



RESERVE BANK OF INDIA
Mumbai - 400 001

RBI/2015-16/128
A.P. (DIR Series) Circular No.4

July 16, 2015

To
All Category – I Authorised Dealer banks

Madam/Sir,

Issue of shares under Employees Stock Options Scheme and/or sweat equity shares to persons resident outside India

Attention of Authorised Dealer Category – I (AD Category-I) banks is invited to Regulation 8 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, notified by the Reserve Bank vide [Notification No. FEMA. 20/2000-RB dated 3rd May 2000](#), as amended from time to time.

2. In terms of the extant instructions, an Indian company can issue shares under Employees' Stock Option (ESOP) Scheme, by whatever name called, to its employees or employees of its Joint venture or Wholly owned overseas subsidiary/subsidiaries who are resident outside India, directly or through a Trust, provided that the scheme has been drawn in terms of regulations issued under the SEBI Act, 1992 and face value of the shares to be allotted under the scheme to non-resident employees does not exceed 5 per cent of the paid up capital of the issuing company. The Trust or Indian company has to ensure compliance with the above conditions and comply with the reporting requirement.

3. On a review, it has been decided that an Indian company may issue "employees' stock option" and/or "sweat equity shares" to its employees/directors or employees/directors of its holding company or joint

venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that :

- a) The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.
- b) The “employee’s stock option”/ “sweat equity shares” issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.
- c) Issue of “employee’s stock option”/ “sweat equity shares” in a company where foreign investment is under the approval route shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.
- d) Issue of “employee’s stock option”/ “sweat equity shares” under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India.

4. The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees’ stock option or sweat equity shares, a return as per the Form-ESOP (given as Annex to this circular).

5. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents /customers concerned.

6. Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2015 notified through [Notification No. FEMA.344/2015-RB dated June 11, 2015](#), vide G.S.R. No. 484 (E) dated June 11, 2015.

7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(B.P. Kanungo)
Principal Chief General Manager

Annex to A.P. (DIR Series) Circular No.4 dated July 16, 2015

Form ESOP

Return to be filed by Indian company who has issued shares under Employees' Stock Options (ESOP) Scheme and/or sweat equity shares.

(To be filed by the company through its Authorised Dealer Category – I bank with the Regional Office of the RBI under whose jurisdiction the Registered Office of the company is situated making the declaration as and when shares under Employees' Stock Options Scheme and/or sweat equity shares are issued to the foreign investor)

I. Details of the Company issuing ESOP/sweat equity shares

S. No.	Particulars	(In Block Letters)
1.	Name of the Company	
2.	Permanent Account Number (PAN)	
3.	Address of the Registered office	
4.	Registration No. given by Registrar of Companies	
5.	Registration No. given by RBI for FDI, if applicable	
6.	Telephone	
7.	Fax	
8.	e-mail	
9.	Business details	
a)	Description of the main business activity	
b)	NIC Code	
c)	Percentage of FDI allowed as per FDI policy	
d)	State whether FDI is allowed under Automatic Route or Approval route	
e)	FIPB approval, if any	

II. Type of security issued

(Tick mark whichever is applicable)

1. Sweat equity shares ()
2. Stock Option Scheme ()
3. Shares issued against exercise of option ()

Please provide the details of the security issued in a separate Annex viz. date of issue, names of persons to whom shares are issued, number of shares, issue price, consideration other than cash(if any), in case of options (maturity date, pre-determined issue price etc.) and any other details relevant to the issue.

DECLARATION TO BE FILED BY THE AUTHORISED REPRESENTATIVE OF THE INDIAN COMPANY: (Delete whichever is not applicable and authenticate)

We hereby declare that:

1. We comply with the procedure for issue of shares under Employees' Stock Option Scheme/ sweat equity shares as indicated in [Notification No. FEMA 20/2000-RB dated 3rd May 2000](#), as amended from time to time.

2. The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of RBI and we fulfill all the conditions laid down for investments under the Automatic Route namely (strike off whichever is not applicable).

a) Options issued under Employees' Stock Option Scheme

OR

b) Shares issued against exercise of option as (a) above

OR

c) Sweat Equity Shares issued to non-residents

3. Shares have been issued in terms of FIPB approval

No. _____ dated _____

4. The foreign investment received and reported now will be utilized in compliance with the provision of a Prevention of Money Laundering Act 2002 (PMLA) and Unlawful Activities(Prevention) Act, 1967 (UAPA). We confirm that the investment complies with the provisions of all applicable Rules and Regulations.

5. We enclose the following documents in compliance with Regulation 8 of [Notification No. FEMA 20/2000-RB dated May 3, 2000](#):

(i) A certificate from our Company Secretary certifying that

a) Sweat equity shares have been issued / the Employees' Stock Option Scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies

(Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act, 2013, as the case may be

- b) all the requirements of the Companies Act, 2013 have been complied with;
- c) terms and conditions of the Government approval, if any, have been complied with;
- d) the company is eligible to issue shares under these Regulations; and
- e) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to [Notification No. FEMA 20/2000-RB dated May 3, 2000](#).

(ii) A certificate from SEBI registered Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

6. Unique Identification Numbers given for all the remittances received as consideration for issue of shares under Employees' Stock Option Scheme/ Sweat Equity shares by Reserve Bank.

(Signature of the Applicant)*

(Name in Block Letters)

(Designation of the signatory)

Place:

Date:

(* To be signed by Managing Director/Director/Secretary of the Company)

CERTIFICATE TO BE FILED BY THE COMPANY SECRETARY OF THE
INDIAN COMPANY ACCEPTING THE INVESTMENT:

In respect of the abovementioned details, we certify the following:

- a) Sweat equity shares have been issued / the Employees' Stock Option Scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act, 2013, as the case may be
- b) all the requirements of the Companies Act, 2013 have been complied with;
- c) terms and conditions of the Government approval, if any, have been complied with;
- d) the company is eligible to issue shares under these Regulations; and
- e) the company has all original certificates issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 8 of Schedule 1 to [Notification No. FEMA 20/2000-RB dated May 3, 2000](#).

(Name & Signature of the Company Secretary) (Seal)

FOR USE OF THE RESERVE BANK ONLY: