

Foreign Exchange Management Act, 1999
A.P. (DIR Series) Circular No.28 (March 30, 2001)

RESERVE BANK OF INDIA
EXCHANGE CONTROL DEPARTMENT
CENTRAL OFFICE
MUMBAI 400 001

A.P. (DIR Series) Circular No.28

March 30, 2001

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Foreign Exchange Management Act, 1999

Authorised dealers are aware that the Reserve Bank has, by notifications, made certain Regulations to carry out the provisions of Foreign Exchange Management Act, 1999 (42 of 1999). The regulations notified i.e. Notifications FEMA Nos.1 to 25, were circulated vide A.D. (M.A. Series) Circular No. 11 dated 16th May 2000. The Reserve Bank has since issued further notifications bearing serial No. 26 to 39 (copies enclosed). The synopsis of these Regulations is furnished in the following paragraphs.

Notification No.FEMA 26 / 2000 – RB dated 14th August 2000 in partial modification of Notification No. FEMA 3/ 2000-RB dated 3rd May 2000

In terms of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, authorised dealers were permitted to grant credit facilities against the balances held in EEFC accounts. It has been decided that credit facilities, both fund based and non-fund based, against the balances held in EEFC accounts should not be granted. In this regard attention of authorised dealers is invited to A.P. (DIR Series) Circular No. 6 dated August 14, 2000.

2. Notification No.FEMA 27/ 2000 – RB dated 14th August 2000 in partial modification of Notification No. FEMA 10/ 2000-RB dated 3rd May 2000

The procedure for opening/ holding and maintenance of Exchange Earners' Foreign Currency (EEFC) accounts is given in the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000. Regulation (9) of the Regulations indicate the forms of deposits viz. current, saving or term deposits permissible under the EEFC Accounts Scheme and paragraph 1 (1) of Schedule to the Regulations indicate the limits up to which inward remittances could be credited to the EEFC accounts. The captioned Notification was issued amending the said Regulation (9) and prohibiting opening of EEFC accounts in the form of term deposits. The limits of

eligible credits to the EEFC accounts were revised to 35% for Export Oriented Units or units in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park and to 25% for other persons resident in India with effect from 14th August 2000. In this regard attention of authorised dealers is invited to A.P. (DIR Series) Circular No. 6 dated August 14, 2000.

3. Notification No.FEMA 28 / 2000 – RB dated 5th September 2000 in partial modification of Notification No. 25/ 2000-RB dated 3rd May 2000

The Foreign Exchange Management (Foreign exchange Derivative Contracts) Regulations, 2000 have been amended by the captioned notification to enable importers/exporters of crude oil and petroleum products to hedge their exposure to price risk. In this regard attention of authorised dealers is invited to A.P. (DIR Series) Circular No. 11 dated September 5, 2000.

4. Notification No.FEMA 29 / 2000 – RB dated 26th September 2000 in partial modification of Notification No. 16/RB-2000 dated 3rd May 2000

Authorised dealers are aware that borrowing and lending of Indian rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a rupee loan is granted against the guarantee provided by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The non-resident guarantor may discharge the liability by i) payment out of rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR/NRE account maintained with an authorised dealer in India. In such cases the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR/NRE account. However, in case the liability is discharged by payment out of rupee balances the amount recovered can be credited to the NRO or NRSR account of the non-resident guarantor.

The Reserve Bank vide its Notification No. FEMA.29/ RB-2000 dated 26th September 2000 has granted general permission to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee. Accordingly, in cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR/NRE account, the repayment may be made by credit to the FCNR/NRE/NRO/NRSR account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

5. Notification No.FEMA 30 / 2000 – RB dated 17th November 2000 in partial modification of Notification No. FEMA 10 /2000-RB dated 3rd May 2000

The procedure for opening and maintenance of Exchange Earners' Foreign Currency (EEFC) accounts is given in the Foreign Exchange Management (Foreign Currency

Accounts by a Person Resident in India) Regulations, 2000. The captioned Notification seeks to amend the procedures for opening, holding and maintenance of the Exchange Earner' Foreign Currency (EEFC) Accounts. The amendments are:

EEFC accounts can be opened, held, or maintained only in the form of non-interest bearing current account, and limits of eligible credits to the EEFC accounts are revised to 70% for Export Oriented Units or units in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park and to 50% for other persons resident in India. Attention of authorised dealers is invited to A.P. (DIR Series) Circular No. 16 dated 10th October 2000.

6. Notification No.FEMA 31/ 2000 – RB dated 27th November 2000 in partial modification of Notification No. FEMA 4/2000-RB dated 3rd May2000

Regulation (7) of the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 enables an authorised dealer to grant loans in India to a non - resident Indian for the borrower's personal or business requirements. Since the loan is to be utilised in India, the amendment is made to proviso (d) of Regulation (7) enabling credit of the loan amount to the Non-Resident Ordinary account of the borrower. It is clarified that the loan amount can not be credited to the NRE/FCNR/NRNR account of the non-resident borrower or remitted out of India.

7. Notification No. FEMA 32 / 2000 – RB dated 26th December 2000 in partial modification of Notification No. 20/ 2000-RB dated 3rd May 2000

The captioned Notification seeks to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 enabling registered Foreign Venture Capital Investors (FVCIs) to invest in Indian venture capital Undertakings/ Venture Capital Funds. In this regard attention of authorised dealers is invited to A.P.(DIR Series) Circular No. 24 dated January 6, 2001.

8. Notification No. 33 not issued

9. Notification No. FEMA 34 / 2001– RB dated 22nd January 2001 in partial modification of Notification No. FEMA 10/2000- RB dated 3rd May 2000

The captioned amendment is made to facilitate foreign nationals resident in India to open and maintain foreign currency accounts with a bank outside India. The facility is available to such foreign nationals who are employees of a foreign company and are on deputation to the office/branch/subsidiary/joint venture in India of the foreign company. The salary payable to the employee for services rendered in India can be credited to the account provided that :-

the amount to be credited to such account shall not exceed 75% of the salary accrued to such person from the foreign company;

the remaining salary shall be paid in India in Indian rupees; and

the Income Tax under the Income Tax Act, 1961 shall be paid on the entire salary as accrued in India.

10. Notification No.FEMA 35 / 2001 – RB dated 16th February 2001 in partial modification of Notification No. FEMA 20/ 2000-RB dated 3rd May 2000

The Notification seeks to amend the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000. It has now been decided to prohibit foreign investment in an Indian company engaged in print media by Foreign Institutional Investors (FIIs), NRIs/OCBs and Foreign Venture Capital Investors. The restriction will apply to investment by NRIs/OCBs on non-repatriation basis also.

11. Notification No.FEMA 36 / 2001 – RB dated February 27, 2001 in partial modification of Notification No. FEMA 23/ 2000-RB dated 3rd May 2000

The amendments made to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 are as under:

In Regulation 4 – (i) Exemptions are granted to certain exports from the requirement of declaration on a prescribed Form. Similar concessions are granted to units in “Electronic Hardware Technology Parks, Electronic Software Technology Parks” and “Special Economic Zones”.

(ii) Reserve Bank has been authorised to waive the requirement of declaration on GR Forms and to permit export of defective goods for repairs subject to re-import.

In Regulation 6 – Sub-regulation 3(i) is substituted to provide for declaration to be made by units in Special Economic Zones for exports of computer software and audio/video/television software in Form Softex.

In regulation 9 – The existing Regulation is numbered as (1). Sub-Regulation (2) permits the units situated in Special Economic Zones to realise and repatriate to India the full export value of goods or software within a period of twelve months from the date of export. Reserve Bank has also been empowered to extend the said period beyond twelve months. The Bank has also been empowered to direct, if necessary, that a unit shall cease to be governed by provisions of sub-regulation (2) and in such a case the unit shall be governed by sub-regulation (1).

The format of the Form SOFTEX has been revised.

12. Notification No.FEMA 37 / 2001 – RB dated February 27, 2001 in partial modification of Notification No. FEMA 10 /2000- RB dated 3rd May 2000

The Notification seeks to amend the Foreign Exchange Management (Foreign Currency

Accounts by a Person Resident in India) Regulations, 2000. The units in Special Economic Zone (SEZ) are now permitted to credit 100% of its foreign exchange receipts to its EEFC account except foreign exchange acquired, by way of purchase against rupees from any person resident in India other than another unit in a Special Economic Zone.

13. Notification No. FEMA 38 / 2001 – RB dated February 27, 2001 in partial modification of Notification No. FEMA 6 /RB-2000 dated 3rd May 2000

The Notification seeks to amend the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000. In terms of Regulation (3) of the said Regulations any person resident in India can take outside India, except to Nepal or Bhutan, currency notes of Government of India or Reserve Bank of India upto an amount not exceeding Rs.5000/-. The amendment empowers Reserve Bank to permit a person, on an application made to it and on being satisfied, to take or send out of India or bring into India currency notes of Government of India/Reserve Bank of India of value exceeding Rs.5000/- subject to such terms and conditions as the Bank may stipulate.

14. Notification No.FEMA 39 / 2001 – RB dated February 27, 2001 in partial modification of Notification No. FEMA 16/ RB-2000 dated 3rd May 2000

The amendment authorises a company in India to make payment in rupees to its non-whole time director, who is a person resident outside India and who is on a visit to India for the company's work. The payments can be towards sitting fees, commission or remuneration, travel expenses in accordance with the provisions of the concerned company's Memorandum of Association or Articles of Association or in terms of any other agreement entered into by it or in any resolution passed by its general meeting/Board of Directors. Such payments shall however, be subject to compliance of any other law, rules, regulations or directions applicable in this behalf.

15. Authorised dealers may bring the contents of this circular to the notice of their constituents concerned.

16. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999). Any contravention or non-observance of these directions is subject to the penalties prescribed under the Act.

Yours faithfully,
K.J. UDESHI
Chief General Manager