

April 05, 2006

To,

All Banks Authorised to Deal in Foreign Exchange

Madam / Sir,

Overseas Investment – Liberalisation under ESOP scheme

Attention of Authorised Dealer (AD) banks is invited to Notification No.FEMA.120/RB-2004 dated 7th July 2004, as amended from time to time.

2. With a view to rationalize the Regulations for investment outside India, it has been decided to bring about the following changes to the existing Regulations :

3. Employees Stock Option Schemes (ESOPs) Automatic Route

3.1 Presently, in terms of Regulation 22 (2) of Notification No.FEMA.120 / RB-2004 dated 7th July 2004, as amended from time to time, Authorised Dealer banks have been delegated authority to allow remittances, without any monetary limit, for ESOPs provided that the foreign company offering ESOPs holds not less than 51% stake in the Indian Company either directly or indirectly (i.e. through a SPV or step down subsidiary). Such remittances are, however, allowed directly to the Company offering shares under ESOP scheme. However, the foreign company requires prior permission of the Reserve Bank to repurchase the shares from the employees, issued under ESOP scheme.

3.2 As a measure of rationalization, it has been decided that Authorised Dealer banks may allow remittance for acquiring shares under ESOP Schemes, irrespective of the method of the operationalisation of the scheme. It would,

therefore, be in order for Authorised Dealer banks to allow remittance for acquiring shares under ESOP scheme, where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / a Special Purpose Vehicle (SPV) / step down subsidiary, provided (i) the company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees / directors are being offered shares, not less than 51% of its equity, (ii) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and (iii) An Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer banks giving details of remittances / beneficiaries / etc., as per Annex I to this circular.

3.3 It has further been decided to grant General Permission to foreign companies to repurchase the shares issued to residents in India under any ESOP scheme provided (i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999, (ii) the shares are being repurchased in terms of the initial offer document and, (iii) An Annual Return is submitted through the Authorised Dealer banks giving details of remittances / beneficiaries / etc., as per Annex II to this circular.

4. Reporting through Designated branches

4.1 Presently, an eligible Indian entity making investment in a Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India, is required to route all its transactions relating to the investment through one branch of an Authorised Dealer bank designated by it. However, the Indian investor / promoter have freedom to designate different Authorised Dealer banks / branches of Authorised Dealer banks for different JV / WOS outside India promoted by them.

4.2 In order to keep the designated branches of Authorised Dealer banks aware of the progress in the investment / disinvestment outside India routed through them, it has been decided that all communications from the Indian parties, to the Reserve Bank, relating to the investment outside India should be routed through the branch of the Authorised Dealer bank that has been designated by the Indian investor for the investment. The Authorised Dealer

bank while forwarding the request from their customers to the Reserve Bank, shall also forward its comments / recommendations on the request.

5. Necessary amendments to the Foreign Exchange Management (Transfer or issue of Any Foreign Security), Regulations, 2004 are being issued separately.

6. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers.

7. The directions 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,

Vinay Bajjal
Chief General Manager-in-Charge

ANNEX I

[Annex to A. P. (DIR Series) Circular No. 30 dated April 05, 2006]

**Statement of shares allotted to Indian employees / directors under ESOP
Schemes for the year ended March _____**

(to be submitted on the letterhead of the company through their Authorised Dealer bank)

We, M/s, (Indian company) hereby declare that :

a) M/s (foreign company) has issued shares to our employees under ESOP Scheme during the year as under

(i) No. of shares allotted :

(ii) Number of employees / directors who accepted shares :

(iii) Amount remitted :

b) effective holding of the foreign company M/s in the Indian company, as on March 31, _____, is not less than 51%; and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official :

Name :

Designation :

Date :

To,

The Chief General Manager
Reserve Bank of India,
Foreign Exchange Department,
Overseas Investment Division,
Central Office, Amar Bldg., 3rd floor,
Sir. P. M. Road, Fort,
Mumbai 400 001.

ANNEX II

[Annex to A. P. (DIR Series) Circular No. 30 dated April 05, 2006]

Statement of shares repurchased by the issuing company from Indian employees / directors under ESOP Schemes for the year ended March _____

(to be submitted on the letterhead of the company through their Authorised Dealer bank)

We, M/s, (Indian company) hereby declare that :

a) M/s (foreign company) has repurchased shares issued to our employees under ESOP Scheme during the year,

(i) Number of shares repurchased :

(ii) Number of employees / directors who sold shares :

(iii) Amount of remittance (inward) :

b) effective holding of the foreign company M/s in the Indian company, as on March 31, _____, is not less than 51%; and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official :

Name :

Designation :

Date :

To;

The Chief General Manager
Reserve Bank of India,
Foreign Exchange Department,
Overseas Investment Division,
Central Office, Amar Bldg., 3rd floor,
Sir. P. M. Road, Fort,
Mumbai 400 001.