

September 23, 2008

To
All Category-I Authorised Dealer Banks

Madam / Sirs,

'Issue of Foreign Currency Exchangeable Bonds Scheme, 2008'

Attention of Authorised Dealers is invited to the "Issue of Foreign Currency Exchangeable Bonds (FCEB) Scheme, 2008", notified by the Government of India, Ministry of Finance, Department of Economic Affairs vide Notification G.S.R.89(E) dated February 15, 2008, copy of which is annexed.

2. Accordingly, it has been decided to operationalise the abovementioned Scheme in order to facilitate the issue of FCEB by Indian companies.

3. "Foreign Currency Exchangeable Bond" means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB may be denominated in any freely convertible foreign currency.

4. **Eligible Issuer** : The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.

5. **Offered Company** : The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).

6. **Entities not eligible to issue FCEB** : An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.

7. **Eligible Subscriber** : Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior

approval of Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

8. Entities not eligible to subscribe to FCEB : Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

9. End-use of FCEB proceeds:

Issuing Company:

- (i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.
- (ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

Promoter Group Companies:

Promoter Group Companies receiving investments out of the FCEB proceeds may utilise the amount in accordance with end-uses prescribed under the ECB policy.

10. End-uses not permitted : The promoter group company receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.

11. All-in-cost : The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.

12. Pricing of FCEB: At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two:

- (i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and
- (ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.

13. Average Maturity : Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange

option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.

14. Parking of FCEB proceeds abroad :

The proceeds of FCEB shall be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB.

It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy. The issuing company should also submit audit trail of the end-use of the proceeds by the issuing company / promoter group companies to the Reserve Bank duly certified by the designated Authorised Dealer bank.

15. Operational Procedure – Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB. The Reporting arrangement for FCEB shall be as per extant ECB policy.

16. This Scheme will come into force with immediate effect.

17. Necessary amendments to the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 dated May 3, 2000 as amended from time to time and Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 dated July 7, 2004) as amended from time to time, are being issued separately.

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

19. 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-in-Charge

[A.P.(DIR Series) Circular No.17 dated September 23, 2008]

**MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)**

New Delhi, the 15th February , 2008.

NOTIFICATION

G.S. R.89(E) – The Central Government hereby notifies the following scheme for facilitating issue of Foreign Currency Exchangeable Bonds by Indian Companies, namely:-

1. **Short title and commencement** - (1) This scheme may be called the Issue of Foreign Currency Exchangeable Bonds Scheme, 2008.

(2) It shall come into force on the date of notification in the Official Gazette.

2. **Definitions** - In this scheme, unless the context otherwise requires, -
 - (a) “Foreign Currency Exchangeable Bond” means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments.

 - (b) “Issuing Company” means an Indian company as defined in the Companies Act, 1956 (1 of 1956), which is eligible to issue Foreign Currency Exchangeable Bond.

 - (c) “Offered Company” means an Indian company as defined in the Companies Act, 1956 (1 of 1956) whose equity share/s shall be offered in exchange of the Foreign Currency Exchangeable Bond.

 - (d) “Promoter Group” has the same meaning as defined in the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000.

3. **Eligibility Conditions and subscription of Foreign Currency Exchangeable Bonds** - (1) The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of Foreign Currency Exchangeable Bond.

(2) The Offered Company shall be a listed company which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond or External Commercial Borrowings.

- (3) An Indian Company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India shall not be eligible to issue Foreign Currency Exchangeable Bond.
- (4) The subscriber to the Foreign Currency Exchangeable Bond shall comply with the Foreign Direct Investment policy and adhere to the sectoral caps at the time of issuance of Foreign Currency Exchangeable Bond. Prior approval of Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained. Entities prohibited to buy, sell or deal in securities by Securities and Exchange Board of India will not be eligible to subscribe to Foreign Currency Exchangeable Bond.
4. **End-use requirements** - (1) The proceeds of Foreign Currency Exchangeable Bond may be invested by the issuing company in the promoter group companies. The promoter group company receiving such investments shall be required to use the proceeds in accordance with end uses prescribed under the External Commercial Borrowings policy. The promoter group company receiving such investments will not be permitted to utilize the proceeds for investments in the capital market or in real estate in India.
- (2) The proceeds of Foreign Currency Exchangeable Bond may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries subject to the existing guidelines on Indian Direct Investment in Joint Ventures or Wholly Owned Subsidiaries abroad.
5. **Operational Procedure** - (1) Prior approval of the Reserve Bank of India shall be required for issuance of Foreign Currency Exchangeable Bond.
- (2) The Foreign Currency Exchangeable Bond may be denominated in any freely convertible foreign currency.
6. **Pricing and Maturity** - (1) The rate of interest payable on Foreign Currency Exchangeable Bond and the issue expenses incurred in foreign currency shall be within the all in cost ceiling as specified by Reserve Bank of India under the External Commercial Borrowings policy.
- (2) At the time of issuance of Foreign Currency Exchangeable Bond the exchange price of the offered listed equity shares shall not be less than the higher of the following two :-
- (i) the average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and
 - (ii) the average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.

Explanation:- For the purpose of this sub-scheme, “relevant date” means, the date on when the Board of the issuing company passes the resolution authorizing the issue of Foreign Currency Exchangeable Bond.

(3) The minimum maturity of the Foreign Currency Exchangeable Bond shall be five years for purposes of redemption. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the Foreign Currency Exchangeable Bond shall take delivery of the offered shares. Cash (Net) settlement of Foreign Currency Exchangeable Bonds shall not be permissible.

7. **Mandatory Requirements :** - (1) The Issuing Company shall comply with the provisions of the Companies Act, 1956 (1 of 1956) and obtain necessary approvals of its Board of Directors and shareholders if applicable. The Offered Company shall also obtain the approval of its Board of Directors in favour of the Foreign Currency Exchangeable Bond proposal of the issuing company.

(2) The Issuing Company intending to offer shares of the offered company under Foreign Currency Exchangeable Bond shall comply with all the applicable provisions of the Securities and Exchange Board of India Act, Rules, Regulations or Guidelines with respect to disclosures of their shareholding in the Offered Company.

(3) The Issuing Company shall not transfer, mortgage or offer as collateral or trade in the offered shares under Foreign Currency Exchangeable Bond from the date of issuance of the Foreign Currency Exchangeable Bond till the date of exchange or redemption. Further, the Issuing Company shall keep the offered shares under Foreign Currency Exchangeable Bond free from all encumbrances from the date of issuance of the Foreign Currency Exchangeable Bond till the date of exchange or redemption.

8. **Retention and deployment of proceeds of Foreign Currency Exchangeable Bond:-** The proceeds of the Foreign Currency Exchangeable Bond shall be retained and/or deployed overseas in accordance with the policy for the proceeds of External Commercial Borrowings.

9. **Taxation on Exchangeable Bonds** - (1) Interest payments on the bonds, until the exchange option is exercised, shall be subject to deduction of tax at source as per the provisions of sub-section (1) of section 115 AC of the Income Tax Act, 1961 (43 of 1961).

(2) Tax on dividend on the exchanged portion of the bond shall be in accordance with the provisions of sub-section (1) of section 115 AC of the Income Tax Act, 1961 (43 of 1961).

(3) Exchange of Foreign Currency Exchangeable Bonds into shares shall not give rise to any capital gains liable to income-tax in India.

(4) Transfers of Foreign Currency Exchangeable Bonds made outside India by an investor who is a person resident outside India to another investor who is a person resident outside India shall not give rise to any capital gains liable to tax in India.

F. No.4/21 /2006-ECB

Dr. K.P. KRISHNAN

JOINT SECRETARY TO THE GOVERNMENT OF INDIA