FREQUENTLY ASKED QUESTIONS

ON

SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

1. **In terms of proviso to regulation 3(12) of the SEBI (Share Based Employee Benefits) Regulations, 2014, the un-appropriated inventory of shares which is not backed by grants but has been acquired through secondary acquisition by the Trust has to be sold on the recognized stock exchange within a period of five years from the date of notification of these regulations. For the purpose of classifying the inventory as un-appropriated, whether the appropriation made to the scheme can be considered as compliance?**

   Appropriation towards ESPS/ESOP/SAR/General Employee Benefits Scheme/ Retirement Benefit Schemes by October 27, 2015 would be considered as compliance with proviso to regulation 3(12). The company may appropriate towards individual employees or sell in the market during next four years so that no un-appropriated inventory remains thereafter.

2. **In terms of the provisions of the SEBI (Share Based Employee Benefits) Regulations, 2014 and the Companies Act, 2013, independent directors are not entitled to ESOPs. However, prior to commencement of these provisions, independent directors were eligible to receive ESOPs. In light of this, if an independent director has been granted ESOPs before commencement of the said provisions and such options remain to be exercised, can he/she still exercise such ESOPs?**[1]

   Yes. The restriction on grant of ESOPs to independent directors applies only on fresh grants of ESOPs after commencement of the aforesaid provisions. Any grant already made prior to commencement of these provisions shall remain valid i.e. an independent director can exercise such ESOPs, subject to fulfilment of terms and conditions of the ESOP schemes framed by the companies in terms of the relevant regulations.

3. **Regulation 22(2) of the SEBI (Share Based Employee Benefits) Regulations, 2014 prescribes lock-in of shares issued under ESPS for a minimum period of one year from the date of allotment. Whether the said lock-in is applicable to the Trust, if an ESPS scheme is implemented through Trust route?**[2]

   No. The lock-in requirement is applicable at the level of employee and not at the level of Trust. Lock-in in terms of regulation 22(2) shall be applicable from the day shares are received by the employees.

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[1] Inserted on November 20, 2015
[2] Inserted on March 03, 2016

4. **Shares have been acquired by the Trust from secondary market and held for a minimum period of six months in terms of regulation 3(13) the SEBI (Share Based Employee Benefits) Regulations, 2014 pursuant to which the same are transferred to employees under ESPS. Whether the requirement of lock-in, in terms of regulation 22(2) of the regulations, shall be applicable to shares received by employees?[3]**

   No. Lock-in shall not be applicable to the shares received by employees.

5. **Whether employees' welfare trusts with objective of employee welfare, such as medical assistance, etc., with no share-based benefits, but are holding/dealing shares of the listed company or shares of listed holding company covered under the scope of SEBI (Share Based Employee Benefits) Regulations, 2014?[4]**

   Yes. General Employee Benefits scheme or GEBS has been defined as any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.

   Therefore, any employee welfare scheme holding / dealing in shares of the company or the shares of its listed holding company is covered under the scope of SEBI (Share Based Employee Benefits) Regulations, 2014, including the timelines prescribed thereunder.

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[3] Inserted on March 03, 2016
[4] Inserted on November 18, 2019