

**RESERVE BANK OF INDIA
(FOREIGN EXCHANGE DEPARTMENT)
CENTRAL OFFICE
MUMBAI 400 001**

Notification No. FEMA 188 / 2009-RB

February 3, 2009

**Foreign Exchange Management
(Transfer or Issue of any Foreign Security)
(Second Amendment) Regulations, 2009)**

In exercise of the powers conferred by clause (a) 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 any Foreign Security) Regulations, 2004 ([Notification No. FEMA 120/ RB-2004 dated July 7, 2004](#)), namely :-

2. Short title and commencement.-

- (a) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2009.
- (b) They shall be deemed to have come into force from the dates specified in these regulations.

3. Amendment to Section 2.-

In the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 ([Notification No. FEMA 120/RB-2004 dated July 7, 2004](#)) (hereinafter referred to as 'the principal regulations'), in regulation 2, -

- (i) after clause (r), the following shall be inserted and shall be deemed to have been inserted with effect from September 23, 2008, namely,:-

“(s) "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 offered company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments.

(t) "issuing company" means a company registered under the Companies Act, 1956 (1 of 1956) and eligible to issue Foreign Currency Exchangeable Bond under these regulations.

(u) "offered company" means a company registered under the Companies Act, 1956 (1 of 1956) and whose equity share/s is / are offered in exchange of the Foreign Currency Exchangeable Bond.

(v) "promoter group" has the same meaning as defined in the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000".

(ii) clause (s) shall be renumbered as '(w)'.

4. Amendment to Regulation 21.-

In Part III, in regulation 21 of the principal regulations, after clause (ii) of sub-regulation (2), the following clause shall be inserted and shall be deemed to have been inserted with effect from September 23, 2008, namely, :-

"(iii) may issue Foreign Currency Exchangeable Bonds to a person resident outside India in accordance with and subject to the conditions specified in Schedule IV with the specific approval of the Reserve Bank."

5. Insertion of new schedule : After schedule III of the principal regulations, the following new schedule shall be inserted and shall be deemed to have been inserted with effect from September 23, 2008, namely, :-

"Schedule IV

[See Regulation 21(2)]

Foreign Currency Exchangeable Bonds (FCEBs)

- 1. Currency:** - The FCEB may be denominated in any freely convertible foreign currency
- 2. 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.
- 3. The 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 FCCB or External Commercial Borrowings (ECB).
- 4. 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.
- 5. 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.
- 6. 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.
- 7. End-use of FCEB proceeds:
Issuing Company:**
 - (i) The proceeds of FCEB may be invested by the issuing company outside India 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 or Wholly Owned Subsidiaries (abroad) .

- (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 FCEB proceeds in accordance with end-uses prescribed under the External Commercial Borrowings policy.

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

9. 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 provided in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, ([Notification No.FEMA 3/2000-RB, dated May 3, 2000](#)) and the directions issued in that behalf by the Reserve Bank of India.

10. 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.

Explanation to clause (i) and (ii): "Relevant date" means the date on which the Board of directors of the issuing company passes the resolution authorizing the issue of FCEB.

11. 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.

The proceeds of FCEB shall be retained and / or deployed overseas by the issuing / Group Companies in accordance with the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, ([FEMA 3/2000-RB, dated May 3, 2000](#)) and the directions issued in that behalf by the Reserve Bank from time to time.

12. 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.

13. Operational Procedure: Issuance of FCEB shall require prior approval of the Reserve Bank of India as specified in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, ([Notification No FEMA 3/2000-RB, dated May 3, 2000](#)).

14. Reporting: The provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, ([Notification No FEMA 3/2000-RB, dated May 3, 2000](#)) with regard to reporting of external commercial borrowings shall apply to FCEB.

(Salim Gangadharan)
Chief General Manager-in-Charge

Foot Note :

i) Certified that no person shall be adversely affected by the retrospective effect given to such regulations.

ii) The Principal Regulations were published in the Official Gazette of GOI vide G.S.R. No 757 (E) dated November 19, 2004 – in Part II, Section 3, Sub-section (i) and subsequently amended vide :-

- i) G.S.R No 220 (E) dt 7-4-2005
- ii) G.S.R No 337 (E) dt 27-5-2005
- iii) G.S.R No 552 (E) dt 31-8-2005
- iv) G.S.R No 535 (E) dt 6-9-2006
- v) G.S.R No 13 (E) dt 5-1-2008
- vi) G.S.R No 209 (E) dt 27-5-2005

Yet to be Published

- vii) -----No 172/ 12-12-2007
- viii) G.S.R No 676 (E) dt 24.9.2008
- ix) G.S.R No 756 (E) dt 31.10.2008

**Published in the Official Gazette of Government
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Sub-Section (i) dated 01.05.2009 - G.S.R.No. 301 (E)**