

Corpsec Hotline

August 26, 2005

GIFT OF INDIAN SECURITIES TO PERSONS RESIDENT OUTSIDE INDIA - PROCEDURE NOTIFIED BY RBI

As per the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations 2000 ("**FEMA Regulations**"), any person resident in India, ("**Donor**"), proposing to transfer any security, by way of gift, to a person resident outside India, ("**Donee**"), is required to make an application to Reserve Bank India ("**RBI**") seeking its approval for making the gift. The RBI, vide its circular dated August 25, 2005 ("**Circular**"), has notified the factors that would be taken into consideration for grant of its approval to the Donor. These are:

1. Eligibility of the Donee to hold these securities
2. Such holding by Donee not to breach the sector caps stipulated for the Indian company whose securities are being gifted ("**Company**")
3. Consideration for the gift not to exceed 5% of the paid up capital of the Company / each series of debentures / each mutual fund scheme
4. Donor and Donee to be close "relatives" as defined in section 6 of the Companies Act, 1956 and
5. Total value of security(ies) to be transferred in a calendar year not to exceed Indian Rupee equivalent of US \$ 25,000.

The Circular also stipulates a host of information and documents to be attached alongwith the application, such as, relationship between the Donor and Donee, reasons for making gift, valuation certificate certifying the value of the securities being transferred and certificate from the Company certifying that the gift shall not breach the sectoral cap and that the consideration for the gift does not exceed 5% of its paid up capital. Accordingly, the Regulation 10 of FEMA Regulations has been amended to incorporate the provisions of the Circular.

-Vyapak Desai & Kishore Joshi

You can direct your queries or comments to the authors

Source:

1. Circular dated August 25, 2005 bearing no. RBI/2005/143/ A.P. (DIR Series) Circular No.08 issued by Reserve Bank of India
2. Notification No. FEMA 137/2005-RB dated July 22, 2005 [Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) (Fourth Amendment) Regulations 2005 issued by Reserve Bank of India

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