



RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office
Mumbai - 400 001

RBI/2004-05/360

A.P. (DIR Series) Circular No. 32

February 09, 2005

To

All Banks Authorised to Deal in Foreign Exchange

Madam / Sirs,

Overseas Direct Investment – Liberalisation

- **Notification No.FEMA.120/2004-RB dated July 7, 2004**
 - **Employees Stock Option Scheme (ESOP)**
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This circular deals with two issues. The first one relates to the issue of notification which incorporates all amendments relating to overseas investment. The second one is a liberalisation in the ESOP scheme. The details are given below :

2. Notification No.FEMA.120/2004-RB dated July 7, 2004

Attention of the Authorised Dealer banks is invited to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2000, Notification No.FEMA.19/2000-RB dated May 3, 2000, notified vide G.S.R.No.456(E) dated May 8, 2000, in Part II, Section 3, Sub-section (1) of the Official Gazette by Government of India. Thereafter, various liberalisation and simplification measures were introduced through A.P. (Dir Series) Circulars and respective amendments to FEMA.19/2000-RB were also notified. In order to consolidate all these amendments, Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment), Regulations, 2004, Notification No.FEMA.120/2004-RB dated July 7, 2004 was notified vide G.S.R.No.757(E) dated November 19, 2004, superseding the original Notification by incorporating all the amendments done so far. The gazetted copy of the Notification No.120/2004-RB dated July 7, 2004 is enclosed.

3. Employees Stock Option Scheme (ESOP)

In terms of sub-regulation (2) of Regulation (22) of the Notification, *ibid*, a person resident in India, being an individual, who is an employee or a director of an Indian Office; or branch or a subsidiary of a foreign company in India; or of an Indian company in which foreign equity holding is not less 51 per cent, may purchase the equity shares offered by the said foreign company. In cases where investment in India has been made through a holding company/Special Purpose Vehicle (SPV), permission for holding the shares of the ultimate parent company, or subsidiary, or group company as the case may be, is presently accorded by the Reserve Bank on a case to case basis.

With a view to further liberalising overseas investment, it has now been decided that even in cases where the foreign company offering its shares under ESOP and has an indirect shareholding in the Indian company, i.e., through a Special Purpose Vehicle or a step down subsidiary, no prior permission of the Reserve Bank is required, as long as such holding is not less than 51 per cent.

4. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment), Regulations, 2004 are being issued separately.
5. Authorised Dealer Banks may bring the contents of this circular to the notice of their constituents and customers.
6. The direction contained in this circular has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully

F.R. Joseph
Chief General Manager