



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 21, 2017  
CA No 4287 / 2017

In the matter of

**IBM India Private Limited**  
**No. 12, Subramanya Arcade**  
**Bannerghatta Main Road, Bangalore**  
**Karnataka**

**(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 20, 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 (i) delay in filing of form FC-GPR beyond the stipulated time period and (ii) non-compliance with conditions applicable to downstream investments by Indian companies. The above amount to the contravention of Paragraph 9(1)(B) of Schedule 1, and Regulation 14(6)(ii) 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, a resident company, was incorporated as IBM Global Services India Private Limited on June 13, 1997 under the Companies Act, 1956 (CIN: U72200KA1997PTC022382). It changed its name to IBM India Private Limited vide a fresh Certificate of Incorporation on February 14, 2006. The applicant is engaged in the business of designing, developing, importing, procuring, selling, providing, licensing and marketing in India and abroad, information technology services. The applicant delayed in filing Form FC-GPR for certain transactions as follows:

S.No.	Transaction	Date of issue of shares	Value of shares issued (INR)	Date of filing FC-GPR
1	Scheme of amalgamation	24.03.2005	11,14,36,990	06.07.2011
2	Bonus issue to IBM WTC	20.12.2007	1,38,21,55,400	06.07.2011
3	Bonus issue to IBM World Trade Holding LLC	20.12.2007	90	06.07.2011

The allotment of shares under FDI route was not reported in Form FC-GPR within the stipulated time period of 30 days, thus contravening Paragraph 9(1)(B) of Schedule I of Notification No. FEMA 20/2000-RB.

Further, the applicant did-not meet certain conditions specified vide Regulation 14(6)(ii) of Notification No. FEMA 20/2000-RB, as follows:

**Downstream investment by Telelogic, incorporated on November 14, 2000 as a subsidiary of Telelogic AB, Sweden, and which became the subsidiary of the applicant with effect from November 1, 2008, into Indian**



**companies which were engaged only in the activity of investing in other companies, without prior Government/FIPB approval:**

S.No.	Company receiving downstream investment	Date of investment	Amount of investment (INR)
1	IBM BCS	31.03.2011	12,16,37,023

The above was in contravention of Regulation 14(6)(ii)(d)(A) of Notification No. FEMA 20/2000-RB. The post-facto approval for the above investment was provided by FIPB vide their letter No. FC.II 311(97)/271(97) & 36(2016)/36(2016)-Amend, dated October, 26, 2016, subject to compounding.

**Downstream investment into Indian companies which did-not have operations and also did-not have any downstream investments, without prior Government/FIPB approval:**

S.No.	Company receiving downstream investment	Date of investment	Amount of investment (INR)
1	Telelogic (merged with Sterling w.e.f. 29.07.2016) (Investment by Network Solutions)	18.09.2009	3,958
2	Unica (merged with Sterling w.e.f. 16.08.2016)	24.01.2012	6,09,63,049
3	Bigfix (merged with Sterling w.e.f. 30.03.2016)	02.09.2011	14,08,60,000
4	Sterling	21.06.2012	1,47,75,14,850
5	Micromuse (merged with Telelogic vide High Court Order dated April 23, 2010)	19.08.2009	49,355
6	Cognos (merged with Telelogic vide High Court Order dated	19.08.2009	8,96,30,123



	April 23, 2010)		
7	Ascential (merged with Telelogic vide High Court Order dated April 23, 2010)	19.08.2009	1,92,52,666
8	Corio (merged with Telelogic vide High Court Order dated April 23, 2010)	19.08.2009	10,000
9	PSDI (merged with Telelogic vide High Court Order dated April 23, 2010)	19.08.2009	10,000

The above was in contravention of Regulation 14(6)(ii)(d)(C) of Notification No. FEMA 20/2000-RB. The post-facto approval for the above investment was provided by FIPB vide their letter No. FC.II 311(97)/271(97) & 36(2016)/36(2016)-Amend, dated October, 26, 2016, subject to compounding.

**Delay in intimation of downstream investment to SIA/DIPP/FIPB within 30 days of such investments:**

S.No.	Downstream investment made by	Downstream investment made into	Date of investment	Due date of reporting	Actual date of reporting
1	IBM India	Bigfix	02.09.2011	01.10.2011	03.03.2014
2	IBM India	Unica	24.01.2012	22.02.2012	03.03.2014
3	IBM India	Sterling	21.06.2012	20.07.2012	03.03.2014
4	IBM India	Network Solutions	18.09.2009	17.10.2009	03.03.2014
5	IBM India	Telelogic	01.11.2008	30.11.2008	03.03.2014
6	IBM India	Micromuse	01.07.2006	30.07.2006	03.03.2014
7	IBM India	Cognos	12.01.2009	10.02.2009	03.03.2014
8	Telelogic	IBM BCS	31.03.2011	29.04.2011	03.03.2014
9	Telelogic	Micromuse	19.08.2009	17.09.2009	03.03.2014
10	Telelogic	Cognos	19.08.2009	17.09.2009	03.03.2014



11	Telelogic	Ascential	19.08.2009	17.09.2009	03.03.2014
12	Telelogic	Corio	19.08.2009	17.09.2009	03.03.2014
13	Telelogic	PSDI	19.08.2009	17.09.2009	03.03.2014

The above was in contravention of Regulation 14(6)(ii)(a) of Notification No. FEMA 20/2000-RB. The post-facto approval for the above delay was provided by FIPB vide their letter No. FC.II 311(97)/271(97) & 36(2016)/36(2016)-Amend, dated October, 26, 2016, subject to compounding.

3. Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB dated May 03, 2000 as amended from time to time states that “An Indian company issuing shares or convertible debentures in accordance with these Regulations shall submit through AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the Registered office of the company operates, not later than 30 days from the date of issue of shares, a report in the Form FC-GPR as specified by the Reserve Bank from time to time....”.

Further, Regulation 14(6)(ii) of the abovementioned Notification states that, “Downstream investments by Indian companies will be subject to the following conditions:

(a) Such a company has to notify Secretariat for Industrial Assistance, DIPP and FIPB of its downstream investment in the form available at <http://www.fipbindia.com> within 30 days of such investment, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme).....

(d) for the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not used funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market. Downstream investments through internal accruals are permissible by an Indian company, subject to the provisions of clause (i) above and as also elaborated below:



A. Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment.....

C. For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment....”

4. The applicant was given an opportunity for personal hearing vide letter No. FE.CO.CEFA/11231/15.20.67/2016-17 dated May 11, 2017 for further submission in person and/or producing documents, if any, in support of the application. The personal hearing was held on May 16, 2017 during which Shri Ajay Dua, IBM Legal Head, Ms. Subhashree Sridharan, IBM Company Secretary, Ms. Darshana Jain, Director, BSR & Associates, and Ms. Neha Lala, Assistant Manager, BSR & Associates, represented the applicant. The representatives of the applicant submitted that the applicant had inadvertently failed to comply with the FEMA regulations 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. As the applicant is also under enquiry by the Directorate of Enforcement (DoE), this compounding order is issued only in respect of contraventions mentioned in paragraph 2 above and is without prejudice to any action that may be taken by Directorate of Enforcement, or any other authority against the applicant on the issues not covered under this order.

6. The Compounding Application has been submitted by the applicant in its own capacity as also on behalf of the subsidiaries of the applicant, mentioned in this Order. The Compounding Order is thus being issued to the applicant on its own behalf as well as on behalf of all the other subsidiaries of the applicant as mentioned in this Order.



7. 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 Paragraph 9(1)(B) of Schedule I and Regulation 14(6)(ii) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time. The amount of contravention is as follows:

(i) Para 9(1)(B) of Schedule 1 of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,49,35,92,480/- and Period of contravention is 6 years approximately.

(ii) Regulation 14(6)(ii)(d)(A) and Regulation 14(6)(ii)(d)(C) of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 1,90,99,31,024/- and Period of contravention – ranges from 4 years to 7 years approximately.

(iii) Regulation 14(6)(ii)(a) of Notification No.FEMA.20/2000-RB – Amount of contravention – Rs. 47,42,41,479/- and Period of contravention – ranges from 4 year to 7 years approximately.

8. 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. 1,69,57,452/- (Rupees one crore sixty nine lakh fifty seven thousand four hundred and fifty two only) will meet the ends of justice in the circumstances of this case.

9. Accordingly, I compound, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 the admitted contravention committed by the applicant namely, Paragraph 9(1)(B) of Schedule I and Regulation 14(6)(ii) of Notification No.FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, on payment of a sum of Rs. 1,69,57,452/- (Rupees one crore sixty nine lakh fifty seven thousand four hundred and fifty



two 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.

The application is disposed accordingly.

Dated this the twenty first day of June, 2017

**Sd/-**

**(Shekhar Bhatnagar)**  
**Chief General Manager**