

August 25, 2005

To,
All Banks Authorised to Deal in Foreign Exchange

Madam/Sir,

Foreign Investments in India Transfer of security by way of gift - Procedure

Attention of the Authorised Dealer (AD) banks is invited Regulation 10 A (a) of the Reserve Bank Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time, in terms of which a person resident in India who proposes to transfer any security, by way of gift, to a person resident outside India, is required to make an application to Reserve Bank.

2. On a review, the procedure for obtaining the approval from Reserve Bank has been modified. As hitherto, a person resident in India who proposes to transfer, **by way of gift**, to a person resident outside India any security including shares/convertible debentures is required to obtain prior approval of the Reserve Bank. However, the application is now required to be submitted along with certain information/documents, a list of which is annexed (Annex 1). Applications in this regard may be submitted to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, 11th floor, Fort, Mumbai 400 001.

3. Reserve Bank would, henceforth, consider the following factors while considering such applications :

- a) The transferee (donee) is eligible to hold such security under Schedule 1, 4 and 5 of the Notification *ibid*.
- b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
- c) The applicable sectoral cap/foreign direct investment (FDI) limit in the Indian company is not breached.
- d) The transferor (donor) and the transferee (donee) are close relatives as defined in section 6 of the Companies Act, 1956.

- e) The value of security to be transferred together with any security transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of USD 25,000 **during a calendar year.**
- f) Such other conditions as considered necessary in public interest by the Reserve bank.

4. Accordingly, Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations 2000 notified vide Reserve Bank Notification No. FEMA 20/2000-RB dated May 3, 2000, has been amended vide Notification No. FEMA 137/2005-RB dated July 22, 2005 [Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations 2005]. A copy of the Government Notification G.S.R. No. 504(E) dated July 25, 2005 incorporating the amendment is annexed (Annex 2).

5. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents/customers concerned.

6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,
(Vinay Bajjal)
Chief General Manager

Annex 1

[A. P. (DIR Series) Circular No. 08 dated August 25, 2005]

Information/Documents to be submitted along with the application to Reserve Bank of India by a person resident in India who proposes to transfer to a person resident outside India any security including shares/convertible debentures, by way of gift

1. Name and address of the transferor (donor) and the transferee (donee).
2. Relationship between the transferor and the transferee.
3. Reasons for making the gift.
4. In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such security.
5. In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
6. In case of shares and debentures, a certificate from a Chartered Accountant on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI for listed companies and unlisted companies, respectively.
7. Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures by way of gift from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.

Annex 2

[A. P. (DIR Series) Circular No. 08 dated August 25, 2005]

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

Notification No. FEMA. 137/2005- RB

Dated 22 July, 2005

Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2005

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), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May 2000) namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations, 2005.
- (ii) They shall come into force from the date of its publication in the official Gazette.

2. Amendment of the Regulations:-

In the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, in Regulation 10, in sub-Regulation A, for the clause (a) the following shall be substituted:

- "(a) (i) any security, by way of gift, shall make an application to the Reserve Bank for its approval.
- (ii) The Reserve Bank may grant such approval on being satisfied of the following conditions:

- a) The donee is eligible to hold such a security under Schedules 1, 4 and 5 of these Regulations.
- b) The gift does not exceed 5% of the paid up capital of the Indian company/each series of debentures/each mutual fund scheme.
- c) The applicable sectoral cap/foreign direct investment limit in the Indian company is not breached.
- d) The donor and the donee are relatives as defined in section 6 of the Companies Act, 1956.
- e) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of USD 25,000.
- f) Such other conditions as considered necessary in public interest by the Reserve Bank.

(iii) The application for approval referred to in sub clause (i) shall contain the following information/documents:

- (a) Name and address of the donor and the donee.
- (b) Relationship between the donor and the donee.
- (c) Reasons for making the gift.
- (d) In case of Government dated securities and treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such securities.
- (e) In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- (f) In case of shares and debentures, a certificate from a Chartered Account on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the erstwhile CCI with regard to listed companies and unlisted companies respectively.

- (g) Certificate from the concerned Indian company certifying that the proposed transfer of shares/convertible debentures, by way of gift, from resident to the non-resident shall not breach the applicable sectoral cap/FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5% of the paid up capital of the company."

-sd/-
(Vinay Baijal)
Chief General Manager

Foot Note: The Principal Regulations were published in the Official Gazette vide G.S.R.No. 406 (E) dated May 3, 2000 in Part II, Section 3, sub-section (i) and subsequently amended as under:

G.S.R.No. 158(E) dated 02.03.2001
G.S.R.No. 175(E) dated 13.03.2001
G.S.R.No. 182(E) dated 14.03.2001
G.S.R.No. 4(E) dated 02.01.2002
G.S.R.No. 574(E) dated 19.08.2002
G.S.R.No. 223(E) dated 18.03.2003
G.S.R.No. 225(E) dated 18.03.2003
G.S.R.No. 558(E) dated 22.07.2003
G.S.R.No. 835(E) dated 23.10.2003
G.S.R.No. 899(E) dated 22.11.2003
G.S.R.No. 12(E) dated 07.01.2004
G.S.R.No. 278(E) dated 23.04.2004
G.S.R.No. 454(E) dated 16.07.2004
G.S.R.No. 625(E) dated 21.09.2004
G.S.R.No. 799(E) dated 08.12.2004
G.S.R.No. 201(E) dated 01.04.2005
G.S.R.No. 202(E) dated 01.04.2005

G.S.R.No.504(E) dated 25.07.2005

