

A.D.(M.A. Series) Circular No.29 (October 12, 1999)

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

October 12, 1999

A.D.(M.A. Series) Circular No.29

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Amendments to Exchange Control Manual (ECM)

It has been decided to amend/modify the Exchange Control Regulations as set out in the following paragraphs :

1. Issue of Rights/Bonus Shares to Non-Residents

In terms of paragraph 10B.3 of Exchange Control Manual, Indian companies are required to apply to Reserve Bank in Form ISD for necessary permission under Section 19 (1)(d) of Foreign Exchange Regulation Act, 1973 for issue of rights/bonus shares to their non-resident shareholders. Reserve Bank has, vide its Notification No.F.E.R.A.208/99-RB dated 31st July 1999 now granted general permission to (a) Indian companies to issue rights/bonus shares to non-residents and to send such shares out of India and (b) to non-residents to acquire such shares, provided:

- (i) the issue of rights/bonus shares does not bring any change in the percentage of foreign equity already approved;
- (ii) the existing shares on which the rights/bonus shares are proposed to be issued are held by the non-resident holders with the Reserve Bank's permission under Section 29 of the Foreign Exchange Regulation Act, 1973, and where the shares were issued under the general permission of the Reserve Bank, the Indian Company had made the requisite report to Reserve Bank in Form FC, ISD/ISD (R), as the case may be;
- (iii) the shares are not issued to the non-residents at a price lower than that at which the shares have been offered to the resident shareholders;

- (iv) the rights/bonus shares are subject to the same restrictions with regard to repatriability and other conditions as are applicable to the original shares against which the rights/bonus shares are issued;
- (v)
 - (a) in case of foreign nationals and companies incorporated outside India, the consideration is received by way of inward remittance through normal banking channels;
 - (b) in case the original investment was made by NRIs/Persons of Indian Origin (PIOs)/OCBs on repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE account of the NRI/PIO/OCB concerned;
 - (c) in case the original investment was made by NRIs/PIOs/OCBs on non-repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE/NRO/NRSR account of the NRI/PIO/OCB concerned;
- (vi) the original project cost as approved by FIPB does not exceed Rs.600 crores.

It may be noted, that issue of rights/bonus shares resulting into increase in the percentage of foreign equity as also issue of shares by companies whose original project cost was more than Rs.600 crores shall continue to require **prior approval** by Government of India, as per the existing procedure.

2. Permission to Non-Residents for Acquisition/ Purchase of shares from other Non-Residents

In terms of paragraph 11A.5 (i) of ECM foreign nationals and companies incorporated outside India are required to obtain permission of Reserve Bank for purchasing shares of Indian companies. Reserve Bank vide its Notification No.F.E.R.A.206/99-RB dated 31st July 1999, has now granted general permission to

- (a)
 - (i) non-residents to acquire shares of companies incorporated in India from other non-residents (other than NRIs and OCBs) by way of sale/transfer provided the transferor/seller had acquired the shares under general/special permission of Reserve Bank;
 - (ii) non-resident Indians and Persons of Indian Origin and OCBs to acquire shares of companies incorporated in India from other non-resident Indians, Persons of Indian Origin or OCBs by way of sale/transfer provided the transferor had acquired the shares under

general or special permission of Reserve Bank;

provided that the rights of the transferee/purchaser in respect of shares so acquired, shall be subject to same restrictions and conditions as were applicable to the transferor/seller of the shares;

- (b) companies incorporated in India and/or a depository defined in clause (2) of sub-section 1 of Section 2 of Depository Act, 1996 to enter in their register or books in which securities are registered or inscribed an address outside India of a holder of any securities consequent upon acquisition of such securities by non-resident under this notification.

It is clarified that the above mentioned Notification **does not permit** transfer of shares from NRIs/PIOs/OCBs to other foreign nationals/companies incorporated outside India. In such cases, the transferee may approach the Secretariat for Industrial Assistance (SIA), Ministry of Industry, Government of India, New Delhi for necessary permission. Subsequently, an application in Form FNC-7 along with SIA's permission may be made to Reserve Bank of India, Exchange Control Department (Foreign Investment Division), Central Office, Mumbai for necessary permission under Foreign Exchange Regulation Act, 1973.

3. Permission for Sale/Transfer of nominal number of shares from subscribers to the Memorandum and Articles of Association of 100% owned subsidiaries to parent company or their nominees

Foreign companies which apply to Foreign Investment Promotion Board (FIPB) for setting up 100% owned subsidiary, very often, pending receipt of FIPB approval, request some resident individuals to complete the formalities of registering an Indian company by subscribing to the Memorandum and Articles of Association and acquiring nominal number of shares (usually less than 500). After obtaining the FIPB approval, the foreign owners seek to acquire the nominal number of shares from the subscribers to the Memorandum and Articles of Association. Presently, applications for permitting such transfers are required to be made to Reserve Bank.

Reserve Bank, vide its Notification No.F.E.R.A.207/99-RB dated 31st July 1999, has granted general permission to a person resident outside India or a company incorporated outside India to acquire shares from the shareholders who had acquired such shares as signatories to the Memorandum and Articles of Association provided (i) the Indian company is permitted to become a 100% owned subsidiary, (ii) the total number of shares so acquired does not exceed 500 and (iii) the face value of the shares to be transferred is less than 0.1% (one tenth of one per cent) of the paid-up capital of the Indian company. The Company whose shares are so released and/or a depository have also been granted permission to enter an address outside India in their books in respect of such shares.

4. The following consequential amendments may be carried out in the Exchange Control Manual.

Volume I

- (i) Paragraph 10B.3 may be replaced by Slip 1.
- (ii) Paragraph 11A.5 (i) may be deleted and new paragraphs 11A.5(i) and (ii) may be added as per Slip 2 and the existing paragraph 11A.5 (ii) may be renumbered as 11A.5 (iii).

Volume II

- (iii) A new Notification No.F.E.R.A.206/99-RB dated 31st July 1999 may be added under Section 19 as per Slip 3.
- (iv) A new Notification No.F.E.R.A.207/99-RB dated 31st July 1999 may be added under Section 19 as per Slip 4.
- (v) A new Notification No.F.E.R.A.208/99-RB dated 31st July 1999 may be added under Section 19 as per Slip 5.

5. Authorised Dealers may bring the contents of this Circular to the notice of their concerned constituents.

6. The directions contained in this Circular have been issued under Section 73 (3) of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and any contravention or non-observance thereof is subject to the penalties prescribed under the Act.

Yours faithfully,

B. MAHESHWARAN

Chief General Manager

10B.3 Issue of Rights/Bonus Shares to Non-Residents

In terms of Notification No.F.E.R.A.208/99-RB dated 31st July 1999, Reserve Bank has granted general permission to (a) Indian Companies to issue rights/bonus shares to Non-Residents and to send such shares out of India and (b) non-residents to acquire such shares, subject to the following conditions :

1. the issue of rights/bonus shares does not bring any change in the percentage of foreign equity already approved.
 2. the existing shares on which the rights/bonus shares are proposed to be issued are held by the Non-Resident holders with the Reserve Bank's permission under Section 29 of the F.E.R.A, 1973, and where the shares were issued under the general permission of the Reserve Bank, the Indian Company had made the requisite report to Reserve Bank in Form FC, ISD/ISD (R) as the case may be.
 3. the rights shares are not issued to the Non-Residents at a price lower than that at which the rights shares are offered to resident shareholders.
 4. the rights/bonus shares are subject to the same restrictions with regard to repatriability and other conditions as are applicable to the original shares against which rights/bonus shares are issued.
 5.
 - (a) in case of foreign nationals and companies incorporated outside India, the consideration is received by way of inward remittance,
 - (b) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE account of the NRI/PIO/OCB concerned,
 - (c) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on non-repatriation basis, the funds are received through normal banking channels by way of inward remittance or by debit to the FCNR/NRE/NRO/NRSR account of the NRI/PIO/OCB concerned.
 6. the original project cost as approved by FIPB does not exceed Rs.600 crores. It may be noted, that issue of rights/bonus shares resulting in increase in the percentage of foreign equity as also issue of shares by companies whose original project cost was more than Rs.600 crores shall continue to require prior approval by Government of India, as per the existing procedure.
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11A.5

(i) Reserve Bank vide Notification No.F.E.R.A.206/99-RB dated 31st July 1999 has granted general permission to Non-Residents to acquire shares from other Non-Residents (except from NRIs/PIOs and OCBs). NRIs/PIOs and OCBs are permitted to acquire shares from other NRIs/PIOs/OCBs. The rights of transferee/purchaser in respect of shares so acquired, shall be subject to same restrictions and conditions as were applicable to the transferor/seller of the shares. In terms of the above-mentioned Notification, permission has also been granted to a company incorporated in India and/or a depository defined in clause (2) of sub-section 1 of Section 2 of Depository Act, 1996 to enter in its register or books in which securities are registered or inscribed an address outside India of a holder of any securities consequent upon acquisition of such securities by non-residents as permitted above.

It is clarified that the notification No.F.E.R.A.206/99-RB dated 31st July 1999 **does not permit** transfer of shares from NRIs/PIOs/OCBs to foreign nationals/companies incorporated outside India. In such cases, the transferee may approach the Secretariat for Industrial Assistance (SIA), Ministry of Industry, Government of India, New Delhi for necessary permission. Subsequently an application in Form FNC-7 along with SIA's permission may be made to Reserve Bank of India, Exchange Control Department, (Foreign Investment Division), Central Office, Mumbai for necessary permission under Foreign Exchange Regulation Act, 1973.

Note: See paragraph 11A.12 for details regarding exemption granted to foreign nationals of Indian origin permanently resident in India.

(ii) Reserve Bank vide its Notification No.F.E.R.A.207/99-RB dated 31st July 1999, has granted general permission to a person resident outside India or a company incorporated outside India to acquire shares from the shareholders who had acquired such shares as signatories to the Memorandum and Articles of Association provided (i) the Indian company is permitted to become a 100% owned subsidiary and (ii) the total number of shares so acquired does not exceed 500 and (iii) the face value of the shares to be transferred is less than 0.1% (one tenth of one per cent) of the paid-up capital. The company whose shares are so released and/or a depository have also been granted general permission to enter an address outside India in their books in respect of such shares.

**General Permission to Non Residents for Acquisition/
Purchase of shares from other Non-Residents**

In exercise of powers conferred by clause (b) of sub-section (1) of Section 29 and sub-section 4 of Section 19 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Reserve Bank of India hereby permits

- (a) (i) Non-Residents to acquire shares of companies incorporated in India from other Non-Residents (other than Overseas Corporate Bodies predominantly owned by Non-Resident Indians/Persons of Indian Origin, Non-Resident Indians and Persons of Indian Origin) by way of sale/transfer provided the transferor/seller had acquired the shares under general/special permission of Reserve Bank
- (ii) Non-Resident Indians and Persons of Indian Origin and Overseas Corporate Bodies predominantly owned by Non-Resident Indians/Persons of Indian Origin to acquire shares of companies incorporated in India from other Non-Resident Indians, Persons of Indian Origin or Overseas Corporate Bodies predominantly owned by Non-Resident Indians/ Persons of Indian Origin by way of sale/transfer provided the transferor had acquired the shares under general or special permission of Reserve Bank

provided that the rights of the transferee/purchaser in respect of shares so acquired, shall be subject to same restrictions and conditions as were applicable to the transferor/seller of the shares.

- (b) Companies incorporated in India and/or a depository defined in clause (2) of sub-section 1 of Section 2 of Depository Act, 1996 to enter in their register or books in which securities are registered or inscribed an address outside India of a holder of any securities consequent upon acquisition of such securities by non-resident under this notification.

Slip 4
[AD/MA/ 29 /1999]

Notification No. F.E.R.A.207/99-RB dated 31st July 1999

**Permission for Sale/Transfer of shares from subscribers
of the Memorandum and Articles of Association of 100%
owned subsidiaries of Foreign Firms/Companies etc. to
parent foreign companies or their nominees**

In pursuance of powers conferred by clause (b) of sub-section (1) of Section 29 and the clause (b) of sub-section (4) of Section 19 of the Foreign Exchange Regulation Act 1973 (46 of 1973), the Reserve Bank of India hereby permits

- a) a person resident outside India or a Company incorporated outside India to acquire shares from the shareholders who had acquired such shares as signatories to Memorandum and Articles of Association provided
 - (i) The Indian company whose shares are so acquired is permitted to become a 100% owned subsidiary of the Foreign Firm/Company or is allowed to be entirely held by persons resident outside **India** (i.e. either Government approval for acquisition of 100% shares has been granted or there exists a general permission to have foreign investment upto 100% under the Automatic Route).
 - (ii) The total number of shares so acquired does not exceed 500 and the face value of shares to be transferred is less than 0.1% (one tenth of one per cent) of the paid-up capital of company.
- b) the company whose shares are so released and/or a depository defined in clause (2) of sub-section 1 of Section 2 of the Depository Act, 1996 to enter in its register or books in which securities are registered or inscribed, an address outside India of the non-resident holder of shares.

Slip 5
[AD/MA/ 29 /1999]

Notification No.F.E.R.A.208/99-RB dated 31st July 1999

General Permission to Indian companies to issue Rights/Bonus shares to Non-Residents

In exercise of the powers conferred by clause (a) and clause (d) of sub-section 1 of Section 19 and clause (b) of sub-section 1 of Section 29 of FERA, 1973, (46 of 1973), Reserve Bank of India, hereby permits Indian Companies to issue rights/bonus shares to Non-Residents and to send such shares out of India and such persons to acquire such shares, subject to the following conditions :

- 1) the issue of right/bonus shares does not bring any change in the percentage of foreign equity already approved.
- 2) the existing shares on which the right/bonus shares are proposed to be issued are held by the Non-Resident holders with the Reserve Bank's permission under Section 29 of the FERA, 1973, and where the shares were issued under the

General Permission of the Reserve Bank, the Indian Company had made the requisite report to RBI in Form FC (Reserve Bank of India), ISD/ISD (R) as the case may be.

- 3) the shares are not issued to the Non-Residents at a price lower than that offered to the resident shareholders.
- 4) the rights/bonus shares are subject to the same restrictions with regard to repatriability and other conditions as the original shares.
- 5)
 - (a) in case of foreign nationals and companies incorporated outside India, the consideration is received by way of Foreign Inward remittance,
 - (b) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on repatriation basis, the funds are received through normal banking channels by way of Inward Remittance or by debit to the FCNR/NRE account of the NRI/PIO/OCB,
 - (c) in case the original investment was made by NRIs/Persons of Indian Origin/OCBs on non-repatriation basis, the funds are received through normal banking channels by way of Inward Remittance or by debit to the FCNR/NRE/NRO/NRSR account of the NRI/PIO/OCB.
- 6) the original project cost as approved by FIPB was up to Rs.600 crores.

Provided however, that issue of right/bonus shares resulting into increase in the percentage of foreign equity as also issue of shares by companies whose original cost was more than Rs.600 crores shall continue to require prior approval by FIPB/Government of India, as per the existing procedure.
