**Annexure-11: Customer's Request Letter cum declaration & undertaking Form (Third party inward remittance received in our Vostro/Nostro)**

(Applicable where purpose of inward remittance is Foreign Direct Investment-to be obtained on letter head of the client)

Date:

To,

The Branch Manager

ICICI Bank Ltd.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sir/Madam,

This is with reference to your email/letter dated \_\_\_\_\_\_\_\_\_\_ regarding receipt of the inward remittance in foreign currency for an amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

We request you to credit the same to our account as per the details given below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name & address of remitter/ investor | Amount (in foreign currency | Purpose of remittance | Account Number | Entry Route (Automatic or under Govt. approval)\* |
|  |  |  |  |  |
|  |  |  |  |  |

\*In case the entry route is Government approval route, copy of Government approval is being enclosed herewith.

1. We confirm that we have complied with all the applicable rules and regulations issued under Foreign Exchange Management Act, 1999 (“FEMA”) by RBI from time to time on Foreign Direct Investment (FDI) in India.
2. We confirm that we are eligible to receive the funds towards issue of capital instruments under FDI scheme under Automatic Route or Government Route.

We further confirm, declare and undertake that:

|  |  |  |  |
| --- | --- | --- | --- |
| **SN.** | **Facet** | **:** | **Response [Please indicate Yes, No, or Not Applicable (NA)]** |
| I. | The overseas remitter/investor Mr/M/s \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name & address) is an eligible remitter/investor under FDI scheme and is not a citizen and/or is an entity registered in Pakistan & Bangladesh. | : |  |
| II. | As the overseas remitter/investor is either a citizen or an entity registered in Bangladesh or Pakistan GOVERNMENT approval of Government of India is enclosed herewith.  Any investment by a person who is a citizen of Bangladesh or Pakistan or is an entity incorporated in Bangladesh or Pakistan requires prior Government approval. | : |  |
| III. | As overseas remitter/investor is an erstwhile OCBs Approval of Government of India (if the investment is through the Government Route) or approval of the Reserve Bank (if the investment is through the Automatic Route) is enclosed. Erstwhile OCB should submit a certification from RBI that it is not in the adverse list being maintained with the RBI. | : |  |
| IV. | We are not engaged in any prohibited activities/sectors listed as per current FDI Policy of Government of India and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 (as amended from time to time). | : |  |
| V. | That the capital instruments shall be issued within sixty days from the date of receipt of consideration In case, the capital instruments are not issued within sixty days from the date of receipt of the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to the NRE/FCNR (B) account as the case may be, within fifteen days from the date of completion of sixty days.  We know that non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions. | : |  |
| VI. | After issue of shares (including bonus and shares issued on rights basis and shares issued on debentures/convertible preference shares, we shall file Form FC-GPR and for conversion of stock option under ESOP scheme/ through you to the RBI not later than 30 days from the date of issue of capital instruments. | : |  |
| VII | In case of transfer of Capital Instruments of a Listed Indian Company on a recognised Stock Exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Repatriation basis, the total holding by any individual NRI or OCI shall not exceed 5 percent of the total paid-up equity capital on a fully diluted basis or should not exceed 5 percent of the paid-up value of each series of debentures or preference shares or share warrants issued by an Indian company and the total holdings of all NRIs and OCIs put together shall not exceed ten percent of the total paid-up equity capital on a fully diluted basis or shall not exceed ten percent of the paid-up value of each series of debentures or preference shares or share warrants;  Provided that the aggregate ceiling of 10 percent may be raised to 24 percent if a special resolution to that effect is passed by the General Body of the Indian company |  |  |
| VIII. | Foreign Direct investment in Partnership Firm/Proprietary Concern (applicable only if the investee entity is a Partnership Firm/ Proprietary Concern):  “We declare that the inward remittance is by way of contribution to the capital of our partnership firm/our proprietary concern on non-repatriation basis and our partnership firm/ proprietary concern is not engaged in any agricultural /plantation or real estate business (i.e dealing in land and immovable property with a view to earning profit or earning income there from) or print media sector. The existing regulations issued by SEBI/RBI & FEMA regulations on Foreign Direct Investment in India have been complied with.”  (An NRI or an OCI is permitted to invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India.) | : |  |
| IX | The transfer or issue is in compliance with the entry routes, sectoral caps or investment limits, as the case may be, and the attendant conditionalities of investment by a person resident outside India; Provided that where the percentage is likely to breach the Sectoral caps or the attendant conditionalities, the transferor company or the transferee or new company may obtain necessary approvals from the Central Government or offload the stake as provided under FEMA regulations as amended from time to time. | : |  |
| X | We, The transferor company/Transferee company or the new company shall not engage in any sector prohibited for investment by a person resident outside India | : |  |
| XI | We also acknowledge that the person/ entity responsible for filing the reports provided in regulation for the reporting requirement for any Investment in India by a person resident outside India shall be liable for payment of late submission fee, as may be decided by the Reserve Bank, in consultation with the Central Government, for any delays in reporting. | : |  |
| XII | In case of a start-up company, we undertake to report such inflows to the Authorised Dealer bank in Form CN within 30 days of issue of Convertible Notes to a person resident outside India. | : |  |
| XIII | We are recognized as Startup company in accordance with notification number G.S.R. 180(E) February 17, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. And Issuance of convertible notes is in compliance with FEMA Notification 377 dated January 10, 2017.  Statutory auditor certifying the same shall be provided by us. | : |  |
| XIV | The amount of convertible note to be issued is of twenty five lakh rupees or more in a single tranche. | : |  |
| XV | We also undertake to convey to the transferor or transferee of Convertible Notes issued by us as a start-up company, and who is a person resident in India to report such transfers to or from a person resident outside India, as the case may be in Form CN to the Authorised Dealer bank within 30 days of such transfer. | : |  |
| XVI | Foreign Direct investment in Other Financial Services:  “We declare that the inward remittance is by way of contribution to the capital in company engaged into activities which are regulated by <<name of the regulator>>.  We confirm   * this foreign investment is within the sectoral cap as per relevant act and is complying with conditionalities, including minimum capitalisation norms, as specified by <<name of the regulator>>.   ”Downstream investment by <entity> is in compliance with extant sectoral regulations and provisions of Principal Regulations”  (In case the financial services provided are not under automatic route as defined by RBI, copy of Government approval shall be provided)   * We comply with fit and proper /due diligence requirement as regards the non-resident investor as stipulated by the respective financial sector regulator where Indian Investee Company is in financial sector. Statutory auditor certificate to this effect shall be submitted by us. | : |  |
| XVII | We hereby confirm that all the provision (including reporting) related to downstream investment will be complied by the company | : |  |
| XVIII | In case of Foreign Investment in investing companies not registered as Non-Banking Financial Companies with the Reserve Bank and in core investment companies (CICs), both engaged in the activity of investing in the capital of other Indian entities will require prior Government approval. Accordingly government approval shall be provided.  In case of core investment companies, a chartered accountant certificate certifying that the Indian company complies with the regulatory framework prescribed for such entities as NBFCs under the Reserve Bank of India Act, 1934 and regulations framed thereunder should be obtained. | : |  |
| XIX | In case the person resident outside India who has made foreign investment specifies a particular auditor / audit firm having international network for the audit of the Indian investee company, then audit of such Indian investee company will be carried out as joint audit wherein one of the auditors is not part of the same network. | : |  |
| XX | We have provided the necessary information in the Entity master form for all the foreign investments received by the entity irrespective of the fact that the regulatory reporting to the Reserve Bank for the same has been made or not and whether the same has been acknowledged or not. | : |  |
| XXI | At the time inward remittance for fresh issuance and transfer of shares from Resident to Non-resident   * 1. The said foreign investments is not on non-repatriation basis.   2. The said foreign investment is not under Schedule 4 of Notification No. FEMA.20(R)/2017-RB dated 7TH November 2017, as amended from time to time |  |  |
| XXII | Client declaration that they are a listed entity and confirm that the specified data / information on foreign investment has been provided to the depositories. |  |  |

1. We confirm that the capital instruments for the said remittance will be allotted to the remitter and not to any other entity. In case remitter and investor are different then we herewith submit KYC of the investor, KYC of beneficial owner and NOC from the remitter for issuing capital instruments to the beneficial owner mentioning their relationship. A letter from the beneficial owner explaining the reason for the remitter making remittance on its behalf, and a copy of agreement / board resolution from the investee company for issuing capital instruments to a person other than from who the remittance has been received.
2. We request you to kindly issue FIRC for the above FDI remittance, and authorize you to debit bank’s charges for issuance of FIRC.
3. We further confirm that: (Applicable in case of transfer of Capital Instruments)
4. Such transfer of capital instruments is in accordance with the regulations of the Foreign Exchange Management Act, 1999 and circulars issued by Reserve Bank of India on Foreign Investments in India, including the valuation of capital instruments as prescribed by RBI Guidelines.
5. All reporting as required under the RBI guidelines (including filing of Form FCTRS) would be made within the prescribed time.
6. The transaction does not involve any deferred payment consideration
7. We confirm that the transaction is received on non-repatriation basis (If Applicable)
8. For Third party remittances (in addition to the above, the below is required): As indicated in the inward remittance received by you, we confirm that the payment is on account of FDI into our company. We request you to kindly remit the converted INR amount as per the request of remitter to our Designated AD bank/branch (…………………….) as also advised in the SWIFT message. We confirm that this remittance is in compliance with FDI guidelines and we have provided the necessary information in the Entity master form for all the foreign investments received by us. We also confirm that we will arrange for filing of form FC-GPR/FCTRS and will fulfill other regulatory reporting requirements through our Designated AD bank as above.

**Yours faithfully,**

**Authorized Signatory**

**Name**

**Designation**

**Company Name**

**Customer letter to include below stated declarations and documents for FDI through the following mode**:

Foreign Direct Investment towards issue of ADRs / GDRs:

“We declare that the inward remittance is towards issue of ADRs/ GDRs and we are eligible to issue ADRs / GDRs in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism Scheme, 1993 and subsequent guidelines issued by Ministry of Finance, Government of India. The existing regulations issued by SEBI, FEMA and RBI Guidelines on the investment have been complied with

Foreign investment towards issue of shares under ESOPs (Employee Stock Option Scheme)

We declare that the inward remittance is towards issue of shares under s (Employee Stock Option Scheme) .The existing regulations issued by SEBI FEMA and RBI Guidelines on the investment have been complied with.

ESOP is to be submitted to Mr./Ms.\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who is an employee (not resident in Pakistan) of our firm \_\_\_\_\_\_\_\_\_\_\_\_/of our JV/WOS firm \_\_\_\_\_\_\_\_\_\_\_\_\_\_/ of our subsidiary firm\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the face value of the shares to be allotted under the scheme to the non-resident employee does not exceed 5 percent of the paid up capital of the issuing company.

**Annexure-FDI1 (A)**

**Format of Declaration cum undertaking from the registered stock broker** (Applicable for acquisition of shares under FDI Scheme through a Stock Exchange)

To,

The Branch Manager

ICICI Bank Ltd.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sir/Madam,

This is with reference to your email/letter dated \_\_\_\_\_\_\_\_\_\_ regarding receipt of the inward remittance in foreign currency for an amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

We request you to credit the same to our account as per the details given below.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name & address of remitter/ investor | Amount in FC | Purpose of remittance | Account Number | Entry Route (Automatic or Govt. approval)\* |
|  |  |  |  |  |
|  |  |  |  |  |

\*In case the entry route is Government approval, copy of Govt. approval be enclosed.

In this connection, we further confirm, declare and undertake that:

1. We <name & address of the registered broker> are the registered stock broker and have been authorized by the <name & address of the non-resident investor> to acquire the shares of the listed Indian company under FDI scheme (i.e. under Schedule 1 of FEMA.20(R)/2017-RB dated 7TH November 2017 as amended) through recognized stock exchange in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations as amended.
2. the non-resident investor has already acquired and continues to hold the control in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations and this is the subsequent acquisition of shares of listed Indian company through recognized stock exchange;
3. the pricing for subsequent acquisition of shares on behalf of the non-resident investor is in accordance with the pricing guidelines under FEMA;
4. the original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, reporting requirement, documentation, etc;
5. We shall arrange submission of form FC-TRS along-with the required certificates and documents within the stipulated period as per guidelines under FEMA, within 60 days from the date of remittance.

Authorized signatory,

Name & Seal

Place

Date

Phone

Mobile

**Annexure-FDI1 (B)**

“We hereby affirm, confirm and declare that;

1. Inward remittance is towards issue of ADRs/ GDRs and we are eligible to issue ADRs/GDRs in accordance with the Scheme of **“Issue of Foreign Currency Convertible Bonds and Ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993”** as amended from time to time by Ministry of Finance , Government of India/ RBI. We further declare that we have complied with all the guidelines under the scheme as amended from time to time and the rules and regulations issued by SEBI and RBI in this context.
2. We are the unlisted company incorporated in India and have also complied with all the terms and conditions of RBI **AP (DIR Series) Circular No. 69 dated November 8, 2013** as amended.”