

RBI/2010-11/586 A. P. (DIR Series) Circular No.74

June 30, 2011

Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI Scheme allowed under the Government route

Attention of Authorised Dealers Category - I (AD Category - I) banks is invited to the 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.

2. In terms of the Schedule 1 of the Notification, *ibid*, an Indian company may, under the automatic route, issue equity shares/ preference shares to a person resident outside India, being a provider of technology / technical know-how and against royalty / lumpsum fees due for payment subject to certain conditions like entry route, sectoral cap, pricing guidelines and compliance with the applicable tax laws.

3. The extant guidelines for issue of equity shares/ preference shares under the Government route have been reviewed in consultation with the Government of India and, accordingly, it has been decided to permit issue of equity shares / preference shares under the Government route of the FDI scheme for the following categories of transactions:

(I) Import of capital goods/ machineries / equipments (including second-hand machineries), subject to compliance with the following conditions:

The import of capital goods, machineries, etc., made by a resident in India, is in accordance with the Export / Import Policy issued by the Government of India as notified by the Directorate General of Foreign Trade (DGFT) and the regulations issued under the Foreign Exchange Management Act (FEMA), 1999 relating to imports issued by the Reserve Bank;

There is an independent valuation of the capital goods / machineries / equipments (including second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents /certificates issued by the customs authorities towards assessment of the fair-value of such imports;

The application should clearly indicate the beneficial ownership and identity of the importer company as well as the overseas entity; and

All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.

(II) Pre-operative/pre-incorporation expenses (including payments of rent, etc.) subject to compliance with the following conditions:

Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred;

Verification and certification of the pre-incorporation/ pre-operative expenses by the statutory auditor;

Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and

The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

4.(i) All requests for conversion should be accompanied by a special resolution of the company.

(ii) Government's approval would be subject to pricing guidelines of the Reserve Bank and appropriate tax clearance.

5. These directions have been issued with reference to the relevant paras of the Consolidated FDI Policy Circular 1 of 2011 dated March 31, 2011, issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India.

6. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

7. Necessary amendments to the 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 will be issued separately.

8. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

(Meena Hemchandra)
Chief General Manager-in-Charge