



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

RBI/2004-05/202
A.P. (DIR Series) Circular No. 14

October 01, 2004

To

All Banks Authorised to Deal in Foreign Exchange

Madam / Sirs,

**Acquisition of Foreign Securities by Resident Individuals-
ADR/GDR Linked Employees Stock Option (ESOP) Schemes**

Attention of Authorised Dealer (AD) banks is invited to Regulation 21 (2) of Notification No.FEMA.19/RB-2000 dated May 3, 2000 in terms of which, Reserve Bank may, on an application made to it by an Indian software company allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked Employees' Stock Option (ESOP) Schemes, provided that the consideration for purchase does not exceed USD 50,000 or its equivalent in a block of five calendar years. The coverage of the facility to acquire such ESOP was expanded later to include employees of all companies in the knowledge based sectors vide Guidelines dated September 15, 2000 (Annex-I) issued by the Ministry of Finance, Government of India.

2. It has now been decided by the Government that the issue of ESOP by a **listed** company in the knowledge-based sectors falling within the purview of the aforesaid Guidelines dated September 15, 2000, will be governed by SEBI (Employees Stock Option and Stock Purchase Scheme) Guidelines, 1999.

3. The issue of ESOP by an **unlisted** company in such knowledge-based sectors shall continue to be governed by the guidelines issued by the Government of India for issue of ADR/GDR linked stock options to its employees.

4. AD banks may henceforth make remittances up to USD 50,000 or its equivalent in a block of five calendar years, which is the current limit per eligible employee,

without prior approval of Reserve Bank, for purchase of foreign securities under the ADR/GDR linked ESOP Scheme, after satisfying that the issuing company has followed the relevant guidelines of SEBI/Government. A copy of Government Press Note F.No.15/14/2001-NRI dated July 26, 2004 is enclosed (Annex-II).

5. Necessary amendments to the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000 are being issued separately.

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

7. The direction contained in this circular has been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,

Grace Koshie
Chief General Manager

Encls: As above

Annex- I

**F.No.17/1/2000-NRI
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS
(INVESTMENT DIVISION)**

New Delhi, dated the 15th September, 2000

**Liberalisation in the Guidelines for Issue of ADR/GDR linked
Employees Stock Options by the Indian Companies**

Guidelines by way of a Press Note were issued on 23rd June, 1998 containing operational parameters and modalities for issue of ADR/GDR linked stock options to its employees by the Indian Software Companies. Revisions/modifications to expand the scope of application to the Indian companies engaged in Information Technology Software and Information Technology Services had been issued on 16th September 1998. These Guidelines were further modified by the Government on the 16th June 2000, expanding the coverage of employees who would be entitled to the ESOPs in line with the SEBI Guidelines on ESOPs, which include employees of a subsidiary company for the purposes of ESOPs. Enabling amendment Notification operating the facility for ADR/GDR linked employees stock options had been issued by Government on 10th November, 1999 under the "Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism)".

2. Guidelines were issued on the 23rd March 2000 liberalising the norms for overseas business acquisition by Indian companies in terms of which;

- I. the norms for acquisition of overseas companies was extended to Information Technology and Entertainment software, Pharmaceuticals, Bio-technology and any other activity within the knowledge based sector as notified by the Government from time to time and;
- II. In the case of multi product diversified company, not conforming to the eligibility criteria of 80% of the turnover from the sectors/areas mentioned above, the liberalised norms would be applicable if they have an average annual export earnings of Rs.100 Crores in the three previous financial years in these sectors/areas.

3. It has been decided to extend the liberalised norms as mentioned in para-2 above in respect of the issue of ADR/GDR linked Employee Stock Options as well. This would imply that :

- (I) The companies in the following knowledge based sectors would be eligible to issue ADR/GDR linked ESOPs with a view to enable retaining their highly skilled personnel;

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- i. Information Technology (as defined in the recommendation No.19 (a) and (b) of Gazette Notification dated 25.07.1999 issued by the Planning Commission) & Entertainment software.
- ii. Pharmaceuticals;
- iii. Biotechnology;
- iv. Any other activities within the knowledge based sector as
- v. notified by the Government from time to time.

(II) The liberalised norms would also be available to multi product diversified Companies which do not conform to the criteria of 80% of its turnover from the sectors mentioned in para 3(I) above, incase they fulfill the condition of average annual export earnings of Rs.100 Crores from these sectors in the three previous financial years.

4. These guidelines will come into force with immediate effect.

Sd/-
(G.S. Dutt)
Joint Sectary to the Government of India.

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS
(NRI CELL)**

New Delhi, dated the 26th July 2004

Press Note

**Modification to guidelines for issue of ADR / GDR linked Employees
Stock Options by the Indian Companies**

Guidelines by way of a Press Note were issued on 23rd June, 1998 for Issue of ADR / GDR linked stock options under the "Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipts Mechanism)". Revisions / modifications to expand the scope of application, sectors, eligible employees etc., were made from time to time.

2. In order to rationalise the guidelines governing issuance of stock options by Indian companies, Government have decided that henceforth, issuance of employees stock options by all listed companies in the knowledge-based sectors will be governed by SEBI (Employee Stock Option and Stock Purchase Scheme) Guidelines, 1999.

3. However, unlisted Indian companies in the knowledge-based sectors will continue to be governed under guidelines issued by Government for issue of ADR / GDR linked stock options to its employees.

4. The above modification to the ADR / GDR linked Stock options will come into force from the date of issuance of Notification of regulations / directions.

Sd/-
(R. BANNERJI)
Joint Secretary to the Government of India