

## **Foreign Exchange Management (Transfer Or Issue Of Security By A Person Resident Outside India) Regulations, 2000**

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### **SCHEDULE 1 :- Foreign Direct Investment Scheme**

## **Foreign Exchange Management (Transfer Or Issue Of Security By A Person Resident Outside India) Regulations, 2000**

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 makes the following regulations to prohibit, restrict or regulate, transfer or Issue security by a person resident outside India, namely: -

### **1. Short title and commencement :-**

(1) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

(2) They shall come into effect on the 1st day of June, 2000.

## **2. Definitions :-**

In these Regulations, unless the context requires otherwise, -

(i) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);

(ii) 'Capital' means equity shares, preference shares, convertible preference shares, and convertible debentures;

(iii) 'registered Foreign Institutional Investor (FII)' means the Foreign institutional investor registered with SEBI;

(iv) 'Government approval' means approval from the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion, Government of India or as the case may be, Foreign Investment Promotion Board (FIPB) of the Government of India,

(v) 'Indian company' means a company incorporated in India;

(vi) 'Investment on repatriation basis' means an investment the sale proceeds of which are, net of taxes, eligible to be repatriated out of India, and the expression 'Investment on non-repatriation basis', shall be construed accordingly;

(vii) Joint Venture (JV) and Wholly Owned Subsidiary shall have the meanings respectively assigned to them in the Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000;

(viii) 'Non-resident Indian (NRI)', 'Overseas Corporate Body (OCB)', shall have the meanings respectively assigned to them in the Foreign Exchange Management (Deposit) Regulations, 2000.

(ix) 'SEBI' means the Securities and Exchange Board of India established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(x) 'Secretariat for Industrial Assistance' means Secretariat for Industrial Assistance in the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Govt. of India;

(xi) 'Transferable Development Rights (TDR)' shall have the same meaning as assigned to it in the Regulations made under sub-section (2) of section 6 of the Act;

(xii) The words and expressions used but not defined in these

Regulations shall have the same meanings respectively assigned to them in the Act.

**3. Restriction on Issue or transfer of Security by a person resident outside India :-**

Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall Issue or transfer any security:-

Provided that a security Issued prior to, and held on, the date of commencement of these Regulations, shall be deemed to have been Issued under these Regulations and shall accordingly be governed by these Regulations;

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident outside India to Issue or transfer any security, subject to such conditions as may be considered necessary.

**4. Restriction on an Indian entity to Issue security to a person resident outside India or to record a transfer of security from or to such a person in its books :-**

Save as otherwise provided in the Act or Rules or Regulations made thereunder, an Indian entity shall not Issue any security to a person resident outside India or shall not record in its books any transfer of security from or to such person:-

Provided that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an entity to Issue any security to a person resident outside India or to record in its books transfer of security from or to such person, subject to such conditions as may be considered necessary.

**5. Permission for purchase of shares by certain persons resident outside India :-**

(1) A person resident outside India (other than a citizen of Bangladesh or Pakistan or Sri Lanka) or an entity outside India, whether incorporated or not, (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1.

(2) A registered Foreign Institutional Investor (FII) may purchase shares or convertible debentures of an Indian company under the

Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 2.

(3) A non-resident Indian or an overseas corporate body may purchase shares or convertible debentures of an Indian company -

(i) on a stock Exchange under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3; or/and

(ii) on non-repatriation basis other than under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 4.

(4) A non-resident Indian or an overseas corporate body or a registered FII may purchase securities, other than shares or convertible debentures of an Indian company, subject to the terms and conditions specified in Schedule 5.

#### **6. Acquisition of right shares :-**

(1) A person resident outside India may purchase equity or preference shares or convertible debentures offered on right basis by an Indian company which satisfies the conditions specified in sub-regulation (2).

(2) An Indian company which satisfies the following conditions, may offer to a person resident outside India, equity or preference shares or convertible debentures on right basis, namely:-

(i) The offer on right basis does not result in increase in the percentage of Foreign equity already approved, or permissible under the Foreign Direct Investment Scheme in terms of these Regulations;

(ii) The existing shares or debentures against which shares or debentures are Issued by the company on right basis were acquired and are held by the person resident outside India in accordance with these Regulations;

(iii) The offer on right basis, to the persons resident outside India is at a price which is not lower than that at which the offer is made to resident shareholders;

(3) The right shares or debentures purchased by the person resident outside India shall be subject to same conditions including restrictions in regard to reparability as are applicable to the original shares against which right shares or debentures are Issued:-

Provided that the amount of consideration for purchase of right shares or debentures is paid by way of inward remittance in Foreign Exchange through normal banking channels or by debit to NRE/FCNR account, when the shares or debentures are Issued on repatriation basis:-

Provided further that in respect of the shares or debentures Issued on non-repatriation basis, the amount of consideration may also be paid by debit to NRO/NRSR/NRNR account.

## **7. Issue and acquisition of shares after merger or de-merger or amalgamation of Indian companies :-**

(1) Where a Scheme of merger or amalgamation of two or more Indian companies or a reconstruction by way of de-merger or otherwise of an Indian company, has been approved by a Court in India, the transferee company or, as the case may be, the new company may Issue shares to the shareholders of the transferor company resident outside India, subject to the following conditions, namely:

(a) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the percentage specified in the approval granted by the Central Government or the Reserve Bank, or specified in these Regulations:-

Provided that where the percentage is likely to exceed the percentage specified in the approval or the Regulations, the transferor company or the transferee or new company may, after obtaining an approval from the Central Government, apply to the Reserve Bank for its approval under these Regulations.

(b) the transferor company or the transferee or new company shall not engage in agriculture, plantation or real estate business or trading in TDRs; and

(c) the transferee or the new company files a report within 30 days with the Reserve Bank giving full details of the shares held by persons resident outside India in the transferor and the transferee or the new company, before and after the merger/ amalgamation/ reconstruction, and also furnishes a confirmation that all the terms and conditions stipulated in the scheme approved by the Court have been complied with.

**8. Issue of shares under Employees Stock Options Scheme to persons resident outside India :-**

(1) An Indian company may Issue shares under the Employees' Stock Options Scheme, by whatever name called, to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, directly or through a Trust:-

Provided that

(a) the scheme has been drawn in terms of regulations Issued under the Securities Exchange Board of India Act, 1992; and

(b) face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5% of the paid-up capital of the issuing company.

(2) The issuing company shall furnish to the Reserve Bank, within thirty days from the date of Issue of shares under the scheme, a report giving the following particulars/documents, -

(i) names of persons to whom shares are Issued under the scheme and number of shares Issued to each of them;

(ii) a certificate from the Company Secretary of the issuing company that the value of shares Issued under the scheme does not exceed 5% of the paid up capital of the issuing company and that the shares are Issued in compliance with the regulations Issued by. the SEBI in this behalf.

**9. Transfer of shares and convertible debentures of an Indian company by a person resident outside India :-**

(1) Subject to the provisions of sub-regulation (2), a person resident outside India holding the shares or debentures of an Indian company in accordance with these Regulations, may transfer the shares or debentures so held by him, in compliance with the conditions specified in the relevant Schedule of these regulations.

(2)

(i) A person resident outside India, not being a non-resident Indian or an overseas corporate body, may transfer by way of sale, the shares or convertible debentures held by him to any person resident outside India:-

Provided that the person to whom the shares are being transferred

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.

(ii) A non-resident Indian or an overseas corporate body may transfer by way of sale, the shares or convertible debentures held by him or it to another non-resident Indian or an overseas corporate body only.

(iii) A person resident outside India may transfer any security held by him, to a person resident in India by way of gift.

**10. Prior permission of Reserve Bank in certain cases for transfer of security :-**

A. Transfer by way of gift or sale by a person resident in India A person resident. in India who proposes to transfer to a person resident outside India:-

(a) any security, by way of gift, shall make an application to the Reserve Bank furnishing the following information, namely:

(i) Name and address of the transferor and the proposed transferee

(ii) Relationship between the transferor and the proposed transferee

(iii) Reasons for making the gift.

(b) any share/convertible debenture of an Indian company, by way of sale, shall obtain the Government approval for the transfer and thereafter apply to the Reserve Bank for its approval, which may be granted subject to such conditions as are considered necessary by Reserve Bank, including the price at which such sale may be made.

B. Transfer by way of sale not covered by Regulation 9 by a person resident outside India

(1) Transfer by way of sale not covered by Regulation 9 by a person resident outside India of the shares/convertible debentures held by him to a person resident in India, shall require prior permission of the Reserve Bank, for which application in form TS1 may be made to the Reserve Bank.

(2) While considering the grant of permission, the Reserve Bank

shall take into account the following factors, namely:

(a) where the shares of an Indian company are traded on stock Exchange,

(i) the sale is at the prevailing market price on stock Exchange and is effected through a merchant banker registered with Securities and Exchange Board of India or through a stock broker registered with the stock Exchange;

(ii) if the transfer is other than that referred to in clause (i), the Reserve Bank will satisfy itself that the shares are proposed to be sold at a price arrived at by taking the average quotations (average of daily high and low) for one week preceding the date of application with 5 percent variation. Where, however, the shares are being sold by the Foreign collaborator or the Foreign promoter of the Indian company to the existing promoters in India with the objective of passing Management-control in favour of the resident promoters the proposal for sale will be considered at a price which may be higher by upto a ceiling of 25 percent over the price arrived at as above,

(b) where the shares of an Indian company are not listed on stock Exchange or are thinly traded,

(i) if the consideration payable for the transfer does not exceed Rs. 20 lakh per seller per company, at a price mutually agreed to between the seller and the buyer, based on any valuation methodology currently in vogue, on submission of a certificate from the statutory auditors of the Indian company whose shares are proposed to be transferred, regarding the valuation of the shares, and

(ii) if the amount of consideration payable for the transfer exceeds Rs. 20 lakh per seller per company, at a price arrived at, at the seller's option, in any of the following manner, namely:

(A) a price based on earning per share (EPS) linked to the Price Earning (P/E) multiple, or a price based on the Net Asset Value (NAV) linked to book value multiple, whichever is higher, or

(B) the prevailing market price in small lots as may be laid down by the Reserve Bank so that the entire shareholding is sold in not less than five trading days through screen based trading system

(c) where the shares are not listed on any stock Exchange, at a



price which is lower of the two independent valuations of share, one by statutory auditors of the company and the other by a Chartered Accountant or by a Merchant Banker in Category 1 registered with Securities and Exchange Board of India.

Explanation:

(i) A share is considered as thinly traded if the annualised trading turnover in that share, on main stock Exchanges in India, during the six calendar months preceding the month in which application is made, is less than 2 percent (by number of shares) of the listed stock.

(ii) For the purpose of arriving at Net Asset Value per share, the miscellaneous expenses carried forward, accumulated losses, total outside liabilities, revaluation reserves and capital reserves (except subsidy received in cash) shall be reduced from value of the total assets and the net figure so arrived at shall be divided by the number of equity shares Issued and paid up. Alternatively, intangible assets shall be reduced from the equity capital and reserves (excluding revaluation reserves) and the figure so arrived at shall be divided by the number of equity shares Issued and paid up. The NAV so calculated shall be used in conjunction with the average BV multiple of Bombay Stock Exchange National Index during the calendar month immediately preceding the month in which application is made and BV multiple shall be discounted by 40 per cent.

(iii) For computing the price based on Earning Per Share, the earning per share as per the latest balance sheet of the company shall be used in conjunction with the average Price Earning Multiple of Bombay Stock Exchange National Index for the calendar month preceding the month in which application is made and Price Earning shall be discounted by 40 per cent.

### **11. Remittance of sale Proceeds :-**

(1) No remittance of sale proceeds of an Indian security held by a person resident outside India shall be made otherwise than in accordance with these Regulations and the conditions specified in the relevant Schedule.

(2) An authorised dealer may allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India:-

Provided -

- (a) the security was held by the seller on repatriation basis;
- (b) either the security has been sold on a recognised stock Exchange in India through a stock broker at the ruling market price as determined on the floor of the Exchange, or the Reserve Bank's approval has been obtained in other cases for sale of the security and remittance of the sale proceeds thereof, and
- (c) a no objection/tax clearance certificate from the Income Tax authority has been produced.

SCHEDULE 1

Foreign Direct Investment Scheme

Schedule 1

Foreign Direct Investment Scheme

[See Regulation (5) (1)]

1. Purchase by a person resident outside India of equity/ preference/ convertible preference shares and convertible debentures Issued by an Indian company

(1) A person resident outside India

referred to in sub-regulation (1) of

Regulation 5, may purchase shares or convertible

debentures Issued by an Indian company up to the extent and subject to the terms and conditions set. out in this schedule.

(2) If the person

purchasing the shares

under this Scheme proposes to be collaborator or proposes to acquire the entire share holding of a new Indian company, he should obtain a prior permission of Central Government if he has a 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  
issuing the shares is  
engaged.

2. Automatic Route of  
Reserve Bank for  
Issue of shares by an  
Indian company

(1) An Indian company  
which is not engaged

in any activity, or  
in manufacturing of  
item included in  
Annexure 'A' to this  
Schedule, may Issue  
shares or convertible  
debentures to a  
person resident  
outside India,  
referred to in  
paragraph 1 upto the extent specified in

Annexure B, subject to compliance with the provisions of the Industrial Policy and Procedures as notified by Secretariat for Industrial Assistance (SIA) in the Ministry of Commerce and Industry, Govt. of India, from time to time.

Provided that:

( i) the activity of the Issuer company does not require an industrial licence

under the provisions of the Industries (Development & Regulation) Act, 1951 or under the locational policy notified by Government of India under the Industrial Policy of 1991 as amended from time to time.

( i i ) the shares or convertible debentures are not being Issued by the Indian company with a view to acquiring existing shares of any Indian company.

Explanation:

A company which proposes to embark on expansion programme to undertake activities or

manufacture items included in Annexure B to this schedule may Issue shares or debentures out of fresh capital proposed to be Issued by it for the purpose of financing expansion programme, upto the extent indicated in Annexure B, subject to compliance with the provisions of this paragraph.

(2) A trading company incorporated in India may Issue shares or convertible debentures to the extent of 5 1 per cent of its capital,

to persons resident  
outside India  
referred to paragraph  
1, subject to the  
condition that  
remittance of  
dividend to the  
shareholders outside  
India is made only  
after the company has  
secured registration  
as an  
Export/Trading/Star  
Trading /Super  
Trading House from  
the Directorate

General of Foreign  
Trade, Ministry of  
Commerce, Government  
of India, New Delhi.

(3) A company which  
is a small scale  
industrial unit and  
which is not engaged  
in any activity or in  
manufacture of items  
included in Annexure  
A, may Issue shares  
or convertible  
debentures to a



person referred to in paragraph 1, to the extent of 24% of its paid-up capital;

Provided that such a company may Issue shares in excess of 24% of its paid up capital if

(a) it has given up its small scale status;

(b) it is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, and

(c) it complies with the ceilings specified in Annexure B.

(4) Notwithstanding anything contained in

clause (3) an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park may Issue shares or convertible debentures to a person resident outside India referred to in paragraph 1 in excess

of 24 per cent provided it complies with the ceilings specified in Annexure B.

3. Issue of shares by a company requiring the Government approval

A company which is engaged or proposes to engage in any activity specified in Annexure 'A' or which

proposes to Issue  
shares to a person  
resident outside  
India beyond the sectoral limits

stipulated in Annexure 'B' or which is otherwise not eligible to Issue shares to a person resident outside India, may Issue shares to a person resident outside India referred to in paragraph 1, provided it has secured prior approval of Secretariat for Industrial Assistance or, as the case may be of the Foreign Investment Promotion Board of the Government of India and the terms and conditions of such an approval are complied with.

4. Issue of Shares by  
International  
offering through ADR  
and/or GDR

(1) An Indian company  
may Issue its Rupee  
denominated shares to  
a person resident

outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs),

Provided the Indian company issuing such shares

(a) has an approval from the Ministry of Finance, Government of India to Issue

such ADRs and/or GDRs or is eligible to Issue ADRs/ GDRs in terms of the relevant scheme in force or notification Issued by the Ministry of Finance, and

(b) is not otherwise ineligible to Issue shares to persons resident outside India in terms of these Regulations, and

(c) the ADRs/GDRs are Issued in accordance with the

Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines Issued by the Central Government thereunder from time to time.

(2) The Indian company issuing shares under subparagraph (1), shall furnish to the Reserve Bank, full details of such Issue in the form specified in Annexure 'C', within 30 days from the date of closing of the Issue.

(3) The Indian

company issuing

shares against ADRs/GDRs shall

furnish a quarterly return in the form specified in Annexure 'D' to Reserve Bank within fifteen days of the close of the calendar quarter.

(4) Pending

repatriation or utilisation of

Foreign Exchange resources raised in terms of clause (1) the Indian company may invest the Foreign currency funds in -

(a) deposits with or

Certificate of

Deposits or other

instruments of banks

who have been rated

not less than A1+ by

Standard and Poor or

P1 by Moody's for

short term

obligations,

(b) deposits with branch outside India of an authorised dealer in India, and

(c) treasury bills and other monetary instruments with a maturity or un-expired maturity of the instrument of one year or less.

## 5. Issue price

Price of shares

Issued to persons

resident outside

India under this

Schedule, shall not be less than

(a) the price worked out in accordance

with the SEBI

guidelines, where the



issuing company is  
listed on any recognised stock Exchange  
in India, and

(b) fair valuation of shares done by a chartered accountant as per the  
guidelines Issued by the erstwhile Controller of Capital Issues, in all other cases.

## 6. Dividend Balancing

Where a company is  
engaged in any of the  
industries in the  
consumer goods  
sector, specified in  
Annexure E, or in any  
other activity where  
the condition of  
dividend balancing

has been stipulated in terms of the provisions of Industrial Policy and Procedures notified by Secretariat for Industrial Assistance, the cumulative outflow of Foreign Exchange on account of payment of dividend over a period of seven years from the date of commencement of commercial production

to investors outside India shall not exceed cumulative amount of export earning of the company during those years.

Provided that

(a) the restriction under this paragraph shall not apply

( i) in respect of shares held in such a company by International Finance

Corporation (IFC), the Deutsche Entwicklungs Gesellschaft (DEG), the Commonwealth Development Corporation (CDC) and Asian Development Bank (ADB).

( i i ) to a company that has completed a period of seven years

from the date of commencement of commercial production,

(b) in case of an existing company that has Issued fresh equity to

persons resident outside India under these Regulations, the restriction shall apply to the fresh shares from the date of their Issue.

## 7. Rate of Dividend on Preference Shares

The rate of dividend on preference shares or convertible preference shares Issued under these Regulations shall not exceed 300 basis points over the Prime Lending Rate of State Bank of India prevailing as on the date of the Board meeting of the

company in which  
Issue of such shares  
is recommended.

8. Mode of payment  
for shares Issued to  
persons resident  
outside India

A company in India  
issuing shares or  
convertible  
debentures under this  
Schedule to a person  
resident outside  
India shall receive

the amount of  
consideration for  
such shares -

( i) by inward remittance through normal banking channels, or

( i i ) by debit to NRE/FCNR account of the person concerned  
maintained with an authorised dealer/authorised bank.

9. Report by the  
Indian company

(1) An Indian company  
issuing shares or  
convertible  
debentures in  
accordance with these  
Regulations shall

submit to Reserve  
Bank,

(A) not later than 30 days from the date of receipt of the amount of  
consideration, a report indicating:

( i) Name and address of the Foreign investors

(ii) Date of receipt  
of funds and their  
rupee equivalent

(iii) Name and  
address of the authorised dealer  
through whom the funds have been received, and

(iv) Details of the  
Government approval,  
if any.

(B) not later than 30  
days from the date of

Issue of shares, a report in form FC-GPR together with,

( i) a certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that

( a ) all the requirements of the Companies Act, 1956 have been complied with;

( b ) terms and conditions of the Government approval, if any, have been complied with;

( c ) the company is eligible to Issue shares under these Regulations; and

( d ) the company has all original certificates Issued by authorised dealers in India evidencing receipt of amount of consideration in accordance with paragraph 9;

( i i ) a certificate from Statutory Auditors or Chartered Accountant indicating the manner of arriving at the price of the shares Issued to the persons resident outside India.

10. Permission for retaining share



subscription money

received from persons resident outside

India in a Foreign currency account

Reserve Bank may, on

an application made

to it and on being

satisfied that it is

necessary so to do,

permit an Indian

company issuing

shares to persons resident outside India under this

Schedule, to retain the subscription amount in a Foreign currency account, subject to such terms and conditions as it may stipulate.