

May 24, 2007

To,

All Category - I Authorised Dealer banks

Madam / Sir,

**Opening of Escrow / Special Accounts by Non-Resident Corporates
for open offers / delisting / exit offers**

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to Regulation 10 A (b) of Notification No. FEMA 20/2000-RB dated 3rd May, 2000 [Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000] read with Regulation 3 of Notification No. FEMA 5/2000-RB dated 3rd May 2000, as amended from time to time. In terms of these Regulations, opening of Escrow account and Special account for transfer of shares / convertible debentures of an Indian company through open offer / delisting / exit offer in accordance with the provisions of SEBI [Substantial Acquisition of Shares and Takeovers (SAST)] Regulations, 1997 or any other applicable SEBI Regulations requires prior approval of the Reserve Bank.

2. As announced in the Annual Policy Statement for the year 2007-08 (para 146 (ii) (i)), with a view to provide operational flexibility to non-resident acquirers, it has been decided to permit AD Category – I banks to open Escrow account and Special account in such cases. Accordingly, AD Category – I banks are permitted to open Escrow account and Special account on behalf of non-resident corporates, without prior approval of the Reserve Bank, for acquisition / transfer of shares / convertible debentures through open offers / delisting / exit offers, subject to the relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations / provisions of the Companies Act, 1956 and to the terms and conditions specified in the Annex.

3. Necessary amendments to Notification No. FEMA 5/2000-RB dated 3rd May 2000 [Foreign Exchange Management (Deposit) Regulations, 2000] are being notified separately.

4. AD Category - I banks may bring the contents of the circular to the notice of their constituents and customers concerned.

5. 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 is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager

Terms and conditions for opening of Escrow Account and Special Account by non-resident corporates for open offers / delisting / exit offers

1. Acquisition / Transfer of shares shall be strictly in accordance with the provisions of Notification No. FEMA 20/2000-RB dated 3rd May, 2000 as amended from time to time and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any other SEBI Regulations as applicable.
2. The accounts shall be non-interest bearing.
3. Escrow Account may be opened in Indian Rupees, jointly and severally for the purpose, with the following permitted credits and debits:
Permitted credits : Foreign Inward Remittance through normal banking channels.
Permitted debits : as per SEBI (SAST) Regulations or any other SEBI Regulations, as applicable.
4. Special Account may be opened in Rupees, jointly and severally for the purpose, with the credit and debits as per SEBI (SAST) Regulations or any other SEBI Regulations, as applicable.
5. The resident mandatee empowered by the overseas acquirer for this purpose, may operate the Escrow Account in accordance with SEBI Regulations, and with the specific approval of the AD Category – I bank with whom the account is opened.
6. No fund based / non-fund based facilities shall be permitted against the balance in the accounts.
7. Requirement of compliance with KYC guidelines issued by RBI shall rest with the AD Category – I bank.
8. Balance in the Escrow Account, if any, may be repatriated at the then prevailing exchange rate (i.e. the exchange rate risk will be borne by the overseas company acquiring the shares), after all the formalities in respect of the said acquisition are completed .
9. In the event, the proposal under the said acquisition/transfer does not materialise, the AD Category – I bank may allow repatriation of the entire amount lying to the credit of the Escrow Account on being satisfied with the bonafides of such remittances.
10. The accounts shall be closed immediately after completing the requirements as outlined above.