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MULTI-JURISDICTIONAL GUIDE 2014/15
EMPLOYEE SHARE PLANS

Employee share plans in India: regulatory overview

Neha Sinha, Vikram Shroff and Ajay Singh Solanki
Nishith Desai Associates

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EMPLOYEE PARTICIPATION

1. Is it common for employees to be offered participation in an employee share plan?

Information technology companies started the trend of offering share options to employees in India. In the last several years, the trend has extended to several other sectors including telecommunications, financial services, outsourcing, pharmaceutical and retail sectors. However, traditional sectors, such as manufacturing, are yet to see share option grants to employees.

Companies generally aim to attract and retain talented employees by offering them participation in company growth and making them stakeholders. Start-ups often find it a convenient mode of recruitment due to the unavailability of cash reserves.

2. Can employees be offered a share plan where the shares to be acquired are in a foreign parent company?

The exchange control laws permit a foreign company to grant share options to directors and employees of its subsidiaries in India or of its branch office in India. The Foreign Exchange Management Act 1999 (FEMA) (along with the relevant regulations) allows an individual resident in India to:

- Acquire shares under a cashless employees' share option plan (ESOP) issued by a company outside India.
- Purchase equity shares under a foreign company's ESOP schemes, if the individual is an employee or director of:
  - an Indian office or branch of the foreign company;
  - a subsidiary in India of the foreign company; or
  - an Indian company in which there is foreign equity holding, either directly or through a holding company/special purpose vehicle, irrespective of the percentage of the direct or indirect equity stake in the Indian company.

If the individual qualifies as above, Indian banks permit the individual to remit funds for the purchase of a foreign company's shares under an ESOP scheme, irrespective of whether the shares are offered directly by the issuing company or indirectly through a trust, special purpose vehicle or step down subsidiary. However, the following conditions must be met:

- The foreign company must issue shares globally on a uniform basis.
- The Indian company must submit a report to the Reserve Bank of India (RBI) annually giving details of remittances, beneficiaries, and so on.

Indian resident individuals are also allowed to purchase a foreign company's shares under the Liberalised Remittance Scheme (LRS) introduced by the RBI. Under the LRS, an individual is permitted to remit up to US$75,000 per financial year (1 April to 31 March), provided certain conditions are met. The LRS limit was reduced from the earlier limit of US$200,000 in August 2013.

There has been considerable liberalisation in the foreign exchange regime for grant of ESOP by a foreign company to Indian resident individuals, which could earlier only grant options at a concessionary price or on a cashless basis.

SHARE OPTION PLANS

3. What types of share option plan are operated in your jurisdiction?

ESOP

The traditional ESOP continues to be predominantly used in India.

Main characteristics. ESOPs in India have broadly the same characteristics as seen globally. Options are granted subject to a vesting schedule that is typically linked to tenure of employment and/or key performance parameters. On vesting of options, employees have the right to exercise the options. On payment of exercise price, shares are issued to the employees and the employees become members of the company.

If an ESOP is issued by a company whose shares are listed (or going to be listed) on a recognised share exchange in India, the company must comply with the Securities and Exchange Board of India (Employee Share Option Scheme and Employee Share Purchase Scheme) Guidelines, 1999 (SEBI ESOP Guidelines). If the ESOP is issued by an unlisted public company, the company must comply with the Unlisted Public Companies (Preferential Allotment) Rules, 2003. Some of the important provisions of the SEBI ESOP Guidelines are:

- ESOPs cannot be issued to promoters or members of the promoter group.
- ESOPs cannot be issued to directors if they hold more than 10% of the outstanding equity shares of the company.
- ESOPs can be issued only after making certain specified disclosures to employees.
- A compensation committee (consisting of a majority of independent directors of the Company) must be appointed to formulate the ESOP's terms and conditions, including:
  - the number of options to be granted per employee and in aggregate;
  - conditions under which vested options lapse (such as employment termination);
  - the exercise period and employee's right to exercise;

The law is stated as at 1 March 2014.

- a procedure for making fair and reasonable adjustments in the event of any corporate actions.
- The compensation committee must frame policies to prohibit insider trading and fraudulent and unfair trade practices.
- Shareholder approval is required in order to institute a share option plan and grant share options.
- An additional shareholder approval is required for the grant of options to either:
  - employees of a subsidiary or holding company; or
  - individual employees receiving 1% or more of the issued capital of the company in a single year.
- Restrictions on any variations to ESOP terms to the detriment of the employees.
- Restrictions on the pricing of the options.
- A lock-in period of at least one year before vesting.
- Restrictions on the options' transferability.

Types of company. ESOPs can be issued by any company incorporated under the Indian Companies Act, 1956 or Indian Companies Act, 2013. Both private and public companies can issue share options to their employees. Listed companies must comply with the SEBI ESOP Guidelines, while unlisted public companies must comply with the Unlisted Public Companies (Preferential Allotment) Rules, 2003. Issuance of share options by private Indian companies is currently largely unregulated The recently introduced Companies Act, 2013 and its draft rules regulate the issue of share options by private companies. The draft rules provide for several restrictions on issue of ESOPs by private companies such as:

- Prior shareholder approval in order to grant share options.
- Restrictions on issuance of options to employees that are promoters and directors holding shares, directly or indirectly, in excess of 10% of the share capital of the company.

Popularity. It is common to restrict the grant of options to senior and mid-level employees.

Grant

4. What rules apply to the grant of employee share option plans?

ESOP

Discretionary/all-employee. It is possible to grant options on a discretionary basis. The factors that are considered can include, among other things, an employee's:

- Tenure.
- Experience.
- Past performance and potential for growth in the organisation.

The number of options to be granted is generally determined by the board or any committee appointed by the board.

Non-employee participation. It is possible for a private company to grant share options to non-employees, for example, consultants, non-executive directors and promoters. However, the SEBI ESOP guidelines prohibit a listed company from granting share options to the following:

- Persons who are not employed by the company or its subsidiaries.
- Persons who are not directors of the company or its subsidiaries.
- Promoters of the company.

There are also some restrictions with respect to issuance of ESOPs to directors who are also shareholders of the company.

Maximum value of shares. Share options are typically granted at an exercise price that is equal to or over the shares' face value. The SEBI ESOP guidelines restrict the grant of options to non-employees, promoters and directors and shareholder approval may be necessary in some circumstances. If the option exercise price is to be lower than the face value of shares, government approval may be necessary.

The face value of the shares to be allotted under the ESOP by a listed company to non-resident employees cannot exceed 5% of the paid-up capital of the issuing company when an Indian company issues options or shares to employees outside India (either direct employees or employees of a joint venture or wholly-owned subsidiary) (*Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2000*).

Market value. The SEBI ESOP Guidelines allow a company to determine the exercise price, subject to the prescribed accounting policies. The compensation committee can make fair and reasonable adjustments to the exercise price in the case of corporate actions such as rights issues, bonus issues, mergers, sales of divisions and so on. Companies are also allowed to reprice unexercised options (whether or not vested) if the ESOPs are rendered unattractive due to a fall in the shares' market price.

5. What are the tax/social security implications of the grant of the option?

ESOP

There is no tax levied and there are no social security obligations as a result of the grant of ESOPs.

Vesting

6. Can the company specify that the options are only exercisable if certain performance or time-based vesting conditions are met?

Vesting of options is typically linked to tenure but can also be linked to company or individual performance for employees.

7. What are the tax/social security implications when the performance or time-based vesting conditions are met?

Social security contributions and income tax are not due on vesting of share options, irrespective of whether the vesting is time or performance based. However, in situations where the date of exercise may coincide with the date of vesting, or if there is no exercise and shares are issued on occurrence of specified events (for example, in the case of restricted share units) tax may be levied at the time of vesting. In this case, the employer is required to withhold the applicable taxes and deposit it with the Indian government within the specified time frame.

Exercise

8. What are the tax/social security implications of the exercise of the option?

The grant of share options to employees is regarded as an employee benefit and tax is levied only at the time of exercise of the option. The difference between the fair market value of the shares at the time of exercise and the exercise price paid is subject to tax at the employee's marginal rate of tax (the maximum marginal rate of tax is 30% exclusive of applicable surcharge and education cess). The fair market value is determined in accordance with prescribed rules, and every Indian or foreign company (except Indian companies whose shares are listed on a recognised stock exchange in India) offering shares to Indian residents must have a share valuation undertaken by a SEBI registered merchant banker under these rules. The employer is required to withhold the applicable tax and deposit it with the government within the specified time frame. No obligation to make social security contributions arise at the time of on exercise of options.

Sale

9. What are the tax and social security implications when shares acquired on exercise of the option are sold?

Tax is levied on sale of the shares acquired under the share option plan. The difference between the sale consideration and the fair market value of the shares on the date of exercise of the option is regarded as a capital gain income subject to tax, exclusive of applicable surcharge and education cess, at either:

- 20% for long-term gains (unlisted shares held for a period exceeding one year).
- 30% for short-term gains (unlisted shares held for a period equal to or less than one year).

The employee/non-employee participant must deposit the taxes directly with the government by way of advance tax instalments. There are no withholding tax obligations on the company and no obligation to make social security contributions arise on the sale of shares acquired through the exercise of share options.

SHARE ACQUISITION OR PURCHASE PLANS

10. What types of share acquisition or purchase plan are operated in your jurisdiction?

The most common share acquisition plan in India is an employee share purchase plan (ESPP). Sweat equity shares are also granted, principally to founders or promoters of a company.

ESPP

Main characteristics. In an ESPP, the shares are issued upfront but are subject to certain restrictions. Both public (listed and unlisted) and private companies can issue ESPPs. However, listed companies must comply with the SEBI ESOP Guidelines when issuing ESPPs. Some of the requirements under the SEBI ESOP Guidelines are:

- ESPPs cannot be issued to promoters or members of the promoter group.
- ESPPs cannot be issued to directors if they hold more than 10% of the outstanding equity shares of the company.
- The shareholders must approve the share issue under the ESPP and certain grants of share options.
- A lock-in period of a minimum of one year from the date of allotment of shares.

The company has freedom to price the shares, provided it complies with the specified accounting policies.

Popularity. ESPPs are far less popular than ESOPs. In addition, promoters and entrepreneurs generally prefer to issue options to employees, since issue of shares upfront would make an employee a shareholder of the company immediately.

Acquisition or purchase

11. What rules apply to the initial acquisition or purchase of shares?

ESPP

Discretionary/all-employee. ESPPs can be offered on a discretionary basis to select employees. However, listed companies must include the appraisal process for determining the eligibility of employees for the ESPP in the explanatory statement to the notice issued to the shareholders (in accordance with SEBI ESOP guidelines) while seeking their approval for the plan. The plan can also offer of different numbers of shares to different categories of employee.

Non-employee participation. It is possible for a company to offer shares under a share purchase plan to non-employees such as consultants, non-executive directors and promoters. However, the SEBI ESOP guidelines prohibit a listed company from granting shares under an ESPP to the following:

- Persons who are not employed by the company or its subsidiaries.
- Persons who are not directors of the company or its subsidiaries.
- Promoters of the company.

Maximum value of shares. There is no specified maximum value of shares that may be issued under the ESPP. Besides restrictions on allotment of shares to non-employees, promoters and directors, the SEBI ESOP Guidelines require prior shareholder approval in the following cases:

- An allotment of shares to the employees of subsidiary or holding companies.
- An allotment of shares in excess of 1% of the issued capital of the company in a single year.

Payment for shares and price. Unlike sweat equity shares, employees must pay for subscribing to shares under an ESPP. There is flexibility in determining the price, although if the price is lower than the shares' face value, government permission may be necessary. Listed companies must comply with the accounting policies specified under the SEBI ESOP Guidelines for pricing of the shares.

Sweat equity shares

Discretionary/all-employee. Sweat equity shares can be offered to employees or directors on a discretionary basis, by both public and private companies. A shareholder resolution must specify the class or classes of directors or employees to whom sweat equity shares are to be issued (Companies Act, 2013).

Non-employee participation. Sweat equity shares can only be issued to employees and directors.

Maximum value of shares. Unlisted companies require prior government approval to issue sweat equity shares for more than the higher of either (*Unlisted Companies (Issue of Sweat Equity Shares) Rules 2003*):

- 15% of the total paid-up equity share capital in a year.
- Shares with a value totalling INR50 million or more.

In addition, sweat equity shares form a part of managerial remuneration and therefore the allotment of sweat equity shares must comply with the managerial remuneration ceilings under the Companies Act, 2013.

Payment of shares and price. Payment for sweat equity shares can be in the form of cash consideration or other consideration, for example, intellectual property rights, know-how or some other item of value. For listed companies, under the SEBI (Issue of Sweat Equity) Regulations 2002, the pricing of sweat equity shares cannot be less than the higher of the following:

- The average of the weekly high and low of the closing prices of the related equity shares in the six months preceding the relevant date (which is 30 days before the date of the shareholders' meeting).
- The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.

If sweat equity shares are issued for non-cash consideration, valuation must be carried out by a merchant banker.

12. What are the tax/social security implications of the acquisition or purchase of shares?

ESPP

Income tax is levied on the difference between the fair market value of the shares and the exercise price at the time that the shares are allotted to an employee. The valuation must be done by a merchant banker for shares awarded by unlisted Indian companies and all foreign companies. The employer is responsible for withholding these taxes and depositing them with the Indian government within the specified time frame. No obligations to make social security contributions arise on allotment of shares under ESPP as they are not included under the definition of basic wages under the Employees' Provident Funds and Miscellaneous Provisions Act 1952 (EPF Act).

Sweat equity shares

The position is the same as for ESPPs (*see above, ESPP*).

Vesting

13. Can the company award the shares subject to restrictions that are only removed when performance or time-based vesting conditions are met?

ESPP

ESPPs are typically issued with restrictions, which are removed when performance or time-based conditions are met. In most cases, such conditions are a combination of time and performance based criteria. If the employee is unable to comply with the requirements, the shares must be repurchased or bought back. The SEBI ESOP guidelines give a minimum lock-in period of one year on allotment of shares, although there is some flexibility in the event of merger or amalgamation.

Sweat equity shares

It is not common for sweat equity shares to be issued with restrictions, except those of a general nature such as on transferability. However, sweat equity shares must be locked in for three years from the date of allotment (*SEBI (Issue of Sweat Equity) Regulations 2002* and the *Unlisted Companies (Issue of Sweat Equity Shares) Rules 2003*).

14. What are the tax and social security implications when the performance or time-based vesting conditions are met?

ESPP

No income tax or social security contribution is due on vesting when the restrictions attached to the shares are removed.

Sweat equity shares

This is the same as for ESPPs (*see above, ESPP*).

Sale

15. What are the tax and social security implications when the shares are sold?

ESPP

There are no social security implications when the shares are sold. Capital gains tax is levied on the difference between the sale consideration and the fair market value of the shares on the date of allotment of the shares. The rate of tax depends on whether the gains are long term or short term in nature and whether the shares are listed in India. The rate of tax ranges between 0% to 30%. The tax is payable by the employees who sell the shares and those employees must deposit the tax by way of advance tax instalments.

Sweat equity shares

This is the same as for ESPPs (*see above, ESPP*).

PHANTOM OR CASH-SETTLED SHARE PLANS

16. What types of phantom or cash-settled share plan are operated in your jurisdiction?

Phantom or cash-settled plans are uncommon in India. Companies have resisted the grant of phantom shares, share appreciation rights and so on, and most companies prefer to use a performance-based cash bonus plan rather than a phantom or cash-settled plan.

Phantom/cash-settled plans

Main characteristics. Typically, a company indexes an employee's participation in the growth of the company in relation to the increase in its share value from the date of joining of the employee until vesting, based on which certain cash rewards are made.

Types of company. Listed companies use these types of plans.

Popularity. These plans are not widespread in India and are most common in foreign companies extending such plans to their Indian subsidiaries.

Grant

17. What rules apply to the grant of phantom or cash-settled awards?

Phantom/cash-settled awards

Discretionary/all-employee. The awards can be made on a discretionary basis.

Non-employee participation. The awards can be made to non-employees such as consultants, non-executive directors and promoters.

Maximum value of awards. There are no rules or regulations governing the maximum value of awards.

18. What are the tax/social security implications when the award is made?

There are no tax or social security implications at the time of granting the award.

Vesting

19. Can phantom or cash-settled awards be made to vest only where performance or time-based vesting conditions are met?

Awards are typically linked to performance and/or time-based conditions.

20. What are the tax/social security implications when performance or time-based vesting conditions are met?

Tax or social security implications do not arise on vesting of the awards.

Payment

21. What are the tax and social security implications when the phantom or cash-settled award is paid out?

Phantom/cash-settled awards

The employee must pay tax at the time of the cash payout, which is treated as salary income. The employer is responsible for withholding these taxes from the cash rewards being paid and depositing them with the government within the specified time frame.

CORPORATE GOVERNANCE GUIDELINES, MARKET OR OTHER GUIDELINES

22. Are there any corporate governance guidelines, market rules or other guidelines that apply to any of the above plans?

Institutional investor guidelines

Besides the general corporate and tax laws, the specific laws governing ESOPs, ESPPs, sweat equity shares and other similar plans are as follows:

- SEBI ESOP Guidelines (applicable to listed companies and companies that are proposing to list).
- Unlisted Public Companies (Preferential Allotment) Rules 2003 (applicable to unlisted public companies).
- SEBI (Issue of Sweat Equity) Regulations 2002 (applicable to listed companies).
- Unlisted Companies (Issue of Sweat Equity Shares) Rules 2003 (applicable to unlisted public companies).
- Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2000 (applicable when an Indian company issues options or shares to employees outside India).
- Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations 2004 (applicable when a foreign company issues options/shares to an Indian employee).

Other shareholder guidelines

See above, *Institutional investor guidelines*.

Market rules or guidelines

See above, *Institutional investor guidelines*.

EMPLOYMENT LAW

23. Is consultation or agreement with, or notification to, employee representative bodies required before an employee share plan can be launched?

In the absence of a collective bargaining agreement setting out provisions for consultation, the Indian labour laws do not require a company to consult or notify employee representative bodies before launching an employee share plan.

24. Do participants in employee share plans have rights to compensation for loss of options or awards on termination of employment?

Participants have no rights to claim compensation for loss of options or awards on termination of employment or even otherwise, including losses arising from a fall in the price of shares, unless contractually agreed. Generally, companies disclose to the participants the element of risk associated with these plans, and the possibility of loss under various circumstances, in the plan documents. The SEBI ESOP guidelines make it mandatory for listed companies to inform the participants of the risks associated with these plans. It is also advisable to specifically exclude ESOPs and the resultant gains from the calculation of severance, gratuity, leave accrual pay and so on, in view of the broad definition of wages under certain labour laws.

EXCHANGE CONTROL

25. How do exchange control regulations affect employees sending money from your jurisdiction to another to purchase shares under an employee share plan?

An employee can remit funds for the purchase of shares of a foreign company under an ESOP irrespective of whether the shares are offered directly by the issuing company or indirectly through a trust, special purpose vehicle or step down subsidiary, provided certain conditions are met (*see Question 2*).

There are no restrictions on the amount that can be remitted by the employees. Additionally, the employees are not required to seek any consent or make any filings for remitting money outside India. However, the Indian company (employer) must submit a report in the prescribed format to the RBI on an annual basis.

26. Do exchange control regulations permit or require employees to repatriate proceeds derived from selling shares in another jurisdiction?

Foreign companies can repurchase shares issued to Indian residents under an ESOP if the following conditions are met (*Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations 2004*):

- The shares are issued in accordance with FEMA.
- The shares are repurchased as specified under the terms of the plan.
- An annual return is submitted to the RBI through an authorised Indian bank, giving details of the remittances and beneficiaries.

The RBI requires an Indian resident to ensure that all proceeds derived from the sale of shares in another jurisdiction are repatriated, without any offset for other liabilities outside India, not later than 90 days from the date of the sale.

INTERNATIONALLY MOBILE EMPLOYEES

27. What is the tax position when an employee who is tax resident in your jurisdiction at the time of grant of a share option or award leaves your jurisdiction before any taxable event affecting the option or award takes place?

An employee resident in India is taxed on his worldwide income. Therefore, the employee must pay tax at the time of exercise of the share option on the difference between the fair market value on the date of exercise and the exercise price. The employer must withhold the applicable taxes and deposit them with the government within the specified time frame. A merchant banker in India must issue a valuation report for shares of foreign companies and unlisted Indian companies.

On sale of the shares issued on exercise, a resident employee must pay capital gains tax in India if the shares are of an Indian company. Where the shares issued are in a company other than an Indian company, tax is levied in accordance with the domestic laws of the other country, the tax laws of India and applicable tax treaties.

Non-resident employee

28. What is the tax position when an employee becomes tax resident in your jurisdiction while holding share options or awards granted abroad and a taxable event occurs?

A non-resident employee is taxed in India only to the extent his salary income is earned in India and the benefit relating to a period of employment in India during the vesting period is taxed in India. The benefit arising at the time of exercise of the option (the difference between the fair market value of the shares and the exercise price) is pro-rated over the vesting period depending on the number of days spent in India during this period.

On sale of the shares issued on exercise, a non-resident employee must pay capital gains tax in India if the shares are in an Indian company.

Indian law on the taxation of employee share options in the case of internationally mobile employees has received relatively little jurisprudence at this time, which can result in uncertainty in some circumstances.

SECURITIES LAWS

29. What are the requirements under securities laws or regulations for the offer of and participation in an employee share plan?

Prospectus needed for employee share plan offer

There are no prospectus requirements for an Indian company granting options to its employees or employees of its subsidiary or holding companies. While there is no explicit exemption for foreign companies, it is unlikely that prospectus requirements would be triggered as the grants would be made to a close group of persons, such as employees.

Exemption(s) for employee share plan offers

There are no prospectus requirements for employee share plan offers.

Consents or filings

In addition to making disclosures in the directors' report for the purposes of receiving shareholder approval (by special resolution in a general meeting), listed companies must make disclosures to their shareholders in relation to ESOPs or ESPPs. Details of the disclosure requirements for listed companies are given in the SEBI ESOP Guidelines.

Listed companies must also obtain an in-principle prior approval from the concerned stock exchanges to list the shares on exercise and must notify the share exchanges when the options are exercised and shares issued. The formats for the approval and notification are given in the SEBI ESOP Guidelines. The listing of the shares must also comply with the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009.

30. Are there any exemptions from securities laws or regulations for employee share plans? If so, what are the conditions for the exemption(s) to apply?

There are no conditions for exemptions for employee share plan offers.

OTHER REGULATORY CONSENTS OR FILINGS

31. Are there any other regulatory consents and filing requirements and/or other administrative obligations for an offer of and participation in an employee share plan?

Private companies and unlisted companies are required to seek board approval prior to instituting employee shares plans, and shareholders' approval where such conditions are contractually agreed to with the shareholders. Listed companies are required to seek shareholders' approval and make filings as discussed in *Question 24, Prospectus requirements*.

Except as set out in *Question 29* above, there are no other regulatory consents, filing requirements or other administrative obligations for offer of, or participation in, an employee share plan. However, on exercise, the employer is required to withhold taxes and deposit the same with the government within a week from the end of the month in which the deduction is made.

32. Are there any data protection requirements or obligations for an offer of and participation in an employee share plan?

India has introduced new provisions in the Information Technology Act 2000 in relation to privacy and data protection. To the extent any "sensitive personal data or information" of the employee is proposed to be obtained or transferred (including to an overseas parent company or plan administrator) by the employer, it would be necessary for the employer to obtain the employee's written consent. Additionally, the Indian company should have a "Privacy Policy" in place in accordance with the Reasonable Security Practices and Procedures and Sensitive Personal Data or Information Rules 2011 (Data Protection Rules). The company is also required to:

- Allow the providers of information the right to review and correct the information.
- Maintain reasonable security practices and procedures to protect the information as set out in the Data Protection Rules. The privacy policy should be made available on your website or the intranet.

FORMALITIES

33. What are the applicable legal formalities?

Translation requirements

There is no requirement to translate the plan documents in to local languages. Customarily, plans are issued in English which is primarily used by businesses in India.

E-mail or online agreements

There are no rules prohibiting employees from entering into binding agreements electronically. However, typically, companies provide physical copies of the plans and related agreements to employees for execution.

Witnesses/notarisation requirements

There are no requirements for witnessing, notarisation or registration of agreements.

Employee consent

There is no legal requirement to obtain the employee's consent to administer their options or awards, although it is generally advisable to indicate the withholding tax requirements and collection mechanism in the plan. Certain companies also obtain the employee's acceptance in this regard. Employee consent is required prior to the company sharing an employee's details with an overseas company. Additionally, the Indian company should have a "Privacy Policy" in place in accordance with the Reasonable Security Practices and Procedures and Sensitive Personal Data or Information Rules 2011.

DEVELOPMENTS AND REFORM

34. Are there any current trends, developments and reform proposals that have or will affect the operation of employee share plans?

Trends and developments

Share options are yet to become an important component of employees' compensation structures in India. This is partly because promoters and entrepreneurs in traditional sectors often resist employees becoming shareholders.

Promoters and entrepreneurs are also concerned by the ESOP tax regime, which has seen a number of changes in the last several years. It is hoped that the new Direct Tax Code will introduce a stable tax regime for ESOPs and ESPPs, increasing their popularity.

Global mergers and acquisitions have resulted in issues such as the exchange of existing vested and unvested options with new options. In certain situations, foreign companies may also choose to substitute different options or make cash payments for underwater options in order to incentivise employees. Such exchanges or substitutions may lead to complex tax issues in India.

Reform proposals

There are no major proposals for reform of the law on employee share plans.

ONLINE RESOURCES

India's central bank (RBI)

W www.rbi.org.in

Description. This is the official website of the RBI, India's central bank and also the financial regulator. It is maintained by RBI and among others, contains recent master circulars which are updated every year on 1 July.

Practical Law Contributor details

Neha Sinha

Nishith Desai Associates
T +91 80 6693 5000
F +91 80 6693 5001
M +91 96633 76793
E neha.sinha@nishithdesai.com
W www.nishithdesai.com

Qualified. India, Bar Council of Karnataka, 2010

Areas of practice. ESOPs and compensation structuring; structuring of secondment and consultancy arrangements; investment and M&A structuring and documentation.

Ajay Singh Solanki

Nishith Desai Associates
T +91 22 6159 5000
F +91 22 6159 5001
M +91 99877 81590
E ajay.solanki@nishithdesai.com
W www.nishithdesai.com

Qualified. India, Bar Council of Madhya Pradesh, 2008

Areas of practice. HR and employment documentation; Indian labour laws; employee benefits; employee stock option and retention plans; employee handbook and policies; expat secondment arrangements; immigration; employment termination and downsizing.

Vikram Shroff

Nishith Desai Associates
T +91 22 6159 5000
F +91 22 6159 5001
M +91 98670 31941
E vikram.shroff@nishithdesai.com
W www.nishithdesai.com

Qualified. India, Bar Council of Maharashtra & Goa, 2002

Areas of practice. HR and employment documentation; Indian labour laws; compensation structuring; employee benefits; employee stock option and retention plans; employee handbook and policies; expatriation and secondment arrangements; employment immigration; employment termination and downsizing; employment litigation advice.

Recent transactions

- Assisted several US and multinational companies in drafting and reviewing their employee stock option and share purchase plans for Indian employees.
- Advised Beceem Communications on employment law issues on its acquisition by Nasdaq listed Broadcom Corporation.
- Assisted Chegg on employment law issues for its acquisition of Cramster.
- Advised Arcot Systems on employment law issues in its acquisition by Nasdaq listed CA Technologies.
- Advised GoAhead Software on employment and labour law issues in its acquisition of a division of Emerson Electric and its acquisition by Oracle.
- Advised Synposys, Inc. on the post-merger integration of Magma Design Automation.
- Advised NETGEAR, Inc. on Indian employment and labour law issues in relation to its acquisition of Firetide Networks.