

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

Notification No.FEMA. 162 /2007- RB

Dated September 18, 2007

Foreign Exchange Management (Deposit) (Third Amendment)

Regulations, 2007

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) (Third Amendment) Regulations, 2007.

(ii) They shall be deemed to have come into force from May 24, 2007. @

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 (2), the following new sub-regulation shall be inserted, namely :-

"2A Non-resident acquirers may, subject to the terms and conditions specified in Schedule 8, open, hold and maintain Escrow Account and Special Account with Authorised Dealers in India without prior approval of the Reserve Bank, for acquisition / transfer of shares / convertible debentures through open offers / delisting / exit offers, subject to the relevant Security Exchange Board of India (SAST) Regulations or any other applicable Security Exchange Board of India Regulations / provisions of the Companies Act, 1956."

(ii) after Schedule 7, a new Schedule as in Annex to these regulations shall be inserted.

**(Salim Gangadharan)
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; and
- (h) G.S. R. No.495(E) dated July 23, 2007.
- (j) G.S. R. No.664(E) dated October 16, 2007.

Published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) dated 15.2.2008 - G.S.R.No. 91 (E)

Schedule 8
(See Sub Regulation 2A of Regulation 5)

Terms and conditions for opening of Escrow Account and Special Account by non-resident corporates for open offers / delisting / exit offers

1. Acquisition / Transfer of shares shall be strictly in accordance with the provisions of Notification No. FEMA 20/2000-RB dated 3rd May, 2000 as amended from time to time and Security Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 [SEBI (SAST) Regulations] or any other SEBI Regulations [SEBI Regulations] as applicable.

2. The accounts shall be non-interest bearing.

3. Escrow Account may be opened in Indian Rupees, jointly and severally for the purpose, with the following permitted credits and debits:

Permitted credits : Foreign Inward Remittance through normal banking channels.

Permitted debits : as per SEBI (SAST) Regulations or any other SEBI Regulations, as applicable.

4. Special Account may be opened in Rupees, jointly and severally for the purpose, with the credit and debits as per SEBI (SAST) Regulations or any other SEBI Regulations, as applicable.

5. The resident mandatee empowered by the overseas acquirer for this purpose, may operate the Escrow Account in accordance with SEBI (SAST) Regulations or any other SEBI Regulations, as applicable and with the specific approval of the Authorised Dealer with whom the account is opened.

6. No fund based / non-fund based facilities shall be permitted against the balance in the accounts.

7. Requirement of compliance with KYC guidelines issued by the Reserve Bank shall rest with the Authorised Dealer.

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 overseas company acquiring the shares), after all the formalities in respect of the said acquisition are completed .

9. In the event, the proposal under the said acquisition/transfer does not materialize, the Authorised Dealer may allow repatriation of the entire amount lying to the credit of the Escrow Account on being satisfied with the bonafides of such remittances.

10. The accounts shall be closed immediately after completing the requirements as outlined above.