

June 8, 2007.

To

All Category - I Authorised Dealer banks

Madam/Sir,

Foreign Investments in Preference Shares—Revised Guidelines

1. Attention of Authorised Dealers is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000 -RB dated May 3, 2000 as amended from time to time. In terms of Schedule 1 of the notification, a person resident outside India can purchase equity/ preference/ convertible preference shares and convertible debentures issued by an Indian company.

2. Government of India, Ministry of Finance vide Press Note dated April 30, 2007 (Annex), has notified the revised guidelines for foreign investment in preference shares, which have come into effect from that date :

(a) Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.

(b) Foreign investment coming as any other type of preference shares (non- convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to ECB guidelines / ECB caps.

(c) Any foreign investment as non-convertible or optionally convertible or partially convertible preference shares as on and up to April 30, 2007 would continue to be outside the sectoral cap till their current maturity.

(d) Issue of preference shares of any type would continue to conform to the guidelines of RBI/SEBI and other statutory bodies and would be subject to all statutory requirements.

3. Accordingly, it is clarified that with effect from May 1, 2007, only preference shares which are fully and mandatorily convertible into equity within a specified time would be reckoned as part of share capital and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000.

4. Foreign investments in other types of preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and shall conform to External Commercial Borrowings (ECB) guidelines / caps. Accordingly, all the norms applicable for ECBs, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. would apply. Since these

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instruments would be denominated in rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.

5. It is further clarified that companies which have received funds from outside India for issue of partially/optionally convertible or redeemable preference shares on or up to April 30, 2007 may issue such instruments. Further, the existing investments in such preference shares which are not fully convertible may continue till their current maturity.

6. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 are being notified separately.

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

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

Yours faithfully,

Salim Gangadharan
Chief General Manager

[A.P. (DIR Series) Circular No.73 dated 08.06.2007]

Government of India
Ministry of Finance
Department of Economic Affairs

PRESS NOTE - GUIDELINES FOR FOREIGN INVESTMENT IN PREFERENCE SHARES

In supersession of Press Note [F.No.17/3/97-NRJ] dated 31st July, 1997 containing the guidelines for Indian Companies for mobilizing foreign investment through issue of preference shares for financial projects / industries, the following guidelines are prescribed with immediate effect:

1. Foreign investment coming as fully convertible preference shares would be treated as part of share capital. This would be included in calculating foreign equity for purposes of sectoral caps on foreign equity, where such caps have been prescribed.
2. Foreign investment coming as any other type of preference shares {non- convertible, optionally convertible or partially convertible) would be considered as debt and shall require conforming to ECB guidelines / ECB caps.

Any foreign investment as non-convertible or optionally convertible or partially convertible preference shares as on and up to today (30/4/ 2007) would continue to be outside the sectoral cap till their current maturity.

Issue of preference shares of any type would continue to conform to the guidelines of RBI/SEBI and other statutory bodies and would be subject to all statutory requirements.

Department of Economic Affairs, Ministry of Finance New Delhi: Vaisakha 10, 1929; April 30, 2007