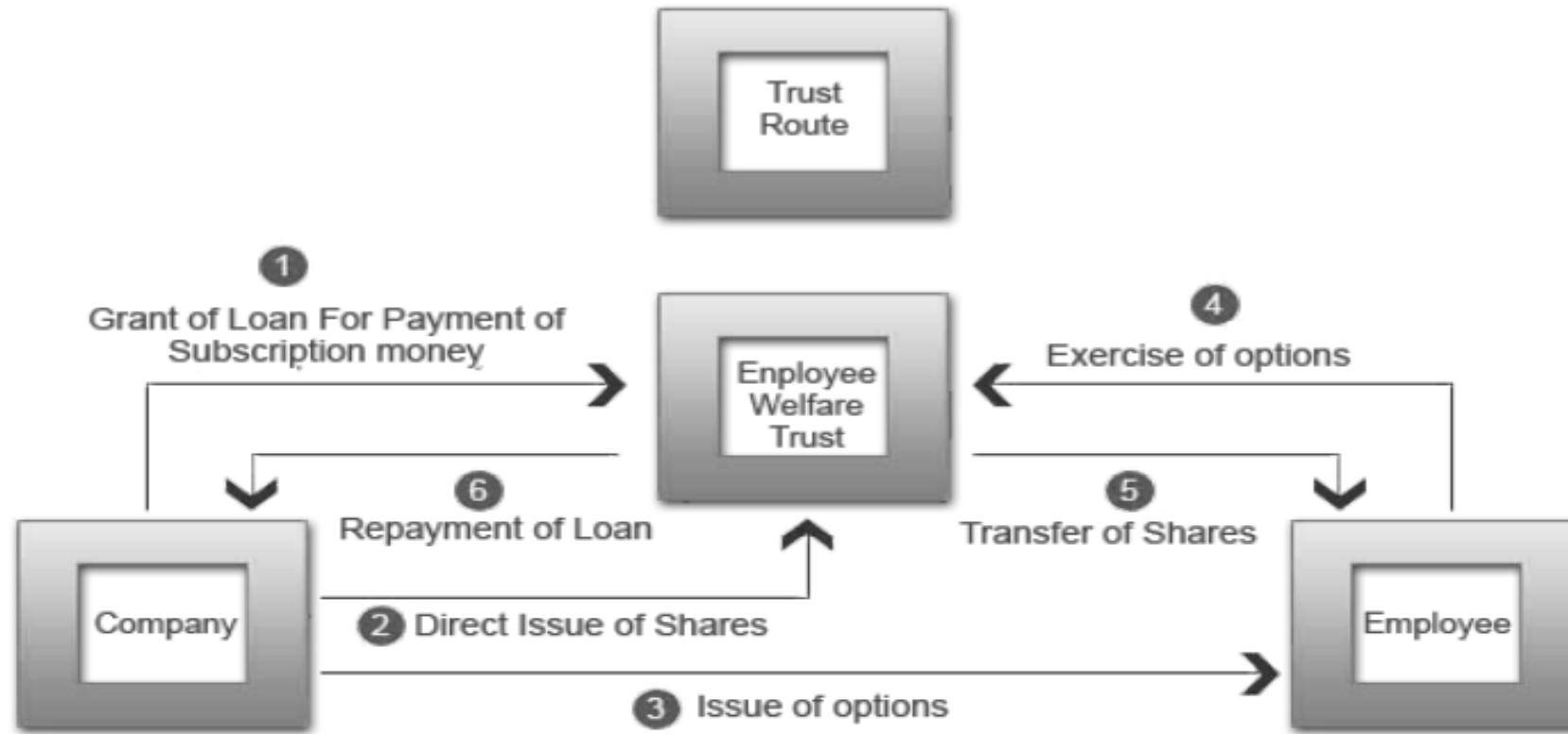
ESOP IMPLEMENTATION & PROCESS.

| Direct Route | Indirect Route |
|---|--|
| <ul style="list-style-type: none">• Form compensation committee and define eligibility criteria.• Issue fresh share.• After vesting period employee can exercise the option.• On exercising, company issue shares to employee. | <ul style="list-style-type: none">• Company form employee welfare trust.• Company grant loan to trust for subscribing the shares.• Company issue new shares to trust & option to the Employee.• Employee exercise the option.• Trust transfers the shares upon a receipt of exercise price.• Trust re-pay the loan. |



Direct Route for ESOP's

- ❶ Company forms an Compensation committee and define the eligibility criteria of ESOPs
- ❷ Issue fresh shares for ESOPs.
- ❸ After vesting period employees can exercise the option.
- ❹ On exercise of an option Company issue the shares to the employees.



Trust Route for ESOP's

- ① Company forms an Employee Welfare Trust.
- ② Company grants Loan to the trust for subscribing shares.
- ③ Company issues fresh shares to the Trust and options to the Employees.
- ④ Employees exercises the options.
- ⑤ Trust Transfers the Shares to the employee upon receipt of exercise price.
- ⑥ Trust repays the loan to the Company.

IMPLEMENTATION OF SCHEME THROUGH TRUST

- Decide the route
- Can launch multiple scheme through single trust but maintain separate account and records
- SEBI specify the format and contain of trust deed and shall be mandatorily filed with STX.
- Trustee of trust Shall not be: a) Director, KMP, promoter, their relative of holding co, such associate. b) Beneficiary held 10% or more shares
- No of Trustee: ▪ Individual or OPC: Minimum 2 ▪ Corporate entity: Sole
- The trustees of a trust shall not vote in respect of the shares held by such trust

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- The trustee should ensure that appropriate approval from the shareholders has been obtained by the company.
 - Trust shall not deal in derivatives. [undertake only delivery based transaction].
 - The company may lend monies to the trust on appropriate terms and conditions to acquire the shares.
 - For the purposes of disclosures to the STX , the shareholding of the trust shall be shown as 'non-promoter and non-public' shareholding.

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- Secondary acquisition in a FY by the trust shall not exceed 2% of the paid up equity capital as at the end of the previous FY.
 - Secondary acquisition shall not exceed 5% if scheme as per part A,B,C and 2% for part D,E and 5% for rest of PSC in any FY.
 - Secondary acquisition – Holds for minimum period of 6 months by trust.
 - Trust can make off market transfer to employee or may participate in takeover.

➤ Trust shall not sell the shares in secondary market **except.**

a) Emergency and trust shall record the reasons.

b) Buyback offer.

c) For repaying the loan.

d) Winding up of the scheme.

e) Approval granted by SEBI.

PROCEDURE FOR IMPLEMENTATION OF A SCHEME

Form compensation committee:

- Compensation committee for administration of the scheme.
- Committee of such member as provided u/s 178.
- Committee shall formulate the detailed terms and condition of the scheme.
- No violation of securities law.



Pass SR in GM (Explanatory statement)

Variation of terms of the scheme:

- Pass SR to vary the terms (if in interest of employee)
- Notice disclose full info of variation.
- company shall ensure that variation shall not detrimental to the interest of employee.

Winding Up of the scheme

In case of winding up of the schemes being implemented by a company through trust, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilized for repayment of loan or by way of distribution to employees as recommended by the Compensation committee .

Non transferability:

Options, SAR granted to employee shall not be transferable.

- No person other than employee are entitled to get benefit arising out of option, SAR etc.
- Not available for pledge, hypothecation etc.
- In the event of death of the employee while in employment, all the options, SAR or any other benefit granted to him under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.
- In the event of resignation or termination of the employee, all the options, SAR, or any other benefit which are granted and yet not vested as on that day shall expire. {However, can be vested subject to terms and condition of compensation committee}.

Listing:

| Listed company | Unlisted company |
|---|--|
| <ul style="list-style-type: none">• List the new shares.• Comply these regulations.• In principle approval from STX.• After exercising- Inform stock exchange. | <ul style="list-style-type: none">• Pre- IPO scheme -> shall comply the regulation.<ul style="list-style-type: none">• No variation in terms. |

COMPLIANCES AND CONDITIONS

- Company cannot allot shares before listing/ IPO.
- Pre-IPO scheme is possible if conformity with these regulations.
- Such pre-IPO scheme is ratified by its shareholders subsequent to the IPO.
- For any change in Pre-IPO scheme, prior approval from shareholders required.
- For listing of shares issued pursuant to ESOS, ESPS or SAR, the company shall obtain the in-principle approval of the STX where it proposes to list the said shares.
- If holding company issue share, SAR or benefits to the employee of subsidiary, the cost incurred shall be disclosed in “Notes to Accounts” of FS of Sub.Co.
- If subsidiary reimburses the cost incurred by holding company, then shall be disclosed in Notes to Accounts.
- The company shall appoint registered Merchant Banker.

Certificate from Auditor

A certificate from auditor is required in each AGM certifying that scheme has been implemented in accordance with these regulation.

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| AUDIT REPORT FORMAT |
| Organization Name |
| Date: _____ |
| Prepared By: _____ |
| Subject: |
| Final Audit Report of: _____ |
| Report of Findings and recommendations of business development of an organization |
| Department of Internal Audit |
| To: _____ |
| From: _____ |

Disclosures

Company shall disclose the details of the scheme being implemented as specified by the SEBI.



Accounting policy

Company shall follow Guidance Note, AS



EMPLOYEE STOCK PURCHASE SCHEME

- ✓ Company offers shares to employee as apart of public issue.
- ✓ Lock in **1 year from allotment**.
- ✓ Company may determine the price of shares.
- ✓ If ESPS 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 ESPS shall not be subject to lock-in.
- ✓ the Lock-in requirement is applicable at the level of employee and not at the level of trust.

STOCK APPRECIATION RIGHT [SAR]

- SAR means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.
- Minimum vesting period- 1 year.
- The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him.

POWER OF SEBI TO RELAX STRICT ENFORCEMENT OF THE REGULATIONS

SEBI may, exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be **specified but not exceeding 12 months**, for furthering innovation in technological aspects relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets.

PROCEDURE FOR ISSUING ESOP BY A LISTED COMPANY

- ✓ Send notice of BM to STX at least 2 working days before
- ✓ Formation of compensation committee.
- ✓ Compensation committee shall plan the draft of scheme.
- ✓ Hold BM approve draft and appoint MB.
- ✓ Outcome of BM notified to SE within 30 minutes of conclusion of meeting
- ✓ Advance notice of GM to SE [2 working day before]
- ✓ Hold GM for approval of shareholders

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- ✓ Outcome of GM notified to STX within 30 minutes of conclusion of meeting.
 - ✓ File MGT-14 within 30 days from SR to ROC.
 - ✓ Obtain In principle approval from stock exchange.
 - ✓ Issue letter of grant of option to eligible employee.
 - ✓ Vesting after 1 year -> Issue letter of vesting.
 - ✓ Hold BM – Allotment of shares.
 - ✓ Dispatch letter of allotment along with share certificate

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- ✓ Listing application to stock exchange (SE).
 - ✓ Receipt of Listing of the shares from the Stock exchange.
 - ✓ File a return of allotment in form **PAS 3** with the ROC *within 30 days* from the date of allotment.

ROLE OF COMPANY SECRETARY

For listing of equity shares issued pursuant to exercise of options granted under ESPS/ESOS/SARS/ GEBS/RBS basis- Post issue

- A Certificate from Company Secretary for receipt of money.
- A quarterly certificate from the practicing Company Secretary specifically certifying that the company has received the application/allotment monies from the applicants of these shares.