

Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2001

**Reserve Bank of India
Exchange Control Department
Central Office
Mumbai**

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Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2001

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), and in partial modification of its Notification No. FEMA 19/RB-2000 dated May 3, 2000, the Reserve Bank of India makes the following Regulations to amend the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000, as amended from time to time, namely:-

1. (a) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2001.
 - (b) They shall come into force with immediate effect.
2. In the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000,
 - (A) in Regulation 6,
 - (a) in sub-regulation (2) ,
 - i) for clause (i) , the following clause shall be substituted, namely:-

"The total financial commitment of the Indian Party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed US\$50 million or its equivalent in any one financial year, except investment in Nepal, Bhutan and Pakistan;
Provided that in respect of commitment in Joint Ventures/Wholly Owned Subsidiaries in Myanmar and SAARC countries (other than Nepal, Bhutan and Pakistan), the ceiling shall be increased by US\$25 million or its equivalent in any one financial year, in respect of such commitment;"
 - ii) for clause (ii), the following clause shall be substituted, namely:-

"In respect of direct investment in Nepal or Bhutan, in Indian rupees the total financial commitment shall not exceed Indian Rupees 350 crores in any one financial year; "
 - iii) clause (iv) shall be deleted.
 - (b) in sub-regulation (3) ,
 - i) for clause (iii), the following clause shall be substituted, namely:-

" (iii) utilisation of the amount raised by issue of ADRs/GDRs by the Indian Party;"
 - (c) in sub-regulation (6) , proviso (b) shall be deleted.

(B) in Regulation 8,

i) for sub-regulation (1), the following sub-regulation shall be substituted, namely: -

" (1) An Indian Party may acquire shares of a foreign company, engaged in the same core activity, in exchange of ADRs/GDRs issued to the latter in accordance with the scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Central Government;

Provided that

(a) the Indian Party has already made an ADR and/or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India;

(b) such investment by the Indian Party does not exceed the higher of the following amounts, namely: -

(i) amount equivalent of US\$ 100 mn., or

(ii) amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited balance-sheet, inclusive of all investments made under Regulations in Part I, including under (i) of this clause, in the same financial year,

(c) the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;

(d) the total holding in the Indian Party by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment;

(e) the valuation of the shares of the foreign company is made, -

(A) as per the recommendations of the Investment Banker if the shares are not listed on any stock exchange; or

(B) based on the current market capitalization of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report in other cases."

(C) after Regulation 9, the following Regulation shall be inserted, namely:-

" 9A Block allocation by Reserve Bank

(1) Reserve Bank may, on application made to it, approve, subject to such terms and conditions as considered necessary, a block allocation of foreign exchange to an Indian Party which has exhausted the limit available to it under sub-regulation (2) of Regulation 6.

- (2) For considering the application made under sub-regulation (1), the Reserve Bank may take into account the factors mentioned in sub-regulation (3) of Regulation 9.”

(D) in Regulation 12, in sub-regulation (3), for the words "Regulation 10", the words "Regulation 11" shall be substituted.

(E) after Part I, the following Part shall be inserted, namely: -

“Part IA

Investments abroad by a firm in India

17A Investments abroad by a firm in India

(1) A firm in India registered under the Indian Partnership Act, 1932, may apply to the Reserve Bank for permission to invest abroad to the extent and in the manner specified in Part I.

(2) Reserve Bank may, after taking into account the factors specified in sub regulation (3) of Regulation 9, grant permission subject to such terms and conditions as are considered necessary.

17B Investments by partnership firm without prior approval of Reserve Bank

(1) A partnership firm registered under the Indian Partnership Act, 1932 which is engaged in providing professional services specified in the Schedule, may make investment in foreign concerns engaged in similar activity, by way of remittance from India and/or capitalization of fees/other entitlements due to it from such foreign concerns

Provided that:-

- a. such investments do not exceed US\$ 1 (one) million or its equivalent in one financial year,
- b. the investing firm is a member of the respective All India professional organization/body; and
- c. a report containing (i) name, full address, registration and membership particulars of the investing firm, (ii) full details of investment abroad, (iii) date and amount of remittance/amount of capitalization of fees/other entitlements due to the investing firm, (iv) name and address of the foreign concern together with its line of activity, (v) identification number, if already allotted by the Reserve Bank, is submitted to the Reserve Bank through the authorised dealer within 30 days of making such investments.”

d.

(F) in Regulation 19, in sub-regulation (2), in the proviso, for clause (b), the following clause shall be substituted, namely: -

“ b) the consideration for purchase does not exceed US\$ 20,000 or its equivalent, in any one calendar year.”

(G) for Schedule I, the following Schedule shall be substituted, namely:-

“Schedule

(See Regulation 17B)

**List of professional services provided by
Registered partnership firms eligible for investment
Abroad without prior approval of the Reserve Bank**

1. Chartered Accountancy
2. Legal practice and related services
3. Information Technology and Entertainment Software related services
4. Medical and healthcare services”

**(D.P.Sarda)
Executive Director**

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