ESOPs Under the Spotlight: Navigating Regulatory Changes and Evolving Industry Practices





"Emerging Practical Challenges and Implementation Insights in ESOP Landscape"



Understanding the Impact :

- ✓ Employee Stock Options are granted either at the prevailing market price or at a deep discount, depending on the company's ESOP policy.
- ✓ The Number of Options to be granted and Exercise Price are determined, in order to arrive at the desired benefit in terms of value to be given to an employee at the time of Grant.

The following challenges are generally faced by the Companies, in relation to this:

Scenario I:

I. If the Fair Market Value (FMV) fallen below, the Exercise Price Example:

•Exercise Price: ₹120
•FMV as on date: ₹90
•Benefit: ₹90 - ₹120 = ₹(-30) → Zero gain/Negative benefit

It is clearly seen there is no desired benefit since the FMV has dropped below the Discounted Exercise Price, thus making desired benefit negative.

Scenario II

If FMV is above the Exercise Price, but the apprehended desired benefit of employee has fallen to great extent.

Example:

Exercise Price: $\gtrless 120$ FMV as on date: $\gtrless 130$ Apprehended Benefit = $\gtrless 200$ Benefit = $\gtrless 130 - \gtrless 120 = \gtrless 10$

It is clearly seen that the apprehended desired benefit has fallen, making an ESOP unattractive for employee.

In either of the two Scenarios, the following points needs to be considered before taking any action:

- Evaluating ESOP Scheme Attractiveness Amidst FMV Decline.
- > Determining the Structure of ESOP: Reward vs Compensation.
- Implications of ESOP as Reward vs Compensation.
- Assessing Remaining Vesting and Exercise Periods.

<u>1. Clarity on Objective: ESOP as Reward vs. Compensation:</u>

ESOP as a Reward:

• Granted **in addition to fixed compensation**, typically performance- or milestone-linked.

ESOP as a Component of Compensation:

- Forms a part of the **total compensation package**.
- Requires a clearly communicated value proposition, especially considering **post-tax impact** and **market volatility**.

🚫 What to Avoid:

Ambiguity in communicating the purpose or benefit of the ESOP to employees.
Implying any guaranteed value or return, as ESOPs are subject to market risk.
Using ESOPs as substitutes for salary cuts, bonuses, or deferred cash payouts.

<u>2. ESOP Disclosures in Explanatory Statement :</u>

S What to Avoid:

- 1. Delegating critical aspects of the scheme to the NRC without defining the parameters like
 - Pricing formula to determine Exercise Price,
 - Exercise period,
 - Vesting period,
 - Eligibility criteria
- 2. Lack of communication on cap on Dilution, Cost Recognition, and EPS impact, as it undermines Shareholder transparency.

<u>3. ESOP is Not a Fundraising Mechanism:</u>

•ESOPs are not meant to **generate capital** for the Company.

•The core objective is to **attract**, **retain**, **and incentivize employees** by giving them a stake in long-term value creation.

S What to Avoid:

- Avoid setting or disclosing exercise price in a way that implies fundraising intent.
- Do not justify a high exercise price as a tool for capital generation.
- Refrain from inconsistent logic such as using market price as exercise price solely to show perceived valuation strength.

<u>3. ESOP is Not a Fundraising Mechanism:</u>

Instead, Clearly Disclose:

- The basis for determining exercise price (e.g., face value, fair market value, or a discounted price), aligned with the reward philosophy.
- That the exercise price is fixed to balance employee benefit and shareholder value, not to serve as a capital inflow.
- If pricing is concessional or at FMV, clarify that it's in line with the ESOP's compensatory purpose, not a pricing strategy for cash generation

4. <u>Shareholder Expectations & Proxy Advisory Sensitivities</u>:

Existing Shareholders closely examine the critical terms of explanatory statement such as:

- 1. Clear Purpose and Rationale of implementing ESOP resolution.
- 2. Maximum Dilution which should be reasonably acceptable.
- **3.** Ensure that the Pricing methodology should be transparent with proper justification.
- 4. All the requisite disclosures in alignment with SEBI (SBEB & SE) Regulations, 2021 should be made.
- 5. Clarity on the Route of Scheme. i.e. Trust vs. Direct.

S What to Avoid:

Absence of proper Clarification to Shareholders on the key aspects of the explanatory terms, may result in negative voting through Proxy advisory and rejection of ESOP ^{6/1} Resolutions, which can create hindrance in implementing Compensation .

Thoughts to be considered

"ESOPs are not about dilution — they are about value creation. You're not losing equity; you're investing it into the very people who can multiply it."

Implementation Challenge III: "ESOPs Alternative for Companies with Multinational Presence"

Equity Incentive Plans for Multinational Workforce – Key Considerations

Companies operating with a multinational workforce whether through foreign subsidiaries or Holding Company or involving NRI/NRE employees often look to extend equity-linked benefits such as ESOPs to their foreign employees. However, such cross-border grants poses several regulatory and practical challenges, both at the corporate and employee levels.

Point to be considered at Company level before implementing such incentive Plans:

- □ Clarity on Cross-border Laws such as FEMA, FDI rules and other RBI Laws.
- □ Clarity on Taxation laws including applicability of DTAA compliance is a must.
- □ Various Territorial jurisdiction restrictions on extending the benefit to foreign nationals must be adhered to.
- Understanding Foreign Employees' interest and their ability to hold Indian equity due to unfamiliarity, tax impact, or liquidity concerns.
- □ Alternative SAR-Cash Settled/Phantom Stocks incentives can be tried.

Implementation Challenge IV: "ESOP Readiness for IPO (Unlisted Company)"

Pre-IPO Challenge: Unlisted Companies who are planning to go for IPO with large ESOP grants distributed pre-listing must reconcile and align all ESOP data before filing of the **DRHP**.

Points to re-consider for IPO-Ready ESOP Compliances:

1. ESOP Data Reconciliation :

Ensure consistency and alignment of ESOP data across HR, accounts & secretarial teams, in order to avoid mismatching of data at the time of DRHP, Actual vs. Disclosures.

2. DRHP-Ready Disclosures

Ensure ESOP cost, Exercise Period for active grants valuation, and grant terms are clearly disclosed in DRHP and Annual reports.

3. Opening of exercise window :When to open exercise window prefiling of RHP or Post Listing.

Implementation Challenge IV: "ESOP Readiness for IPO (Unlisted Company)"

Points to re-consider for IPO-Ready ESOP Compliances:

4. Scheme Review & Amendment for making Fresh Grants post Listing:

- ✓ Align scheme with SEBI (SBEB & SE) Regulations, 2021
- ✓ Ratification by the Shareholder, if the Company wishes to cotinine giving grants in the ESOP Scheme
- ✓ **Stock Exchange Approval required** for fresh grants post-listing.

5. Filing of In-principle application with Exchanges for Active Grants offered by the Company before Listing.

Implementation Challenge V: "Impact of Corporate Actions"

Corporate Action means:

- A change in the capital structure of the Company as a result of Bonus issue, Right Issue, Stock split/sub-division of Shares or consolidation of Shares.
- Merger, De-merger, Reconstitution, Spin-off, Consolidation, amalgamation, reclassification of capital.

Companies have various challenges to determine the impact on the Corporate Action, on ESOP Option and Price adjustments.

Implementation Challenge V: "Impact of Corporate Actions "

Key Challenges in Assessing the Impact of C.A. on ESOP's?

- 1. Identifying the Type of Corporate Action and its Impact on ESOP: Whether it's a bonus issue, stock split, merger, demerger, etc., as each requires different ESOP treatment.
- 2. Adjustment of Active Options and Exercise Price.
- 3. Preserving Value Post-C.A.
- 4. Impact on ESOP Pool.

Implementation Challenge V: "Impact of Corporate Actions "

Point to be Considered at Company level:

- 1. Identifying the Nature of Corporate Action.
- 2. Giving fair adjustment of Active Granted options (vested but unexercised +Unvested) as on the Record date.
- 3. Ensuring the C.A. adjustment made to the value arising pre- C.A. and post adjustment should remain same.
- 4. Forgoing to provide impact on the ESOP Pool, in case of C.A. like Bonus Issue.
- 5. Suitable adjustment on Exercise price in the Ratio of C.A.
- 6. Booking of Accounting treatment of additional options and adjusted Exercise price in the books of the Company.

6/18/2025

Regulatory Framework Governing ESOPs. SEBI (SBEB & SE) Regulations, 2021 – core ESOP framework

SEBI (LODR) Regulations, 2015 – disclosure requirements

SEBI (ICDR) Regulations, 2018 – IPO-related ESOP reporting

Companies Act, 2013 – Section 62(1)(b) read with Rule 12 of Companies (Share Capital & Debentures) Rules, 2014.

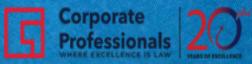
Income Tax Act, 1961 (for employees & Companies)

FEMARuleswithrespecttoGrant/Allotment/Transfer of ESOPs.

SEBI Consultation Papers – clarifications and future changes

Regulation / Law	Applicability / Coverage
SEBI (SBEB & SE) Regulations, 2021	Listed companies issuing ESOS, RSU, SAR(Equity Settled), ESPS, Sweat Equity
SEBI (LODR) Regulations, 2015	Ongoing Disclosures and compliance for listed entities
SEBI (ICDR) Regulations, 2018	Companies planning IPO / filing DRHP
Companies Act, 2013 (Sec 62(1)(b) & Rule 12, Sec 67 & Rule 16	 Issuance of ESOP All companies (Public and Private) Loan to ESOP Trust(provision of Money)
Income Tax Act, 1961	Perquisite and Capital gain Taxation in respect to ESOP
FEMA Regulations	Cross-border ESOPs to non-resident employees or foreign Nationals
SEBI Consultation Papers (2025) .8/2025	Proposed clarifications & reforms in existing Regulations
	SEBI (SBEB & SE) Regulations, 2021SEBI (LODR) Regulations, 2015SEBI (ICDR) Regulations, 2018Companies Act, 2013 (Sec 62(1)(b) & Rule 12, Sec 67 & Rule 16Income Tax Act, 1961FEMA Regulations

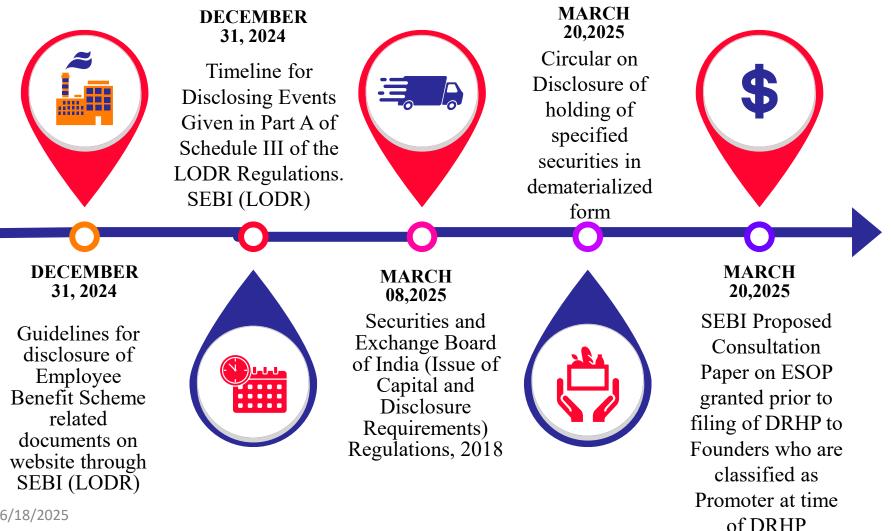
Key Regulatory framework at Glance (F.Y. 2024–25)



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Timeline of Regulatory Amendments for Listed Company w.r.t ESOP(s) (F.Y. 2024–25)

REGULATORY CHANGES TIMELINE GRAPH



6/18/2025

SEBI/HO/CFD/CFD-PoD-2/CIR/P/2024/185 Dec 31, 2024

Circular for implementation of recommendations of the Expert Committee for facilitating ease of doing business for Listed entities

Number of Amendments covered w.r.t to ESOP

> Amendments I:

Guidelines for disclosureof Employee BenefitScheme relateddocuments.

Amendments II: Timeline for Disclosing Events Given in Part A of Schedule III of the LODR Regulations.



Guidelines for disclosure of Employee Benefit Scheme related documents

Key Compliances required at the time of Disclosures by the Listed Entities

- ✓ The ESOP scheme document shall be uploaded on the website of the listed entity after obtaining shareholder approval as required under SEBI (SBEB & SE) Regulations, 2021
- ✓ The documents uploaded on the website shall mandatorily have minimum information to be disclosed to shareholders as per SEBI (SBEB & SE) Regulations, 2021.
- ✓ The rationale for redacting information from the documents and the justification as to how such redacted information would affect competitive position or reveal commercial secrets of the listed entity shall be placed before the board of directors for consideration and approval.

1. Upload of ESOP Scheme on Website:

What it says:

"The ESOP scheme document shall be uploaded on the website of the listed entity after obtaining shareholder approval as required under SEBI (SBEB & SE) Regulations, 2021."

What to do:

•Once shareholders approve the ESOP scheme through a special resolution, **upload the scheme document on your website** (under a clearly labeled section).

<u>2. Minimum Disclosure Requirement:</u> What it says:

"The documents uploaded on the website shall mandatorily have minimum information to be disclosed to shareholders as per SEBI (SBEB & SE) Regulations, 2021."

What to do:

•Ensure the uploaded document includes **all disclosures prescribed in Part D of Schedule I** of SEBI (SBEB & SE) Regulations, 2021, such as:

•Scheme objectives

•Class of employees eligible

•Appraisal process

•Vesting period and criteria

•Maximum grants per employee

•Pricing formula

•Lock-in and transfer restrictions

^{6/18/2025} Ensure this is reflected even if parts of the Scheme are redacted.

<u>3. Redaction Policy and Board Justification:</u>

Let's first try to understand the meaning of **"Redacted information":**

In legal terms, "*Redaction*" means the process of removing or obscuring sensitive or confidential information from a document before it is released or made public.

Methods:

Redaction can involve blacking out text, removing sections, or using other methods to obscure the sensitive information which would affect competitive position.

3. Redaction Policy and Board Justification:

What it says:

"The rationale for redacting information from the documents and the justification as to how such redacted information would affect competitive position or reveal commercial secrets of the listed entity shall be placed before the board of directors for consideration and approval."

What to do:

•If you redact any sensitive sections (e.g., exact performance triggers, formulae, or performance linked KPIs or vesting conditions etc):

•Draft a justification explaining:

•What is redacted,

•Why disclosure would harm competitive interest,

•How it qualifies as confidential or commercially sensitive.

•Place this memo before the board and have the redaction formally approved 6/18/in 5a board resolution.

<u>Summary of Steps to How to make it a part of approval process by Listed</u> <u>Entities:</u>

Step	Action
1.	Draft complete ESOP scheme document
2.	Obtain shareholder approval
3.	Identify any redactions and prepare rationale
4.	Place redaction note before Board and get approval
5.	Upload the ESOP scheme (with Board-approved redactions, if any) on the company website
6.	Ensure all minimum disclosures as per SEBI are included.

Key Compliances required at the time of Disclosures by the Listed Entities

Role of Secretarial Auditor:

The secretarial compliance report issued by a Peer Reviewed Company Secretary under regulation 24A(2) of the LODR Regulations shall include a confirmation on compliance with the aforesaid requirements by the listed entity.

Secretarial Compliance Report Requirement:

Secretarial Auditor to confirm compliance with:
Website disclosure under Reg. 46(2)(za)
Completeness of ESOP document
Whether redactions are board-approved

Rationale:

To provide an independent check on compliance and promote governance discipline.

Compliance Actions:

•Company Secretary to ensure and document:

- Website disclosures
- Redaction notes if and board resolution
- 6/18/2025• Scheme compliance with SBEB & SE norms



Timeline for Disclosing **Events** Given in **Part A of** Schedule III of the LODR Regulations.

Key Compliances required at the time of Disclosures by the Listed Entities

Chapter / section number and para number of the Master Circular Existing provision Changes proposed existing

ChangesRevised provisionproposed to theof the Masterexisting provisionCircular

Annexure 18A of the Master Circular for compliance with the provisions of the SEBI (LODR) Regulation 2015_dated November 11, 2024. TIMELINE FOR DISCLOSING EVENTS GIVEN IN PART A OF SCHEDULE III OF THE LODR REGULATIONS Annexure 18A of the Master Circular to be substituted by Annexure 5 to this circular.(Dec 31, 2024) Please refer Annexure 5 of this circular on 'Timeline for disclosing events given in Part A of Schedule III of the LODR Regulations.

Earlier provision

Within 30 minutes

From the **closure of the Board Meeting** where the decision was taken regarding the material event or information.

Within 12 hours

From the occurrence of the event/information, if it originates from within the listed entity (e.g., resignation, default, internal investigation, etc.).

Within 24 hours

From the occurrence of the event/information, if it originates externally (e.g., regulatory order, litigation, market rumor confirmation, etc.).

New Provision

Within 30 minutes

From the **closure of the Board Meeting** where the decision was taken regarding the material event or information.

Within 3 hours

If the Board Meeting ends after market hours but at least **3 hours before next trading day starts** ,disclose event or information, within three hours from the closure of the board meeting.

Within 12 hours

From the occurrence of the event/information, if it originates from within the listed entity (e.g., resignation, default, internal investigation, etc.).

Within 24 hours

From the occurrence of the event/information, if it originates externally (e.g., regulatory order, litigation, market rumor confirmation, etc.)

Under which provisions of the SEBI LODR Regulations disclosure related to ESOPs (Employee Stock Option Plans) are covered?

Regulation 30 – Disclosure of Material Events

Jul 13, 2023| Circular No.: SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123

Regulation 30 – Disclosure of Material Events

Reference: Schedule III, Part B of LODR

Events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30)

Events	Timeline for Disclosure
Options to purchase securities including any ESOP/ESPS Scheme.	Within 12 hours *

* Note: In case the issuance of ESOP emanates from a decision taken in a meeting of board of directors and if the said event is material as per application of guideline of materiality, the same shall be disclosed within 30 minutes or 3 hours, as applicable as per Regulation 30(6), from the closure of such meeting as against the timeline indicated in the table above.

Disclosure Timelines under Regulation 30(6): for ESOP Events

Disclosure Timeline for Resolution by Circulation:

Event Type	Timeline (from occurrence)
Grant / Vesting /Exercise	Within 12 hours (originating from within the company)*

*Since the ESOP as an event shall be originating within the Company hence the said timeline shall apply.

Pl note: Considering the Market Practices, Companies are giving outcomes and intimation to Stock exchanges at the time of Grant and Allotment of Shares .pursuant to exercise, as it is not feasible to give outcome at the time of each vesting or exercise.

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Last amended on March 8, 2025]

Number of Amendments covered w.r.t to ESOP

- Amendments I: Flexibility in IPO Pre-Filing Route for ESOPs and Convertible Securities.
- Amendment II: Understanding the Calculation of Minimum Promoters Contribution for post IPO capital.
 - Amendment III: Lock-in of specified securities held by persons other than the promoters
 - Amendments IV: Lock –in period exemption in event of IPO.

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations

Changes proposed to the existing provision

Sub- Reg 59 E – General Conditions.

Flexibility in IPO through Pre-Filing the Draft offer Document in provisions of this Chapter for ESOPs and Convertible Securities:

This Clause has been explained in two Phases:

- (1) Before SEBI Issues Observations on the Pre-Filed Draft (PDRHP)
- (2) Even After SEBI Issues Observations What's Still Allowed

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Amended provision

(1) Before SEBI Issues Observations on the Pre-Filed Draft (PDRHP):

Permitted:

The **existence** of outstanding convertible securities (e.g., CCPS, warrants, etc.) or rights like **ESOPs** is allowed.

BUT – Condition:

These **must be mandatorily converted or exercised** *before SEBI issues observations or recommends changes*.

The company must intimate SEBI after such conversion is completed.

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Changes proposed to the existing provision

(2) Even After SEBI Issues Observations – What's Still Allowed:

The following exceptions apply even after SEBI has reviewed and issued observations on the PDRHP:

Permitted Item	Condition / Explanation
(i) Outstanding ESOPs	Options already granted to employees (even ex-employees), if compliant with Companies Act and ICAI accounting standards, may continue to exist.

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Changes proposed to the existing provision

Permitted Item	Condition / Explanation								
(ii) Stock Appreciation Rights (SARs)	SARs that are fully exercised before the filing of the RHP/Prospectus, and whose disclosures (scheme + total shares issued) can made in the offer documents.								

Under SEBI ICDR Regulations, a company generally cannot file a draft red herring prospectus (DRHP) if there are any outstanding convertible securities or rights/options to convert into equity shares — unless:

1. The securities are **mandatorily convertible** and will be converted **before DRHP filing**, or

2. They are **ESOP-based allotments**.

A third exception has now been added — companies can also file the DRHP if there are outstanding Stock Appreciation Rights (SARs) that:

However, the company must disclose:

•The details of the SAR scheme, and

•The total number of equity shares issued and exercised from SARs in both the draft offer document and the final offer document.

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations

Changes proposed to the existing provision

Sub-Reg 113

Minimum Promoter Contribution

For the purpose of this regulation, promoters' contribution shall be computed on the basis of the post-issue expanded capital:(a)assuming full proposed conversion of convertible securities into equity shares;(b)assuming exercise of all vested options, where any employee stock options [or stock appreciation rights]are outstanding at the time of further public offer.

When calculating the **minimum promoter contribution** for an IPO, the company must consider the **post-IPO share capital**.

As per the **recent amendments**:

•In addition to including:

- Equity shares from **conversion of outstanding convertible securities**, and
- Shares from exercise of vested ESOPs,
- •The post-IPO capital **must also include**:
 - Equity shares arising from the exercise of Stock Appreciation Rights (SARs), if these SARs are fully exercised before filing the red herring prospectus.

This ensures a more accurate and expanded calculation of promoter ^{6/18/2025} tribution based on the fully diluted capital structure.

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations Changes proposed to the existing provision

Sub-Reg 288

Lock In

General Rule (Main Provision): Main Provision:

The entire pre-issue capital of shareholders shall be locked in for 6 months:

From the **date of allotment** in case of **listing through a public issue** (IPO), or

From the **date of listing** in case of **direct listing without a public issue** (e.g., SME or direct listing on exchanges like NSE/BSE).

CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations	Changes proposed to the existing provision
Sub- Reg 288	Key Exemptions from Lock-in:
C	a) ESOP/ESPS/SAR Shares Held by Employees (Past
Lock In	or Present : Equity shares allotted under a:
	 Stock Option Scheme (ESOP)
	 Employee Stock Purchase Scheme (ESPS)
	 Stock Appreciation Right (SAR) Scheme
	to employees (even ex-employees) before the IPO or
	listing \rightarrow will not be subject to the 6-month lock-in, if
	the company has made full disclosures in the offer
	documents as per Part A of Schedule VI.
/18/2025	<u>^</u>

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CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations	Changes proposed to the existing provision
Sub- Reg 288	Key Exemptions from Lock-in:
	b) Shares Held by ESOP Trust or Transferred by Trust
Lock In	to Employees
	Shares held or transferred by an Employee Stock Option
	Trust, arising from:
	Valid exercise of options/SARs by employees
	In accordance with approved ESOP/ESPS/SAR
	schemes
	\rightarrow These are also exempt from the 6-month lock-in.
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CHAPTER IIA – IPO ON MAIN BOARD THROUGH PRE-FILING OF DRAFT OFFER DOCUMENT

Chapter / section number and para number of the Regulations	Changes proposed to the existing provision
Sub- Reg 288	Key Exemptions from Lock-in: Such shares will still be subject to the lock-in requirements prescribed under the SEBI (SBEB & SE) Regulations, 2021,
Lock In	 which generally include: Minimum 6 months lock-in from the date of exercise of options
	 Trust route must follow detailed administration and disclosure rules

Lock-in Exemption – Expanded Scope (Post-SEBI ICDR Amendment)

The recent SEBI ICDR Amendments provide additional exemptions from the mandatory six-month lock-in period after an IPO.

Now, the following equity shares are **not subject to the lock-in of 6 months**:

1.Equity shares allotted to employees (whether they are currently employed or not) under a **Stock Appreciation Rights (SARs) scheme**, and

2.Equity shares held by an ESOP trust or transferred by the ESOP trust to employees, following the exercise of SARs, even if the employee is no longer with the company

SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/35 March 20, 2025

Circular on Disclosure of holding of specified securities in dematerialized form Number of Amendments covered w.r.t to ESOP

Amendments I:

Clarification that the underlying outstanding convertible securities also includes ESOPs at the time of filing of shareholding pattern.

Chapter / section	Changes proposed to the existing provision
number and para	
number of the	
Circular	

Regulation	31	of
Securities		and
Exchange	Board	of
India	(Lis	sting
Obligations		and
Disclosure		
Requiremen	ts)	
Regulations	, 2015	

The shareholding pattern has been amended as under: It is clarified that underlying outstanding convertible securities also includes ESOPs i.e. the existing header of column X as "No. of Shares Underlying Outstanding convertible securities (including Warrants, ESOP etc.)

iii. One additional column in the existing shareholding pattern format to capture the details of total number of shares on fully diluted basis (including warrants, ESOP, Convertible Securities etc.)

Regulation 31 – Revised format of Shareholding Pattern

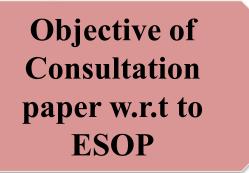
Annexure A

Table I - Summary Statement showing holding of specified securities of the listed entity

Category (I)	Category of shareholder (II)	No. of shareh older (III)	No. of fully paid up equity shares held (IV)	Partly paid- up equity shares held (V)	ng Deposit	Total no. shares held (VII) = (IV)+(V) +(VI)	Shareholdi ng as a % of total no. of shares (calculated as per SCRR, 1957) As a % of (A+B+C2) (VIII)	held No of V	Class	ties ghts	is of	No. of Shares Underly ing Outstan ding converti ble securiti es (includi ng Warrant s, ESOP etc.) (X)	Total No of shares on fully diluted basis (including warrants, ESOP, Convertibl e Securities etc.) (XI)=(VII+X)	Shareholdi ng, as a % assuming full conversion of convertible securities (as a percentage of diluted share capital) (XII) = (VII)+(X) As a % of (A+B+C2)	(a) % to Sh sh	lin s s of otal nare	Number of Shares pledged (XIV) No. As a (a) % of total share s held (b)	Dis Unde (No (a)	lon- sposal ertaking XV) As a % of total shar es held (b)	encu	Other mbrances, if any (XVI) As a % of total shares held (b)	o en	al Number f Shares cumbered (XVII) = V+XV+XVI) As a % of total shares held (b)	Number of equity shares held in dematerialized form (XVIII)		
(A)	Promoter & Promoter Group																									
(B)	Public																		NA							
(C)	Non Promoter- Non Public																	NA								
(C1)	Shares underlying DRs						NA										NA						NA			
(C2)	Shares held by Employee Trusts																NA									
	6 ī/otla 8/20)25																								

March 30, 2025

Consultation Paper seeked comments / suggestions from the public on the following proposals relating to amendments to SEBI (ICDR) Regulations, 2018, ("ICDR Regulations") and SEBI (SBEB & SE) Regulations, 2021,("SBEB Regulations")



Proposals relating to amendments to SEBI (ICDR) Regulations, 2018, ("ICDR Regulations") and SEBI (SBEB & SE) Regulations, 2021,("SBEB Regulations") with the objective of streamlining certain processes and providing clarifications related to requirements of a public issue:

a. Clarification on ESOPs granted prior to filing of DRHP to founders who are classified as promoters at the time of filing of DRHP.

<u>Clarification on ESOPs granted prior to filing of DRHP to founders who are</u> <u>classified as promoters at the time of filing of DRHP:</u>

Existing Regulations :

The term "employee" has been as defined in terms of Regulation 2(1)(i) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 as follows:

"Employee", except in relation to issue of sweat equity shares, does not include—

a) an employee who is a promoter or a person belonging to the promoter group; or b) a director who, either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company; "

Promoters Not Eligible for ESOPs:

•Under SEBI SBEB Regulations, the term "Employee" excludes promoters and members of the promoter group.

•Therefore, promoters and their group members cannot be granted ESOPs.

This is also reflected in the Companies Act, 2013, specifically in:
Section 62(1)(b) and
Rule 12 of the Share Capital and Debenture Rules, where only "employees" (excluding promoters) can receive ESOPs.

Founders may be classified as Promoters at IPO Stage:

•As per the **SEBI ICDR Regulations**, a **promoter** is someone who has **control over the issuer**, whether:

•Directly or indirectly,

•As a shareholder, director, or otherwise.

•This may result in **founders being classified as promoters** at the time of filing the **Draft Red Herring Prospectus (DRHP)** — even if they initially weren't treated as such.

•The classification could be based on their shareholding or vested ESOPs/options.

Accordingly, if founders are classified as 'promoters' at the time of filing of DRHP, the existing provisions do not clearly state whether an Employee holding ESOPs who is subsequently categorized as Promoter can exercise their granted ESOPs (both vested and unvested).

Currently, SBEB Regulations neither specifically allow nor disallow exercise of granted ESOPs (both vested and unvested) when Employee holding such ESOPs is subsequently categorized as Promoter.

Based on the representations received, it is proposed that an explanation may be added to state that share based benefits granted to founders would continue upon such founder being classified as promoter in the DRHP.

The requirement of no new issuances under Share Based Employee Benefit Scheme to promoters, would continue being applicable to such founders who are categorized as promoter.

Proposal :

An explanation may be inserted under Regulation 9(6) of the SBEB Regulations, 2023 to state the following:

"Explanation 2:

an employee, identified as a "promoter" or "promoter group" in the draft offer document filed by a company in relation to an initial public offering, who was granted options, SARs or other benefits under any scheme prior to being identified as a "promoter" or "promoter group", as the case may be, shall be eligible to continue to hold, exercise or avail any such option, SAR or benefit, in accordance with its terms and granted, prior to one year from the date when the Company (i.e. its' Board) decides to undertake Initial Public Offering and, in compliance with these Regulations.

Interpretation:

If an employee is later identified as a "promoter" or part of the "promoter group" in the draft offer document filed for the company's Initial Public Offering (IPO), then:

•The employee is still allowed to hold, exercise, or benefit from any ESOPs, SARs (Stock Appreciation Rights), or similar incentives.

•But only if those benefits were:

- Granted to the employee before they were identified as a promoter/promoter group, and
- Granted at least one year before the Board of Directors decided to go for an IPO, and
- The grant is in compliance with the applicable SEBI (SBEB & SE) Regulations.

If your company is preparing for an IPO:



Review all outstanding ESOP/SAR grants, especially those held by employees likely to be identified as **promoters**.



Maintain **proper documentation** showing that grants were made in compliance with scheme terms and applicable timelines.

Ensure no new grants are made to such persons within 1 year before the IPO decision date.

Regulatory Framework of Unlisted Company at Glance (F.Y. 2024–25)

Approval of ESOP Scheme and disclosures notice along Explanatory Statement for GM in terms of Section 62(1)(b) read with rule 12 of Companies(Share Capital and Debenture) Rules, 2014.

Filing of Form MGT-14 within 30 days of passing the resolution.

(in case of Public unlisted Company) (Pursuant of Section 117 of the Companies Act, 2013)

GRANT, VEST AND EXERCISE OF OPTIONS

Board of Directors/NRC to approve the Grant and Vesting of Options under the Scheme.

Filing of FORM ESOP with RBI within 30 date of Grant, if any grants are being made to foreign employees.

Exercise of Options by the employee

FRESH ALLOTMENT OF SHARES TO EMPLOYEE

Board of Directors approve allotment of Shares to the Employees, pursuant to exercise.

Filing of Form PAS - 3 with the MCA within 30 days from the date of allotment. (Section 39 of the Companies Act - 2013)

6/18/2025

Filing of Corporate action forms, immediately after allotment of shares, with NSDL and CDSL for admission of Capital.

(In October 2023, the Ministry of Corporate Affairs (MCA) updated the PAS Rules, 2014, introducing a new provision requiring all private companies, except small companies, to dematerialize their shares by September 30, 2024, which has been further extended to 30th June 2025 vide Notification dated 12th February, 2025).

If allotment is being made to Foreign Directors / Employees, appropriate filing shall be done with RBI in the Form FCGPR within 30 days from the date of allotment.

Intimation of Exit Event shall be approved by Board of Directors.

Intimation of the Exit Event to the Employees

Transfer of shares by the Employees.

Payment of sale proceeds to the Employees.

Annual disclosure shall be made in the Directors report as per Rule 12 of Companies (Share Capital and Debentures) Rules, 2014.

Payment of Stamp duty to the respective state government within 30 days from the issuance of Shares.

THANK YOU

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