

## HR Law Hotline

April 07, 2006

### RBI LIBERALIZES GRANT OF ESOP BY FOREIGN COMPANIES & DEFINES NORMS FOR REPURCHASE BY COMPANIES

By a recent Notification<sup>1</sup> dated April 5, 2006 addressed to all banks authorized to deal in foreign exchange, the Reserve Bank of India ("RBI") has rationalized the norms for issuance of shares of a foreign company under an Employee Stock Option ("ESOP") Scheme, and announced norms for repurchase through the automatic route of such shares from the employees. These changes pertain to Regulation 22 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security)(Amendment) Regulation, 2004<sup>2</sup> ("Regulation").

#### ISSUE OF SHARES BY TRUST, SPV OR STEP DOWN SUBSIDIARY:

Under the Regulation 22 (2), Authorised Dealer Banks were authorised to allow remittances by Indian resident individuals without any monetary limit to the foreign company for acquiring shares offered under an ESOP Scheme by such foreign company, provided the resident individual was an employee of the foreign company's branch or liaison office in India or an employee or director of an Indian company, which was the subsidiary of the foreign company or in which the foreign company held at least a 51% stake. It is now proposed to permit remittance for acquiring shares under ESOP Schemes, irrespective of the method of the operationalisation of the scheme. Now therefore, Authorised Dealer Banks are authorized to allow remittance for acquiring shares under an ESOP Scheme, where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / Special Purpose Vehicle ("SPV") / step down subsidiary, provided (i) the company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees / directors are being offered shares, at least 51% of its equity; (ii) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and (iii) an Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer Banks giving details of remittances / beneficiaries / etc., in the prescribed format.

**Implications:** Now foreign companies will not have to wait to take clearance from the RBI when granting ESOPs through a trust or SPV or by their step down subsidiary, provided the conditions mentioned above are satisfied.

However, the companies are now required to file a report which is an additional compliance requirement.

#### REPURCHASE OF SHARES

It is further proposed to grant General Permission to foreign companies to repurchase the shares issued to residents in India under any ESOP Scheme provided the following conditions are satisfied: (i) the shares should have been issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999 (ii) the shares should be repurchased in terms of the initial offer document and, (iii) an Annual Return in the prescribed form should be submitted through the Authorised Dealer Banks, giving details of remittances, beneficiaries, etc.

**Implications:** The above rationalization seems to be a retrogressive step since such permission was already there under sub regulation 4 of Regulation 22 of 2004. Now, by this recent Notification, the RBI has imposed certain conditions for repurchase through the automatic route. In particular, the condition that the repurchase should be in terms of the initial offer document takes away the ability of a private company to repurchase the shares if the employee leaves employment. This can prove to be a substantial hurdle for private companies to liberally give stock options as a retention strategy.

- Daksha Baxi & Rina Kamath

Source: RBI/2005-06/353 A.P. (DIR Series) Circular No. 30 April 05, 2006 <http://rbi.org.in/scripts/NotificationUser.aspx?Id=2817&Mode=0> as viewed on April 7, 2006

#### DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

## Research Papers

### Taxing Offshore Indirect Transfers in India

February 28, 2025

### Unlocking Corporate Philanthropy

February 27, 2025

### Digital Health in India

February 26, 2025

## Research Articles

### Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

### INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

### Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

## Audio

### CCI's Deal Value Test

February 22, 2025

### Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

### Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

## NDA Connect

Connect with us at events, conferences and seminars.

## NDA Hotline

Click here to view Hotline archives.

## Video

### Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

March 19, 2025

**SIAC 2025 Rules: Key changes & Implications**

February 18, 2025

**How Cross Border M&A Will Shape the AI Age**

February 13, 2025

