

**RESERVE BANK OF INDIA
EXCHANGE CONTROL DEPARTMENT
CENTRAL OFFICE
MUMBAI 400 001**

November 1 , 1999

A.D.(M.A.Series) Circular No.32

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Amendments to Exchange Control Manual (ECM)

It has been decided to amend/modify the Exchange Control regulations as stated in the following paragraphs.

**1. Investment in Non-Convertible Debentures by
NRIs/OCBs on non-repatriation/repatriation basis**

In terms of paragraph 10C.7(ii) and 10C.15 of ECM, proposals for investment in non-convertible debentures of Indian companies by Non-Resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) on non-repatriation/repatriation basis are considered by Reserve Bank on a case to case basis.

With a view to further simplifying the procedure for NRI/OCB investment in India, Reserve Bank has, by issue of a Notification (copy enclosed) granted general permission to Indian companies for issuing non-convertible debentures to such investors on non-repatriation/repatriation basis. Accordingly, it will be in order for Indian companies to issue, by way of public issue, non-convertible debentures on non-repatriation/repatriation basis to NRIs/OCBs without prior permission of Reserve Bank, subject to the conditions mentioned in the Notification.

**2. Portfolio investment in shares/debentures of Indian
companies by non-resident Indians/Overseas Corporate
Bodies through designated branches of authorised dealers**

In terms of paragraph 10C.21(iv) and (v) of ECM, Non-Resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) intending to make portfolio investment in shares and debentures of Indian companies on non-repatriation/repatriation basis are required to apply to Reserve Bank in form NRI/NRC or RPI/RPC, as applicable, through a designated branch of an authorised dealer. The Reserve Bank grants permission to the designated branch to purchase such shares/debentures/Government Securities (other than bearer securities) and Treasury Bills on behalf of the NRI/OCB subject to certain conditions. It has now been decided that all **portfolio investments** made by NRIs and/or

OCBs on non-repatriation/repatriation basis in shares/debentures of Indian companies and other securities through **designated branches** of authorised dealers will not require specific permission from Reserve Bank. Such NRIs/OCBs who make portfolio investment in shares/debentures etc. through a designated branch of an authorised dealer will have Reserve Bank's permission under Section 29(1)(b) of Foreign Exchange Regulation Act, 1973 to acquire such shares/debentures etc. Accordingly, NRIs/OCBs desirous of making portfolio investment in shares/debentures of Indian companies and other securities on non-repatriation/repatriation basis may apply in form NRI/NRC or RPI/RPC, as applicable, to designated branch of an authorised dealer.

**3. Loans in India to Non-residents
against shares/securities/properties
held by them in India**

In terms of paragraph 10D.2(i) of ECM, prior approval of Reserve Bank is required for grant of loans/overdrafts in India to non-residents against the security of shares/securities/immovable property held by them in India. It has now been decided that authorised dealers may grant loans and advances to Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) against the security of shares/debentures/immovable property held by them in India, according to their commercial judgement and subject to the conditions mentioned in the said paragraph.

**4. Foreign Currency (Non-Resident) Accounts
(Banks) Scheme [FCNR(B)]**

In terms of paragraph 14B.1(b) of ECM, authorised dealers have been permitted to open FCNR(B) accounts in the form of term deposit for four maturity periods which includes maturity of six months and above but less than one year. It has now been decided that the minimum maturity for FCNR(B) deposits be raised to one year. Accordingly, FCNR(B) deposits may be accepted by authorised dealers for three maturity periods viz. one year and above but less than two years, two years and above but less than 3 years and three years only.

5. The following consequential amendments may be carried out in Exchange Control Manual.

Volume I

- i) The existing paragraph 10C.7(ii) may be substituted by Slip 1.
- ii) The existing paragraph 10C.15 may be substituted by Slip 2.
- iii) Slips incorporating changes in paragraph 10C.21 are being issued separately.

- iv) The existing paragraph 10D.2(i) may be replaced by Slip 3.
- v) The existing paragraph 14B.1(b) may be substituted by Slip 4.

Volume II

- vi) A new notification No.F.E.R.A.213/99-RB dated 1st November 1999 may be added under Section 19 as per Slip 5.
- vii) Formats of revised form NRI, NRC, RPI and RPC are being issued separately

6. Authorised dealers may bring the contents of this circular to the notice of their constituents concerned.

7. The directions contained in this circular have been issued under Section 73(3) of the Foreign Exchange Regulation Act, 1973 (46 of 1973) and any contravention or non-observance thereof is subject to the penalties prescribed under the Act.

Yours faithfully,

B. MAHESHWARAN

Chief General Manager

Investment in New Issues of Shares/Debentures of Indian Companies

10C.7 (ii) Reserve Bank of India vide its Notification No.F.E.R.A.213/99-RB dated 1st November 1999, has granted general permission to Indian companies to issue, by way of public issue, non-convertible debentures (NCDs) to NRIs/PIOs/OCBs on non-repatriation basis subject to the following conditions:

- i) The amount of subscription should be received by inward remittance from abroad through normal banking channels or by debit to the non-resident's NRE/FCNR/NRO/NRSR account, as the case may be, with an authorised dealer in India. The principal amount representing the investment is not repatriable. If the investment is made out of funds held in NRSR account, the principal as well as interest earned are not repatriable.
- ii) The rate of interest on such NCDs shall not exceed prime lending rate of State Bank of India, plus 300 basis points.
- iii) The minimum period for redemption of such NCDs should be three years.
- iv) The company raising funds through NCDs should not be engaged in agricultural/plantation activity, real estate business, trading in transferable development rights (TDRs) or act as Nidhi/Chit Fund company.
- v) The issuer company files with the Regional Office of Reserve Bank, not later than thirty days from the date of receipt of remittance, a report containing the following:-
 - (a) A list containing names of NRIs/OCBs.
 - (b) Country of residence or incorporation of the non-resident investor;
 - (c) Amount and date of receipt of remittance and its rupee equivalent;
 - (d) Name and address of the authorised dealer in India through whom the remittance is received.
- vi) The issuer company files with Regional Office of Reserve Bank, not later than thirty days from the date of issue of NCDs, the following:-
 - (a) A list containing names of NRIs/OCBs and the number and face value of NCDs issued to each of them on non-repatriation basis.
 - (b) Certified true copy of resolution passed in the meeting of the Board of Directors of the company, indicating the quantum and value of NCDs issued to NRIs/OCBs and residents and other details of the issue such as coupon rate, date of redemption, etc.
 - (c) Original Foreign Inward Remittance Certificate (FIRC)/Bank Certificate evidencing receipt of funds, from abroad or from the NRE/FCNR/NRO/NRSR accounts as the case may be, of the NRI/PIO/OCB.
 - (d) Memorandum and Articles of Association of the issuer company.
 - (e) Certificate in Form OAC/OAC1 indicating the NRI shareholding to the extent of atleast 60% either directly or indirectly in case of investment by OCB.

- (f) Any information sought by the Reserve Bank with reference to the issue of NCDs within such time as may be stipulated.
 - (g) An undertaking that the issuer company is not and shall not be engaged in agricultural/plantation activity, real estate business, trading in TDRs or act as Nidhi/Chit Fund company.
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Investment in non-convertible Debentures of Indian Companies

10C.15 Reserve Bank of India vide its Notification No.F.E.R.A.213/99-RB dated 1st November 1999, has granted general permission to Indian companies to issue, by way of public issue, non-convertible debentures (NCDs) to NRIs/PIOs/OCBs on repatriation basis subject to the following conditions:

- i) The amount of subscription should be received by inward remittance from abroad through normal banking channels or by debit to the non-resident's NRE/FCNR account, as the case may be, with an authorised dealer in India. Further, the percentage of such NCDs issued to NRIs/OCBs to the total paid-up value of each series of NCDs issued should not exceed the ceiling applicable for issue of equity shares/convertible debentures as prescribed by the Reserve Bank from time to time, under the respective schemes viz. 24%/ 51%/100% etc. for investment by NRIs/OCBs **on repatriation basis** in the capital of the issuer company.
- ii) The rate of interest on such NCDs shall not exceed prime lending rate of State Bank of India, plus 300 basis points.
- iii) The minimum period for redemption of such NCDs should be three years.
- iv) The company raising funds through NCDs should not be engaged in agricultural/plantation activity, real estate business, trading in transferable development rights (TDRs) or act as Nidhi/Chit Fund company.
- v) The issuer company files with the Regional Office of Reserve Bank, not later than thirty days from the date of receipt of remittance, a report containing the following:-
 - (a) A list containing names of NRIs/OCBs.
 - (b) Country of residence or incorporation of the non-resident investor;
 - (c) Amount and date of receipt of remittance and its rupee equivalent;
 - (d) Name and address of the authorised dealer in India through whom the remittance is received.
- vi) The issuer company files with Regional Office of Reserve Bank, not later than thirty days from the date of issue of NCDs, the following:-
 - (a) A list containing names of NRIs/OCBs and the number and face value of NCDs issued to each of them on repatriation basis.
 - (b) Certified true copy of resolution passed in the meeting of the Board of Directors of the company, indicating the quantum and value of NCDs issued to NRIs/OCBs and residents and other details of the issue such as coupon rate, date of redemption, etc.
 - (c) Original Foreign Inward Remittance Certificate (FIRC)/Bank Certificate evidencing receipt of funds, from abroad or from the NRE/FCNR accounts as the case may be, of the NRI/PIO/OCB.
 - (d) Memorandum and Articles of Association of the issuer company.

- (e) Certificate in Form OAC/OAC1 indicating the NRI shareholding to the extent of atleast 60% either directly or indirectly in case of investment by OCB.
 - (f) Any information sought by the Reserve Bank with reference to the issue of NCDs within such time as may be stipulated.
 - (g) An undertaking that the issuer company is not and shall not be engaged in agricultural/plantation activity, real estate business, trading in TDRs or act as Nidhi/Chit Fund company.
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**Loans in India to Non-residents against
Shares/Securities/Properties held by them in India**

10D.2 (i) Authorised dealers may grant loans and overdrafts to Non-resident persons of Indian nationality/origin against the security of shares/debentures and immovable property held by them in India, according to their commercial judgement provided:

- (a) Shares/Securities are held in the name of the concerned NRI with the general or special permission of Reserve Bank. In the case of loans against security of immovable properties (other than agricultural/plantation property or farm house) to persons of Indian origin holding foreign passport, the properties have been acquired with the general or special permission of Reserve Bank.
- (b) The loan is utilised for meeting the borrower's personal requirements and/or for his own business purposes and not for (i) re-lending or investment in shares/securities/immovable property, or (ii) investment in agricultural/plantation activities or farm house and in real estate business (i.e. dealing in land and other immovable property for commercial purposes either singly or in association with others).
- (c) The quantum of loan, margin, interest etc., are in accordance with the guidelines issued by Department of Banking Operations and Development regarding advances against shares/securities/immovable properties.
- (d) The loan amount is retained in India and not remitted abroad. The loan amount should not be credited to NRE/FCNR/NRNR account of the non-resident.
- (e) The repayment of the loan is made by way of remittances from abroad through normal banking channel or by debit to the NRO/NRSR/NRE/FCNR account of the borrower or out of the sale proceeds of the shares/securities/immovable property against which such loan was granted.

Regulations governing grant of loans/overdrafts against balances held in NRO//NRSR/NRE/FCNR accounts have been laid down in Chapter 13 and 14.

14B.1

(b) FCNR(B) accounts are permitted to be opened only in the form of term deposits. The deposits may be accepted for three maturities viz. one year and above but less than 2 years, two years and above but less than 3 years and three years only.

Notification No. F.E.R.A.213 /99-RB dated 1st November 1999

Investment in Non-Convertible Debentures(NCDs).

In pursuance of clause (a) and clause(d) of sub-section (1) of Section 19 read with clause (b) of sub-section (1) of Section 29 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Reserve Bank is pleased to permit a company incorporated in India to issue, by way of public issue, Non-Convertible Debentures (NCDs) to non-residents of Indian nationality or origin(NRIs) or Overseas Corporate Bodies(OCBs), on repatriation basis as well as on non-repatriation basis, and to send such NCDs out of India to their place of residence or location , as the case may be.

2. The General permission granted herein to issue NCDs is subject to the following conditions:-

- i) The payment for the NCDs issued to NRIs/OCBs **on repatriation basis** should be received by remittance from abroad through normal banking channels or by transfer of funds held in the investor's NRE/FCNR accounts maintained with an authorised dealer in India. Further, the percentage of such NCDs issued to NRIs/OCBs to the total paid-up value of each series of NCDs issued should not exceed the ceiling applicable for issue of equity shares/convertible debentures as prescribed by the Reserve Bank from time to time, under the respective schemes viz. 24%/ 51%/100% etc. for investment by NRIs/OCBs **on repatriation basis** in the capital of the issuer company.
- ii) The payment for the NCDs issued to NRIs/OCBs **on non-repatriation basis** should be received by remittance from abroad through normal banking channels or by transfer of funds held in the investor's NRE/FCNR/NRO/NRSR accounts maintained with an authorised dealer in India. In such cases the amount of capital invested will not be allowed to be repatriated outside India. If the investment in NCDs is made out of funds held in NRSR accounts, the interest on such NCDs will **also not** be repatriable outside India.
- iii) The rate of interest on such NCDs shall not exceed SBI prime lending rate plus 300 basis points as on the date of resolution in the company's General Body Meeting approving the issue.
- iv) The minimum period for redemption of such NCDs should be three years.
- v) The company raising funds through NCDs should not carry on agricultural/plantation/real estate business/Trading in Transferable Development Rights (TDRs) or should not act as Nidhi/ Chit Fund company.
- vi) The issuer company files with the Regional Office of Reserve Bank, not later than 30 days from the date of receipt of remittance, a report containing the following:-
 - (a) Name of the non-resident investor;
 - (b) Country of residence or incorporation of the non-resident investor;
 - (c) Date of receipt of remittance and its rupee equivalent;
 - (d) Name and address of the authorised dealer in India through whom the remittance is received.

- vii) The issuer company files with Regional Office of Reserve Bank, not later than thirty days from the date of issue of NCDs, the following:
- (a) A list containing names of NRIs/OCBs and the number and face value of NCDs issued to each of them on repatriation /non-repatriation basis.
 - (b) Certified true copy of resolution passed in the meeting of the Board of Directors of the company, indicating the quantum and value of NCDs issued to NRIs/OCBs and residents and other details of the issue such as coupon rate and redemption date.
 - (c) Original Foreign Inward Remittance Certificate(FIRC)/Bank Certificate evidencing receipt of funds, from abroad or from the NRE/FCNR/NRO/NRSR account, as the case may be, of the NRI/OCB.
 - (d) Memorandum and Articles of Association of the issuer company.
 - (e) In the case of investment by OCBs, a certificate in Form OAC/OAC1 showing that it is an OCB within the meaning of Explanation II of this Notification.
 - (f) An undertaking that the issuer company is not and shall not be engaged in any of the prohibited activities specified in condition 2(v) above.
 - (g) Any other information sought by the Reserve Bank with reference to the issue of NCDs within such time as may be stipulated.

Explanation:-

1. A person (not being a citizen of Pakistan or Bangladesh or Sri Lanka) shall be deemed to be of “Indian Origin”, if:-

- i) he, at any time, held Indian passport;
- or
- ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955)
- or
- iii) that person is the spouse of an Indian citizen or of a person of Indian origin(not being a citizen of Pakistan or Bangladesh or Sri Lanka)

II. “Overseas Corporate Body” means any overseas company, partnership firm, society and other corporate body predominantly owned directly or indirectly to the extent of atleast sixty percent by NRIs and includes overseas trust in which not less than sixty percent beneficial interest is irrevocably held by NRIs, either directly or indirectly.

III. “ Transferable Development Rights” (TDRs) are certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.”
