



In the

RESERVE BANK OF INDIA
Foreign Exchange Department
11th floor, Central Office Building
Shahid Bhagat Singh Road
Mumbai - 400 001

Present

Shekhar Bhatnagar
Chief General Manager

Date: June 14, 2017
CA No 4285 / 2017

In the matter of

UBS (India) Private Limited
Level 2, 2 North Avenue, Maker Maxity
Bandra Kurla Complex, Bandra East
Mumbai - 400051

(Applicant)

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

Order

The applicant has filed the application dated January 23, 2017 (received in the Reserve Bank on January 24, 2017) for compounding of contraventions of the provisions of the Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued there under. The contraventions sought to be compounded are, delay in meeting the minimum capitalization norms beyond the stipulated time period, and delay in filing the statement of Annual Return on Foreign Liabilities and Assets beyond the stipulated time period. The above amount to the contravention of Paragraph F.8.2(1)(iii) of Annex B and Paragraph 9(2) of Schedule I of 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 May 3, 2000 as amended from time to time (hereinafter referred to as Notification No. FEMA 20/2000-RB).

2. The relevant facts are as under: The applicant was incorporated as UBS (India) Private Limited on August 26, 1996 (CIN: U74900MH1996PTC102161). The applicant is engaged in the business of investment banking activities including merchant banking, portfolio management, research in various investment opportunities etc. The applicant was formed as a Joint Venture (JV) between Swiss Finance Corporation (Mauritius) Limited (UBS Mauritius) and Decagon Investments Private Limited, a company incorporated in India. The foreign equity participation in the applicant was to the extent of 75%. The applicant was then provided approval vide FIPB letter dated June 12, 2007, to become the Wholly Owned Subsidiary (WOS) of UBS Mauritius. FIPB, vide clarification letter dated August 21, 2007, approved the capitalization of the applicant to the extent of USD 50 million. UBS became the beneficial owner of all the shares of Decagon on or around July 6 and 27, 2007. On account of foreign holding thus reaching 100%, the applicant required to be capitalized to the extent of USD 50 million. According to Paragraph F.8.2(1)(iii), specifying the minimum capitalization norms, the applicant was required to be capitalized to the extent of USD 7.5 million upfront, i.e., on July 6, 2007, with the balance USD 42.5 million to be brought in within 24 months, i.e., by July 5, 2009. However, the applicant was capitalized only to the extent of USD 5 million on July 6, 2007, with the remaining USD 2.5 million being brought in only on November 7, 2007, with a delay of approximately 4 months beyond the stipulated time period. Similarly, the applicant was capitalized only to the extent of USD 15.9 million on July 5, 2009 and the rest of the amount, to the extent of USD 34.1 million was brought in only on November 13, 2009, again with a delay of approximately 4 months beyond the stipulated time period. The above amounted to a contravention of Paragraph F.8.2(1)(iii) of Annex B of Schedule I of Notification No. FEMA 20/2000-RB.



Further, the applicant submitted the Annual Return on Foreign Liabilities and Assets statement for the years 2007-2010 only on October 14, 2016, thereby contravening Paragraph 9(2) of Schedule I of Notification No. FEMA 20/2000-RB.

3. Paragraph F.8.2(1)(iii) of Annexure B of Schedule I of Notification No. FEMA 20/2000-RB specifies the minimum capitalization norms subject to which foreign investment in NBFC is allowed under the automatic route. It specifies the same as “US \$ 50 million for foreign capital more than 75% out of which US \$ 7.5 million to be brought up front and the balance in 24 months.”

Further, Paragraph 9(2) of Schedule I of the same Notification, as then applicable, stated that, “All Indian companies which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled ‘Annual Return on Foreign Liabilities and Assets’ in the form specified in Annex E to this Schedule.”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11913/15.20.67/2016-17 dated May 30, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on June 02, 2017 during which Shri Aashish Kamat, CEO and Country Head, UBS (India) Private Limited, and Ms. Anukriti Sharma, Chief Representative Officer, UBS (India) Private Limited, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations due to ignorance and requested that a lenient view may be taken in the matter. The application is, therefore, being considered on the basis of the averments made in the application, the documents produced and submissions made during the personal hearing.

5. I have given my careful consideration to the documents on record and submissions made by the applicant during the personal hearing. It was observed that the applicant has contravened the provisions of Regulation



Paragraph F.8.2(1)(iii) of Annex B and Paragraph 9(2) of Schedule I, of 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 May 3, 2000, as amended from time to time. The amount of contravention is Rs. 2,23,92,99,000/- and the period of contravention is as specified in Paragraph 2 above.

6. In terms of section 13 of the FEMA, any person contravening any provision of the Act shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. After considering the submissions made by the applicant and the entire facts and circumstances of the case I am persuaded to take a lenient view on the amount for which the contravention is to be compounded and it stands to reason that payment of an amount of Rs. 1,12,86,495/- (Rupees one crore twelve lakh eighty six thousand four hundred and ninety five only) will meet the ends of justice in the circumstances of this case.

7. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Paragraph F.8.2(1)(iii) of Annex B and Paragraph 9(2) of Schedule I of 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 May 3, 2000 as amended from time to time, on payment of a sum of Rs. 1,12,86,495/- (Rupees one crore twelve lakh eighty six thousand four hundred and ninety five only), which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, 5th Floor, Amar Building, Fort, Mumbai 400001 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 above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 3, 2000 shall apply.



8. The above order is passed only in respect of contraventions of Paragraph F.8.2(1)(iii) of Annex B and Paragraph 9(2) of Schedule I of Notification No. FEMA 20/2000-RB and does not restrict the right of any authority to proceed against the applicant for any other violations/contraventions noticed at any point of time.

The application is disposed accordingly.

Dated this the fourteenth day of June, 2017

Sd/-

(Shekhar Bhatnagar)
Chief General Manager