

FEMA

Recent developments

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1. FDI

- **40 of February 01, 2016 –Reporting under FDI Scheme, Mandatory filing of form ARF, FCGPR and FCTRS on e-Biz platform and discontinuation of physical filing from February 8, 2016**

Beginning February 8, 2016 the physical filing of forms Advance Remittance Form, FCGPR and FC-TRS will be discontinued and forms submitted in online mode only through e-Biz portal will be accepted.

- **58 of March 31, 2016-- Foreign Direct Investment (FDI) in India – Review of FDI policy –Insurance sector**

It has been decided to enhance the limit of foreign investment in insurance sector from 26 to 49 percent under the Automatic Route.

- **63 of April 21, 2016-- Foreign Investment in units issued by Real Estate Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by SEBI regulations**

- REITS will not include “real estate business”
- Infrastructure Investment Trusts (InvITs) registered and regulated under the SEBI (InvITs) Regulations, 2014;
- Alternative Investment Funds (AIFs) registered and regulated under the SEBI (AIFs) Regulations 2012.
- Few aspects of the scheme-Investment in units, pay by inward remittance, downstream investment is regarded as foreign investment, need confirmation to sectoral caps etc.,

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FDI – A.P (DIR Series) Circular 27 of May 03, 2018

In terms of para 6 of Annexure A of the circular dated April 05, 2018, all listed Indian companies are required to provide the specified data/information on foreign investment to the depositories. The requisite information may be provided before May 15, 2018. The listed Indian companies, in non-compliance with the above instructions will not be able to receive foreign investment

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November 07, 2017 – FDI

FEM(TISPRO) Regulations, 2017

B. Sectoral Caps

SECTOR-SPECIFIC POLICY FOR TOTAL FOREIGN INVESTMENT

- In sectors/ activities not listed below or not prohibited under regulation 15 of these Regulations, foreign investment is permitted up to 100 per cent on the automatic route, subject to applicable laws/ regulations, security and other conditionalities.
- Provided foreign investment in financial services other than those indicated under serial number “F” below would require prior Government approval.

LATE SERVICE FEE-- RBI Master Direction No.18/2015-16--(January 1, 2016 updated till Feb 11 2016)

Delays in reporting

a) The person/ entity responsible for filing the reports provided in Part IV of this Master Direction shall be liable for payment of late submission fee (LSF) for any delays in reporting.

(i) The LSF shall be applicable for the transactions undertaken on or after November 7, 2017.

(ii) The payment of LSF is an option for regularising reporting delays without undergoing the compounding procedure.

b) Calculation and Payment of LSF:

(i) Where LSF is required to be paid, the reports shall be, wherever necessary, conditionally acknowledged subject to payment of the LSF. The final acknowledgement/ communication, wherever applicable, shall be given after the late submission fee is paid by the applicant.

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2. Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015

- 43 of February 04, 2016- Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015
 - **An Indian company** having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the limits prescribed (15% of average annual turnover in last two FY or 25% net-worth)
 - **Individual:** Acquisition or transfer of any immovable property outside India by a person resident in India would require Prior Approval of RBI **except for** foreign citizen resident, Property acquired by a person on or before 8th July, 1947 and held with the permission of Reserve, Gift or Inheritance, funds held in Resident Foreign Currency (RFC) account & jointly with a relative who is a person resident outside India etc.,

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3. Foreign Exchange Management (Remittance of Assets) Regulations, 2016

- **64 of April 28, 2016-- Foreign Exchange Management (Remittance of Assets) Regulations, 2016**
 - Remittance of Capital Asset needs RBI approval
 - Remittance of Assets by a **Foreign National**, up to USD One Million per FY, by a foreign national or submission of documentary evidence if person is retired, inheritance of assets & remittances by Indian companies
 - Remittance of Assets by **NRI or PIO** in excess of USD One Million per FY
 - All Remittances, subject to applicable Indian Tax Law

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4. Startups – Regulatory relaxations

- **51 of February 11, 2016 / 77 of June 23, 2016-- Clarifications relating to acceptance of payments**
 - To facilitate Ease of Doing Business, certain permissible transactions under the existing regime clarified such as opening of Foreign Currency Accounts, pooling up receivables arising from transactions with residents/non residents, to be repatriated within prescribed period, & avail facility of Online Payment Gateway Service Providers (POGSP).
- **52 of February 11, 2016-- Clarifications relating to Issue of Shares**
 - Issue of shares without cash payment through Sweat Equity (subject to SEBI / Cos Act requirements)
 - Issue of shares against legitimate payment owed (payments for IPR, import of goods, dividends, interest, consultancy fee etc.), subject to FDI guidelines

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5. ECB

A.P (DIR Series) Circular # 17 of January 16, 2019 -- External Commercial Borrowings (ECB) – Revised framework

- ❖ Merging of Tracks: Merging of Tracks I and II as “Foreign Currency denominated ECB” and merging of Track III and Rupee Denominated Bonds framework as “Rupee Denominated ECB”.
- ❖ Eligible Borrowers: This has been expanded to include all entities eligible to receive FDI. Additionally, Port Trusts, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities, viz., registered not for profit companies, registered societies/trusts/cooperatives and non-government organizations can also borrow under this framework.
- ❖ Recognized Lender: The lender should be resident of FATF or IOSCO compliant country. Multilateral and Regional Financial Institutions, Individuals and Foreign branches / subsidiaries of Indian banks also be lenders.
- ❖ Minimum Average Maturity Period (MAMP): MAMP will be 3 years for all ECBs. However, for ECB raised from foreign equity holder and utilized for specific purposes, as detailed in the Annex, the MAMP would be 5 years. Similarly, for ECB up to USD 50 million per financial year raised by manufacturing sector, which has been given a special dispensation, the MAMP would be 1 year
- ❖ Late Submission Fee (LSF) for delay in Reporting: Any borrower, who is otherwise in compliance of ECB guidelines, except for delay in reporting drawdown of ECB proceeds before obtaining LRN or Form ECB 2 returns, can regularize the delay by payment of LSF as per the laid down procedure

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6. ODI

- **61 of April 13, 2016--ODI – APR submission**
 - Indian Party (IP) / Resident Individual (RI) are either not regular in submitting the APR or are submitting it with delay
 - **In order to provide AD banks greater capability to track submission of APRs** and also improve compliance level without delay in the matter of submission of APRs by the Indian Party (IPs) / Resident Individual (RIs), it is advised as follows
 - to modify suitably online ODI application
 - self certification accepted for residents
 - the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS
 - An IP / RI, which has set up / acquired a JV / WOS overseas an APR in Form ODI Part II needs to be submitted
- **62 of April 13, 2016-- Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms**
 - The rationalised and revised Form ODI will now comprise the following parts:
 - Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions need info of details of IP/ RI, capital structure and details of JV/WOS/ SDS, declaration by IP/RI and certification by statutory auditors.
 - Part II - Annual Performance Report (APR)
 - Part III – Report on Disinvestment by way of closure, sale buyback etc.,
- **28 of January 25, 2017 – Prohibition of ODI in FATF (Financial Action Task Force) Countries**

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7.GENERAL

- **59 of April 13, 2016-- Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director**
 - S.160 of companies Act 2013
 - ❑ Person who nominates himself or others must make deposit with company
 - ❑ Such deposit is treated as a Current Account and hence does not need RBI approval

- **60 of April 13 2016-- Issue of Rupee denominated Bonds overseas**
 - Max Limit- Rs 50 billion by automatic route
 - These bonds can **only** be issued in a country **and** can **only** be subscribed by a resident of a country
 - maturity- of bond issued overseas is 3 years

- **69 of May 12, 2016-- Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines**
 - An application from a person resident outside India for opening of a BO/LO/PO in India shall require prior approval of Reserve Bank of India, when applicant is in Pakistan, Bangladesh, Afghanistan, Sri Lanka, Iran, China, HK and / or the Principal Business is in Defence, Telecom, Private Security and Information & Broadcasting or the applicant is an NGO
 - **Procedures:** (1) Application to AD (2) UIN (3) Opening Bank A/c & foreign currency account (4) Remittance of profits (5) Remittance of Assets (6) Initial validity for 3 years + extension for further 3 years (7) Annual Activity Certificate

- **73 of May 26, 2016-- Foreign Exchange Management Act, 1999 (FEMA)/ Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) / Compounding of Contraventions under FEMA, 1999**
 - To maximise transparency & minimise transaction cost and to make proper disclosures, Compounding order put up in web site. Penalty imposable is calculated based on Guidance Note of *Formulae* given in Annexure.



**Thank
You!!!**