

**Reserve Bank of India
Foreign Exchange Department
Central Office, Mumbai-400 001**

Notification No. FEMA.322/RB-2014

October 14, 2014

**Foreign Exchange Management (Transfer or Issue of any
Foreign Security) (Third Amendment) Regulations, 2014**

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations 2004 ([Notification No. FEMA.120/RB-2004 dated July 7, 2004](#)), as amended from time to time, (hereinafter called the Principal Regulations or the Notification), namely:-

1. Short Title & Commencement:-

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Third Amendment) Regulations, 2014.
- (ii) They shall come into force from the date of publication in the Official Gazette.

2. Amendment to Regulation 18

The existing Regulation 18 shall be substituted with the following, namely:

“18. Pledge of Shares of Joint Venture (JV), Wholly Owned Subsidiary (WOS) and Step down Subsidiary (SDS)

An Indian Party may create charge, by way of pledge, on the shares of Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India [held directly by the Indian party in JV or WOS and indirectly in SDS] as a security in favour of an Authorized Dealer or a public financial institution in India or an overseas lender, for availing of fund based or non-fund based facility for itself (i.e. the Indian party) or for its JV / WOS / SDS whose shares have been pledged, or for any other JV / WOS / SDS of the Indian party.

Provided that

- (a) The value of the fund based or non-fund based facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank for overseas direct investments in the JV / WOS from time to time;
- (b) In case of the facility from an overseas lender, it should be regulated and supervised as a bank; and
- (c) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time.”

3. Amendment to Regulation 18A

The existing Regulation 18A shall be substituted with the following, namely:

“18A Creation of charge on domestic and foreign assets

(1) An Indian party may create charge (by way of mortgage, pledge, hypothecation or otherwise) on its assets [including the assets of its group company, sister concern or associate company in India, promoter and / or director] in favour of an overseas lender as security for availing of the fund based and/or non-fund based facility for its Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India.

Provided that

- (a) The value of the facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank from time to time for overseas direct investments in the JV / WOS;
- (b) The overseas lender is regulated and supervised as a bank as per the law of the host country;
- (c) A ‘No Objection’ is obtained from the domestic lender in whose favour if charge is already created on the domestic assets; and
- (d) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time.”

(2) An Indian party may create charge (by way of mortgage, pledge, hypothecation or otherwise) on the assets of its overseas JV or WOS or SDS in favour of an AD bank in India as security for availing of the fund

based and/or non-fund based facility for itself or its JV or WOS or SDS outside India.

Provided that

- (a) The value of the facility is reckoned as financial commitment for the Indian party and the total financial commitment of the Indian party remains within the limit stipulated by the Reserve Bank from time to time for overseas direct investments in the JV / WOS;
- (b) The overseas lender is regulated and supervised as a bank as per the law of the host country;
- (c) A 'No Objection' is obtained from the overseas lender or domestic AD bank in whose favour if charge is already created on the overseas assets;
- (d) The facility extended by the domestic AD bank to the Indian party / JV / WOS / SDS is governed by the prudential norms and other guidelines issued by the Department of Banking Operations and Development, Reserve Bank; and
- (e) Subject to the additional terms and conditions prescribed by the Reserve Bank from time to time."

(C D Srinivasan)
Chief General Manager

Foot Note: The Principal Regulations were published in the Official Gazette of GOI vide G.S.R. No 757 (E) dated November 19, 2004 – in Part II, Section 3, Sub-section (i) and subsequently amended vide:-

G.S.R. No. 220 (E) dated April 7, 2005,
G.S.R. No. 337 (E) dated May 27, 2005,
G.S.R. No. 552 (E) dated August 31, 2005,
G.S.R. No. 535 (E) dated September 6, 2006,
G.S.R. No.13 (E) dated January 5, 2008,
G.S.R. No. 209(E) dated March 25, 2008,
G.S.R. No.676 (E) dated September 24, 2008,
G.S.R. No.756 (E) dated October 31, 2008,
G.S.R. No.108 (E) dated February 20, 2009,
G.S.R. No. 301(E) dated May 1, 2009,
G.S.R. No. 441(E) dated June 23, 2009,
G.S.R. No. 609(E) dated August 28, 2009,
G.S.R. No. 607(E) dated August 3, 2012,
G.S.R. No. 609(E) dated August 3, 2012,
G.S.R. No. 947(E) dated December 31, 2012,
G.S.R. No. 345(E) dated May 29, 2013,
G.S.R. No. 516(E) dated July 30, 2013,
G.S.R. No. 529(E) dated August 05, 2013,
G.S.R. No. 552(E) dated August 14, 2013,
G.S.R. No. 323(E) dated May 07, 2014 and
G.S.R. No. 489(E) dated July 11, 2014.

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 03.12.2014- G.S.R.No.868(E)**