

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

Notification No. FEMA. 229/ 2012- RB

Dated April 23, 2012

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2012

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and 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 Security by a Person Resident Outside India) Regulations, 2000 ([Notification No. FEMA. 20 / 2000-RB dated 3rd May 2000](#)), namely:-

1. Short Title & Commencement:-

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2012.
- (ii) Save as otherwise provided in these Regulations, the provisions of these Regulations shall come into force from the date of the Consolidated FDI Policy Circular No. 1 of 2011 i.e., March 31, 2011, issued by the Department of Industrial Policy and Promotion, Government of India.

2. Amendment of Regulation 9

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA. 20 / 2000-RB dated 3rd May 2000), (hereinafter referred to as 'the principal Regulations'), in Regulation 9, in sub-regulation (2) in clause(ii), the following shall be deleted.

“Provided that the person to whom the shares are being transferred, in terms of clause (i) and (ii), has obtained prior permission of Central Government to acquire the

shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged:

Provided further that the restriction in clauses (i) and (ii) shall not apply to the transfer of shares to International financial institutions such as Asian Development Bank (ADB), International Finance Corporation (IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG) and transfer of shares of an Indian company engaged in Information Technology sector.”

3. Amendment of Schedule 1

In the principal Regulations, in Schedule 1,

(A) in paragraph 1, sub-paragraph (2) shall be deleted.

(B) in paragraph 2, in sub-paragraph (4), after clause (ii) , the following new clause shall be added and shall be deemed to have been added with effect from the 1st day of April 2003, namely;:-

“(iii) against import of capital goods by units in SEZs, subject to the valuation by a Committee consisting of Development Commissioner and the appropriate Customs officials.”

(C) for the existing paragraph 3, the following paragraph shall be substituted:-

“3. An Indian company intending to issue shares to a person resident outside India in accordance with these Regulations directly against foreign inward remittance (or by debit to NRE account/ FCNR account) or against consideration other than inward remittance i.e., against royalty/ lump sum fee due for payment/ import of capital goods by units in SEZs/ ECBs (excluding those deemed as ECBs) shall obtain prior approval of the Foreign Investment Promotion Board (FIPB) of Government of India, if the Indian company ;

- a) is engaged or proposes to engage, in any activity specified in Annex A to this Schedule ;or

- b) proposes to issue shares to a person resident outside India beyond sectoral limits or the activity of the Indian company falls under the FIPB route, as stipulated in Annex B to this Schedule ; or
- c) proposes to issue shares to a person resident outside India against shares swap¹ i.e. in lieu of consideration to be paid for shares acquired in the overseas company; or
- d) proposes to issue shares to a person resident outside India against import of capital goods/ machinery/ equipment (including second-hand machinery) subject to compliance with the conditions specified by the Government of India and the Reserve Bank from time to time; or
- e) proposes to issue shares to a person resident outside India against pre-operative/ pre-incorporation expenses (including payments of rent etc.), subject to compliance with the conditions specified by the Government of India and the Reserve Bank from time to time.

(D). In Annex 'A', the existing paragraph (A) shall be deleted and paragraph (B) shall be substituted, namely:-

“Sectors prohibited for FDI

- i. Retail Trading (except single brand product retailing);
- ii. Lottery Business including Government / private lottery, online lotteries etc.;
- iii. Gambling and Betting including casinos etc.;
- iv. Chit funds;
- v. Nidhi Company;
- vi. Trading in Transferable Development Rights (TDRs);
- vii. Real Estate Business or Construction of Farm Houses;
- viii. Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes; and
- ix. Activities/sector not opened to private sector investment e.g. Atomic

¹ This amendment is given retrospective effect from 6th day of December 2003 that is from the date of issuance of A.P. (Dir Series) Circular No.41 issued by the Reserve Bank of India.

Energy and Railway Transport (other than Mass Rapid Transport Systems).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities.

4. Amendment of Schedule 4

In Schedule 4, in paragraph 2, the following shall be deleted,

“Provided that the person to whom the shares are being transferred, shall obtain prior permission of the Central Government to acquire the shares if he has, as on 12th day of January 2005, an existing joint venture or technology transfer/trademark agreement in the same field as that of the company of which the shares or convertible debentures to be acquired by him.

Provided further that no prior permission of Central Government shall be required for:

(a) transfer of shares to multinational financial institutions such as Asian Development Bank (ADB), International Finance Corporation (IFC), Commonwealth Development Corporation (CDC), Deutsche Entwicklungs Gescelschaft (DEG).

(b) transfer of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer/trade mark agreement of the person to whom the shares are to be transferred are also in the Information Technology sector or in the mining sector for same area/mineral.

(c) investments to be made by Venture Capital Funds registered with SEBI; investments by multinational financial institutions or where in the existing joint-venture investment by either of the parties is less than 3%; or where the existing joint venture/ collaboration is defunct or sick”

(Rudra Narayan Kar)
Chief General Manager

Foot Note: The Principal Regulations were published in the Official Gazette vide G.S.R.No. 406(E) dated May 8, 2000 in Part II, Section 3, sub-section (i) and subsequently amended as under:

G.S.R.No. 158(E) dated 02.03.2001
G.S.R.No. 175(E) dated 13.03.2001
G.S.R.No. 182(E) dated 14.03.2001
G.S.R.No. 4(E) dated 02.01.2002
G.S.R.No. 574(E) dated 19.08.2002
G.S.R.No. 223(E) dated 18.03.2003
G.S.R.No. 225(E) dated 18.03.2003
G.S.R.No. 558(E) dated 22.07.2003
G.S.R.No. 835(E) dated 23.10.2003
G.S.R.No. 899(E) dated 22.11.2003
G.S.R.No. 12(E) dated 07.01.2004
G.S.R.No. 278(E) dated 23.04.2004
G.S.R.No. 454(E) dated 16.07.2004
G.S.R.No. 625(E) dated 21.09.2004
G.S.R.No. 799(E) dated 08.12.2004
G.S.R.No. 201(E) dated 01.04.2005
G.S.R.No. 202(E) dated 01.04.2005
G.S.R.No. 504(E) dated 25.07.2005
G.S.R.No. 505(E) dated 25.07.2005
G.S.R.No. 513(E) dated 29.07.2005
G.S.R.No. 738(E) dated 22.12.2005
G.S.R.No. 29(E) dated 19.01.2006
G.S.R.No. 413(E) dated 11.07.2006
G.S.R.No. 712(E) dated 14.11.2007
G.S.R.No. 713(E) dated 14.11.2007
G.S.R.No. 737(E) dated 29.11.2007
G.S.R.No. 575(E) dated 05.08.2008
G.S.R.No. 896(E) dated 30.12.2008
G.S.R.No. 851(E) dated 01.12.2009
G.S.R.No. 341 (E) dated 21.04.2010
G.S.R.No. ----- dated -----
G.S.R.No. ----- dated -----
G.S.R.No. ----- dated -----
G.S.R.No. ----- dated -----

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

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 30.10.2012- G.S.R.No.796 (E)**