

Companies Act Fundamentals

Employee stock options



2020 MHA Legal

Applicable Law

- Chapter IV- Share Capital and Debentures - Section 43-72 of the Companies Act 2013
 - The Companies (Share Capital and Debentures) Rules, 2014.
-
- Act means – Companies Act 2013
 - Rules means - The Companies (Share Capital and Debentures) Rules, 2014.

Employee stock options

Definition of Employee

For the purposes of section 62 (1) (b) and Rule 12 “Employee” means-

- a permanent employee of the company who has been working in India or outside India; or
- a director of the company, whether a whole time director or not but excluding an independent director; or
- an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company or of an associate company but does not include-
 - (i) an employee who is a promoter or a person belonging to the promoter group; or
 - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Issue of employee stock options

Rule 12 provides that a company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees' stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

- the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.
- The companies granting option to its employees pursuant to Employees Stock Option Scheme will have the freedom to determine the exercise price in conformity with the applicable accounting policies, if any.
- The approval of shareholders by way of separate resolution shall be obtained by the company in case of-
 - (a) grant of option to employees of subsidiary or holding company; or

Issue of employee stock options

- (b) grant of option to identified employees, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option.
- The company may by special resolution, vary the terms of Employees Stock Option Scheme not yet exercised by the employees provided such variation is not prejudicial to the interests of the option holders.
 - The notice for passing special resolution for variation of terms of Employees Stock Option Scheme shall disclose full of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.
 - There shall be a minimum period of one year between the grant of options and vesting of option.

Issue of employee stock options

- However, in a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause;
- The company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option.
- The Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- The amount, if any, payable by the employees, at the time of grant of option-
 - (a) may be forfeited by the company if the option is not exercised by the employees within the exercise period; or

Issue of employee stock options

- (b) the amount may be refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme.
- The option granted to employees shall not be transferable to any other person.
 - The option granted to the employees shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated in any other manner.
 - No person other than the employees to whom the option is granted shall be entitled to exercise the option.
 - In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.
 - In case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.

Issue of employee stock options

- In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

Disclosures in the explanatory statement

The company shall make the following disclosures in the explanatory statement annexed to the notice for passing of the resolution-

- the total number of stock options to be granted;
- identification of classes of employees entitled to participate in the Employees Stock Option Scheme;
- the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme;
- the requirements of vesting and period of vesting;
- the maximum period within which the options shall be vested;
- the exercise price or the formula for arriving at the same;
- the exercise period and process of exercise;
- the Lock-in period, if any ;
- the maximum number of options to be granted per employee and in aggregate;

Disclosures in the explanatory statement

- the method which the company shall use to value its options;
- the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct;
- the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or resignation of employee; and
- a statement to the effect that the company shall comply with the applicable accounting standards .

Disclose in the Directors' Report

The Board of directors, shall, inter alia, disclose in the Directors' Report for the year, the following details of the Employees Stock Option Scheme:

- options granted, options vested, options exercised and options lapsed;
- the total number of shares arising as a result of exercise of option;
- the exercise price;
- variation of terms of options;
- money realized by exercise of options;
- total number of options in force;
- employee wise details of options granted to;-
 - (i) key managerial personnel;
 - (ii) any other employee who receives a grant of options in any one year of option amounting to five percent or more of options granted during that year.

Disclose in the Directors' Report

(iii) identified employees who were granted option, during any one year, equal to or exceeding one percent of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant;

Register of Employee Stock Options

- The company shall maintain a Register of Employee Stock Options in Form No. SH.6 and shall forthwith enter therein the particulars of option granted under section 62 (1) (b).
- The Register of Employee Stock Options shall be maintained at the registered office of the company or such other place as the Board may decide.
- The entries in the register shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.
- If the equity shares of the company are listed on a recognized stock exchange, the Employees Stock Option Scheme shall be issued, in accordance with the regulations made by the Securities and Exchange Board of India in this behalf.

Thank you



Mind, Heart, Aspiration =
Passion, Integrity, Excellence

Thank You

Please feel free to contact, if you need any further information or clarification:

Manish K Tyagi

Partner- MHA Legal

manish@mhalegal.in

9902977833/9810187833

This material and the information contained herein prepared by MHA Legal is intended to provide general information about the firm and the members associated. Any information contained herein should not be treated as an advise on professional matters.

The Bar Council of India's regulations prohibit MHAlegal from advertising in any manner, but the Firm's website www.mhalegal.in gives the relevant information about the firm. Information about members of MHAlegal can be obtained by making specific request at info@mhalegal.in

©2020 MHA Legal