International Labor & Employment Law Committee Newsletter

Issue: February 2013

India

ESOP Regulations Amended to Prohibit Companies from Acquiring Their Own Securities from the Secondary Market

Veena Gopalakrishnan and Vikram Shroff, Nishith Desai Associates, Mumbai/Bangalore/Delhi

The Indian securities market regulator has prohibited listed companies from framing any employee benefit scheme involving acquisition of the company's own securities from the secondary market. The Securities and Exchange Board of India (SEBI) issued a circular on January 17, 2013[1] (Circular) to amend the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 (ESOP Guidelines) and the Equity Listing Agreement.

Key amendments include:

- Amendment of the ESOP Guidelines to prohibit acquisition of securities from the secondary market:
    - New clause 22B has been included in the ESOP Guidelines stipulating that an employee stock option scheme or stock purchase scheme shall not involve acquisition of the company's own securities from the secondary market.
- Amendment of the Equity Listing Agreement:
    - Clause 35C has been included in the Equity Listing Agreement that requires:
        - The issuer to ensure compliance with the revised ESOP Guidelines with respect to all new employee benefit schemes involving the securities of the company; and
        - The issuer to ensure that all existing employee benefit schemes, i.e., schemes framed and implemented by the company involving dealing in the securities of the company in the secondary market, before January 17, 2013 are aligned with and made to conform to the revised ESOP Guidelines by June 30, 2013.
- Disclosure requirements:
    - Companies which have existing employee benefit schemes that do not conform to the amended ESOP Guidelines are now required to inform the details of their schemes to the stock exchanges, in the prescribed format, within 30 days of the date of issue of the Circular, i.e., February 16, 2013 and disseminate the prescribed information on their website. Some key disclosures to be made include, (i) name of the scheme; (ii) date of implementation; (iii) mode of implementation (trust route or direct route); (iv) details of the trust, trustees, and their relationship with promoters or directors of the company; (v) whether promoters/persons belonging to the promoter group/directors are also beneficiaries in the scheme and details of their entitlements; (vi) number of shares held by the trust or any other agency managing the scheme as on the date of the Circular; (vii) details of how such trust/agency is proposing to deal with the existing holding (i.e.,

whether to be transferred to the employees, or to be sold in the market for transferring the benefits to the employees) and timelines for the same; (viii) details of persons who are entitled to shares or benefits accruing out of the shares, which, on the date of the Circular, form part of more than 1% of the paid up share capital of the company; and (ix) details of secondary market transactions by the company or trust or such other agency managing the scheme (if any) since April 2012 in the prescribed format.

[1]CIR/CFD/DIL/3/2013, http://www.sebi.gov.in/cms/sebi_data/attachdocs/1358405632526.pdf.

American Bar Association Section of Labor and Employment Law
321 N Clark | Chicago, IL 60654 | (312) 988-5813