

# Recent updates in FEMA (including Master Circulars 2013)

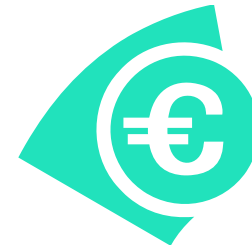


Speaker – CA Harshal Bhuta

Chairman – CA Pankaj Bhuta

# Inbound Investments

**Important  
Changes**





## Inbound Investments

### Downstream investment by a banking company incorporated in India

(Press Note 2 of 2012 dated 31st July 2012)

Earlier Position for Banks	Current Position for banks
<ul style="list-style-type: none"><li>• Downstream investment not considered as Indirect foreign investment when made by Indian companies '<b>owned and controlled</b>' by resident Indian citizens and/or Indian Companies owned and controlled by resident Indian citizens.</li><li>• For other than above, <u>entire investment</u> by the investing company into the subject Indian Company <u>would be considered as indirect foreign investment</u> (except in case of 100% investment in subject Indian Company)</li></ul>	<ul style="list-style-type: none"><li>• Applicable to Banking company, as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 and incorporated in India</li><li>• For following investments, even if they are made by bank which is owned and/or controlled by non-residents/ a non-resident entity/non-resident entities, it <b>would not count towards indirect investment</b>:<ul style="list-style-type: none"><li>• Corporate Debt Restructuring (CDR)</li><li>• other loan restructuring mechanism</li><li>• in trading books</li><li>• for acquisition of shares due to defaults in loans</li><li>• <b>Not for investment in their subsidiaries, joint ventures and associates</b></li></ul></li></ul>

# Inbound Investments - Improving relations with neighbours

## FDI by citizen/entity incorporated in Pakistan

(A.P. (DIR Series) Circular No. 16 dt 22nd August, 2012 + Press Note No.3 dt 1st August 2012)

Earlier Position	Current Position
<ul style="list-style-type: none"><li>Investment from a citizen of Pakistan or an entity incorporated in Pakistan is <b>not permitted</b></li></ul>	<ul style="list-style-type: none"><li>A citizen of Pakistan/entity incorporated in Pakistan <b>now permitted</b> to make investments in India, <b>under the Government route</b>, in sectors/activities other than defence, space and atomic energy</li></ul>

## Opening of NRO accounts by individuals of Bangladesh Nationality

(A.P. (DIR Series) Circular No. 82 dated 11th February, 2013)

- Till now RBI approval was required, now AD permitted to open without RBI approval
- Following conditions:
  - Individual is holding valid visa and valid residential permit issued by FRO/FRRO
  - Each branch of AD to maintain a record of details of the bank accounts opened & fwd it to their head office. Head office in turn would fwd it on quarterly basis to MHA
  - Such details would consist of Name of the Individual, Date of arrival in India, Passport No. & Place/Country of issue, Residential permit reference and date and place of issue, Name of the FRO/FRRO concerned and the Complete address and contact number of the branch where the bank account is being maintained



## Inbound Investments

### Issue of Indian Depository Receipts (IDRs) - Limited two way fungibility

(A.P. (DIR Series) Circular No. 19 dated 28th August, 2012)

- RBI had issued guidelines for issue of IDRs by eligible companies resident outside India vide A.P. (DIR Series) Circular No.5 dated July 22, 2009
- A limited two way fungibility for IDRs now allowed (**similar to the limited two way fungibility facility available for ADRs/GDRs**) subject to certain terms & conditions:
  - The conversion of IDRs into underlying equity shares would be governed by the Para 6 (Period of redemption) & 7 (Procedure for transfer and redemption of IDRs) of A.P. (DIR Series) Circular No. 5 dated July 22, 2009
  - Fresh IDRs would be governed by A.P. (DIR Series) Circular No. 5 dated July 22, 2009
  - The re-issuance of IDRs would be allowed only to the extent of IDRs that have been redeemed /converted into underlying shares and sold
  - Limit of \$ 5 bln for raising of capital by issuance of IDRs by eligible foreign companies in Indian markets.
  - The issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 as well as other relevant guidelines issued in this regard by the Government, the SEBI & RBI



## Inbound Investments

### Allotment of Shares to person resident outside India under MoA - Pricing guidelines (A.P. (DIR Series) Circular No. 36 dated 26th September, 2012)

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• <b>Valuation</b> of shares as per the <b>Discounted Free Cash Flow Method</b> even for subscribers to MOA</li></ul>	<ul style="list-style-type: none"><li>• Shares can be issued at <b>face value</b> for subscribers to MOA</li></ul>

### FDI in Limited Liability Partnerships

[Para 3.2.5 Page 16 of Consolidated FDI Policy, 2013]

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• Foreign Capital participation in LLPs allowed only by way of cash consideration <u>received</u>, even for conversion of company with FDI into LLP</li></ul>	<ul style="list-style-type: none"><li>• Receipt of cash consideration either by through normal banking channels or by debit to NRE/FCNR account <u>now not mandated</u> for conversion of company with FDI into LLP</li></ul>



## Inbound Investments

### Conversion of ECB/Lump sum fees/Royalty etc to Equity

[Para 3.4.6 Page 25 of Consolidated FDI Policy, 2013]

- In case of import of capital goods/ machinery/ equipment (excluding second-hand machinery), issue of equity shares under the FDI policy is allowed under the Government route subject to some conditions.
- Removal of condition of valuation of the capital goods/ machinery/ equipment (excluding second-hand machinery) to be done by a third party entity, preferably by an independent valuer from the country of import along with production of copies of documents /certificates issued by the customs authorities towards the assessment of the fair value of such imports, etc.

### Changes in Form FC-TRS

[Annex 8 Page 111 to 115 of Consolidated FDI Policy, 2013]

- KYC requirements have been introduced in respect of non-resident investor whereby additional declaration for information in the KYC form has to be provided alongwith Form FC-TRS.
- Already present in Form FC-GPR



## Inbound Investments

### Changes in Form FC-GPR

[Annex 1 Page 87 to 93 of Consolidated FDI Policy, 2013]

- Removal of two declarations:
  - Subscribing foreign entity is an existing joint venture partner or there exists technology transfer or trade mark agreement in India in the same field
  - Manufacturing/Not manufacturing items reserved for small sector with 24% FDI cap/FDI above 24% with FIPB approval
- Insertion of additional declaration:
  - Utilization of FDI received in accordance with PMLA/UAPA

### Changes in Annual Return Form on Foreign Assets and Liabilities

[Annex 7 Page 103 to 110 of Consolidated FDI Policy, 2013]

- Insertion of additional declaration:
  - Utilization of FDI received in accordance with PMLA/UAPA





## Inbound Investments

### **Foreign Investment in India by FIIs / QFIs / Long-term investors in Govt securities / infrastructure debt / corporate debt**

(A.P. (DIR Series) Circular No. 135 dated 25th June, 2012)

(A.P. (DIR Series) Circular No. 7 dated 16th July, 2012)

(A. P. (DIR Series) Circular No. 21 dated 31st August 2012)

(A.P. (DIR Series) Circular No. 80 dated 24th January, 2013)

(A.P. (DIR Series) Circular No.90 dated 14th March, 2013)

(A.P. (DIR Series) Circular No. 94 dated 01st April, 2013)

(A.P. (DIR Series) Circular No. 111 dated 12th June, 2013)

### **Foreign Investment in India – Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies**

[A.P. (DIR Series) Circular No. 1 dt 4<sup>th</sup> July, 2013 + Notification No. FEMA 278/2013-RB dt 7<sup>th</sup> June13]

- Consolidated FDI Policy of DIPP already contained the above provisions. Vide this Circular and Notification, RBI has now notified them under FEMA. Most of the provisions are consistent with the Consolidated FDI Policy except with a few changes.



## Inbound Investments – Sector specific FDI

### Single Brand Product Retail Trading

[Press note 4 (2012 series) dt 20/09/2012]

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• The <b>foreign investor should be the owner</b> of the brand.</li></ul>	<ul style="list-style-type: none"><li>• Only <b>one non-resident entity, whether owner of the brand or otherwise</b>, shall be permitted to undertake single brand product retail trading for the specific brand, through a legally tenable agreement, with the brand owner.</li></ul>
<ul style="list-style-type: none"><li>• In respect of proposals involving FDI beyond 51%, <b>mandatory sourcing</b> of at least 30% of the value of products sold would have to be done from Indian 'small industries/ village and cottage industries, artisans and craftsmen'.</li></ul>	<ul style="list-style-type: none"><li>• In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, <b>preferably</b> from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors.</li></ul>
<ul style="list-style-type: none"><li>• Absent</li></ul>	<ul style="list-style-type: none"><li>• This procurement requirement would have to be met, in the first instance, as avg of 5 yrs total value of the goods purchased, beginning 1st April of the year of first FDI tranche. Thereafter, it would have to be met annually.</li></ul>

# Inbound Investments – Sector specific FDI

## Civil Aviation Sector

[Press note 6 (2012 series) dt 20/09/2012]

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• <b>No foreign airlines would be allowed</b> to participate directly or indirectly in the equity of an Air Transport Undertaking engaged in operating Scheduled &amp; Non-Scheduled Air Transport Services except Cargo airlines.</li></ul>	<ul style="list-style-type: none"><li>• <b>Foreign airlines</b> are also, henceforth, <b>allowed to invest</b>, in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:<ul style="list-style-type: none"><li>• <b>Government approval route</b></li><li>• 49% limit includes FDI + FII</li><li>• Compliance with SEBI ICDR + Takeover Code</li><li>• A Scheduled Operator's Permit can be granted only to a company:<ul style="list-style-type: none"><li>• Registered and principal place of business in India</li><li>• Chairmen + 2/3rds of directors should be Indian citizens</li><li>• Substantial ownership+effective control with Indian nationals</li></ul></li><li>• <u>Foreign nationals clearance from security viewpoint</u></li><li>• <u>Clearance from Ministry of Civil Aviation for import of technical equipment</u></li></ul></li></ul>



## Inbound Investments – Sector specific FDI

### Broadcasting Sector

[Press note 7 (2012 series) dt 20/09/2012]

- Comprehensive changes have been made thru this press note
- Highlights of important changes:

Activity	Earlier Position	Current Position
<ul style="list-style-type: none"><li>• <b>Teleports</b> (setting up up-linking HUBs/Teleports); <b>Direct to Home (DTH)</b>; <b>Cable Networks</b> (MSOs operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability)</li></ul>	<ul style="list-style-type: none"><li>• 49% under approval route</li></ul>	<ul style="list-style-type: none"><li>• Upto 49% under automatic route</li><li>• Beyond 49% &amp; upto 74% under Government approval route</li></ul>
<ul style="list-style-type: none"><li>• Mobile TV</li></ul>	<ul style="list-style-type: none"><li>• No specific policy</li></ul>	



## Inbound Investments – Sector specific FDI

### Power Exchanges [Press note 8 (2012 series) dt 20/09/2012]

- 49% foreign investment limit in Power Exchanges should be registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010
- FDI limit of 26% under government approval route & FII limit of 23% under automatic route only thru secondary market
- No non-resident investor/ entity, including persons acting in concert, to hold more than 5% of the equity in these companies
- SEBI regulations to be complied with

### NBFC Sector [Press note 9 (2012 series) dt 03/10/2012]

Earlier Condition	Revised Condition
<ul style="list-style-type: none"><li>• <b>100% foreign owned NBFCs</b> with a minimum capitalisation of US\$ 50 million can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and <b>without bringing in additional capital.</b></li></ul>	<ul style="list-style-type: none"><li>• Relaxation of having foreign investment from 100% owned to between 75% &amp; 100%.</li></ul>



## Inbound Investments – Sector specific FDI

### Asset Reconstruction Companies [Para 6.2.17.1 Page 72 - Consolidated FDI Policy 2013]

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• 49% FDI allowed under Government route</li><li>• No FII investment allowed in equity capital</li></ul>	<ul style="list-style-type: none"><li>• Increase in overall limit to 74% of paid-up capital (FDI+FII)</li><li>• Two new conditions:<ul style="list-style-type: none"><li>• No sponsor to hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII controlled by the single sponsor</li><li>• The total shareholding of an individual FII shall not exceed 10% of the total paid-up capital</li></ul></li></ul>

### Pharmaceutical sector [Para 6.2.18 Page 79 of Consolidated FDI Policy 2013]

- FDI upto 100% is allowed for brownfield investments in the pharmaceuticals sector under the Government approval route.
- Consolidated FDI Policy further stated that appropriate conditions for FDI may be incorporated at the time of granting approval.



## Inbound Investments – Sector specific FDI

### Multi Brand Retail Trading [Press note 5 (2012 series) dt 20/09/2012]

- Hitherto, FDI was prohibited in retail trading, except in single brand product retail trading
- Govt has now permitted FDI to invest upto 51% under the Government Route, in Multi Brand Retail Trading, subject to conditions, some of which are:
  - Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, although unbranded may be traded.
  - Minimum investment of \$ 100 million to be brought in by foreign investor
  - At least 50% of foreign investment to be invested in back-end infra within 3 yrs of first FDI tranche. Back-end infra **to include** capital expd on investment made towards processing, mfg, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agricultural market produce infra etc. It **shall not include** expd on front-end units, land cost and rentals.
  - Minimum sourcing of 30% of mfg/processed pdts from SSI units with gross value of invst in P&M < \$1mln
  - Self- certification by company for compliance to above 3 conditions
  - Retail sales outlets to be set-up in cities with >10 lakhs population as per 2011 Census (including area of 10 kms around municipal /urban limits). For States/UT not meeting this criteria, criteria to be decided by such States/UT for set-up.



## Inbound Investments – Sector specific FDI

### Multi Brand Retail Trading

- GOI to have first right of procurement of agricultural products
- Further compliance to State laws as may be prevalent
- Application first to DIPP, then to be fwded to FIPB
- List of 10 states which have agreed to introduce FDI in MBRT
- Himachal Pradesh and Karnataka added as States consented to FDI in MBRT [Press note 1 (2013 series) dt 03/06/2013] & [Press note 3 (2013 series) dt 04/07/2013] respectively
- Definition of Group Company [Press note 2 (2013 series) dt 03/06/2013]
  - Vide this Press Note, the Government has incorporated the following definition of ‘Group Company’ in Chapter 2 of FDI Policy:
    - *Group Company means two or more enterprises which, directly or indirectly, are in a position to:- (i) exercise twenty-six percent, or more of voting rights in the other enterprise; or (ii) appoint more than fifty percent, of members of board of directors in the other enterprise.*
- Clarification on queries of prospective investors/ stakeholders on FDI Policy for Multi-Brand Retail Trading (MBRT): [Hosted on DIPP website on 06/06/2013]
  - Govt has issued clarifications by way of comprehensive replies to various queries raised by stakeholders. Kindly refer to annexure to this presentation for our views on the same.



# Inbound Investments

## Format for seeking clarifications on the FDI Policy Issues

[Notice dated 10<sup>th</sup> May 2013]

- DIPP took note of numerous requests for clarification and observed that they did not provide specific/adequate details of the proposal. As a result, it was unable to take decision/provide clarifications on such references.
- Therefore, it has come out with a format for seeking clarifications as below:

1.	Name of the existing/Proposed foreign investor	
a)	Address	
b)	Phone No.	
c)	Mail id	
d)	Date and place of incorporation	
2.	Name of the Indian investee entity/ joint venture partner	
a)	Address	
b)	Phone No.	
c)	Mail id	
d)	Date and place of incorporation	
e)	Present business activities	
f)	Copy of MoA	
3.	Proposed amount of investment	
4.	Percentage foreign shareholding (pre and post investment)	
5.	Sector	
6.	NIC code of proposed activity	
7.	Gist(not exceeding 200 words) on proposed business activity in India	
8.	Mention paragraph No. of the policy on which clarification	
9.	Please mention the issue in brief.	
10.	Details of earlier SIA/FIPB/RBI approvals, if any. Enclose copies.	
11.	Any other information relevant to the case/issue.	

Authorized signatory

14<sup>th</sup> July 2013

Matunga CPE Study Circle of WIRC

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# Outbound Investments

## Important Changes



14<sup>th</sup> July 2013

Matunga CPE Study Circle of WIRC

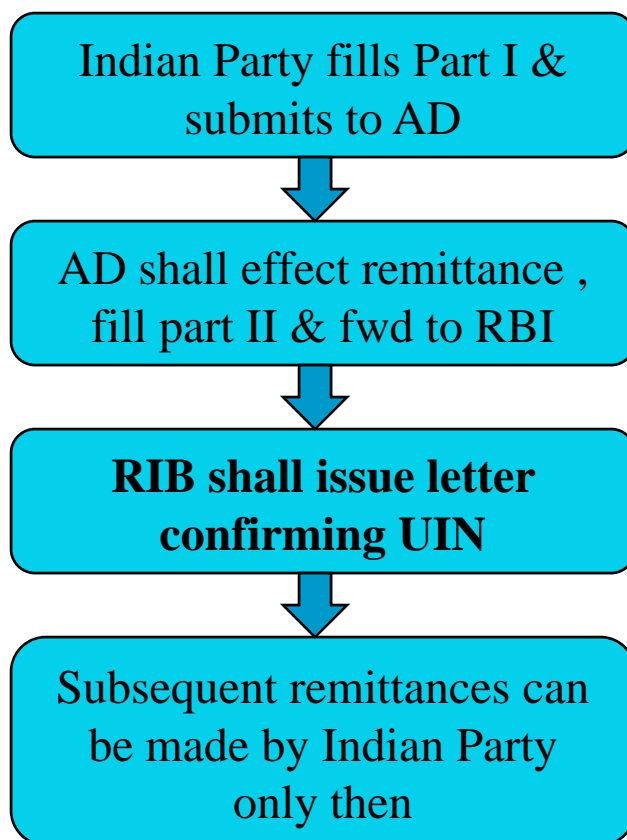
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# Outbound Investments

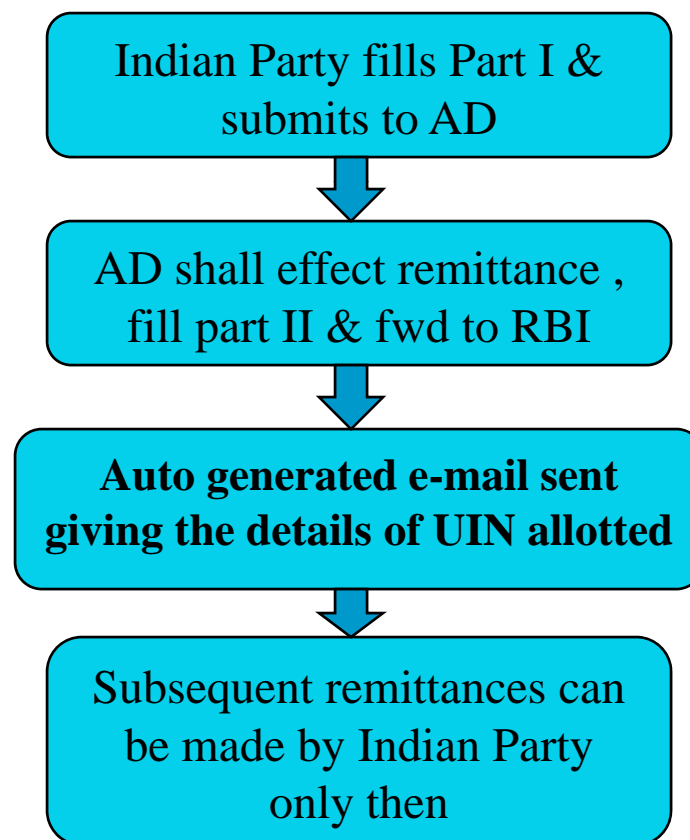
## Allotment of UIN by auto-generated email

(A.P. (DIR Series) Circular No. 131 dated 31st May, 2012.)

### Earlier Procedure (Automatic Route)



### Revised Procedure (Automatic Route)





## Outbound Investments

### Changes in Form ODI

(A.P. (DIR Series) Circular No. 15 dated 21st August, 2012)

- **New undertaking** to be given under Part I – Section E of Form ODI (i.e. Declaration by Indian Party) & under Part I – Section F of Form ODI (i.e. Certificate by Statutory Auditors of Indian Party):
  - **Wherever applicable, APR in respect of all existing JV/WOS of Indian Party has been submitted**

### Investment by Indian Parties in Pakistan

(A.P. (DIR Series) Circular No. 25 dated 7th September, 2012)

- Hitherto, outbound investment in Pakistan was not be permissible
- RBI shall consider all Overseas Direct Investment proposals by Indian Parties in Pakistan under the approval route



## Outbound Investments

### Submission of APR-Time Limits

(A.P. (DIR Series) Circular No. 29 dated 12th September, 2012)

- Hitherto, Indian party needed to submit to APR in Form ODI Part III every year in respect of each JV/WOS outside India, set up or acquired by the Indian party, **within 60 days of expiry of statutory period for finalization of the audited accounts of such JV/WOS**
- RBI has streamlined the date of submission of APR by Indian party, **on or before the 30th of June each year**
- For host country where its law does not mandatorily require auditing of the books of accounts of JV / WOS, APR may continue to be filed on basis of un-audited accounts provided:
  - The Statutory Auditors of the Indian party certifies that ‘The un-audited annual accounts of the JV / WOS reflect the true and fair picture of the affairs of the JV / WOS’ &
  - That the un-audited annual accounts of the JV / WOS have been adopted and ratified by the Board of the Indian party



## Outbound Investments

### Overseas investments by Navratna Public Sector Undertakings (PSUs), OVL and OIL

(A.P. (DIR Series) Circular No. 99 dated 23rd April, 2013)

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• Navratna Public Sector Undertakings (PSUs), ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) are allowed to invest in overseas <b>unincorporated entities</b> in oil sector (for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits under the automatic route.</li></ul>	<ul style="list-style-type: none"><li>• Now, Navratna Public Sector Undertakings (PSUs), ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) also allowed to invest in overseas <b>incorporated JV/WOS</b> in oil sector (for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits under the automatic route.</li></ul>



## Outbound Investments

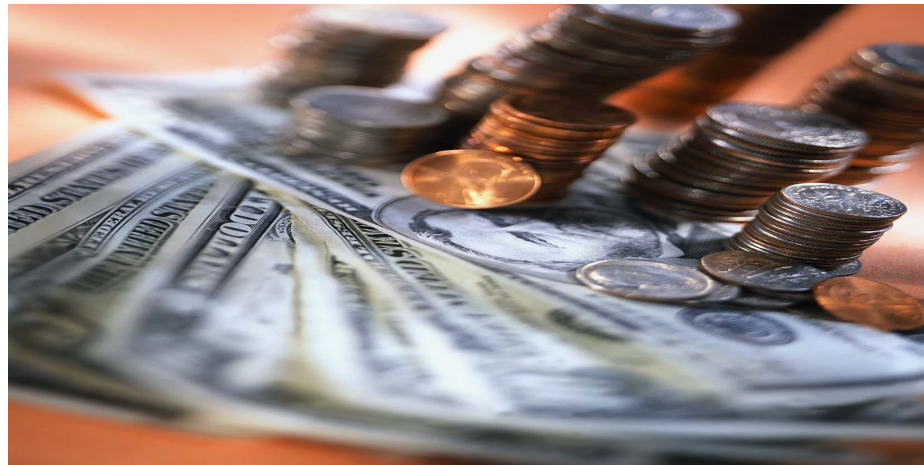
### **Clarification w.r.t. structures facilitating trading in currencies, securities and commodities**

(A.P. (DIR Series) Circular No. 100 dated 25th April, 2013)

- Overseas entity, having direct or indirect equity participation by an Indian party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank.
- Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999

# External Commercial Borrowings (ECB) and Trade Credits

## Important Changes





# External Commercial Borrowings (ECB) and Trade Credits

## Repayment of rupee loans:

(A.P. (DIR Series) Circular No. 134 dated 25th June, 2012)

(A.P. DIR Series Circular No. 26 dated 11th September, 2012)

(A.P. (DIR Series) Circular No. 78 dated 21st January, 2013)

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• ECB could not be availed for repayment of rupee loans (except for infrastructure sector as per A.P. (DIR Series) Circular No. 25 dt 23/09/11)</li></ul>	<ul style="list-style-type: none"><li>• ECB now allowed for repayment of rupee loans and/or fresh rupee capital expenditure.</li><li>• Only for companies in the <b>manufacturing, infrastructure sector and hotel sector</b> (with a total project cost of INR 250 crore or more irrespective of geographical location for hotel sector)</li><li>• <u>Some important conditions:</u><ul style="list-style-type: none"><li>• O/s Rupee Loan should have been used for capex</li><li>• Consistent forex earners for past 3 yrs</li><li>• Not in the default/caution list of RBI</li><li>• Limit-Higher of (a) 75% of avg forex earning during past 3 FYs or (b) highest forex earning during past 3 Fys</li><li>• Limits for new SPV- 50% of forex earning for past FY</li><li>• Repayment of ECB only thru forex earnings</li></ul></li></ul>

# External Commercial Borrowings (ECB) and Trade Credits

## What is Average Maturity period?

(A.P. (DIR Series) Circular No. 136 dated 26th June, 2012)

### Annex II

#### Calculation of Average Maturity- An Illustration

ABC LTD.

Loan Amount = USD 2 million

Date of drawal/ repayment (MM/DD/YYYY)	Drawal	Repayment	Balance	No. of Days** balance with the borrower	Product= (Col.4 * Col. 5)/ (Loan amount * 360)
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6
05/11/2007	0.75		0.75	24	0.0250
06/05/2007	0.50		1.25	85	0.1476
08/31/2007	0.75		2.00	477	1.3250
12/27/2008		0.20	1.80	180	0.4500
06/27/2009		0.25	1.55	180	0.3875
12/27/2009		0.25	1.30	180	0.3250
06/27/2010		0.30	1.00	180	0.2500
12/27/2010		0.25	0.75	180	0.1875
06/27/2011		0.25	0.50	180	0.1250
12/27/2011		0.25	0.25	180	0.0625
06/27/2012		0.25	0.00		

**Average Maturity= 3.2851**

\*\* Calculated by = DAYS360 (firstdate, seconddate, 360)



# External Commercial Borrowings (ECB) and Trade Credits

## ECB by Small Industries Development Bank of India (SIDBI)

(A.P. (DIR Series) Circular No. 48 dated 06th November, 2012)

- **SIDBI now an eligible borrower** for availing of ECB
- Purpose is to on-lend to MSME sector (as defined under MSMED Act, 2006)
- On-lending in INR - foreign currency risk shall be hedged by SIDBI in full
- On-lending in FCY – only to MSME having natural hedge by way of forex earnings
- Limits under automatic route – 50% of owned funds
- Limits under approval route - >50% of owned funds but max \$ 500 mnl per FY
- Proceeds of ECB shall be used only for permissible end-uses by MSME

## ECB for Telecom Sector

Relaxations for ECB w.r.t. payments for revised 2G spectrum auction

(A.P. (DIR Series) Circular No. 54 dated 26<sup>th</sup> November, 2012)

Extension of ECB window for financing 3G spectrum auction

(A.P. (DIR Series) Circular No. 114 dated 25th June, 2013)



# External Commercial Borrowings (ECB) and Trade Credits

## Buyback / prepayment of Foreign Currency Convertible Bonds (FCCBs)

(A.P. (DIR Series) Circular No. 1 dated 5th July, 2012)

(A.P. (DIR Series) Circular No. 115 dated 25th June, 2013)

- Earlier scheme of buyback of FCCB vide A.P. (DIR Series) Circular No. 75 dated 30th June, 2011 was till 31<sup>st</sup> March 12
- Now, buyback **under approval route only**
- The buyback value of the FCCBs shall be at a minimum discount of 5% on the accreted value
- The right for buyback is vested with the issuer of FCCBs. However, the actual buyback is subject to the consent of the bond holders
- The FCCBs bought back / repurchased from the holders **must be cancelled** and should not be re-issued or re-sold
- The buyback will not have any effect on the bond holders not opting for the buyback or on the non-participating bond holders of companies opting for the buyback
- Regular compliance of ECB 2 returns mandatory & filing report on completion of buyback
- Scheme of buyback to expire on 31/12/2013



# External Commercial Borrowings (ECB) and Trade Credits

## ECB for the low cost affordable housing projects

(A.P. (DIR Series) Circular No. 61 dated 17th December, 2012)

(A.P. (DIR Series) Circular No. 113 dated 24th June, 2013)

- Low cost affordable housing projects:
  - At least 60 % of FSI would be for units having maximum carpet area up to 60 square meters
  - Slum rehabilitation projects also eligible (Parameters to be set by Central Sanctioning and Monitoring Committee of the Affordable Housing in Partnership Scheme)
- ECB can be availed by **developers/builders, Housing Finance Companies (HFCs) / National Housing Bank (NHB)**
- **Certain important criteria for developers/builders**
  - Should be a company registered under the Companies Act, 1956
  - Minimum 3 years' experience in undertaking residential projects & good track record
  - All necessary clearances should be available on record
  - No default in financial commitments to banks/financial institutions/other agencies
  - Project should not be a matter of litigation
  - ECB should be swapped into Rupees for the entire maturity on fully hedged basis
  - Cant use for acquisition of land



# External Commercial Borrowings (ECB) and Trade Credits

## ECB for the low cost affordable housing projects

- **Certain important criteria for HFCs**
  - HFC registered with NHB
  - Minimum NOF, borrowing limits, net NPA limits
  - Max loan amt to the individual buyer would be INR 25 lakh subject to cost of the individual housing unit not exceed INR 30 lakh
  - ECB should be swapped into Rupees for the entire maturity on fully hedged basis
  - Interest rate spread charged to ultimate buyer is reasonable
  - Cant use for acquisition of land
- NHB shall also be eligible for raising of ECB for financing low cost affordable housing units of individual borrowers and on-lending to developers not being able to raise ECB
- Builders/developers to apply thru NHB
- NHB to act as the nodal agency to decide a project's eligibility & fwd application to RBI
- Developers/builders/HFCs/ NHB will not be permitted to raise FCCBs under this scheme
- Aggregate limit of USD 1(one) billion each for the financial year 2013-14 and 2014-15

# External Commercial Borrowings (ECB) and Trade Credits

## Corporates under Investigation

A.P. (DIR Series) Circular No. 87 dated 05th March, 2013

Earlier Position	Current Position
<ul style="list-style-type: none"><li>• Corporates under investigation by any law enforcing agencies like the Directorate of Enforcement (DoE), etc. <b>not allowed</b> to access ECB <b>under the Automatic route</b></li><li>• Any request by such corporates for ECB is examined by the Reserve Bank <b>under the approval route</b></li></ul>	<ul style="list-style-type: none"><li>• All entities now <b>permitted under Automatic Route</b> notwithstanding the pending investigations / adjudications / appeals by the law enforcing agencies, without prejudice to the outcome of such investigations / adjudications / appeals</li><li>• <u>Authorised Dealers</u> while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter</li><li>• <u>Reserve Bank of India</u> also shall intimate the concerned agencies by endorsing the copy of the approval letter while approving such proposals</li></ul>



# External Commercial Borrowings (ECB) and Trade Credits

## ECB for Import of Services, Technical know-how and License Fees

(A.P. (DIR Series) Circular No. 119 dated 26th June, 2013)

- Currently, eligible borrowers can raise ECB for the purpose of import of capital goods
- Now, import of services, technical know-how and payment of license fees allowed to be taken as part of import of capital goods for **manufacturing** and **infrastructure** sectors
- Important conditions:
  - Duly signed agreement between the service provider and the borrower company
  - Original invoice raised by the service provider to be certified by borrower company
  - **Declaration by the importer that the entire expenditure on import of services will be capitalized**
  - **Declaration by the importer that entire expenditure on import of services forms part of project cost**

## ECB in Renminbi (A.P. (DIR Series) Circular No. 117 dated 25th June, 2013)

Discontinuation of ECB in Renminbi (RMB) under approval route for Indian companies in the infrastructure sector



# External Commercial Borrowings (ECB) and Trade Credits

## Continuation of current all-in-cost ceilings till 30<sup>th</sup> September 2013

### **Trade Credits** (A.P. (DIR Series) Circular No.9 dt 11<sup>th</sup> July 2013)

Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points  *for the respective currency of credit or applicable benchmark
More than one year and up to three years	
More than three years and up to five years (import of capital goods by companies only in infrastructure sector)	

- RBI has also instructed ADs to ensure that the period of trade credit should be linked to the operating cycle and trade transaction.

### **ECB** (A.P. (DIR Series) Circular No.11 dt 11<sup>th</sup> July 2013)

Average Maturity period	All-in-cost ceilings over 6 months LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

\*for the respective currency of credit or applicable benchmark

# Export of Goods and Services

## Important Changes





## Export of Goods and Services

### EEFC A/c, DDA & RFC(D) A/c - Review of Guidelines

(A.P. (DIR Series) Circular No. 124 dated 10<sup>th</sup> May, 2012)

(A.P. (DIR Series) Circular No. 8 dated 18<sup>th</sup> July, 2012)

(A.P. (DIR Series) Circular No. 12 dated 31<sup>st</sup> July, 2012)

(A.P. (DIR Series) Circular No. 79 dated 22<sup>nd</sup> January, 2013)

- All categories of foreign exchange earners are allowed to credit 100% of their foreign exchange earnings to their EEFC Accounts subject to the condition that:
  - Sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.
  - Further, in case of requirements, EEFC account holders are permitted to access the forex market for purchasing foreign exchange.
- Above also applicable to RFC(Domestic) a/c and DDA

**[RBI reasoning:** The facility of EEFC scheme / RFC(D) A/c / DDA is intended to enable exchange earners to save on conversion/transaction costs while undertaking forex transactions. This facility is not intended to enable exchange earners to maintain assets in foreign currency, as India is still not fully convertible on Capital Account]



## Export of Goods and Services

### Supply of Goods and Services by SEZs to DTAs Units against payment in foreign exchange

(A.P. (DIR Series) Circulars No. 46 dated 23rd October, 2012)

Earlier Position	Current Position
<ul style="list-style-type: none"><li>•Units in the DTAs permitted to purchase foreign exchange from ADs for making <b>payment towards goods supplied</b> to them by units in the SEZs</li></ul>	<ul style="list-style-type: none"><li>•Units in the DTAs permitted to purchase foreign exchange from ADs for making <b>payment towards services rendered</b> to them</li><li>•There should be an enabling provision for supplying these goods/services by the SEZ unit to the DTA unit and for payment in foreign exchange for such goods/ services to the SEZ unit, in the Letter of Approval (LoA) issued to the SEZ unit by the Development Commissioner(DC) of the SEZ</li></ul>



## Export of Goods and Services

### Realisation and Repatriation of export proceeds – Non-SEZs units & SEZs units

(A.P. (DIR Series) Circular No. 52 dt. 20<sup>th</sup> November, 2012)

(A.P. (DIR Series) Circular No. 105 dated May 20, 2013)

(A.P. (DIR Series) Circular No.108 dated 11<sup>th</sup>June, 2013)

- **Non-SEZs Units:** period for realization and repatriation to India, of the amount representing the full value of goods or software exported increased from 6 months to 12 months and now brought down to **9 months till 30<sup>th</sup> September 2013**
- **SEZs units:** Period now specified. SEZs units have to realize and repatriate full value of goods/software/services to India within a **period of twelve months** from the date of export

### Processing and Settlement of Export related receipts facilitated by Online Payment Gateways – Enhancement of the value of transaction

A.P. (DIR Series) Circular No. 109 dated 11th June, 2013

- AD are permitted to offer the facility to repatriate export related remittances by entering into standing arrangements with Online Payment Gateway Service Providers (OPGSPs) for export of goods and services for value not exceeding USD 3000 per transaction
- Limit has been **increased from USD 3000 to USD 10,000** for such transaction



## Export of Goods and Services

### **Simplification and Revision of Softex Procedure at SEZs / EPZs / 100% EOU / DTA**

(A. P. (DIR Series) Circular No. 47 dated 23rd October 2012)

(A.P. (DIR Series) Circular No. 66 dated 1th January, 2013)

- Earlier as per A.P. (DIR Series) Circular No.80 dated February 15, 2012, apart from all other terms and conditions mentioned in the circular, the new procedure was **effective only in STPI Bangalore, Chennai, Hyderabad, Mumbai and Pune**. Since the revised procedure was running successfully at the 5 designated centers, it had been decided to implement the revised procedure in **all the STPIs in India** with immediate effect as per A.P. (DIR Series) Circular No.47 dated October 23, 2012
- Now adopted all over by **all the STPIs and also SEZ/ EPZ/ 100% EOU/ EHTP/ DTA units**
- As per this revised procedure, a software exporter either under STPIs or SEZs / EPZs / 100% EOU / DTA, whose annual turnover is at least Rs.1000 crores or who files at least 600 SOFTEX forms annually on all India basis, will be eligible to submit statements in **revised excel format sheets**



## Export of Goods and Services

### “Write-off” of unrealized export bills

(A.P. DIR Series Circular No.88 dated 12<sup>th</sup> March, 2013)

- Hitherto, exporters were given limited powers of write-off and also AD Category – I banks have been permitted to accede to the requests for "write-off" made by the exporters, subject to various conditions.
- With a view to further simplify and liberalize the procedure and for providing greater flexibility to all exporters as well as the Authorized Dealer banks, RBI decided to effect the following liberalization in the limits of “write-offs” of unrealized export bills (subject to the stipulations regarding surrender of incentives prior to ”write-off” adduced in the A.P. (DIR Series) Circular No. 03 dated 22 July 2010):
  - i. Self “write-off” by an exporter  
(Other than Status Holder Exporter) 5%\*
  - ii. Self “write-off” by Status Holder Exporters 10%\*
  - iii. ‘Write-off” by Authorized Dealer bank 10%\*

\*of the total export proceeds realized during the previous **calendar year**.
- The above limits will be related to total export proceeds realized during the previous calendar year and will be cumulatively available in a year



## Export of Goods and Services

### “Write-off” of unrealized export bills

- The above “write-off” will be subject to the following conditions:
  - Relevant amount has remained **outstanding for more than one year**
  - **Satisfactory documentary evidence** is furnished in support of the exporter having made **all efforts to realize the dues**
  - The case falls under any of the undernoted categories:
    - Overseas buyer has been **declared insolvent** & a certificate from the official liquidator indicating that there is no possibility of recovery of export proceeds has been produced;
    - Goods exported have **been auctioned or destroyed** by the Port / Customs / Health authorities in the importing country;
    - Unrealized amount represents the balance due in a **case settled through the intervention** of the Indian Embassy, Foreign Chamber of Commerce or similar Organization;
    - Unrealized amount represents the undrawn balance of an export bill (**not exceeding 10% of the invoice value**) remaining outstanding and turned out to be unrealizable despite all efforts made by the exporter;
    - The **cost of resorting to legal action would be disproportionate** to the unrealized amount of the export bill or where the exporter even after winning the Court case against the overseas buyer could not execute the Court decree due to reasons beyond his control;
    - Bills were drawn for the difference between the letter of credit value and actual export value or between the provisional and the actual freight charges but the amount has remained unrealized consequent on **dishonour of the bills by the overseas buyer** and there are no prospects of realization





## Export of Goods and Services

### “Write-off” of unrealized export bills

- The **exporter has surrendered proportionate export incentives** (for the cases not covered under A. P. (DIR. Series) Circular No.03 dated July 22, 2010), if any, availed of in respect of the relative shipments. The AD Category – I banks should obtain documents evidencing surrender of export incentives availed of before permitting the relevant bills to be written off.
- In case of self write-off, the exporter should submit to the concerned AD bank, a **Chartered Accountant’s certificate**, indicating the export realization in the preceding calendar year and also the amount of write-off already availed of during the year, if any, the relevant GR / SDF Nos. to be written off, Bill No., invoice value, commodity exported, country of export. The CA certificate should also indicate that the export benefits, if any, availed of by the exporter have been surrendered.
- However, the following would not qualify for the “write off” facility :
  - Exports made to countries with externalization problem i.e. where the overseas buyer has deposited the value of export in local currency but the amount has not been allowed to be repatriated by the central banking authorities of the country
  - GR / SDF forms which are under investigation by agencies like, ED, DRI, CBI, etc. as also the outstanding bills which are subject matter of civil / criminal suit

# Import of Goods and Services

## Important Changes





# Import of Goods and Services

## Import of Gold by Nominated Banks/Agencies

(A.P. (DIR Series) Circular No. 103 dated May 13, 2013)

(A.P. (DIR Series) Circular No. 107 dated 4<sup>th</sup> June, 2013)

(A.P. (DIR Series) Circular No. 122 dated 27<sup>th</sup> June, 2013)

### • Various Modes of import of Gold allowed under FEMA:

- 1) Import of Gold on loan basis:** Gold loan is availed of by nominated agencies/banks from overseas suppliers, where the loan is denominated on the basis of the quantity of gold.
- 2) Import of gold on Suppliers credit/Buyers credit basis**
- 3) Import of gold on Consignment basis:** Gold is imported by the nominated banks/agencies on consignment basis wherein the ownership of the goods will rest with the supplier and the importer [consignee] will be acting as an agent of the supplier [consignor]. Remittances towards the cost of import shall be made as and when sales take place as per the provisions of agreement entered into between the overseas supplier [consignor] and nominated agency/bank (consignee).
- 4) Import of gold on unfixed price basis:** The nominated agency/bank imports gold on outright purchase basis subject to the condition that although ownership of the gold shall be passed on to the importer at the time of import itself, the price of gold shall be fixed later/ as and when the importer sells the gold to the users.



## Import of Goods and Services

### Import of Gold by Nominated Banks/Agencies

- All imports of gold by Nominated Banks/Agencies will now necessarily have to be on **Documents against Payment (DP) basis**.
- Accordingly, gold imports on **Documents against Acceptance (DA) basis will not be permitted**.
- These restrictions will however not apply to import of gold to meet the needs of exporters of gold jewellery.
- **Letters of Credit (LC)** to be opened by Nominated Banks / Agencies for import of gold under all categories will be only on **100 per cent cash margin basis**.

### Import of gold in any form including jewellery & import of precious and semi precious stones

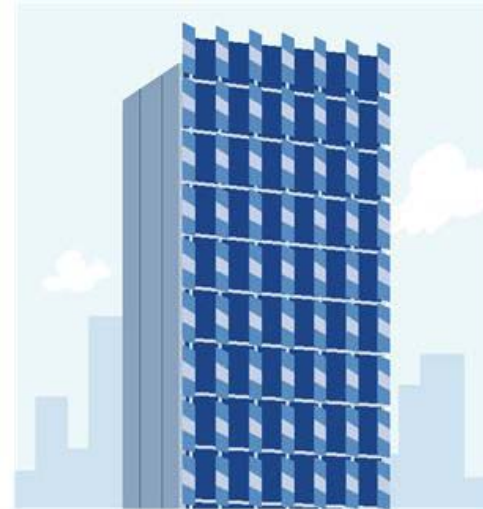
(A.P. (DIR Series) Circular No. 34 dated 24th September, 2012)

(A.P. (DIR Series) Circular No. 83 dated 20th February, 2013)

- RBI has clarified that Suppliers' and Buyers' Credit (trade credit) including usance period of Letters of Credit opened for import of gold in any form including jewellery (made of gold/precious metals or/and studded with diamonds/semi precious/precious stones) and import of precious and semi precious stones **should not exceed 90 days from the date of shipment**

# Establishment of LO/BO/PO

## Important Changes





## Establishment of LO/BO/PO

### Additional reporting requirements – LO/BO/PO

(A.P. (DIR Series) Circular No. 35 dated 25th September, 2012)

- Submission of a report containing information **within five working days of the LO/BO/PO becoming functional** to the Director General of Police (DGP) of the state concerned in which LO/BO/PO has established its office [if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India]
- Such **information contains comprehensive background details** such as details of foreign entity, details of office in India, list and details of personnel employed at India office including foreigners, whether they are on employment visas only, list of equipment imported, details of suppliers, list of places visited, etc.
- Such copy of the report shall also be filed with the DGP concerned **on annual basis** along with a copy of the Annual Activity Certificate/Annual report required to be submitted by LO/BO/PO concerned, as the case may be
- Copy of report also to be filed with AD
- All existing LO/BO/PO to comply with immediate effect



## Establishment of LO/BO/PO

### Reporting to Income Tax Authorities – LO/BO/PO

(A.P. (DIR Series) Circular No. 55 dated 26th November, 2012)

- RBI clarified that the copies of Annual Activity Certificates submitted to the DGIT (International Taxation), New Delhi will have to be **accompanied by Audited Financial Statements including Receipt and Payment Account**.
- RBI further clarified that at the time of renewal of permission of LOs by AD Banks, the copy of the same will have to be submitted to the office of the DGIT (International Taxation).

# Compounding of Contraventions & Penalties

**Important  
Changes**







# Compounding of Contraventions & Penalties

## Compounding of Contraventions under FEMA, 1999

(A.P. DIR Series Circular No. 11 dated 31st July, 2012)

- RBI clarified, that whenever a contravention is identified by the Reserve Bank or **brought to its notice** by the entity involved in contravention by way of a reference **other than through the prescribed application for compounding**, the Bank will continue to decide:
  - i. Whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
  - ii. Whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed or
  - iii. Whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE)
- However, RBI also clarified that once a compounding application is filed by the concerned entity suo moto admitting the contravention, the same will not be considered as ‘technical’ or ‘minor’ in nature and formal compounding process shall be initiated

(Press Release 2012-2013/1215 dated 18<sup>th</sup> January 2013)

- RBI has clarified that appearing for a personal hearing is optional for the applicant and appearing for or opting out of personal hearing would not have any bearing whatsoever on the amount of penalty involved in the compounding order
- RBI encourages the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions



# Compounding of Contraventions & Penalties

## Omissions and commissions in reporting under FEMA

(A.P. (DIR Series) Circular No. 76 dated 17th January, 2013)

- RBI observed that on many occasions, the contraventions of the provisions of FEMA by corporates and individuals were due to the acts of omission and commission on the part of ADs and some of the applicants had also produced documentary evidence in support of their claim.
- It scrutinized such contraventions and noticed that they pertain to the following:
  - Draw down of ECB without obtaining LRN
  - Allowing draw down of ECB under the automatic route from unrecognised lender, to ineligible borrower, for non-permitted end uses, etc.
  - Non-filing of form ODI for obtaining UIN before making the second outbound remittance
  - Non-submission of APRs / copies of Share Certificates to the AD (and non-reporting thereof by the AD to Reserve Bank) in respect of overseas investments
  - Delay in submission of the Advance Reporting Format in respect of Foreign Direct Investment (FDI) to the concerned Regional Office of the Reserve Bank
  - Delay in filing of details after issue of eligible instruments under FDI within 30 days in form FC-GPR to the concerned Regional Office of the Reserve Bank
  - Delay in filing of details pertaining to transfer of shares for FDI transactions in form FC-TRS by resident individual/companies



## Compounding of Contraventions & Penalties

### Omissions and commissions in reporting under FEMA

(A.P. (DIR Series) Circular No. 76 dated 17th January, 2013)

- RBI further stated that all the transactions involving FDI, ECB and ODI are important components of our Balance of Payments statistics which are being compiled and published on a quarterly basis. Any delay in reporting affects the integrity of data and consequently the quality of policy decisions relating to capital flows into and out of the country.
- In this connection RBI therefore reiterated that in terms of Section 11(3) of FEMA, 1999, **it may impose a penalty on the authorized person** for contravening any of its direction or failing to file any return as may be directed by it from time to time.

# Miscellaneous

## Important Changes





## Miscellaneous under FEMA

### **Submission of Revised A-2 Form** (A.P. (DIR Series) Circular No. 5 dated 12th July 2012)

- RBI had revised the purpose codes for foreign exchange purchase/ sale transactions, used for filling the cover page of R-Return, vide A.P.(DIR Series) Circular No. 84 dated February 29, 2012.
- Accordingly, RBI also revised the list of the purpose codes in Form A-2 for use by the applicants for remittance of funds abroad to align the same with R-Return.

### **Money Transfer Service Scheme** (A.P. (DIR Series) Circular No. 132 dated 8<sup>th</sup> June, 2012)

- RBI has now decided to increase the number of remittances from 12 to 30 to be received by a single individual beneficiary in a calendar year.

### **Non-resident guarantee for non-fund based facilities entered between two resident entities** (A. P. (DIR Series) Circular No. 20 dated 29th August 2012)

- Reserve bank extended the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC)) entered into between two persons resident in India.



## Miscellaneous under FEMA

### **Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives – Cost Reduction Structures**

(A.P. DIR Series Circular No. 30 dated 12th September, 2012)

- Under the extant instructions, use of cost reduction structures, i.e., cross currency option cost reduction structures and foreign currency –INR option cost reduction structures had been permitted to hedge exchange rate risk arising out of trade transactions and ECBs
- RBI decided to permit the use of cost reduction structures for hedging the exchange rate risk arising out of foreign currency loans availed of domestically against FCNR(B) deposits.

### **KYC norms/AML standards/CFT Obligation of Authorised Persons under PMLA 2002, as amended by PML Amendment Act, 2009 – Money changing activities**

(A.P. (DIR Series) Circular No. 51 dt. 15<sup>th</sup> November, 2012)

- RBI has amended certain instructions for obtaining documents other than passport towards address proof in case of foreign tourists
- RBI has stated that where neither passports contain any address nor foreign tourists are able to produce any address proof, APs may obtain and keep on record, a copy of passport and visa duly stamped by the Indian Immigration authorities and a declaration duly signed from foreign tourists regarding the permanent address.



## Miscellaneous under FEMA

### **Facilities for Persons Resident outside India – FIIs**

(A.P. (DIR Series) Circulars No. 45 dated 22<sup>nd</sup> October, 2012)

- Hitherto, only designated branches of AD Category I banks maintaining accounts of FIIs were allowed to act as market makers to FIIs for hedging their currency risk on the market value of entire investment in equity and/or debt in India as on a particular date
- RBI thereafter allowed FIIs to approach any AD Category I bank for hedging their currency risk subject to specific conditions

### **Memorandum of Instructions for Opening and Maintenance of Rupee/Foreign Currency Vostro Accounts of Non-resident Exchange Houses**

(A.P. (DIR Series) Circular No. 81 dated 24<sup>th</sup> January, 2013)

(A.P. (DIR Series) Circular No. 85 dated 28<sup>th</sup> February, 2013)

- RBI has now decided to extend the Rupee Drawing Arrangements only under the Speed Remittance Procedure to Exchange Houses situated in all countries which are FATF compliant for the following:
  - Payments to medical institutions and hospitals in India
  - Payments to hotels for stay



## Miscellaneous under FEMA

### **Memorandum of Instructions governing Money Changing Activities**

(A.P. (DIR Series) Circular No. 96 dated 05<sup>th</sup> April, 2013)

- RBI has now allowed Authorised Money Changers (AMCs) to sell Indian Rupees to foreign tourists/visitors against international credit cards/international debit cards and advised them to take prompt steps to obtain reimbursement through normal banking channels.

### **Restriction on proprietary trading**

(A.P. (DIR Series) Circular No. 96 dated 05<sup>th</sup> April, 2013)

- RBI has prohibited AD Category – I banks from undertaking proprietary trading in the currency futures / exchange traded currency options markets.

[Also, SEBI has doubled the margin requirement required for dollar-rupee contracts in the currency derivatives segment to curb speculation]

### **Green Initiatives & Embracement of technology**

(A.P. (DIR Series) Circular No. 133 dated 20<sup>th</sup> June, 2012)

(A.P. (DIR Series) Circulars No. 42 & 43 dated 12<sup>th</sup> October, 2012)

(A.P. (DIR Series) Circulars No. 47 dated 23<sup>rd</sup> October, 2012)

(A.P. (DIR Series) Circular No. 72 dated 10<sup>th</sup> January, 2013)

(A.P. (DIR Series) Circular No. 73 dated 10<sup>th</sup> January, 2013)

(A. P. (DIR Series) Circular No. 106 dated May 23, 2013)



# Important Master Circulars 2013

## Important Changes



14<sup>th</sup> July 2013

Matunga CPE Study Circle of WIRC

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## Important Master Circulars 2013

- Master Circulars are issued on 1<sup>st</sup> July of every year
- Master Circulars **consolidate the existing instructions** on a particular subject at one place. The list of underlying circulars /notifications consolidated is annexed as an Appendix to the Master Circular.
- Each Master Circular is **issued with a sunset clause of one year**. Therefore, Master Circulars issued on 1<sup>st</sup> July 2013 will stand withdrawn on July 1, 2014 and be replaced with an updated Master Circular.
- Changes under FEMA regulations are either brought about by RBI through Amendment Notifications giving effect to (i) A.P. (Dir Series) Circulars issued by it and (ii) A.P. (Dir Series) Circulars issued subsequent to Press Notes issued by DIPP. **Can change in regulations be brought about thru Master Circulars?**
  - *Ending Note to Master Circular on Establishment of Liaison / Branch / Project Offices in India by Foreign Entities:* It is clarified for the information of all users that the Master Circular need not necessarily be exhaustive **and a reference to the relevant A.P. (DIR Series) Circular is needed, wherever further information/clarification is required.**



## Important Master Circulars 2013

### Master Circular on Non-Resident Ordinary Rupee (NRO) Account

[Master Circular No.2 /2013-14 dated 1<sup>st</sup> July 2013]

- **Para 5.A.(i)** - Proceeds of remittances from outside India through normal banking channels received in ~~foreign currency which is freely convertible~~ any permitted currency.
- **Para 11** – Reference to payment of funds to resident nominee has been removed and replaced by non-resident nominee?
- **Annex 2** (Operational Instruction for ADs) to erstwhile Master Circular has been removed?

### Master Circular on Miscellaneous Remittances from India – Facilities for Residents [Master Circular No.6 /2013-14 dated 1<sup>st</sup> July 2013]

- Para dealing with Advance Remittance for Import of Services has been deleted (Para A.11 of erstwhile Master Circular)?
- Para 12.5 - Resident individuals are free to acquire and hold immovable property or shares (of listed companies ~~or otherwise~~) or debt instruments or any other asset outside India without prior approval of the Reserve Bank.



## Important Master Circulars 2013

### Master Circular on Foreign Investment in India

[Master Circular No.15 /2013-14 dated 1<sup>st</sup> July 2013]

- **Section I Para 2** - Government Route has been reworded to include Department of Economic Affairs and DIPP.
- **Section I Para 8.E.ii** – General permission is also available for issue of shares / preference shares against lump-sum technical know-how fee, royalty *due for payment/repayment*, under automatic route or SIA / FIPB route, subject to pricing guidelines of RBI/SEBI and compliance with applicable tax laws.
- **Section I Para 8.E.iv** (Issue of equity shares against Import of capital goods / machinery / equipment) – Condition of independent valuation still present whereas in Consolidated FDI Policy 2013 it had been deleted.
- **Section II Para 2.A.(b)** (Investments by FIIs/Sub-accounts in aggregate over 24% and upto sectoral limit) - Additional compliance by Indian company of submitting Certificate from CS towards adherence to FEMA Regulations & FDI Policy
- **Section II Para 2.B.(c)** (Investments by NRIs in aggregate over 10% till 24%) - Additional compliance by Indian company of submitting Certificate from CS towards adherence to FEMA Regulations & FDI Policy

# Thank You

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