

FEMA ke FUNDAE

Cross-Border Employees' Stock Options

#FamiliarwithFEMA

Date : January 25,2023

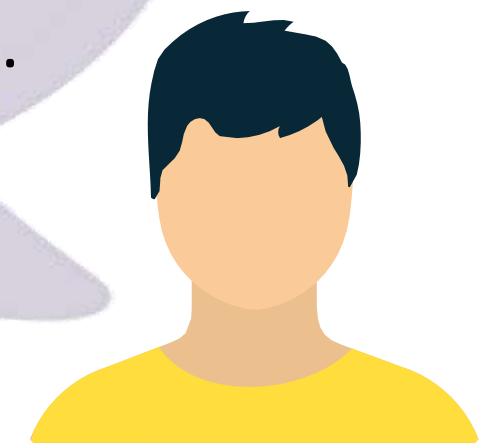
Issue No. : 33

Hi Mr FEMA Gyani, Hope you are doing Good. Our Company has a Parent Company in USA. It want to issue Employee Stock options to their Employees and Employees of our Indian Company also. I am curious to know whether the Employees of our Company can acquire the shares of the Parent Company under ESOP.



Teena - The Director of Indian Company

Hello Teena! Yes, the Employees of your Company can acquire the shares of the Parent Company under ESOP. I'll tell you the important aspects in this regard.



The FEMA Gyani

As per the **Foreign Exchange Management (Overseas Investment) Rules, 2022**, a resident individual may acquire the shares offered by the Foreign Entity under ESOP, if he is an employee or a Director of

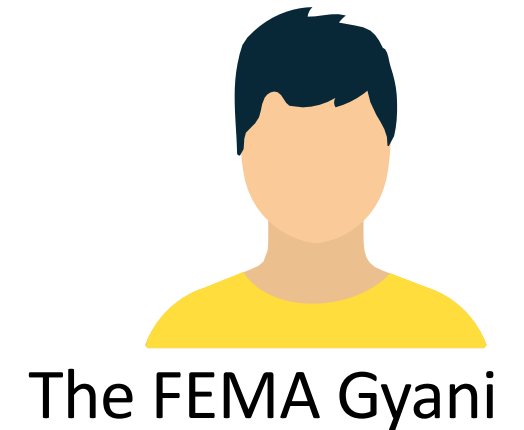
Branch of an overseas entity in India

OR

A Subsidiary in India of an overseas entity

OR

An Indian entity in which the overseas entity has direct or indirect equity holding



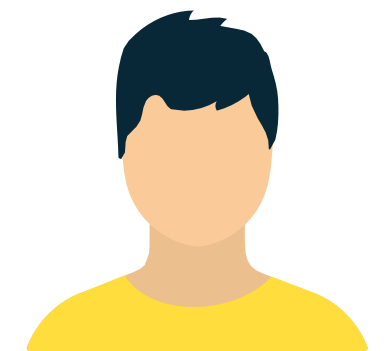
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Teena

Okay. Is it mandatory to hold Specific percentage of ESOP?

No, there is no requirement for any specific percentage of holding. However, the ESOP must be offered by the Parent Company globally on a **uniform Basis**.



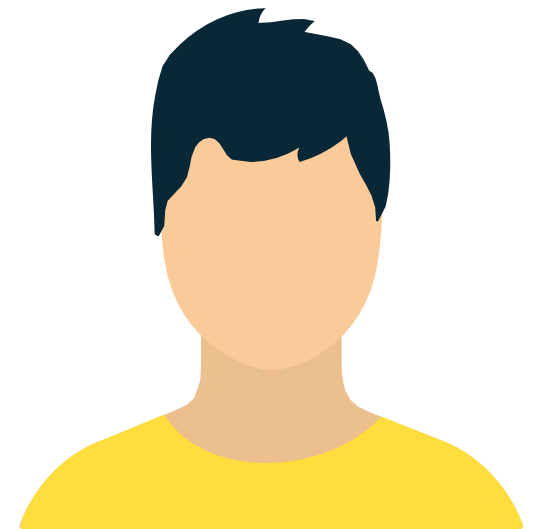
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Teena

Okay. Whether such investment will classify as a OPI or ODI?

Teena, it shall be categorized as ODI or OPI based on the nature of the Investment. Like if the shares are acquired up to 10 percent of the Paid-up capital/stock, whether listed or unlisted of the foreign Entity and without control. Then such Investment will be classify as OPI.



The FEMA Gyani



Teena

Okay. Can the Parent company opt for the Buy Back of the shares which are issued under ESOP from the Indian Resident employees.



Yes, it can opt for Buyback, if the following conditions are satisfied :-

1. The Shares were issued in accordance with the rules/ regulations framed under FEMA. 1999.
2. The Shares are being repurchased in the terms of the Initial offer documents, and
3. Necessary reporting is Done through the AD Bank.



The FEMA Gyani



Teena

Okay, Thank you Mr. FEMA Gyani.

Thank You!

Let's meet every
Wednesday.

To make you more familiar with FEMA,
we are happy to listen to your

Comments

Feedbacks

Suggestions



The FEMA Gyani

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