



RESERVE BANK OF INDIA
Foreign Exchange Department
Central Office
Mumbai - 400 001

RBI/2010-11/ 498

A. P. (DIR Series) Circular No. 58

May 02, 2011

To

All Category-I Authorised Dealer Banks

Madam / Sir,

Opening of Escrow Accounts for FDI transactions

Attention of the Authorised Dealer 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, and [A.P. \(DIR Series\) Circular No. 62 dated May 24, 2007](#), permitting AD Category – I banks to open Escrow account and Special account on behalf of non-resident corporates for acquisition/transfer of shares/ convertible debentures of an Indian company through open offers/ delisting/ exit offers, subject to compliance with the relevant SEBI [Substantial Acquisition of Shares and Takeovers (SAST)] Regulations, 1997 and other applicable SEBI regulations. In all other cases of opening/maintaining of Escrow accounts for FDI related transactions, prior approval from the Reserve Bank is necessary.

2. It is observed that the Escrow mechanism facilitates FDI transactions in cases where parties to the share purchase agreement desire to complete the due diligence process before they finalize the agreement for the same and accordingly, there is a time lag between payment of purchase consideration and the receipt of the shares. To provide operational flexibility and ease the procedure for such transactions, it has been decided to permit AD Category – I

banks to open and maintain, without prior approval of the Reserve Bank, **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and / or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions as given in Annex. It has also been decided to permit SEBI authorised Depository Participants, to open and maintain, without prior approval of the Reserve Bank, Escrow accounts for securities subject to the terms and conditions as given in Annex. In both cases, the Escrow agent shall necessarily be an AD Category- I bank or SEBI authorised Depository Participant (in case of securities' accounts). These facilities will be applicable for both issue of fresh shares to the non- residents as well as transfer of shares from / to the non- residents.

3. Necessary amendments to [Notification No. FEMA 5/2000-RB dated May 3, 2000](#) [Foreign Exchange Management (Deposit) Regulations, 2000] are being notified separately.

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

5. 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

ANNEX

[Annex to A.P.(DIR Series) Circular No. 58
dated May 02, 2011]

1. The Escrow account in INR would be maintained only with an AD Category – I bank in India. The Escrow account may be opened jointly and severally. Further, securities kept / linked with such Escrow accounts may be linked with demat account maintained with SEBI authorised Depository Participants.
2. The account shall be non-interest bearing.
3. No fund or non-fund based facilities would be permitted against the balances in the Escrow account.
4. Permitted credits:
 - i) Receipt of foreign inward remittance as consideration towards issue or transfer of shares through normal banking channels; or
 - ii) Receipt of rupee consideration through the normal banking channels from India by the resident acquirers of shares who proposes to acquire them from non-resident holders by way of transfer.
5. Permitted debits:
 - i) Remittance of consideration for issue of shares or transfer of shares directly into the bank accounts of the beneficiary (issuer in India or transferor of shares in India or abroad); or
 - ii) Remittance of consideration for refund to the initial remitter of funds in case of failure / non-materialization of the FDI transaction for which the Escrow account was opened.

6. The underlying FDI transaction for which the Escrow account is opened should be compliant with extant FEMA provisions. Further, for the purposes of FDI reporting, date of transfer of funds into the bank account of the issuer or transferor of shares, shall be the relevant date of remittance.

7. Where the transaction is governed by SEBI guidelines/regulations, operation of the Escrow accounts shall also be in accordance with the relevant SEBI regulations.

8. Balance in the Escrow account, if any, may be repatriated at the then prevailing exchange rate (i.e., the exchange rate risk will be borne by the person resident outside India acquiring the shares), after all the formalities in respect of the said acquisition are completed. In cases, where proposed acquisition/transfer does not materialise, the AD Category – I bank may allow repatriation/refund of the entire amount lying to the credit of the Escrow account on being satisfied with the bonafides of such remittances.

9. The Escrow account shall remain operational for a maximum period of six months only and the account shall be closed immediately after completing the requirements as outlined above or on completion of six months from the date of opening of such account, whichever is earlier. In case the Escrow account is required to be maintained beyond six months, specific permission from the Reserve Bank has to be sought.

10. Requirement of compliance with KYC guidelines issued by the Reserve Bank /SEBI shall rest with the AD Category – I bank/ SEBI authorised Depository Participants.

11. The terms of the Escrow account shall be laid down strictly in the Escrow agreement, Share purchase agreement, conditions of issue of shares, etc.