

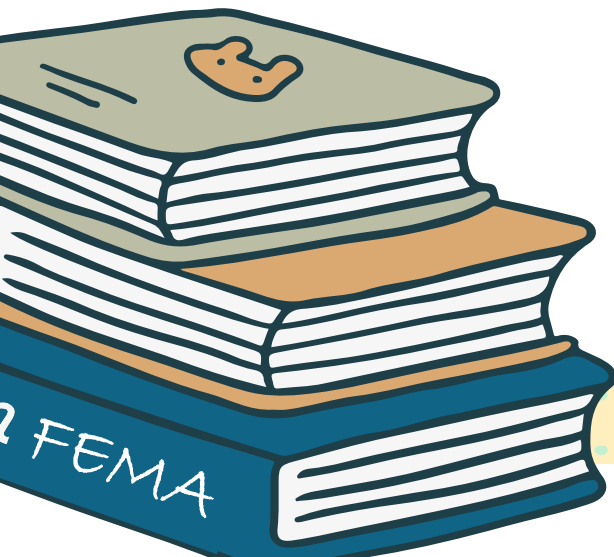
# FEMA Ke Fundae

#FamiliarwithFEMA

Issue of ESOP's  
by Indian  
Entity to a  
PROI

Date: 23/10/2024

Issue no: 123

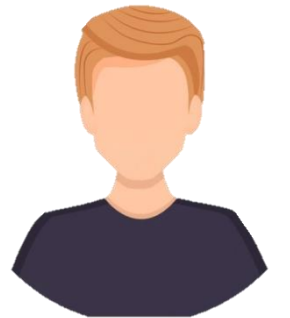




**Gaurang jain  
(CEO of a Indian  
Company)**

Hey, Mr. FEMA Gyani! I am Gaurang Jain (CEO of a Indian Company). We have decided to provide ESOPs to our employees, directors. I have a few questions about issuing employee stock options and sweat equity shares to employees outside India. Could you help me out?

Hi Gaurang,  
Of course! I'd be happy to help. What specifically would you like to know?



**The FEMA Gyani**





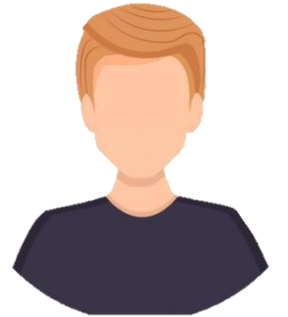
**Gaurang jain  
(CEO of a Indian  
Company)**

Okay! FEMA Gyani  
Well, I heard that Indian companies can issue these options to their employees living abroad. Is that true ?



**Gaurang jain  
(CEO of a Indian  
Company)**

Yes, that's correct! Indian companies can issue employees' stock options and sweat equity shares to their employees or directors who are residents outside India.

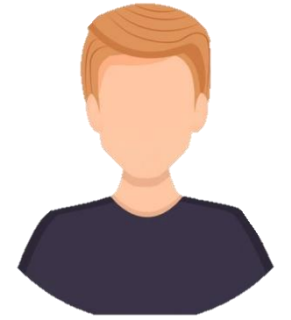


**The FEMA Gyani**

That's interesting! Are there any specific conditions or regulations that need to be followed ?



Absolutely. The scheme must comply with either the regulations set by the Securities and Exchange Board of India (SEBI) or the Companies (Share Capital and Debentures) Rules from 2014.

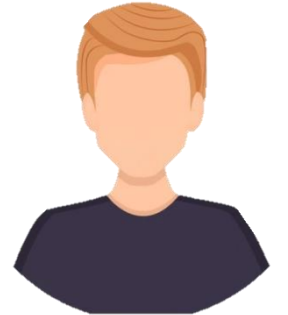


**The FEMA Gyani**



**Gaurang Jain  
(CEO of a Indian  
Company)**

Got it. What about the sectoral caps? Are they applicable here?



**The FEMA Gyani**

Yes Gaurang, they are. The issuance of stock options or sweat equity shares must comply with the sectoral caps applicable to the company. It's essential to ensure you're within those limits.

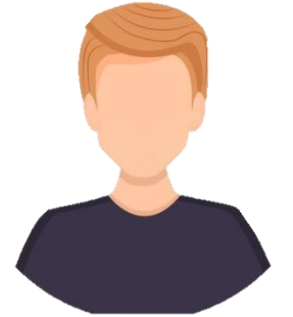




**Gaurang Jain**  
(CEO of a Indian  
Company)

That makes sense. Now, I'm curious about government approval. When is it required?

Government approval is necessary if the company's investments are under the approval route. Also, if the employee is a citizen of Bangladesh or Pakistan, prior government approval is mandatory.



**The FEMA Gyani**

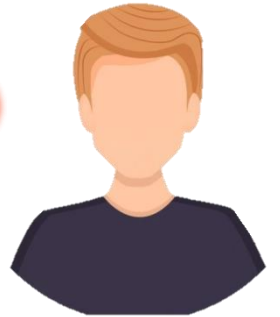




**Gaurang Jain**  
(CEO of a Indian  
Company)

What happens if an employee who used to reside in India moves abroad? Can they still exercise their options?

Yes Gaurang!  
They can! However, if they were issued options while they were residents in India, the shares acquired upon exercising those options will be on a non-repatriation basis.



**The FEMA Gyani**

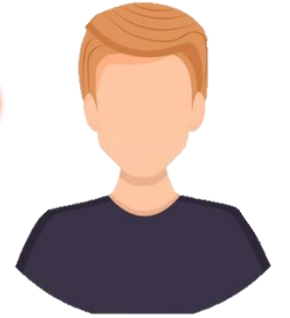


**Gaurang Jain**  
(CEO of a Indian  
Company)

Non-repatriation basis? What does that mean exactly?



It means that while the employee can hold the shares, they won't be able to transfer or sell them abroad or repatriate the proceeds back to another country. The shares can only be sold or transferred within India.

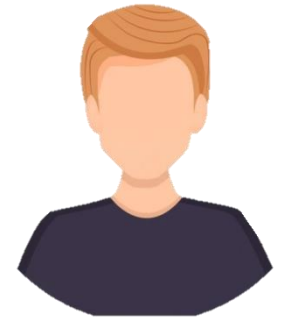


**The FEMA Gyani**



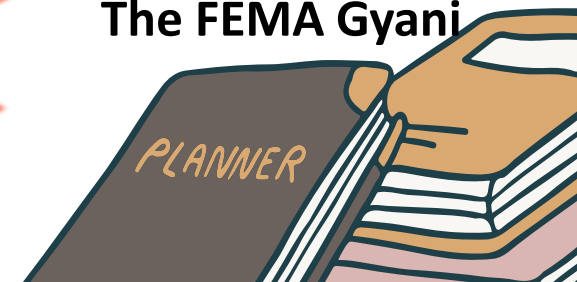
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Company)**

I see! That clears up a lot of my doubts. Thanks for explaining everything so clearly!

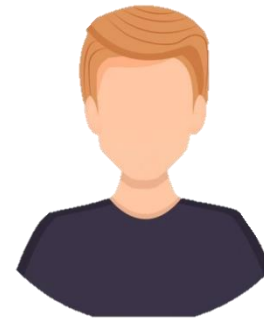


**The FEMA Gyani**

You're welcome! If you have any more questions in the future, feel free to reach out.



# Thank You



The FEMA Gyani

Comments

Feedbacks

Suggestions



<https://in.linkedin.com/company/jscoca>

WEBSITE

<https://jainshrimal.com/>



International Tax Gyan  
WhatsApp group





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