

**Reserve Bank of India
Foreign Exchange Department
Central Office
Mumbai-400 001**

Notification No.FEMA. 228/2012- RB

Dated April 11, 2012

Foreign Exchange Management (Deposit) (Amendment) Regulations, 2012

In exercise of the powers conferred by clause (f) of Sub-section (3) of Section 6, Sub-Section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Deposit) Regulations, 2000 ([Notification No. FEMA.5/2000-RB dated May 3, 2000](#)) namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Deposit) (Amendment) Regulations, 2012.
- (ii) They shall be deemed to have come into force from May 2, 2011. @

2. Amendment of the Regulations:-

In the Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No. FEMA.5/2000-RB dated May 3, 2000),

- (i) in Regulation 5, after sub-regulation (2A), the following shall be added:-

“(2B) Resident or Non-resident acquirers may, subject to the terms and conditions specified in Schedule 9, open, hold and maintain Escrow Account with Authorised Dealers in India without prior approval of the Reserve Bank, towards payment of share purchase consideration. Resident or Non-resident acquirers may, subject to the terms and conditions specified in Schedule 9, open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities with SEBI authorised Depository Participants. These facilities will be applicable for both issue of fresh shares to the non-residents as well as transfer of shares from / to the non-residents.”

- (ii) After Schedule 8, the following schedule, as per the Annex to these regulations, shall be added and the same shall be numbered as Schedule 9.

**(Rudra Narayan Kar)
Chief General Manager**

Foot Note:

(i) @ It is clarified that no person will be adversely affected as a result of retrospective effect being given to such regulations.

(ii) The Principal Regulations were published in the Official Gazette vide G.S.R.No.388 (E) dated May 5, 2000 in Part II, Section 3, Sub-section (i) and subsequently amended as under:

- (a) G.S.R. No. 262(E) dated April 9, 2002;
- (b) G.S.R. No. 577(E) dated August 19, 2002;
- (c) G.S.R. No. 855(E) dated December 31, 2002;
- (d) G.S.R. No. 494(E) dated August 4, 2004;
- (e) G.S.R. No. 221(E) dated April 7, 2005;
- (f) G.S.R. No. 663(E) dated November 14, 2005;
- (g) G.S.R. No. 28 (E) dated January 19, 2006;
- (h) G.S. R. No.495(E) dated July 23, 2007.
- (i) G.S. R. No.664(E) dated October 16, 2007.
- (j) G.S.R. No.714(E) dated November 14, 2007
- (k) G.S.R.No.91(E) dated February 15, 2008.
- (l) G.S.R.No.442(E) dated June 23, 2009.

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 10.11.2012- G.S.R.No.822 (E)**

**Schedule 9
(See Sub Regulation (2B) of Regulation 5)**

Terms and conditions for opening of Escrow Account

1. The Escrow account in INR would be maintained only with an AD Category – I bank in India as Escrow agent. The Escrow account may be opened jointly and severally. Further, securities kept / linked with such Escrow accounts may be linked with demat account maintained with SEBI authorised Depository Participants as Escrow agents.

2. The account shall be non-interest bearing.

3. No fund or non-fund based facilities would be permitted against the balances in the Escrow account.

4. Permitted credits:

i) Receipt of foreign inward remittance as consideration towards issue or transfer of shares through normal banking channels; or

ii) Receipt of rupee consideration through the normal banking channels from India by the resident acquirers of shares who proposes to acquire them from non-resident holders by way of transfer.

5. Permitted debits:

i) Remittance of consideration for issue of shares or transfer of shares directly into the bank accounts of the beneficiary (issuer in India or transferor of shares in India or abroad);or

ii) Remittance of consideration for refund to the initial remitter of funds in case of failure / non-materialization of the FDI transaction for which the Escrow account was opened.

6. The underlying FDI transaction for which the Escrow account is opened should be compliant with extant FEMA provisions. Further, for the purposes of FDI reporting,

date of transfer of funds into the bank account of the issuer or transferor of shares, shall be the relevant date of remittance.

7. Where the transaction is governed by SEBI guidelines/regulations, operation of the Escrow accounts shall also be in accordance with the relevant SEBI regulations.

8. Balance in the Escrow account, if any, may be repatriated at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the shares), after all the formalities in respect of the said acquisition are completed. In cases, where proposed acquisition/ transfer does not materialise, the AD Category – I bank may allow repatriation/ refund of the entire amount lying to the credit of the Escrow account on being satisfied with the bonafides of such remittances.

9. The Escrow account shall remain operational for a maximum period of six months only and the account shall be closed immediately after completing the requirements as outlined above or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.

10. Requirement of compliance with KYC guidelines issued by the Reserve Bank /SEBI shall rest with the AD Category – I bank/ SEBI authorised Depository Participants.

11. The terms of the Escrow account shall be laid down strictly in the Escrow agreement, Share purchase agreement, conditions of issue of shares, etc.