

May 31, 2007

To

All Category - I Authorised Dealer banks

Madam / Sir,

Remittance on winding up of companies

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to Regulation 3 of Notification No. FEMA 13/2000-RB dated 3rd May 2000 Foreign Exchange Management (Remittance of Assets) Regulations, 2000, in terms of which unless otherwise provided in the Act or rules or regulations no person whether a resident in India or not, shall make remittance of any assets held in India by him or any other person except with the permission of the Reserve Bank. Therefore, as per the existing provisions, remittance of out of the assets of Indian companies under liquidation requires prior approval of the Reserve Bank.

2. As announced in the Annual Policy Statement for the year 2007-08 (para 146 (i) (vii)), as a measure of simplification of procedure, it has been decided to delegate powers to AD Category – I banks to permit remittance out of assets of Indian companies under liquidation under the provisions of the Companies Act, 1956 subject to any order issued by the court winding up the company or the official liquidator or the liquidator in case of voluntary winding up and also subject to tax compliance.

3. Accordingly, AD Category – I banks are now permitted to allow remittance of out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 1956, subject to the following conditions :

(i) AD Category-I bank shall ensure that the remittance is in compliance with the order issued by a court in India / order issued by the official liquidator or the liquidator in the case of voluntary winding up ; and

(ii) no remittance shall be allowed unless the applicant submits :-

(a) No objection or Tax clearance certificate from Income Tax authority for the remittance.

(b) Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.

(c) Auditor's certificate to the effect that the winding up is in accordance with the provisions of the Companies Act, 1956.

(d) In case of winding up otherwise than by a court, an auditor's certificate to the effect that there is no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.

4. Necessary amendments to Notification No. FEMA 13/2000-RB dated 3rd May 2000 [Foreign Exchange Management (Remittance of Assets) Regulations, 2000] are being notified separately.

5. AD Category - I banks may bring the contents of the circular to the notice of their constituents and 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,

Salim Gangadharan
Chief General Manager