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To

The Executive Director
Department of Debt and Hybrid Securities
Securities and Exchange Board of India
SEBI Bhawan, Plot No. C4-A, G Block
Bandra Kurla Complex,
Mumbai-400051

Dear Sirs,

Sub: Request for informal guidance by way of an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 ("Informal Guidance Scheme") in connection to SEBI (Foreign Portfolio Investors) Regulations, 2014.

1. Background and facts of the case

- 1.1. Genpact India Private Limited (f/k/a Empower Research Knowledge Services Pvt. Ltd.), hereinafter referred as ("**Genpact India**" or "**Applicant**") is a company incorporated under the erstwhile provisions of Companies Act, 1956 having its registered office at 12A (Ground Floor), Prakash Deep Building 7, Tolstoy Marg, New Delhi - 110001.
- 1.2. The Applicant is engaged in the business of providing finance and accounting services, smart decision services (including analytics research, business consulting, enterprise risk consulting and re - engineering), supply chain and procurement services, enterprise application services, IT Management services etc.
- 1.3. On March 25, 2015, the Applicant issued 4,600 Rated, Unsecured, Redeemable, Non-Convertible Debentures of face value of INR 10,000,000/- each aggregating to INR 46,000,000,000/- ("**NCDs**") on private placement basis to Genpact Luxembourg S.A.R.L., registered Foreign Portfolio Investor ('FPI') under Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 ('SEBI FPI Regulations').
- 1.4. It is submitted that the NCDs were issued and allotted in terms of the provisions of Companies Act, 2013 and rules made thereunder, Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010, Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations,

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2008 and other applicable laws and have been listed at Bombay Stock Exchange vide listing notice dated 30th March 2015.

- 1.5. It is submitted that the NCDs so issued by Applicant to FPI have maturity period (including residual maturity) of more than three years and were utilized for meeting the funding requirements for day-to-day operations, downstream investment and for general corporate purposes. Further, in terms of repayment schedule, the first tranche of principal repayment amounting to INR 6,000,000,000/- has been effected on April 26, 2018.

2. Relevant Regulations

- 2.1. At the time of issuance of NCDs in terms of the then prevailing SEBI FPI Regulations read with Foreign Exchange Management (Transfer or issue of security by a Person Resident Outside India) Regulations, 2000 (the "FEMA Regulations") issued by the Reserve Bank of India ("RBI") (the SEBI FPI Regulations and the FEMA Regulations are collectively referred to as the "**Relevant Regulations**"), a foreign portfolio investor was permitted to invest in, inter alia, listed debentures. The investment in unlisted debt securities was, at that time, permitted only in case of companies in the infrastructure sector.
- 2.2. The Government of India in the Union Budget 2016-17, decided to expand the investment basket of eligible instruments for investment by FPIs under the corporate bond route pursuant to which the Reserve Bank of India ("RBI") through its A.P. (DIR Series) Circular No.19 dated November 17, 2016 read along with A.P. (DIR Series) Circular No. 24 dated April 27, 2018 permitted FPIs to invest in unlisted corporate debt subject to minimum residual maturity of more than one year and end use restriction on investment in real estate business, capital market and purchase of land. Consequently, the Securities and Exchange Board of India on February 27, 2017 also permitted FPI's to invest in such securities.

3. Clarification Sought

In light of the above submissions and Relevant Regulations, we most humbly request your good office to confirm our understanding and issue an informal guidance by way of interpretive letter under para 5 of the Informal Guidance Scheme on the following:

- i. Whether, pursuant to the aforesaid amendment, the Applicant is permitted to de-list its existing listed NCD's that have been subscribed to by FPI prior*

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to the date of the amendment coming into effect and the proceeds of which has been utilized for making downstream investment on private arrangement basis for acquiring shares of private companies?

4. Our Understanding

- 4.1.** Taking note of the Relevant Regulations, in our considered view, there is no prohibition per se in relation to delisting of debt securities as FPIs are allowed to invest in unlisted NCDs as specified in regulation 21(1)(n) of the SEBI FPI Regulations subject to the guidelines issued by the Ministry of Corporate Affairs, Government of India from time to time.
- 4.2.** Further in accordance with the notification issued by the Reserve Bank of India vide A.P. (DIR Series) Circular No.19 dated November 17, 2016 read along with A.P. (DIR Series) Circular No. 24 dated April 27, 2018, FPI's are permitted to invest in Unlisted corporate debt securities in the form of non-convertible debentures/bonds issued by public or private companies subject to minimum residual maturity of one years and end use-restriction on investment in real estate business, capital market and purchase of land.
- 4.3.** We understand that although the term 'capital market' is not explicitly defined in SEBI Regulations, in our understanding inference can be drawn from FAQs-Secondary Market Department issued by SEBI. The term 'capital market' as provided in said FAQs refer to: *Capital market is a market for long-term debt and equity shares. In this market, the capital funds comprising of both equity and debt are issued and traded. This also includes private placement sources of debt and equity as well as organized markets like stock exchanges. Capital market can be further divided into primary and secondary markets.*
- 4.4.** It is submitted that the Applicant had utilized part of the NCD proceeds in making downstream investment in acquiring shares of private companies of the Genpact group only. In terms of the provisions of Companies Act, 2013, a private company restricts the right to transfer its shares and accordingly, in our view, such shares of private companies, acquired by the Applicant should ideally not qualify as capital funds since they may not be freely traded on the primary/ secondary markets.
- 4.5.** Taking note of the above, it is our understanding that downstream investment made by Applicant on private arrangement basis for acquiring shares of private companies should not be considered as investment made in capital market and accordingly, the delisting process of the NCD's subscribed

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to by the FPI may be initiated by the Company pursuant to which FPI shall be considered to have invested in unlisted NCD's.

Considering the above, we request you to kindly consider our application and look forward to hearing from you and receiving interpretive letter in relation to the same.

5. Request for Confidentiality

In accordance with para 11 of the Informal Guidance Scheme, we request that this letter and its contents be kept confidential for the maximum period possible i.e until 90 days after the response to this letter has been tendered.

6. Compliance with Para 6 of the Scheme

In accordance with para 6, this request for informal guidance is accompanied with a Demand Draft of INR 25,000/- (Twenty Five Thousand Rupees) dated October 11, 2018, drawn on The Hongkong and Shanghai Banking Corporation Limited in favour of Securities and Exchange board of India, payable at Mumbai.

All material facts, circumstances and legal provisions which in our opinion are relevant for the purposes of determination of this request are stated herein.

We would be happy to provide any further information, as may be required to process this application. In case of any additional clarifications or information in connection with the subject matter, please feel free to contact the undersigned or Deloitte Haskins & Sells LLP and their representatives, namely, Mr. Atul Mittal, Director and Ms. Ruchi Maini, Manager, (E-mail: atulmittal@deloitte.com; rmaini@deloitte.com and Mobile : 98100 65744 and 9958519305) having their office at 7th Floor, Building 10, Tower B, DLF Cyber City Complex, DLF Cyber City Phase II, Gurgaon, Haryana 122002, whom we hereby authorize to represent on our behalf.

Thanking you,
For **Genpact India Private Limited**



Name: **M. H. DURESH**

Designation: **DIRECTOR**

Date: **12/10/2018**

Place: **DELHI**



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