

RBI/2014-15/123
A.P.(DIR Series) Circular No.3

July 14, 2014

To,

All Category – I Authorised Dealer Banks

Madam/Sir,

Issue of Partly Paid Shares and Warrants by Indian Company to Foreign Investors

Attention of Authorized 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 (principal Regulations) notified by the Reserve Bank of India vide [Notification No.FEMA.20/2000-RB dated 3rd May 2000](#), in terms of which only equity shares and compulsorily and mandatorily convertible preference shares/debentures are recognised as Foreign Direct Investment (FDI) compliant instruments. Further, equity shares or compulsorily and mandatorily convertible preference shares/debentures containing an optionality clause but without any option/ right to exit at an assured price have also been recognised as FDI compliant instruments.

2. A review of the policy as regards partly paid shares and warrants has been undertaken and it has been decided as under:

(i) Eligible instruments and investors

Partly paid equity shares and warrants issued by an Indian company in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines, as applicable, shall be eligible instruments for the purpose of FDI and foreign portfolio investment (FPI) by Foreign Institutional Investors (FIIs)/Registered Foreign Portfolio Investors(RFPs) subject to compliance with FDI and FPI schemes.

(ii) Pricing and receipt of balance consideration

(a) Partly paid equity shares

The pricing of the partly paid equity shares shall be determined upfront and 25% of the total consideration amount (including share premium, if any), shall also be received upfront; The balance consideration towards fully paid equity shares shall be received within a period of 12 months.

The time period for receipt of the balance consideration within 12 months shall not be insisted upon where the issue size exceeds rupees five hundred crore and the issuer complies with Regulation 17 of the SEBI (Issue of Capital and Disclosure Requirements(ICDR)) Regulations regarding monitoring agency. Similarly, in case of an unlisted Indian company, the balance consideration amount can be received after 12

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months where the issue size exceeds rupees five hundred crores. However, the investee company shall appoint a monitoring agency on the same lines as required in case of a listed Indian company under the SEBI (ICDR) Regulations. Such monitoring agency (AD Category -1 bank) shall report to the investee company as prescribed by the SEBI regulations, *ibid*, for the listed companies.

(b) Warrants

The pricing of the warrants and price/ conversion formula shall be determined upfront and 25% of the consideration amount shall also be received upfront. The balance consideration towards fully paid up equity shares shall be received within a period of 18 months;

The price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such warrants, in accordance with the extant FEMA Regulations and pricing guidelines stipulated by RBI from time to time. Thus, Investee company shall be free to receive consideration more than the pre-agreed price.

(iii) Reporting

(a) Partly paid equity shares

The reporting of receipt of foreign inward remittance towards each upfront /call payment for FDI transaction shall be made in Advance Reporting Form (format enclosed) along with copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on non-resident investor and details of the Government approval, if any. The reporting of issue or transfer of partly paid shares shall be made in form FC-GPR and form FC-TRS respectively, to the extent the equity shares are called up. The reporting of purchase/sale of partly paid shares by FIIs/RFPs in form LEC by the designated branch of authorised dealer bank should be in accordance with FEMA regulations.

(b) Warrants

The identity of non-resident investor shall be disclosed for the purpose of compliance with KYC norms at the time of issuance of warrants.

The reporting of receipt of foreign inward remittance towards each upfront /call payment for FDI transaction shall be made in Advance Reporting form ([format enclosed](#)) along with a copy/ies of Foreign Inward Remittance Certificate/s (FIRC), Know Your Customer (KYC) report on non-resident investor and details of the Government approval, if any. The reporting of issue or transfer of warrants in form FC-GPR and form FC-TRS respectively, under the head 'others', shall reflect the extent up to which the amount in respect of equity shares has been called up by the company. The reporting of purchase/sale of warrants by FIIs/RFPs in form LEC under the head 'others' with suitable details by the designated branch of authorised dealer bank of FIIs/RFPs, should be in accordance with FEMA regulations.

(iv) Compliance

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The onus of compliance of all the conditions under FEMA as regards entry route, sectoral caps and all other conditions under FDI guidelines shall be on the Investee company in case of issue of partly paid shares /warrants as well as upon resident transferor or transferee in accordance with extant guidelines in case of transfer of partly-paid shares/warrants . The onus of giving notice required under the provisions of the Companies Act, 2013 for transfer of partly-paid shares shall also be on the Investee company. The onus of compliance with individual limit below 10% (ten per cent) of the total paid-up equity capital shall be on each FII/RFPI. Further, the aggregate investments of all FIIs/RFPIs put together shall not exceed the applicable aggregate limit for each issue of partly paid shares.

Other conditions

3. The following other conditions shall also be adhered to:

(a) The Indian company whose activity/ sector falls under government route would require prior approval of the Foreign Investment Promotion Board (FIPB), Government of India for issue of partly-paid shares/warrants.

(b)The forfeiture of the amount paid upfront on non-payment of call money shall be in accordance with the provisions of the Companies Act, 2013 and Income tax provisions, as applicable;

(c) The company while issuing partly paid shares or warrants shall ensure that the sectoral caps are not breached even after the shares get fully paid-up or warrants get converted into fully paid equity shares. Similarly, the Non-resident investors acquiring partly paid shares or convertible debentures or warrants shall ensure that the sectoral caps are not breached even after the shares get fully paid-up or warrants get converted into fully paid equity shares.

(d) The deferment of payment of consideration amount or shortfall in receipt of consideration amount as per applicable pricing guidelines by the foreign investors will not be covered under these guidelines so as to be treated as subscription to partly paid shares and warrants. Thus, the Investee company under these guidelines for issue/transfer of partly-paid shares/warrants, shall require to comply with the requirements under the Companies Act, 2013 for issuance of partly paid shares and warrants;

4. Non-Resident Indians (NRIs) shall also be eligible to invest on non-repatriation basis in partly-paid shares and warrants issued by Indian companies in accordance with the provisions of the Companies Act/ SEBI guidelines / Income tax provisions, as applicable. Investments by NRIs in partly-paid shares and warrants on non-repatriation basis shall also be subject to terms and conditions stipulated in Schedule 4 to [Notification No. FEMA. 20/2000-RB dated 3rd May 2000](#), as amended from time to time.

5. Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Ninth Amendment) Regulations, 2014 notified vide [Notification No. FEMA. 308 /2014-RB dated June 30, 2014](#) c.f. G.S.R. No. 436(E) dated July 8, 2014.

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6. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.

7. 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,

(B.P. Kanungo)
Principal Chief General Manager

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