

**RESERVE BANK OF INDIA
(FOREIGN EXCHANGE DEPARTMENT)
CENTRAL OFFICE
MUMBAI-400 001**

Notification No. FEMA 120/ RB-2004

dated : July 7, 2004

In exercise of the powers conferred by clause (a) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act 1999, (42 of 1999) and in supersession of Notification No. FEMA19/ RB 2000 dated 3rd May 2000, as amended from time to time the Reserve Bank of India makes the following regulations relating to transfer or issue of any foreign security by a person resident in India, namely:

1. Short title and commencement

- i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004.
- ii) They shall come in force from the date of their publication in the Official Gazette.

2. Definitions

In these Regulations, unless the context otherwise requires:

- a) "Act" means Foreign Exchange Management Act, 1999, (42 of 1999):
- b) "authorised dealer" means a person authorised as an authorised dealer under sub section (1) of section 10 of the Act;
- c) "American Depository Receipt" (ADR) means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India;
- d) 'Core Activity' means an activity carried on by an Indian entity turnover wherefrom constitutes not less than 50% of its total turnover in the previous accounting year;
- e) "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include portfolio investment.
- f) "Financial commitment" means the amount of direct investment by way of contribution to equity and loan and 50 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;
- g) "Foreign Currency Convertible Bond" (FCCB) means a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency;
- h) "Form" means the forms annexed to these Regulations;
- i) "Global Depository Receipt" (GDR) means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India;
- j) "Host country" means the country in which the foreign entity receiving the direct investment from an Indian party is registered or incorporated;

k) "Indian party" means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932 making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank: -

Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian party"

l) "Investment banker" means an Investment banker registered with the Securities and Exchange Commission in USA, or the Financial Services Authority in UK, or appropriate regulatory authority in Germany, France, Singapore or Japan;

m) "Joint Venture (JV)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment;

n) "Mutual Fund" means a Mutual Fund referred to in clause (23D) of section 10 of the Income Tax Act, 1961;

o) 'Net worth' means paid up capital and free reserves;

p) "Real estate business" means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges;

q) "Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party;

r) "Agricultural Operations" means agricultural operations as defined in the 'National Bank for Agriculture and Rural Development Act, 1981'

s) Words and expressions used but not defined in these Regulations shall have the meanings respectively assigned to them in the Act.

3. Prohibition on issue or transfer of foreign security

Save as otherwise provided in the Act or rules or regulations made or directions issued thereunder, no person resident in India shall issue or transfer any foreign security: -

Provided that the Reserve Bank may, on application made to it, permit any person resident in India to issue or transfer any foreign security.

4. Purchase and sale of foreign security by a person resident in India

A person resident in India

- a) may purchase a foreign security out of funds held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000;
- b) may acquire bonus shares on the foreign securities held in accordance with the provisions of the Act or rules or regulations made thereunder;
- c) when not permanently resident in India, may purchase a foreign security from out of his foreign currency resources outside India;
- d) may sell the foreign security purchased or acquired under clauses (a), (b) or (c).

Explanation:

For the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

Part I

Direct Investment outside India

5. Prohibition on Direct Investment outside India

Save as otherwise provided in the Act, rules or regulations made or directions issued thereunder, or with prior approval of the Reserve Bank,

- (1) no person resident in India shall make any direct investment outside India; and
- (2) no Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business.

6. Permission for Direct Investment in certain cases

- (1) Subject to the conditions specified in sub-regulation (2), (and Regulation 7 in case investment in financial services sector) an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India.
- (2) (i) The total financial commitment of the Indian party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed 100% of the net worth of the Indian Party as on the date of the last audited balance sheet;

Explanation: - For the purpose of the limit of 100% of the net worth the following shall be reckoned, namely:

- (a) cash remittance by market purchase and /or equivalent rupee investments in case of Nepal and Bhutan
 - (b) capitalisation of export proceeds and other dues and entitlements as mentioned in Regulation 11;
 - (c) fifty per cent of the value of guarantees issued by the Indian party to or on behalf of the joint venture company or wholly owned subsidiary.
 - (d) investment in agricultural operations through overseas offices or directly
 - (e) External Commercial Borrowing in conformity with other parameters of the ECB guidelines Notwithstanding anything contained in these Regulations investment in Pakistan shall not be permitted.
- (ii) The direct investment is made in an overseas JV or WOS engaged in a bonafide business activity.
 - (iii) The Indian Party is not on the Reserve Bank's Exporters caution list /list of defaulters to the banking system circulated by the Reserve Bank or under investigation by any investigation /enforcement agency or regulatory body.
 - (iv) The Indian party has submitted up to date returns in form APR in respect of all its overseas investments;

- (v) The Indian Party routes all transactions relating to the investment in a Joint Venture/Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

Explanation: -

The Indian Party may designate different branches of authorised dealers for different Joint Ventures/Wholly Owned Subsidiaries outside India.

- (vi) The Indian Party submits form ODA, duly completed, to the designated branch of an authorised dealer.

- (3) Investment under this Regulation may be funded out of one or more of the following sources, namely: -

- i) out of balance held in the Exchange Earners' Foreign Currency account of the Indian party maintained with an authorised dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000;

- ii) drawal of foreign exchange from an authorised dealer in India not exceeding 100 % of the net worth of the Indian Party as on the date of last audited balance sheet;
Explanation: - For the purpose of the limit of 100% of the net worth the following shall be reckoned, namely:

(a) cash remittance by market purchase

(b) capitalisation of export proceeds and other dues and entitlements as mentioned in Regulation 11 and 12;

(c) fifty per cent of the value of guarantees issued by the Indian party to or on behalf of the Joint Venture company or Wholly Owned Subsidiary

(d) utilisation of the amount raised by issue of ADRs/GDRs by the Indian party;

(e) External Commercial Borrowing in conformity with other parameters of the ECB guidelines.

Explanation:

for the purpose of reckoning net worth of an Indian party, the net worth of its holding company (which holds at least 51% stake in the Indian Party) or its subsidiary company (in which the Indian party holds at least 51% stake) may be taken into account to the extent not availed of by the holding company or the subsidiary independently and has furnished a letter of disclaimer in favour of the Indian Party;

Provided further that the ceiling mentioned in sub-clause (2)(i) shall not apply where the investment is made out of balances held in its EEFC account, maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000, as amended from time to time.

- (4) An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.
- (5) An Indian Party may make direct investment without any limit in any foreign security out of the proceeds of its international offering of shares through the mechanism of ADR and/or GDR: -

Provided that

(a) the ADR/GDR issue has been made in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme 1993 and the guidelines issued thereunder from time to time by the Central Government;

(b) the Indian Party files with the designated authorised dealer in form ODA full details of the investment proposed.

(6)(a) For the purposes of investment under this Regulation by way of remittance from India in an existing company outside India, the valuation of shares of the company outside India shall be made, -

(i) where the investment is more than USD 5 (Five) million, by a Category I Merchant Banker Registered with Securities and Exchange Board of India (SEBI), or an Investment Banker/Merchant Banker outside India registered with the appropriate regulatory authority in the host country; and

(ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant.

(b) For the purposes of investment under this Regulation by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the Indian party's shares, the valuation of shares of the company outside India shall in all cases, be carried out by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker/Merchant Banker outside India registered with the appropriate regulatory authority in the host country.

6A General Permission for Investment in Agricultural Operations Overseas Directly or through Overseas Offices

A person resident in India being a company incorporated in India or a partnership firm registered under Indian Partnership Act, 1932, may undertake agricultural operations including purchase of land incidental to such activity either directly or through their overseas offices;

Provided that

(a) the Indian party is otherwise eligible to make investment under Regulation 6 and that such investment is within the overall limits as specified in Regulation 6.

(b) for the purposes of investment under this regulation by acquisition of land overseas the valuation of the land is certified by a certified valuer registered with the appropriate valuation authority in the host country.

6B. General Permission for Investment in Equity of a Company Registered Overseas

A person resident in India, being an individual or a listed Indian company or a mutual fund registered in India, may invest in

(a) the shares of an overseas company which is listed on a recognised stock exchange and has in its name share holding of not less than 10% in any listed Indian company as on 1st January of the year of investment

(b) the rated bonds/ fixed income securities issued by companies at (a) above:
Provided that-

- (i) in the case of investment by a listed Indian company, the investment shall not exceed 25% of its net worth as on the date of its last audited balance sheet;
- (ii) in the case of investment by a Mutual Fund, the investment shall not exceed the ceiling stipulated by Securities & Exchange Board of India (SEBI) from time to time;
- (iii) every transaction relating to purchase and sale of shares of the overseas company or bonds/ securities shall be routed through the designated branch of an authorised dealer in India.

7. Investment in Financial Services Sector

(1) Subject to the Regulations in Part I, an Indian party may make investment in an entity outside India engaged in financial services activities:

Provided that the Indian party

- (i) has earned net profit during the preceding three financial years from the financial services activities;
- (ii) is registered with the regulatory authority in India for conducting the financial services activities;
- (iii) has obtained approval from the concerned regulatory authorities both in India and abroad, for venturing into such financial sector activity;
- (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

(2) any additional investment by an existing JV/WOS or its step down company in the Financial Services Sector shall be made only after complying with the conditions stipulated in sub-clause (1).

8. Investment in a foreign security by swap or exchange of shares of an Indian company

(1) An Indian Party may acquire shares of a foreign company, engaged in bonafide business activity in exchange of ADRs/GDRs issued to the latter in accordance with the scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Central Government;

Provided that

- a. the Indian Party has already made an ADR and / or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India; such investment by the Indian Party does not exceed amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited balance-sheet, inclusive of all investments made under Regulations in Part I.
- b. the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;
- c. the total holding in the Indian Party by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment;
- d. the valuation of the shares of the foreign company is made,
 - (i) as per the recommendations of the Investment Banker if the shares are not listed on any stock exchange; or

(ii) based on the current market capitalization of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report in other cases.

- (2) Within 30 days from the date of issue of ADRs and/or GDRs in exchange for acquisition of shares of the foreign company under sub-regulation (1), the Indian Party shall submit a report in form ODG to the Reserve Bank.

9. Approval of the Reserve Bank in certain cases

- (1) An Indian Party, which does not satisfy the eligibility norms under Regulations 6 or 7 or 8, may apply to the Reserve Bank for approval.
- (2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Form ODI, or in Form ODB, as applicable.

(2A) An application made under sub-regulation (2) in Form ODI

(a) for the purpose of investment by way of remittance from India, in an existing company outside India, shall be accompanied, by the valuation of shares of the company outside India, made-

(i) where the investment is more than USD 5 (five) million, by a Category I Merchant Banker registered with SEBI or an Investment Banker/Merchant Banker registered with the appropriate regulatory authority in the host country; and

(ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant.

(b) for the purposes of investment by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the Indian party's shares, shall be accompanied by the valuation carried out by a Category I Merchant Banker registered with the SEBI or an Investment Banker/Merchant Banker registered with the appropriate regulatory authority in the host country.

- (3) The Reserve Bank may, inter alia, take into account following factors while considering the application made under sub-regulation (2):
- a) Prima facie viability of the Joint Venture/Wholly Owned Subsidiary outside India;
 - b) Contribution to external trade and other benefits which will accrue to India through such investment;
 - c) Financial position and business track record of the Indian Party and the foreign entity;
 - d) Expertise and experience of the Indian Party in the same or related line of activity of the Joint Venture or Wholly Owned Subsidiary outside India.

10. Unique Identification Number

Reserve bank will allot a unique Identification Number for each Joint Venture or Wholly Owned Subsidiary outside India and the Indian Party shall quote such number in all its communications and reports to the Reserve Bank and the authorised dealer.

11. Investment by capitalization

- (1) An Indian Party may make direct investment outside India in accordance with the Regulations in Part I by way of capitalisation in full or part of the amount due to the Indian Party from the foreign entity towards: -

- (i) payment for export of plant, machinery, equipment and other goods/software to the foreign entity;
- (ii) fees, royalties, commissions or other entitlements due to the Indian Party from the foreign entity for the supply of technical know-how, consultancy, managerial or other services

Provided that where the export proceeds have remained unrealised beyond a period of six months from the date of export, and fees, royalties, commissions or other entitlements of the Indian party have remained unrealised from the date on which such payment is due, such proceeds shall not be capitalised without the prior permission of the Reserve Bank.

- (2) An Indian Software exporter may receive in the form of shares upto 25% of the value of exports to an overseas software start up company without entering into JV agreement by filing an application with the Reserve Bank through the Authorised Dealer

12. Export of Goods towards Equity- Procedure

- (1) An Indian Party exporting goods/software/plant and machinery from India towards equity contribution in a Joint Venture or Wholly Owned Subsidiary outside India shall declare it on GR/SDF/SOFTEX form, as the case may be, which shall be superscribed as "Exports against equity participation in the JV/WOS abroad", and also quoting Identification Number, if already allotted by Reserve Bank.
- (2) Notwithstanding anything contained in Regulation 11 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, the Indian Party shall, within 15 days of effecting the shipment of the goods, submit to the Reserve Bank a custom certified copy of the invoice through the branch of an authorised dealer designated by it.
- (3) An Indian Party capitalising exports under Regulation 11 shall, within six months from the date of export, or any further time as allowed by Reserve Bank, submit to Reserve Bank copy/ies of the share certificate/s or any document issued by the Joint Venture or Wholly Owned Subsidiary outside India to the satisfaction of Reserve Bank evidencing the investment from the Indian Party together with the duplicate of GR/SDF/SOFTEX form through the branch of an authorised dealer designated by it.

13. Post investment changes/additional investment in existing JV/WOS

A JV/WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary/ alter the shareholding pattern in the overseas entity Provided the Indian party reports to the Reserve Bank, the details of such decisions taken by the JV/WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15.

14. Acquisition of a foreign company through bidding or tender procedure

- (1) On being approached by an Indian Party, which is eligible under the Regulations to make investment outside India, an authorised dealer may allow remittance towards earnest money deposit or issue a bid bond guarantee on its behalf for participation in bidding or tender procedure for acquisition of a company incorporated outside India,
- (2) On the Indian Party winning the bid,
 - (i) the authorised dealer may allow further remittances towards acquisition of the foreign company, subject to the ceilings specified in Regulation 6; and
 - (ii) the Indian Party shall submit through the authorised dealer concerned a report to the Reserve Bank in form ODA within 30 days of effecting the final remittance.

- (3) For participation in bidding or tender procedure for acquisition of a company incorporated outside India which does not fall within the provisions of sub-regulation (1), the Reserve Bank may, on application in Form ODI, allow remittance of foreign exchange towards earnest money deposit or permit the authorised dealer in India to issue a bid bond guarantee, subject to such terms and conditions as the Reserve Bank may stipulate.
- (4) In case the Indian Party is successful in the bid but the terms and conditions of acquisition of a company outside India are,-
 - (a) not in conformity with the provisions of Regulations in Part I, or different from those for which approval under sub-regulation (3) was obtained, the Indian Party shall submit application in form ODI to Reserve Bank for obtaining approval for the foreign direct investment in the manner specified in Regulation 9, or
 - (b) in conformity with the provisions of the Regulations in Part I or are same as those for which approval under sub-regulation (3) was obtained, the Indian Party shall submit a report to the Reserve Bank, giving details of the remittances made, within 30 days of effecting the final remittance.

15. Obligations of the Indian Party

An Indian Party, which has acquired foreign security in terms of the Regulations in Part- I, shall –

- (i) receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised;
- (ii) repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit;
- (iii) submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be stipulated by the Reserve Bank.

Explanation

It will be in order for individual partners to hold shares for and on behalf of the firm in an overseas JV/WOS in the individual name if the host country regulations or operational requirements warrant such holdings, subject to the condition that the entire funding for such investment is done by the firm.

16. Transfer by way of sale of shares of a JV/WOS outside India

- (1) An Indian party may transfer by way of sale to another Indian party who complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by him in a Joint Venture or Wholly Owned Subsidiary outside India

Provided that

- (i) The sale does not result in any write-off of the investment made;
- (ii) the sale is effected through a stock exchange where the shares of the overseas Joint Venture or Wholly Owned Subsidiary are listed;
- (iii) if the shares are not listed on the stock exchange, and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant /Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the Joint Venture or Wholly Owned Subsidiary;
- (iv)The Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements, and/or export proceeds from the Joint Venture or Wholly Owned Subsidiary;
- (v)The overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- (vi)The Indian party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India.

(2)Sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares/securities and documentary evidence to this effect shall be submitted to the Regional office of the Reserve Bank through the designated authorized dealer.

(3) An Indian party, which does not satisfy the criteria specified at sub regulation (1) above, shall apply to the Reserve Bank for permission to transfer by way of sale of shares of a JV/WOS outside India which may be granted subject to such conditions as the Reserve Bank may consider appropriate.

17. Transfer by way of Sale of Shares involving Write -off

Where the transfer by way of sale of shares or security referred to in sub regulation (1) of Regulation 16 by any Indian party listed on any stock exchange in India, is for a price less than the amount invested in the share or the security transferred, -

1. where the difference between the said value and the sale price does not exceed the percentage approved by the Reserve Bank, from time to time, of the Indian party's actual export realisation of the previous year, the Indian party may write-off to the extent of the difference, the capital invested in the overseas JV/WOS;

2. where such difference is more than the percentage approved by the Reserve Bank, from time to time, of the Indian party's actual export realisation of the previous year, the Indian party shall apply to the Reserve Bank for permission to write -off the capital invested, which permission may be granted subject to such conditions as the Reserve Bank considers appropriate.

18.Pledge of Shares of Joint Ventures and Wholly Owned Subsidiaries

An Indian Party may transfer, by way of pledge, shares held in a Joint Venture or Wholly Owned Subsidiary outside India as a security for availing of fund based or non-fund based facilities for itself or for the Joint Venture or Wholly Owned Subsidiary from an authorised dealer or a public financial institution in India.

Part II
Investments abroad by Individuals in India

19. Prior Permission of the Reserve Bank for Direct Investment by a Proprietary Concern in India

A proprietary concern in India may apply to the Reserve Bank in Form ODB for permission to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company.

Provided that: -

(a) the value of the shares accepted from each company outside India shall not exceed fifty per cent of the fees receivable by the Indian concern from that company; and,

(b) the Indian concern's shareholding in any one company outside India by virtue of shares accepted as aforesaid shall not exceed ten per cent of the paid-up capital of the company outside India, whose shares are accepted.

20. Investment by Individuals

(1) A Resident individual may apply to the Reserve Bank for permission to acquire shares in a foreign entity offered as consideration for professional services rendered to the foreign entity.

(2) Reserve Bank may, after taking into account, inter alia, the following factors, grant permission subject to such terms and conditions as are considered necessary:

- (i) credentials and net worth of the individual and the nature of his profession;
- (ii) the extent of his forex earnings/balances in his EEFC and/or RFC account;
- (iii) financial and business track record of the foreign entity;
- (iv) potential for forex inflow to the country;
- (v) other likely benefits to the country.

Part III

**Investments in Foreign Securities other than by way
of Direct Investment**

21. Prohibition on issue of foreign security by a person resident in India.

(1) Save as otherwise provided in the Act or in sub-regulation (2), no person resident in India shall issue or transfer a foreign security.

(2) A person resident in India, being an Indian Company or a Body Corporate created by an Act of Parliament.

i) may issue FCCBs not exceeding USD 500 million to a person resident outside India in accordance with and subject to the conditions stipulated in Schedule I.

ii) may issue FCCBs beyond US \$ 500 million with the specific approval of the Reserve Bank.

(3) The company/body corporate referred to in sub-regulation (2), issuing the FCCBs shall, within 30 days from the date of issue, furnish a report to the Reserve Bank giving the details and documents as under:

- a) Total amount for which FCCBs have been issued,
- b) Names of the investors resident outside India and number of FCCBs issued to each of them.

- c) The amount repatriated to India through normal banking channels and/or the amount received by debit to NRE/FCNR accounts in India of the investors (duly supported by bank certificate).

22. Permission for purchase /acquisition of foreign securities in certain cases

- (1) A person resident in India being an individual may acquire foreign securities:-
- i) by way of gift from a person resident outside India; or
 - ii) issued by a company incorporated outside India under Cashless Employees Stock Option Scheme:-
Provided it does not involve any remittance from India, or
 - iii) by way of inheritance from a person whether resident in or outside India.
- (2) A person resident in India, being an individual, who is an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company in which foreign equity holding is not less than 51 per cent, may purchase the equity shares offered by the said foreign company.
- (3) An authorised dealer may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2): -
Provided that the condition specified in that sub-regulation is fulfilled.
- (4) A person resident in India may transfer by way of sale the shares acquired in terms of sub-regulation (1) and (2) above

Provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.

23. Transfer of a foreign security by a person resident in India

A person resident in India, who has acquired or holds foreign securities in accordance with the provisions of the Act, rules or regulations made thereunder, may transfer them by way of pledge for obtaining fund based or non-fund based facilities in India from an authorised dealer.

24. General Permission for Acquisition of foreign securities as qualification / rights shares

- (1) A person resident in India being an individual may
- (a) acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the post of a director in the company:
- Provided that, -
- (i) the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1 per cent of the paid-up capital of the company, and
 - (ii) the consideration for acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time.
- (b) acquire foreign securities by way of rights shares in a company incorporated outside India:

Provided that the right shares are being issued by virtue of holding shares in accordance with the provisions of the law for the time being in force.

(c) where such person is an employee or a director of the Indian promoter company, acquire by way of purchase shares of a Joint Venture or Wholly Owned Subsidiary outside India of the Indian promoter company, in the field of software;

Provided that –

(1) (i) the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time.

(ii) the shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India, and

(iii) after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment.

(2) A person resident in India, being an individual holding qualification /rights shares in terms of sub regulations (a) or (b) above may sell the shares so acquired, without prior approval, provided the sale proceeds are repatriated to India through banking channels and documentary evidence is submitted to the authorized dealer.

(3) An Indian software company may allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes:-
Provided that the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time.

25. Prior permission of Reserve Bank in certain cases

A person resident in India being an individual seeking to acquire qualification shares in a company outside India beyond the limits laid down in the proviso to clause (a) of sub-regulation (1) of Regulation 24 shall apply to the Reserve Bank for prior approval.

26. Investment by Mutual Funds

Mutual Funds may purchase foreign securities subject to such terms and conditions as it may be notified by SEBI from time to time.

**(Shyamala Gopinath)
Executive Director**

Schedule I

**See Regulation 21 (2)(i)
Automatic Route for Issue of Foreign Currency Convertible Bonds (FCCBs)**

- (i) The FCCBs to be issued will have to conform to the Foreign Direct Investment Policy (including Sectoral Cap and Sectors where FDI is permissible) of the Government of India as announced from time to time and the Reserve Bank's Regulations/directions issued from time to time.
- (ii) The issue of FCCBs shall be subject to a ceiling of USD 500 million in any one financial year.
- (iii) Public issue of FCCBs shall be only through reputed lead managers in the international capital market. In case of private placement, the placement shall be with banks, or with multilateral and bilateral financial institutions, or foreign collaborators, or foreign equity holder having a minimum holding of 5% of the paid up equity capital of the issuing company. Private placement with unrecognized sources is prohibited.
- (iv) The maturity of the FCCB shall not be less than 5 years. The call & put option, if any, shall not be exercisable prior to 5 years.
- (v) Issue of FCCBs with attached warrants is not permitted.
- (vi) The "all in cost" will be on par with those prescribed for External Commercial Borrowing (ECB) schemes specified in the Schedule to Notification No: FEMA 3/2000-RB dated 3rd May 2000. The "all in cost" shall include coupon rate, redemption premium, default payments, commitment fees, and fronting fees, if any, but shall not include the issue related expenses such as legal fees, lead managers fees, out of pocket expenses.
- (vii) The FCCB proceeds shall not be used for investment in Stock Market, and may be used for such purposes for which ECB proceeds are permitted to be utilized under the ECB schemes.
- (viii) FCCBs are allowed for corporate investments in industrial sector, especially infrastructure sector. Funds raised through the mechanism may be parked abroad unless actually required.
- (ix) FCCBs for meeting rupee expenditure under automatic route to be hedged unless there is a natural hedge in the form of uncovered foreign exchange receivables, which will be ensured by Authorised Dealers.
- (x) Financial intermediaries (viz. a bank, DFI, or NBFC) shall not be allowed access to FCCBs, except those Banks and financial intermediaries that have participated in the Textile or Steel Sector restructuring package of the Government/RBI subject to the limit of their investment in the package.
- (xi) Banks, FIs, NBFCs shall not provide guarantee/letter of comfort etc. for the FCCB issue.
- (xii) The issue related expenses shall not exceed 4% of issue size and in case of private placement, shall not exceed 2% of the issue size.
- (xiii) The issuing entity shall, within 30 days from the date of completion of the issue, furnish a report to the concerned Regional Office of the Reserve Bank of India through a designated branch of an Authorized Dealer giving the details and documents as under :

- (a) The total amount of the FCCBs issued,
- (b) Names of the investors resident outside India and number of FCCBs issued to each of them, and

Foot Note : The Principal Regulations were published in the Official Gazette vide G.S.R.No.456(E) dated May 8, 2000 in Part II, Section 3, Sub-section (i) and subsequently amended vide G.S.R.Nos. as indicated below .:

Sr. No.	G.S.R. No.	Date
1.	157(E)	2.3.2001
2.	258(E)	9.4.2002
3.	259(E)	9.4.2002
4.	263(E)	9.4.2002
5.	265(E)	9.4.2002
6.	475(E)	8.7.2002
7.	34(E)	16.1.2003
8.	629(E)	4.8.2003
9.	399(E)	14.5.2003

Published in the Official Gazette of Government of India - Extraordinary - Part-II, Section 3, Sub-Section (i) dated 19.11.2004 - G.S.R.No.757(E)