

December 14, 2007

To

All Category - I Authorised Dealer banks

Madam / Sir,

**Foreign Direct Investments (FDI) –
Issue of shares under FDI and refund of advance remittances**

Attention of Authorised Dealer Category – I (AD Category – I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000-RB dated May 3, 2000 (the Notification), as amended from time to time.

2. In terms of Schedule 1 of the Notification, a person resident outside India can purchase equity shares / compulsorily convertible preference shares and compulsorily convertible debentures (equity instruments) issued by an Indian company under the FDI policy and the Indian company is allowed to receive the amount of consideration in advance towards issue of such equity instruments, subject to the terms and conditions laid down therein. In terms of Regulation 9(1) (A) of Schedule 1 *ibid*, the Indian company is required to report the receipt of the amount of consideration within thirty days of receipt of the inward remittance or the date of debit of the NRE / FCNR(B) account of the foreign investor with a AD category – I bank in India, to the Regional Office concerned of the Reserve Bank, in accordance with the prescribed procedure. Further, in terms of A. P. (DIR Series) Circular No. 45 dated November 12, 2002, general permission is available to Indian companies to refund the amounts received towards purchase of shares under Regulation 5 (1) of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

3. The matter has been reviewed in consultation with the Government of India and it has been decided that, with effect from November 29, 2007, the equity instruments should be issued within 180 days of the receipt of the inward remittance. In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. The AD Category – I banks may allow such outward remittances after satisfying themselves with the bonafides of the transactions and that no part of the remittance represents interest on the funds received as advance. Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.

4. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the Reserve Bank on the merits of the case. Accordingly, AD Category – I banks may apply to the Regional Office concerned of Foreign Exchange Department of the Reserve Bank for refund of such advance.

5. In all cases where, as on November 28, 2007, 180 days have elapsed since receipt of funds and the equity instruments have not been issued, the companies are required to approach the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through their AD Category - I bank with a definite action plan either for allotment of equity instruments or for refund of the advance, with full details, for specific approval.

6. It is clarified that the advances against equity instruments may be received only where the FDI is allowed under the automatic route.

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

8. A copy of the Notification No. FEMA 170/2007-RB, notified vide G.S.R. 737(E), dated November 29, 2007 amending the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) issued in this regard, is enclosed.

9. 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

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

Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Third Amendment) Regulations, 2007

NOTIFICATION

Mumbai, the 13th November, 2007

Notification No. FEMA 170 /2007-RB Dated 13th November, 2007

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) (Third Amendment) Regulations, 2007.

(ii) These regulations shall come into force from the date of their 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 (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in Schedule 1, in paragraph 8, after Explanation, the following provisos shall be inserted, namely:

"Provided that if the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR (B) account, the amount of consideration so received shall be refunded to the person concerned by outward remittance through normal banking channels or by credit to his NRE / FCNR(B) account, as the case may be;

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons permit an Indian company to refund the amount of consideration received towards issue of security, if such amount is outstanding beyond a period of 180 days from the date of receipt.

(Salim Gangadharan)
Chief General Manager

- (i) **Foot Note:** The Principal Regulations were published in the Official Gazette vide G.S.R.No. 406 (E) dated May 8, 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

G.S.R.No. 505(E) dated 25.07.2005

G.S.R.No. 513(E) dated 29.07.2005

G.S.R.No. 738(E) dated 22.12.2005

G.S.R.No. 29(E) dated 19.01.2006

G.S.R.No. 413(E) dated 11.07.2006

G.S.R.No. 737(E) dated 29.11.2007