

**Foreign Exchange Management (Transfer or Issue of Security by a
Person Resident outside India) (Second Amendment) Regulations, 2003**

**Reserve Bank of India
Exchange Control Department
Central Office
Mumbai-400 001**

Notification No.FEMA. 94 /2003-RB

dated 18th June 2003

**Foreign Exchange Management (Transfer or Issue of Security
by a Person Resident outside India)
(Second Amendment) Regulations, 2003**

In exercise of the powers conferred by clause (b) 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 20/2000-RB dated 3rd May 2000, the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time, namely:-

Short Title & Commencement :-

1. (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India)(Second Amendment) Regulations, 2003.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

Amendment of the Regulations :-

2. In the Foreign Exchange Management(Transfer or Issue of Security by a person Resident outside India) Regulations, 2000,

A In Regulation 2,

i) after item (vii), the following item shall be inserted, namely:- (vii) (a) ‘ Non-resident Indian (NRI) shall have the meaning assigned to it in clause (iv) of Regulation 2 of the Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000.’

ii) in item (viii), the words ‘ Non-resident Indian (NRI)’ shall be deleted;

B. After Regulation 6, the following Regulations shall be inserted, namely:-

“ 6A. Acquisition of Bonus shares :-

An Indian company may issue bonus shares to its non-resident shareholders, subject to the following conditions:

(a) the shares against which bonus shares are issued by the company (hereinafter referred to as ‘the original shares’) were acquired or held by the non-resident shareholder in accordance with the Rules/ Regulations applicable to such acquisition;

(b) the bonus shares acquired by the non-resident shareholder shall be subject to the same conditions including restrictions in regard to repatriability as are applicable to the original shares.

6 B. Report to RBI: -

A company issuing right shares or bonus shares in terms of Regulation 6 or Regulation 6A as the case may be, shall, within thirty days from the date of issue, report the transaction in Form FC-GPR to the Regional Office of the Reserve Bank of India under whose jurisdiction the Registered Office of the company is situated.”

C In Regulation 9, for sub-regulation (2), the following sub-regulation shall be substituted, namely:

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“(2) (i) A person resident outside India, not being a non- resident Indian or an overseas corporate body, may transfer by way of sale or gift, the shares or convertible debentures held by him or it to any person resident outside India;

(ii) A non-resident Indian or an overseas corporate body may transfer by way of sale or gift, the shares or convertible debentures held by him or it to another non-resident Indian or overseas corporate body only;

Provided that the person to whom the shares are being transferred, in terms of clause (i) and (ii), has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

Provided further that the restriction in clauses (i) and (ii) shall not apply to the transfer of shares to International financial institutions such as Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG) and transfer of shares of an Indian company engaged in Information Technology sector.

(iii) A person resident outside India holding the shares or convertible debentures of an Indian company in accordance with these Regulations,

(a) may transfer the same to a person resident in India by way of gift;

(b) may sell the same on a recognized Stock Exchange in India through a registered broker.”

D In Schedule 1

(a) in paragraph 5, in clause (a), after the words “ SEBI guidelines”, the words “as applicable” shall be inserted;

(b) after paragraph 5, the following new paragraph shall be inserted, namely;

“5A. Issue price of ADRs/GDRs

Price of ADRs/GDRs to be issued to a person resident outside India may be decided by the Indian company-

(a) where the issue is on public offer basis, in consultation with the Lead Manager to the issue; and

(b) in other cases , as provided in paragraph 5 above.”

(c) In paragraph 6, in clause (a), after sub-clause (ii), the following shall be added, namely:

“(iii) to obligations arising out of dividends declared/remitted after 14th July 2000 i.e. the date on which conditions of dividend balancing was withdrawn”

(d) In paragraph 6, the existing sub-clause (b) shall be deleted

E Annexure A may be substituted with amended Annexure “A”

F Annexure B may be substituted with amended Annexure “B”

G Annexure C may be substituted with amended Annexure “C”:

H Annexure D may be substituted with amended Annexure “D”

I The existing Form FC-GPR shall be substituted with the amended Form FC-GPR.

J In Schedule 2,

In Paragraph 1), for sub-paragraph (5), the following shall be substituted, namely :-

“(5) A registered FII is permitted to purchase shares/convertible debentures of an Indian company through offer/private placement, subject to the ceiling specified in sub-paragraph (4) of this paragraph and the Indian company is permitted to issue such shares;

Provided that –

(i) in case of Public Offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and

(ii) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or guidelines issued by erstwhile Controller of Capital Issues, as applicable.”

K In Schedule 3,

(i) in Paragraph 1, for sub-paragraph (i), the following shall be substituted, namely :-

“(i) NRIs may purchase and sell shares/convertible debentures under the Portfolio Investment Scheme through a branch designated by an Authorised Dealer for the purpose and duly approved by the Reserve Bank of India.”

(ii) For Paragraph 3, the following shall be substituted, namely: -

“3. Remittance/credit of sale/maturity proceeds of shares and/or debentures.

The net sale/maturity proceeds (after payment of taxes) of shares and/or debentures of an Indian company purchased by NRI or OCB under this scheme, may be allowed by the designated branch of an authorised dealer referred to in paragraph 1,

a) to be credited to NRO account of the NRI/OCB investor where the payment for purchase of shares and/or debentures sold was made out of funds held in NRO account or where the shares and/or debentures were purchased on non-repatriation basis, or

b) at the NRI or OCB investor’s option, to be remitted abroad or credited to his/its NRE/FCNR/NRO account of the NRI, where shares and/or debentures were purchased on repatriation basis.”

L In Schedule 4, after paragraph 2, the following proviso shall be added, namely :-

“Provided that the person to whom the shares are being transferred, has obtained prior permission of Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.”

Provided further that this restriction shall not apply to the transfer of shares to International financial institutions such as Asian Development Bank(ADB), International Finance Corporation(IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungsgesellschaft(DEG) and transfer of shares of an Indian company engaged in Information Technology sector.

(Usha Thorat)
Executive Director

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| <p>Published in the Official Gazette of Government of India - Extraordinary - Part-II, Section 3, Sub-Section (i) dated 22.07.2003 - G.S.R.No.558(E)</p> |
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Annexure A
(See paragraph 2)

(A) List of Activities for which Automatic Route of RBI for investment from person resident outside India is not available

1. Domestic Airlines
2. Petroleum Sector (except for private sector oil refining)
3. Investing companies in Infrastructure & Services Sector
4. Defence and Strategic Industries
5. Atomic Minerals
6. Print Media
7. Broadcasting
8. Postal services
9. Courier Services
10. Establishment and Operation of satellite
11. Development of Integrated Township
12. Tea Sector

(B) List of activities or items for which FDI is prohibited.

1. Retail Trading
2. Atomic Energy
3. Lottery Business
4. Gambling and Betting
5. Housing and Real Estate business
6. Agriculture (**excluding** Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and Cultivation of vegetables, mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (**Other than Tea plantations**)

Annexure B
(See paragraph 2)

Sectoral cap on Investments by persons resident outside India

| Sector | Investment Cap | Description of Activity / Items / Conditions |
|---|----------------|---|
| 1. Private Sector Banking | 49% | Subject to guidelines issued by RBI from time to time |
| 2. Non-Banking Financial Companies | 100% | <p>FDI /NRI/OCB investments allowed in the following 19 NBFC activities shall be as per the levels indicated below :</p> <p>a) Activities covered :</p> <ol style="list-style-type: none"> 1. Merchant Banking 2. Under writing 3. Portfolio Management Services 4. Investment Advisory Services 5. Financial Consultancy 6. Stock-broking 7. Asset Management 8. Venture Capital 9. Custodial Services 10. Factoring 11. Credit Reference Agencies 12. Credit Rating Agencies 13. Leasing & Finance 14. Housing Finance 15. Forex-broking 16. Credit Card Business 17. Money-changing Business 18. Micro-credit 19. Rural credit <p>b) <u>Minimum Capitalisation norms for fund based NBFCs</u></p> <p>i) for FDI upto 51%, US \$ 0.5 million to be brought in upfront</p> <p>ii) If the FDI is above 51 % and upto 75 %, US \$ 5 million to be brought upfront</p> <p>iii) If the FDI is above 75 % and upto 100 %, US \$ 50 million out of which \$ 7.5 million to be brought in upfront and the balance in 24 months</p> <p><u>c) Minimum Capitalisation norms for non-fund based activities.</u></p> <p>Minimum Capitalisation norm of US\$0.5 million is applicable in respect of non-fund based NBFCs with foreign investment.</p> |

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| | | <p>d) Foreign investors can set up 100% operating subsidiaries without the condition to disinvest a minimum of 25% of its equity to Indian entities, subject to bringing in US \$ 50 million as at b) (iii) above (without any restriction on number of operating subsidiaries without bringing in additional capital)</p> <p>e) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment will also be allowed to set up subsidiaries for undertaking other NBFC activities , subject to the subsidiaries also complying with the applicable minimum capital inflow i.e, (b)(l) and (b)(ii) above.</p> <p>f) FDI in the NBFC sector is put on automatic route subject to compliance with guidelines of the Reserve Bank of India. RBI would issue appropriate guidelines in this regard</p> |
| 3. Insurance | 26% | <p>FDI upto 26% in the Insurance sector is allowed on the automatic route subject to obtaining licence from Insurance Regulatory & Development Authority(IRDA)</p> |
| 4. Telecommuni- -cations | 49 % | <p>i) In basic, Cellular, Value Added Services, and Global Mobile Personal Communications by Satellite, FDI is limited to 49% subject to licencing and security requirements and adherence by the companies (who are investing and the companies in which the investment is being made) to the license conditions for foreign equity cap and lock-in period for transfer and addition of equity and other license provisions.</p> <p>ii) ISPs with gateways, radio paging and end-to-end bandwidth, FDI is permitted upto74% with FDI, beyond 49% requiring Government approval. These services would be subject to licencing and security requirements</p> <p>iii) No equity cap is applicable to manufacturing activities.</p> <p>iv) FDI upto 100% is allowed for the</p> |

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| | | <p>following activities in the telecom sector:</p> <p>a) ISPs not providing gateways (both for satellite and submarine cables)</p> <p>b) Infrastructure Providers providing dark fibre (IP Category 1)</p> <p>c) Electronic Mail, and</p> <p>d) Voice Mail</p> <p>The above would be subject to the following conditions;</p> <p>a) FDI upto 100% is allowed subject to the condition that such companies would divest 26% of their equity in favour of Indian public in 5 years, if these companies are listed in other parts of the world.</p> <p>b) The above services would be subject to licencing and security requirements, wherever required</p> <p>c) Proposal for FDI beyond 49% shall be considered by FIPB on case to case basis.</p> |
| 5. Petroleum Refining (Private Sector) | 100% | FDI permitted upto 100 % in case of private Indian companies. |
| 6. Housing and Real Estate | 100 % | <p>Only NRIs/OCBs are allowed to invest upto 100 % in the areas listed below :</p> <p>a) Development of serviced plots and construction of built-up residential premises</p> <p>b) Investment in real estate covering construction of residential and commercial premises including business centres and offices</p> <p>c) Development of townships</p> <p>d) City and regional level urban infrastructure facilities, including both roads and bridges</p> <p>e) Investment in manufacture of building materials</p> <p>f) Investment in participatory ventures in (a) to (e) above</p> <p>g) Investment in Housing finance institutions which is also opened to FDI as an NBFC</p> |
| 7. Coal & Lignite | | <p>i) Private Indian companies setting up or operating power projects as well as coal and lignite mines for captive consumption are allowed FDI upto 100%.</p> <p>ii) 100% FDI is allowed for setting up coal processing plants subject to the condition that the company shall not do</p> |

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| | | <p>coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.</p> <p>iii) FDI upto 74% is allowed for exploration or mining of coal or lignite for captive consumption.</p> <p>iv) In all the above cases, FDI is allowed upto 50% under the automatic route subject to the condition that such investment shall not exceed 49% of the equity of a PSU.</p> |
| 8. Venture Capital Fund (VCF) and Venture Capital Company(VCC) | | <p>Offshore Venture Capital Funds/ companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI.</p> |
| 9. Trading | | <p>Trading is permitted under automatic route with FDI upto 51% provided it is primarily export activities, and the undertaking is an export house/ trading house / super trading house/ star trading house. However, under the FIPB route:</p> <p>(i) 100% FDI is permitted in case of trading companies for the following activities:</p> <ol style="list-style-type: none"> exports; bulk imports with export/ ex-bonded warehouse sales; cash and carry wholesale trading; other import of goods or services provided at least 75% is for procurement and sale of the same group and not for third party use or onward transfer/ distribution/sales. <p>ii) The following kinds of trading are also permitted , subject to provisions of Exim Policy.</p> <ol style="list-style-type: none"> Companies for providing after sales services(that is not trading per se) Domestic trading of products of JVs is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their Joint ventures in which they have equity participation in India |

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| | | <p>c) Trading of hi-tech items/ items requiring specialised after sales service</p> <p>d) Trading of items for social sector</p> <p>e) Trading of hi-tech, medical and diagnostic items.</p> <p>f) Trading of items sourced from the small scale sector under which, based on technology provided and laid down quality specifications, a company can market that item under its brand name</p> <p>g) Domestic sourcing of products for exports</p> <p>h) Test marketing of such items for which a company has approval for manufacture provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with test marketing.</p> <p>i) FDI upto 100% permitted for e-commerce activities subject to the condition that such companies would divest 26% of their equity in favour of the Indian public in five years, if these companies are listed in other parts of the world. Such companies would engage only in business to business (B2B) e-commerce and not in retail trading.</p> |
| 10. Power | 100% | FDI allowed upto 100 % in respect of projects relating to electricity generation, transmission and distribution, other than atomic reactor power plants. There is no limit on the project cost and quantum of foreign direct investment. |
| 11. Drugs & Pharmaceuticals | 100 % | <p>FDI permitted upto 100 % for manufacture of drugs and pharmaceuticals provided the activity does not attract compulsory licensing or involve use of recombinant DNA technology and specific cell/tissue targeted formulations.</p> <p>FDI proposals for the manufacture of licensable drugs and pharmaceuticals and bulk drugs produced by recombinant DNA technology and specific cell/tissue targeted formulations will require prior Govt. approval.</p> |

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| 12. Road and highways, Ports and harbours | 100% | In projects for construction and maintenance of roads, highways, vehicular bridges, toll roads, vehicular tunnels, ports and harbours. |
| 13. Hotel & Tourism | 100 % | <p>The term hotels include restaurants, beach resorts and other tourist complexes providing accommodation and/ or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wild life experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and Convention/Seminar units and organisations.</p> <p>For foreign technology agreements, automatic approval is granted if</p> <p>(i) Upto 3% of the capital cost of the project is proposed to be paid for technical and consultancy services including fees for architects, design, supervision, etc.</p> <p>(ii) Upto 3% of the net turnover is payable for franchising and marketing/publicity support fee, and Upto 10% of gross operating profit is payable for management fee, including incentive fee.</p> |
| 14. Mining | 74 % 100 % | <p>(i) For exploration and mining of diamonds and precious stones FDI is allowed upto 74 % under automatic route</p> <p>(ii) For exploration and mining of gold and silver and minerals other than diamonds and precious stones, metallurgy and processing FDI is allowed upto 100 % under automatic route</p> <p>(iii) Press Note 18 (1998 series) dated 14/12/98 would not be applicable for setting up 100 % owned subsidiaries in so far as the mining sector is concerned, subject to a declaration from the applicant that he has no existing joint venture for the same area and/or the particular mineral.</p> |
| 15. Advertising | 100 % | Advertising Sector FDI upto 100 % allowed on the |

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| | | automatic route |
| 16. Films | 100 % | Film Sector (Film production, exhibition and distribution including related services/products) FDI upto 100 % allowed on the automatic route with no entry-level condition |
| 17. Airports | 74 % | Govt approval required beyond 74 % |
| 18. Mass Rapid Transport Systems | 100 % | FDI upto 100% is permitted on the automatic route in mass rapid transport system in all metros including associated real estate development |
| 19. Pollution Control & Management | 100 % | In both manufacture of pollution control equipment and consultancy for integration of pollution control systems is permitted on the automatic route |
| 20. Special Economic Zones | 100 % | All manufacturing activities except: (i) Arms and ammunition , Explosives and allied itemsOf defence equipments, Defence aircrafts and warships, (ii) Atomic substances, Narcotics and Psychotropic Substances and hazardous Chemicals, (iii) Distillation and brewing of Alcoholic drinks and (iv) Cigarette/cigars and manufactured tobacco substitutes. |

Annexure 'C'

[Refer to paragraph 4(2) of Schedule I]

**Return to be filed by an Indian company
who has arranged issue of GDR/ADR****Instructions :****The form should be completed and submitted to the Reserve Bank of India,
Foreign Investment Division, Central Office, Mumbai.**

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| 1. | Name of the Company | : | |
| 2. | Address of Registered Office | : | |
| 3. | Address for correspondence | : | |
| 4. | Existing Business (Please give the NIC Code of the activity in which the company is predominantly engaged) | : | |
| 5. | Details of the purposes for which GDRs/ADRs have been raised. If funds are deployed for overseas investment, details thereof. | : | |
| 6. | Name and address of the Depository abroad | : | |
| 7. | Name and Address of the Lead/Manager Investment/Merchant Banker | : | |
| 8. | Name and addresses of the Sub-Managers to the issue | : | |
| 9. | Name and address of the Indian custodians | : | |
| 10. | Details of FIPB approval (Please quote the relevant NIC Code if the GDRs are being issued under the Automatic Route) | : | |
| 11. | Whether any overall sectoral cap for foreign investment is applicable. If yes, please give details. | : | |
| 12. | <u>Details of the Equity Capital</u> (a) Authorised Capital (b) Issued and Paid-up Capital (i) Held by persons Resident in India (ii) Held by foreign Investors other than FIIs/NRIs/PIOs/OCBs (A list of foreign investors holding more than 10 per cent of the paid- | : | <u>Before Issue</u> <u>After Issue</u> |

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| | <p>up capital and number of shares held by each of them should be furnished)</p> <p>(iii) Held by NRIs/PIOs/OCBs</p> <p>(iv) Held by FIIs.</p> <p>Total Equity held by non – residents</p> <p>(c) Percentage of equity held by non-residents to total paid-up capital</p> | | |
| 13. | Whether issue was on private placement basis. If yes, please give details of the investors and ADRs/GDRs issued to each of them. | : | |
| 14. | Number of GDRs/ADRs issued | : | |
| 15. | Ratio of GDRs/ADRs to underlying shares | : | |
| 16. | <p><u>Issue Related Expenses</u> :</p> <p>(a) Fee paid/payable to Merchant Bankers/Lead Manager</p> <p>(i) Amount (in US \$ etc.)</p> <p>(ii) Amount as percentage to the total issue.</p> <p>(b) Other Expenses</p> | | |
| 17. | Whether funds are kept abroad. If yes, name and address of the bank. | : | |
| 18. | <p>Details of the listing arrangement :</p> <p>Name of Stock Exchange</p> <p>Date of commencement of trading</p> | | |
| 19. | The date on which ADRs/GDRs issue was launched : | | |
| 20. | Amount raised (in US \$) : | | |
| 21. | Amount repatriated (in US \$) : | | |
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| | Certified that all the conditions laid down by Government of India and Reserve Bank of India have been complied with. | | |
| | | | |
| | Sd/- | | Sd/- |
| | Chartered Accountant | | Authorised Signatory of |
| | | | the Company |

Annexure 'D'
[Refer to paragraph 4(3) of Schedule I]

Quarterly Return

(to be submitted to the Reserve Bank of India, Foreign Investment Division, Central Office, Mumbai)

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| 1. | Name of Company | : | |
| 2. | Address | : | |
| 3. | GDR/ADR issue launched on | : | |
| 4. | Total No. of GDRs/ADRs issued | : | |
| 5. | Total amount raised | : | |
| 6. | Total interest earned till end of quarter | : | |
| 7. | Issue Expenses and commissions etc. | : | |
| 8. | Amount repatriated | : | |
| 9. | Balance kept abroad <u>Details :</u> (i) Banks Deposits (ii) Treasury Bills (iii) Others (Please specify) | : | |
| 10. | No. of GDRs still outstanding | : | |
| 11. | Company's share price at the end of the quarter | : | |
| 12. | GDR price quoted on overseas stock exchange as at the end of the quarter | : | |

Certified that funds raised through ADRs/GDRs have not been invested in stock market or real estate.

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| Sd/- | Sd/- |
| Chartered Accountant | Authorised Signatory of the Company |