

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

Notification No. FEMA. 164 / 2007-RB

dated October 9. 2007

**Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2007**

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and sub-section (2) of 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:-

**1. Short Title & Commencement:-**

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2007.
- (ii) These Regulations shall be deemed to have come into effect from the dates specified in these Regulations.

**2. Amendment of Regulation 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 as the principal Regulations),

- (i) In Regulation 2, in clause (f), for the words and figures "50 per cent of the amount of guarantees", the words and figures "100 per cent of the amount of guarantees" shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.
- (ii) In Regulation 2, after clause (q), the following new clause shall be inserted and shall be deemed to have been inserted with effect from the 30<sup>th</sup> day of April, 2007, namely: -

"(qa) 'Venture Capital Fund' means a fund as defined under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996".

### **3. Amendment of Regulation 6:-**

In the principal Regulations, in Regulation 6,

- (i) in sub- regulation (2), for clause (i), the following shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007, namely,

“(i) The total financial commitment of the Indian Party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed 300% of the net worth of the Indian Party as on the date of the last audited balance sheet,

Provided that for the Indian Party which is a registered partnership firm, the total financial commitment shall not exceed 200% of its net worth”

- (ii) In sub-regulation (2), in clause (i), in the Explanation, for the words and figures “ For the purpose of determining ‘total financial commitment’ within the limits of 200% of the net worth”, the following shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June 2007, namely, -

"For the purpose of determining 'total financial commitment' within the limit of 200% or 300% of the net worth, as the case may be ”

- (iii) in sub- regulation (2), in clause (i), in sub- clause (c), for the words "fifty per cent of the value of guarantees", the words "hundred per cent of the value of guarantees" shall be substituted and shall

be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.

- (iv) in sub regulation (3), in clause (ii), for the words and figures "shall not exceed 100 % of the net worth", the words and figures "shall not exceed 200 % of the net worth" shall be substituted and shall be deemed to have been substituted with effect from the 12<sup>th</sup> day of May, 2005.
- (v) in sub-regulation (3) in clause (ii) as amended by clause (iv) above, for the words " shall not exceed 200 % of the net worth", the words and figures "shall not exceed 300 % of the net worth in case of corporates and shall not exceed 200 % of net worth in case of registered partnership firms" shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.
- (vi) in sub-regulation (3), in clause (ii), in the Explanation, for the words and figures "100 % of the net worth", the words and figures " 200 % of the net worth" shall be substituted and shall be deemed to have been substituted with effect from the 12<sup>th</sup> day of May, 2005.
- (vii) in sub-regulation (3), in clause (ii), as amended by clause (vi) above, for the words and figures "200 % of the net worth", the words and figures " shall not exceed 300 % of the net worth in case of corporates and shall not exceed 200 % of the net worth in case of registered partnership firms " shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.
- (viii) in sub-regulation (3), in clause (ii), in sub-clause (c), for the words "fifty per cent of the amount of guarantees" the words " hundred per cent of the amount of guarantees" shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.
- (ix) in sub-regulation (3), in clause (ii), after sub-clause (c), the following shall be inserted and shall be deemed to have been inserted with effect from the 27<sup>th</sup> day of March,2006, namely :-

" Explanation:- an Indian Party may offer to a *person resident outside India* any form of guarantees, that is, corporate or personal / primary or collateral / guarantee by promoter company in India / guarantee by group company, sister concern or associate company in India, provided that :

- a) total 'financial commitment' including all forms of guarantees remains within the overall ceiling stipulated for overseas investment by an Indian Party and
- b) no guarantee is 'open ended'. ”

- (x) in sub-regulation (3), in clause (ii), in the Explanation, after the sub-clause (e), the following new sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 7<sup>th</sup> day of July, 2004 namely:-

"(f) Swap of shares".

- (xi) in sub-regulation (3), in clause (ii), in the Explanation, after sub-clause (f), as inserted by clause (x) above, the following new sub-clause shall be inserted and shall be deemed to have been inserted with effect from the 20<sup>th</sup> day of April 2007, namely:-

"(g) ADR/GDR Stock Swap subject to the valuation norms and sectoral cap".

#### **4. Amendment of Regulation 6B:-**

In the principal Regulations, in Regulation 6B,

- (i) the words “ an individual or ” shall be omitted and shall be deemed to have been omitted with effect from the 20<sup>th</sup> day of December 2006.

- (ii) in clause (b), in sub clause (i), for the words and figures "25 % of the net worth", the words and figures "35% of the net worth" shall be substituted and shall be deemed to have been substituted with effect from the 14<sup>th</sup> day of June, 2007.

#### **5. Amendment of Regulation 8 :-**

In the principal Regulations, Regulation 8 shall be omitted and shall be deemed to have been omitted with effect from 20<sup>th</sup> day of April 2007.

#### **6. Amendment of Regulation 16**

In the principal Regulations, In clause (1) of Regulation 16 after the words 'outside India' the following words shall be inserted and shall be deemed to have been inserted with effect from the 27<sup>th</sup> day of March 2006 , namely:-

" without prior approval of the Reserve Bank, in the under noted categories:

- i) in cases where the JV / WOS is listed in the overseas stock exchange;
- ii) in cases where the Indian promoter company is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- iii) where the Indian promoter is an unlisted company and the investment in overseas venture does not exceed USD 10 million".

#### **7. Amendment of Regulation 18:-**

In the principal Regulations, in Regulation 18, after the words, "from an authorised dealer or a public financial institution in India" the following shall be inserted and shall be deemed to have been inserted with effect from the 20<sup>th</sup> day of April 2007, namely, :-

"or to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitment of the Indian Party remains within the limit stipulated by the Reserve Bank for overseas investments in JV/WOS".

## **8. Insertion of new Regulation in Part II :-**

In the principal Regulations, in Part II, after Regulation 19, the following Regulation shall be inserted and shall be deemed to have been inserted with effect from the 27<sup>th</sup> day of March, 2006, namely :-

### **"19A Overseas Investments - Proprietorship Concerns:-**

Proprietary / unregistered partnership firm in India being a recognised Star Export House with a proven track record and a consistently high export performance satisfying the criteria as per schedule II of the Notification may set up a JV/WOS outside India with the prior approval of the Reserve Bank ."

## **9. Insertion of new Schedule: -**

In the principal Regulations, after Schedule I, the following new Schedule shall be inserted and shall be deemed to have been inserted with effect from the 27<sup>th</sup> day of March 2006, namely:-

"Schedule II

(See Regulation 19A)

### **Overseas Investments - Proprietorship concerns**

Criteria for considering investment proposals outside India by established proprietorship or unregistered partnership exporter firms:

- i) The Partnership / Proprietorship firm is a DGFT recognised Star Export House (export exceeding Rs.15 crore per annum).
- ii) The Authorised Dealer bank is satisfied that the exporter is KYC (Know Your Customer) compliant, is engaged in the proposed business and has turnover as indicated.
- iii) Exporter has proven track record i.e. export outstanding does not exceed 10 per cent of the average export realisation of the preceding three years.

- iv) The exporter has not come under the adverse notice of any Government agency like Directorate of Enforcement, Central Bureau of Investigation and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India.
- v) The amount of investment outside India does not exceed 10 per cent of the average of three years export realisation or 200 per cent of the net owned funds of the firm, whichever is lower. "

**10. Amendment of Regulation 22:-**

In the principal Regulations, in Regulation 22,

- (i) for sub-regulation (2), the following shall be substituted and shall be deemed to have been substituted with effect from the 5<sup>th</sup> day of April 2006, namely :-

"(2) A person resident in India, being an individual, who is an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company in which foreign equity holding effectively, directly or indirectly, is not less than 51 per cent, may accept the shares offered by such foreign company

Provided that

(i) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and (ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer bank giving details of remittances / beneficiaries etc.,

Explanation: - For the purpose of this sub-regulation, 'indirectly' means 'indirect foreign equity holding through a trust/ special purpose vehicle or a step down subsidiary'."

- (ii) for sub-regulations (3) and (4), the following shall be substituted and shall be deemed to have been substituted with effect from the 5<sup>th</sup> day of April, 2006, namely :-

"(3) An authorised dealer bank may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2) for acquiring shares under ESOP Schemes, irrespective of the method of the operationalisation of the scheme

Provided that the conditions specified in that sub-regulation are fulfilled.

(4) A person resident in India may transfer by way of sale, the shares acquired in terms of sub-regulations (2) and (3) above

Provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities".

- (iii) after sub-regulation (4), the following new sub-regulations shall be inserted and shall be deemed to have been inserted with effect from the 5<sup>th</sup> day of April, 2006, namely :-

"(5) A foreign company, who has issued the shares in terms of sub-regulation (2) of this Regulation may repurchase the same provided that

(i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999,

(ii) the shares are being repurchased in terms of the initial offer document and,



(iii) An Annual Return is submitted through the Authorised Dealer bank giving details of remittances / beneficiaries etc.

(6). An Authorised Dealer bank may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2).”

#### **11. Amendment of Regulation 26:-**

In the principal Regulations, in Regulation 26, after the words “Mutual Funds”, the words “and Venture Capital Funds” shall be inserted and shall be deemed to have been inserted with effect from the 30<sup>th</sup> day of April, 2007.

**(Salim Gangadharan)  
Chief General Manager**

#### **Foot Note:**

(i) The Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 were published in the Official Gazette vide G.S.R.No.757 (E) dated November 19, 2004 and subsequently amended vide

G.S.R. No. 220(E) dated April 7, 2005

G.S.R. No. 337(E) dated May 27, 2005

G.S.R. No. 552(E) dated August 31, 2005

(ii) It is clarified that no person will be adversely affected as a result of retrospective effect being given to these Regulations.

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