



**In the  
Reserve Bank of India  
Foreign Exchange Department  
7th Floor, Gera's Imperium-II,  
EDC Complex, Patto Plaza,  
Panaji, Goa - 403 001**

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Present

**Shri Richard Gomes  
Assistant General Manager**

**Date: July 01, 2019**

**CA No: PAN21**

In the matter of

**M/s Berkler Health Care Services Private Limited  
Regd. Office: H.No.204/3, Oxel, Devel Waddo  
Siolim, North Goa, Goa – 403517**

**(Applicant)**

In exercise of the powers conferred under section 15 (1) of the Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made there under, I pass the following

**Order**

The applicant has filed a compounding application dated February 26, 2019 for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contraventions sought to be compounded are (i) delay in reporting receipt of foreign inward remittance towards subscription to equity, beyond the stipulated time period, (ii) delay in filing of form FC-GPR beyond the stipulated time period



and (iii) delay in allotment of shares issued after the receipt of inward remittance beyond the stipulated time period, in terms of paragraphs 9(1)(A), 9(1)(B) and 8 respectively of Schedule-I to 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 3rd May 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts of the case are as follows:

i) The applicant is a company registered as a private limited company, incorporated on February 22, 2007 under the Companies Act, 1956 (CIN:U85193GA2007PTC005095) with the main object of undertaking the business of Health Care (NIC code: 86909).

ii) The applicant had received foreign inward remittances towards issue of equity shares as detailed below:

<b>Sr. No.</b>	<b>Name of Remitter</b>	<b>Amount (Rs.)</b>	<b>Date of Receipt</b>	<b>Reported to RBI on</b>
1	Elke Berkler	4,18,478/-	29-Sep-2008	12-Nov-2008

The applicant reported receipt of remittance to the Foreign Exchange Department, Panaji Regional Office of the Reserve Bank on the date indicated above with a delay of 13 days in respect of remittance received on one occasion, beyond the stipulated period of 30 days. Whereas in terms of paragraph 9(1)(A) of Schedule-I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares or convertible debentures in accordance with these Regulations should report to the Reserve Bank of India as per the prescribed procedure, not later than 30 days from the date of receipt of the amount of consideration.



iii) The applicant allotted equity shares and filed FC-GPRs as indicated below:

Sr. No.	Name of Investor	No. of Shares	Amount (Rs.)	Date of Allotment	Reported to RBI on
1	Elke Berkler	995	99,500	22-Feb-2007	9-Apr-2007
2	Alfred Egon Kohler	5	500		
	<b>Total</b>	<b>100</b>	<b>1,00,000/-</b>		

The applicant filed Form FC-GPR in respect of shares allotted with delay of 15 days approximately on one occasion, beyond the stipulated period of 30 days. Whereas in terms of paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB, an Indian company issuing shares in accordance with these Regulations has to submit to Reserve Bank a report in Form FCGPR along with documents prescribed therein within 30 days from the date of issue of shares to persons resident outside India.

iv) The applicant had received the inward remittances towards issue of shares and allotted shares after the prescribed period of 180 days as detailed below –

Sr. No.	No. of Shares	Amount (Rs.)	Date of Credit	Date of Allotment
1	10,000	4,78,500/- (Part amount of inward remittance of Rs.5,78,500/-)	8-Mar-2007	28-Nov-2007
2	4,000	48,258/- (Part amount of inward remittance of Rs.5,69,758/-)	13-Nov-2007	20-Nov-2008
3	667	66,700/- (Part amount of inward remittance of Rs.4,18,478/-)	29-Sep-2008	01-Feb-2017



The applicant had received inward remittance and allotted shares beyond the stipulated period with delays ranging from 2 months 24 days to 7 years 10 months 3 days. Whereas in terms of paragraph 8 of Schedule-I to Notification No. FEMA 20/2000-RB, the shares have to be issued and / or amount refunded within 180 days from the date of receipt of the inward remittance.

3. The applicant was given an opportunity for personal hearing vide Reserve Bank's letter no. PNJ.FED: 679 / 02.01.496 / 2018-19 dated May 28, 2019 for further submission in person and / or producing documents, if any, in support of the application. The company representative Mr. Ludovico Ferrao, Chartered Accountant has informed vide email dated June 03, 2019 that they did not wish to attend the personal hearing.

It has been declared in the compounding application dated February 26, 2019 that the particulars given by the applicant in the application are true and correct to the best of their knowledge and belief and also that the applicant was not under any enquiry / investigation / adjudication by any agency such as Enforcement Directorate, CBI, etc. as on the date of the application. The applicant has also given an undertaking to inform RBI of initiation of any enquiry / investigation / adjudication proceedings against it thereafter. Accordingly, the above contraventions which are being compounded in this Order are subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and / or incorrect.

The application for compounding is, therefore, being considered on the basis of the averments made in the application as well as other documents and submissions made in this context by the applicant

4. I have given my careful consideration to the documents on record and in the compounding application. Accordingly, I hold that the applicant has contravened the FEMA provisions issued in terms of:



i) Paragraph 9(1)(A) of Schedule I to Notification No. FEMA 20/2000-RB due to the delay in reporting of receipt of foreign inward remittance towards subscription to equity as detailed in paragraph 2 above. The contravention relates to an amount of **Rs.4,18,478/-** and the duration of delay is 13 days.

ii) Paragraph 9(1)(B) of Schedule I to Notification No. FEMA 20/2000-RB due to delay in submission of Form FC-GPR to the Reserve Bank after issue of shares to persons resident outside India. The contravention relates to an amount of **Rs.1,00,000/-** and the duration of contravention is 15 days.

iii) Paragraph 8 of Schedule I to Notification No. FEMA 20/2000-RB due to delay in allotment of shares against the inward remittance received with delay ranges from 2 months 24 days to 7 years 10 months 3 days. The contravention relates to an amount of **Rs.5,93,458/-**.

5. In terms of Section 13 of the FEMA, if any person contravenes any provision of the Act or contravenes any rules, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank of India (RBI), he, upon adjudication, shall be liable to a penalty up to thrice the sum involved in such contravention. However, after considering the relevant facts and the circumstances of the case as stated in the foregoing paragraphs, I am inclined to take a lenient view on the amount for which the contravention is to be compounded and I consider that an amount of **Rs.60,261/- (Rupees Sixty Thousand Two Hundred Sixty One only)** will meet the ends of justice.

6. Accordingly, I compound the admitted contraventions namely, the contraventions of paragraphs 9(1)(A), 9(1)(B) and 8 of Schedule I to Notification No. FEMA 20/2000-RB by the applicant on the facts discussed above in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of **Rs.60,261/- (Rupees Sixty Thousand Two Hundred Sixty One only)** which shall be deposited by the applicant with the Reserve Bank of India, Foreign



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Exchange Department, Gera Imperium II, 7<sup>th</sup> Floor, EDC, Patta Plaza, Panaji, Goa 403 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Mumbai within a period of 15 days from the date of this order. In case of failure to deposit the compounded amount within the abovementioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.

The application is disposed of accordingly.

Dated this the First day of July 2019.

**Sd/-**  
**(Richard Gomes)**  
**Assistant General Manager**