

FREQUENTLY ASKED QUESTIONS
ON
SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY)
REGULATIONS, 2021

These FAQs offer only a simplistic explanation/clarification of terms/concepts related to the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 [“SBEB and SE Regulations, 2021”]. Any such explanation/clarification that is provided herein should not be regarded as an interpretation of law nor be treated as a binding opinion/guidance from the Securities and Exchange Board of India [“SEBI”]. For full particulars of laws governing the share based employee benefits and sweat equity, please refer to actual text of the Acts/Regulations/Circulars appearing under the Legal Framework Section on the SEBI website.

1. Which types of schemes does the provisions of new SBEB and SE Regulations, 2021 govern?

The provisions of these new regulations shall apply to the following schemes-

- i. Employee Stock Option Schemes;
- ii. Employee Stock Purchase Schemes;
- iii. Stock Appreciation Rights Schemes;
- iv. General Employee Benefits Schemes;
- v. Retirement Benefit Schemes; and
- vi. Sweat Equity Shares.

2. Whether the provisions of SBEB and SE Regulations, 2021 apply to any other employee benefits schemes like Restricted Stock Units?

Restricted Stock Units are a form of share-based employee benefits under which a company issues its equity shares to an employee subject to certain restrictions (such as vesting period) or fulfilment of prescribed performance conditions.

The provisions of these regulations shall be applicable to all schemes contemplated under Regulations 1(3) and 1(4) of the SBEB and SE Regulations, 2021, i.e., the list of schemes provided in Para 1 above and all such schemes that fulfil the criteria set out in

Regulation 1(4) of the SBEB and SE Regulations, 2021. This would include Restrictive Stock Units.

3. Whether the provisions of SBEB and SE Regulations, 2021 apply to Phantom Stock Options?

“Phantom stock options” are a form of share-based employee benefits based on the underlying value of equity shares of the employer company. The settlement of such options is made in cash and not in equity shares of the company.

Since phantom stock options do not involve any actual purchase or sale of the equity shares of a listed company, the same would not be covered under the SBEB and SE Regulations, 2021.

4. What does the phrase “*exclusively working in India or outside India*” mean with respect to the definition of “employee” under Regulation 2(1)(i) of SBEB and SE Regulations, 2021?

The phrase “*exclusively working in India or outside India*” means any employee who is exclusively working with such company, irrespective of whether such person is employed either in India or outside India.

5. Whether contractual employees are eligible to receive benefits under Share Based Employee Benefits schemes?

Yes, contractual employees are also eligible to receive benefits under the Share Based Employee Benefits schemes provided they are designated as employees by their employers and are exclusively working with such company or its group company including subsidiary or its associate company or its holding company.

6. Based on the definition of “group” under the SBEB and SE Regulations, 2021, if there are two companies (Company A and Company B) that together hold 26% of the share capital of a listed company (Company X), can company X grant options, SAR or other benefits to the employees of each of Company A and Company B even if Company A and Company B are not part of same group?

Yes. Company X may grant benefits to the employees of Company A and Company B even if they are not part of the same group. Further, each of Company A and Company

B may also grant benefits to employees of Company X. However, neither Company A nor Company B can grant such benefits to each other's employees if they are not part of the same group.

7. Are employees of joint ventures eligible to receive benefits under Share Based Employee Benefits schemes?

As per Section 2(6) of the Companies Act, 2013, the term Associate Companies includes Joint Ventures. Since the employees of Associate Companies are now included in the definition of "Employees" under Regulation 2 of SBEB and SE Regulations, 2021, employees of joint ventures are also eligible to receive benefits under share based employee benefits schemes subject to shareholders' approval.

8. Does holding company need to be based in India or can it be outside India as well for granting benefits to its employees?

Holding company can be based in India or outside India.

9. In light of modified definition of "employee", whether an existing scheme(s) can be amended to include such new class of "employee"? And whether the identity of classes of persons under the scheme for associate, group companies or JVs are also required to be disclosed under Part D of Schedule 1?

As prescribed under Regulation 7(2) of SBEB and SE Regulations, to meet the regulatory requirement, an existing scheme(s) may be amended to include the new class of employees without seeking shareholders' approval.

However, grant of benefits to such employees shall be subject to prior approval of shareholders.

Further, any grant of options, SARs, shares or other benefits, as the case may be to such new class of employees shall be required to be disclosed under Part D of Schedule-I.

10. What is the treatment in cases where the holding in shares of the Trust exceeds the threshold as prescribed under Regulation 3(11) of these regulations, due to action other than of its own?

In cases where there is a reduction of paid-up capital on account of any corporate actions like buyback, the trust may be permitted to hold on to their shares, however, the trust shall not be permitted to acquire any further shares.

11. Whether the increase in period for appropriation of unappropriated inventory of shares, which are not backed by grant, applicable to outstanding inventory at the time of promulgation of the new regulations as well?

Yes, the increase in period for appropriation of unappropriated inventory, which are not backed by grant, is applicable to all the outstanding inventories at the time of promulgation of the new regulations as well.

12. What is the process to grant benefits to employees of group company including subsidiary or its associate companies, joint ventures or holding company? Are shareholders required to approve the grant of option, SAR, shares or other benefits, as the case may be, to employees of such companies?

Yes, as per Regulation 6(3)(c) of these regulations, shareholders are required to approve the grant of option, SAR, shares or other benefits, as the case may be, to employees of group company including subsidiary or its associate companies, joint ventures or holding company.

13. In terms of Regulation 6(3)(d), whether separate resolution needs to be passed for the identified employees, class wise or name wise?

Separate resolution needs to be passed for each employee name wise.

14. Whether shareholders' approval shall be required for variance in only those terms which are mentioned in the explanatory statement as provided in Part C of Schedule –I or for those changes in the scheme as well which do not form part of the explanatory statement?

Shareholders' approval is required for only those terms which are covered in Part C of Schedule-I of the SBEB and SE Regulations, 2021.

15. In case employees suffer mental incapacity, whether his/her nominee can exercise stock options on such employees' behalf or whether the options shall be vested with the Nominee?

In such cases, company needs to frame necessary modalities and the same shall form part of the scheme to be approved by the shareholders.

16. What is the treatment to the options, SAR or other benefits which are granted and not vested to the directors who have vacated the office due to retirement?

Subject to the terms of the company's policies, all grants, SARs or other benefits would continue to vest in accordance with the respective vesting schedules even after the cessation of directorship due to retirement.

17. Whether the lock-in period is applicable to the Trust, if an ESPS scheme is implemented through Trust route?

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.

18. Whether any scheme established with the objective of employee welfare 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 and Sweat Equity) Regulations, 2021?

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 SBEB and SE Regulations, 2021, including the timelines prescribed thereunder.

19. Whether shares held by the trust will be taken into account for the determination of percentage of voting rights under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations")

Notwithstanding the views provided by SEBI in the informal guidance issued vide letter dated December 22, 2016, shares held by the trust shall be taken into account for the determination of percentage of voting rights under the SAST Regulations.

20. Pursuant to the issue of sweat equity shares to the employees beyond the threshold limits as prescribed under provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations”), whether open offer shall be triggered in the hands of the beneficiaries?

The provisions of the new SBEB and SE Regulations, 2021 should be read in harmony with the provisions of Takeover Regulations and thus the beneficiaries of sweat equity shares shall be liable to make an open offer if the acquisition exceeds the threshold limits under Takeover Regulations.