



RBI/2011-12/474

A. P. (DIR Series) Circular No.97

March 28, 2012

To

All Category-I Authorised Dealer Banks

Madam / Sir,

**Overseas Investments by Resident Individuals – Liberalisation /
Rationalisation**

Attention of the Authorised Dealer (AD - Category I) banks is invited to the [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#) [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time.

2. Reserve Bank of India has reviewed the facilities available to the resident individuals for acquiring equity shares of a foreign entity by way of / under (i) qualification shares, (ii) professional services rendered and (iii) ESOP scheme. Further, the Committee to Review the Facilities for Individuals under the Foreign Exchange Management Act, 1999 (Chairperson Smt K J Udeshi) in its report submitted in August 2011 suggested that general permission may be made available to the resident individuals for acquiring equity shares of a foreign entity as above. Accordingly, it has been decided to grant general permission to resident individuals in respect of the following.

3. Acquiring qualification shares of an overseas company for holding the post of a Director

In terms of Regulation 24(1)(a) of the Notification *ibid*, a person resident in India being an individual may acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the post of a Director in the company provided that:

- (i) the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1 (one) per cent of the paid-up capital of the company, and

- (ii) the consideration for acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time.

Since the necessity of having certain qualification shares by an individual to be appointed as a Director of the company is governed by the law of the host country, it has been decided to remove the existing cap of 1 (one) per cent on the ceiling for resident individuals to acquire qualification shares for holding the post of a Director in the overseas company. Accordingly, henceforth, remittance shall be allowed from resident individuals for acquiring the qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located. The limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

4. Acquiring shares of a foreign company towards professional services rendered or in lieu of Director's remuneration

Presently, Regulation 20 of the Notification *ibid* prescribes that a Resident individual may apply to the Reserve Bank for permission to acquire shares in a foreign entity offered as consideration for professional services rendered to the foreign entity and the Reserve Bank may, after taking into account certain factors, grant permission subject to such terms and conditions as are considered necessary.

It has been decided to grant General Permission to the resident individuals to acquire shares of a foreign entity in part / full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

5. Acquiring shares in a foreign company through ESOP Scheme

As per the extant Regulation 22(2) of the Notification *ibid*, General permission has been granted to a resident individual to purchase equity shares offered by a foreign company under its ESOP Schemes, if he is an employee, or, a Director of

an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle (SPV), is not less than 51 per cent.

Accordingly, AD Category – I banks are permitted to allow remittances for purchase of shares by eligible persons under this provision irrespective of the method of operationalisation of the scheme i.e. 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 per cent of its equity,
- (ii) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and
- (iii) an Annual Return is submitted by the Indian company to the Reserve Bank through the AD Category – I bank giving details of remittances / beneficiaries, etc.

It has now been decided that resident employees or Directors may be permitted to accept shares offered under an ESOP Scheme globally, on uniform basis, in a foreign company irrespective of the percentage of the direct or indirect equity stake in the Indian company subject to:

- (i) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and
- (ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the AD Category – I bank giving details of remittances / beneficiaries, etc.

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

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

8. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,

(Dr. Sujatha Elizabeth Prasad)
Chief General Manager

Withdrawn w.e.f. August 22, 2022