

Notification No. FEMA 55 /2002-RB dated March 7, 2002

RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
MUMBAI

Notification No. FEMA 55 /2002-RB

Dated March 7, 2002

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 partial modification of its Notification No.FEMA 19/RB-2000- dated 3rd May 2000, the Reserve Bank makes the following amendments to the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000 as amended from time to time, namely:

Short title and commencement:-

1. (i) These Regulations may be called the "Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2002."

(ii) They shall come into force with effect from the date of their publication in the Official Gazette.

Amendment of the Regulations

2. In the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000

(a) in Regulation 18

(i)for sub-regulation (2), the following Sub-Regulation shall be substituted, namely:-

"(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 US\$50 million, to a person resident outside India in accordance with and subject to the conditions stipulated in Schedule II;

(ii) where the issue exceeds US \$50 million but does not exceed US \$100 million, may apply to the Reserve Bank in Form ECB for permission to issue FCCBs;

(iii) where the issue exceeds US \$100 million, may apply to the Government of India, Ministry of Finance, (Department of Economic Affairs) for approval".

(ii) in sub-regulation (3), for the words " The company/ body corporate referred to in sub-regulation (2)", the words " The company/ body corporate referred to in clause (iii) of sub-regulation (2)" shall be substituted;.

(b) existing Schedule shall be re-numbered as "Schedule I",

(c) after Schedule I, the following Schedule shall be added, namely:-

Schedule II**See Regulation 18 (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 U S \$ 50 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 unrecognised 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 100 basis points less than 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 utilised under the ECB schemes.

- (viii) In case the FCCBs are issued for financing imports/foreign exchange capital expenditure, the proceeds can be retained abroad with the approval of the Reserve Bank of India. In all other cases, the proceeds shall be repatriated to India immediately on completion of issue process.
- (ix) 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.
- (x) 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
 - (c) The amount repatriated to India through normal banking channels and/or, duly supported by bank certificates.

(K.J.Udeshi)
Executive Director

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