

Recent updates in FEMA (including Master Circulars 2014)



Speaker – CA Harshal Bhuta

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Inbound Investments

Important Changes





Inbound Investments

Issue of Bank Guarantee for transactions covered under Takeover Code

(A.P. (DIR Series) Circular No. 37 dated 5th September 2013)

- **Escrow account and Special account** are allowed to be opened by AD Cat-I Bank on behalf of non-resident acquirer for acquisition/transfer of shares/convertible debentures of an Indian company through open offers/ delisting/ exit offers
- AD Cat –I bank to issue **bank guarantee**, without prior approval of the Reserve Bank, on their behalf for such purpose subject to following:
 - Transaction being in compliance with Takeover Code
 - Issued Guarantee should be covered by counter-guarantee of international reputed bank
 - Guarantee to be valid for a tenure co-terminus with the offer period as required under Takeover Code

Downstream investment by an Indian company

(A.P. (DIR Series) Circular No. 42 dated 12th September 2013)

Earlier Position	Current Position
<u>Funds for making downstream investment:</u> <ul style="list-style-type: none">• Foreign remittance;• Internal Accruals by Investing Company only	<u>Funds for making downstream investment:</u> <ul style="list-style-type: none">• Foreign remittance;• Internal Accruals by an Indian Company



Inbound Investments

Purchase of shares on the recognised stock exchanges under FDI Scheme:

(A.P. (DIR Series) Circular No. 38 dated 6th September 2013)

FIIIs, QFIIs and NRIIs are now eligible to **acquire shares** of a listed Indian company **on the recognised stock exchange** through a registered broker **under FDI Scheme** subject to the following:

- The non-resident investor has already acquired and continues to hold the **control** in accordance with Takeover Code
- **Consideration** for purchase of shares to be paid by:
 - inward remittance or by way of debit to the NRE/FCNR account; or
 - by debit to non-interest bearing Escrow account (in INR) maintained in India; or
 - consideration amount may also be paid out of the dividend payable by Indian investee company, in which the said non-resident holds control, provided the right to receive dividend is established & dividend amount has been credited to specially designated non –interest bearing Escrow account
- The pricing for **subsequent transfer** of shares to non-resident shareholder shall be in accordance with the pricing guidelines under FEMA (i.e. pricing norms as applicable to listed shares)
- The original and resultant investments are in line with the FDI policy;



Inbound Investments

Review of FDI policy – Definition for control

(Press Note Nos. 4 (2013 Series) dated August 22, 2013)

(A.P. (DIR Series) Circular No. 44 dated 13th September 2013)

Earlier Position	Current Position
Company shall be considered ' Controlled ' by resident Indian citizens if the residents Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, <u>have the power to appoint a majority of its directors</u> in that company	' Control ' shall include the <u>right to appoint a majority of the directors</u> or to <u>control the management or policy decisions</u> including by virtue of <i>their shareholding or management rights or shareholders agreements or voting agreements</i>

Review of FDI policy – Multi Brand Retail Trading Sector

(Press Note Nos. 5 (2013 Series) dated August 22, 2013)

(A.P. (DIR Series) Circular No. 44 dated 13th September 2013)

Earlier Position	Current Position
At least 50% of total FDI brought in shall be invested in 'backend infrastructure' within three years of the first tranche of FDI	<ul style="list-style-type: none">• At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'backend infrastructure'.• Subsequent investment in the backend infrastructure to be made depending upon its business requirements.



Inbound Investments

Review of FDI policy – Multi Brand Retail Trading Sector

Earlier Position	Current Position
<ul style="list-style-type: none">• At least 30% of the value of procurement of manufactured/ processed products purchased shall be sourced from Indian 'small industries' which have a total investment in plant & machinery not exceeding US \$ 1.00 million.• This valuation refers to the value at the time of installation, without providing for depreciation.• Further, if at any point in time, this valuation is exceeded, the industry shall not qualify as a 'small industry'.	<ul style="list-style-type: none">• Sourcing from 'MSMI' which have a total investment in plant & machinery not exceeding US \$ 2.00 million.• 'MSMI' status would be reckoned only at the time of first engagement with the retailer and such industry shall continue to qualify as a 'MSMI' for this purpose even if it outgrows the said investment of US\$ 2 million during its course of its relationship with the said retailer.• Further, sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category.
<p><u>In States/ Union Territories not having cities with population >10 lakh as per 2011 Census:</u></p> <ul style="list-style-type: none">• Retail sales outlets may be set up in the cities of their choice, preferably the largest city and may also cover an area of 10 kms around the municipal limits of such cities.	<p><u>In States/ Union Territories not having cities with population > 10 lakh as per 2011 Census:</u></p> <ul style="list-style-type: none">• Retail sales outlets may be set up in any cities as per the decision of the respective State Governments

Inbound Investments

Review of FDI policy – Various Sectors

(Press Note Nos. 6 (2013 Series) dated August 22, 2013)

(A.P. (DIR Series) Circular No. 44 dated 13th September 2013)

Sector	Earlier Position	Current Position
Tea sector including tea plantations	Compulsory disinvestment of 26% equity of the company in favour of an Indian partner/ Indian public within a period of 5 years.	This clause has been deleted.
Petroleum and Natural Gas: Petroleum refining by the PSUs, without any disinvestment or dilution of domestic equity in the existing PSUs	Entry was allowed through government route	Entry is now allowed through automatic route
Defence	Entry was allowed through government route. (FDI CAP 26%)	Up to 26% Government. Above 26% to Cabinet Committee on Security (CCS) on case to case basis, which ensure access to modern and state of art technology in the country. Additional Conditions also added.



Inbound Investments

Review of FDI policy – Various Sectors

Sector	Earlier Position	Current Position
Courier Services	Entry was allowed through government route	Entry is now allowed through automatic route.
Telecom Services	Entry was allowed through automatic route up to 49% and beyond 49% up to 74% through government route.	Entry is now allowed through automatic route up to 49% & above 49% up to 100% is allowed through Government route. FDI up to 100%
Test Marketing	According to para 6.2.16.3, entry was allowed through government route.	Para 6.2.16.3 is now deleted.
Single Brand Product retail Trading	Entry was allowed through government route. Application seeking permission of the Government for FDI in retail trade of single brand products is required to be made to the Secretariat for Industrial Assistance (SIA).	Entry up to 49% is allowed through automatic route and above 49% through government route. Now, application seeking permission of the Government for FDI exceeding 49% in retail trade of single brand products is required to be made to the Secretariat for Industrial Assistance (SIA).



Inbound Investments

Review of FDI policy – Various Sectors

Sector	Earlier Position	Current Position
Asset Reconstruction Company (ARC)	Entry was allowed through government route. (FDI Cap: 74% of paid-up capital of ARC FDI-FII)	Entry is now allowed up to 49% through automatic route and above 49% through Government route. (FDI Cap: 100% of paid up capital of ARC FDI-FII)
Commodity Exchanges	Entry was under Government route (For FDI)	Entry is now allowed under Automatic Route
Credit Information Company	Entry was under Government route (For FDI) (FDI Cap 49%)	Entry is now allowed by Automatic Route (FDI Cap 74%)
Infrastructure Company in Security Market	Entry was under Government route (For FDI)	Entry is now allowed by Automatic Route
Power Exchanges	Entry was under Government route (For FDI)	Entry is now allowed by Automatic Route



Inbound Investments

Issue of shares by unlisted Indian companies under ADR/GDR

(Press Note Nos. 7 (2013 Series) dated December 3, 2013)

(A.P. (DIR Series) Circular No. 69 dated 8th November 2013)

- Under the Depository Receipts Mechanism Regime, unlisted Indian companies were required to have **prior or simultaneous listing in the domestic market** before raising capital in the international market through issue of ADRs/GDRs
- Now onwards, unlisted Indian companies would be allowed to raise capital abroad initially for a period of two years, **without the requirement of prior or subsequent listing in India**, subject to conditions below:
 - Listing on IOSCO/FATF compliant jurisdictions exchanges or those jurisdictions with which SEBI has signed bilateral agreements
 - Listing company shall be compliant with FDI Policy in force
 - Pricing of ADRs/GDRs to be in accordance with extant ADR/GDR Regime
 - Number of underlying equity shares to be kept with the local custodian shall be determined upfront & ratio of ADRs/GDRs to equity shares to be decided upfront based on applicable FDI pricing norms
 - The criteria of eligibility of such unlisted company to be as prescribed by GOI
 - The capital raised abroad should be utilised for retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions
 - In case the funds raised are not utilised abroad as stipulated above, company has repatriate the funds to India within 15 days and such money shall be parked only with AD Category-1 banks recognised by RBI and shall be used for eligible purposes



Inbound Investments

Transfer of Shares of Financial Services Sector Company from R to NR

(A.P. (DIR Series) Circular No. 72 dated 11th November 2013)

Earlier Position	Current Position
No Objection Certificate (NoC) is required to be obtained from the respective financial sector regulator/regulators of the investee company as well as transferor and transferee entities and such NoC(s) are to be filed with the form FC-TRS to the AD bank	Requirement of obtaining and filing NOC waived off . However, <u>any 'fit and proper/ due diligence' requirement</u> as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

Issue of non-convertible/ redeemable bonus preference shares or debentures

(A.P. (DIR Series) Circular No. 84 dated 6th January 2014)

Earlier Position	Current Position
RBI permission required for: <ul style="list-style-type: none">• Issue of non-convertible/ redeemable bonus preference shares or debentures• to non-resident shareholders• from the general reserves• under a Scheme of Arrangement by a Court, under the provisions of the Companies Act	General permission given for such cases subject to condition of NOC from Income-Tax Authorities



Inbound Investments

Rate of Exchange for conversion of payables / liability by an Indian company into Equity:

(A.P. (DIR Series) Circular No. 94 dated 16th January 2014)

- Payables/liabilities such as lumpsum technical know-how, royalty due for payment /repayment, capitalisation of pre-incorporation expenses/import payables (with prior approval of government)
- Rate of Exchange prevailing on the date of Agreement (i.e. issue of Equity Shares against such payables/liability) should be assigned to such forex payables/liability
- Further, fair value of the equity shares to be issued to be worked out with reference to the date of conversion only
- RBI would not have any objection if Indian company issues equity shares for a rupee amount < that arrived at as mentioned above by a mutual agreement with the other party.

FDI in LLP - *New Schedule 9 to TISPRO*

(Paragraph 3.2.5 of the Consolidated FDI Policy Circular 1of 2013 dated April 5, 2013 issued by DIPP)

(A.P. (DIR Series) Circular No. 123 dated 16th April 2014)

1] Eligible Investors:

- A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs except citizen/entity of Pakistan and Bangladesh, FII, FVCI, QFI & RFPI



Inbound Investments

FDI in LLP

2] Eligibility of LLP for accepting foreign Investment: (Covered under FDI Policy earlier)

- **Existing or New LLP** operating in sectors/activities where 100% FDI is allowed under the automatic route of FDI Scheme
- **Ineligible LLPs:**
 - Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions
 - Sectors eligible to accept less than 100% FDI under automatic route
 - Sectors eligible to accept FDI under Government Approval route
 - Agricultural/plantation activity and print media
 - Any sector which is prohibited under extant FDI policy

3] Eligible investment:

- Contribution to the capital of an LLP
- Investment by way of 'profit share'

4] Entry Route:

- Direct/Indirect Foreign Investment in LLP shall require prior Government/FIPB approval.



Inbound Investments

FDI in LLP

5] Pricing :

- **Initial Eligible investment:** Capital contribution or Acquisition / Transfer of profit shares should be for value \geq fair price as worked out with any internationally accepted valuation norm / adopted as per market practice (valuation certificate to be issued by the CA or by a practicing CWA or by an approved valuer from the panel maintained by CG)
- **Transfer of capital contribution/profit share from R to NR:** Transfer value should be \geq fair price of capital contribution/profit share of an LLP
- **Transfer of capital contribution/profit share from NR to R:** Transfer value should be \leq fair price of the capital contribution/profit share of an LLP

6] Mode of payment for an eligible investor : (Covered under FDI Policy earlier)

- Eligible investment to be received by way of cash consideration (a) by way of inward remittance through normal banking channels or (b) by debit to NRE/FCNR(B) account

7] Reporting: (Similar to other FDI investments)

- **Initial Eligible investment:** Filing Report of receipt of consideration and Form FOREIGN DIRECT INVESTMENT-LLP(I) (Similar to FC-GPR)
- **Disinvestment / transfer of capital contribution or profit share from R to NR & vice versa:** Filing Form FOREIGN DIRECT INVESTMENT-LLP(II) (Similar to FC-TRS)



Inbound Investments

FDI in LLP

8] Downstream investment: (Covered under FDI Policy earlier)

- An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.

9] Other Conditions: (Covered under FDI Policy earlier)

- In case an LLP with FDI has a body corporate as a designated partner, such a body corporate should only be a company registered in India under the provisions of the Companies Act
- The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.
- Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.
- LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).



Inbound Investments

Foreign Direct Investment in Pharmaceuticals sector

(Press Note Nos. 1 (2014 Series) dated January 8, 2014)

(A.P. (DIR Series) Circular No. 124 dated 21st April 2014)

- ‘Non-compete’ clause would not be allowed except in special circumstances with the approval of FIPB

Consolidated FDI Policy

(Circular 1 of 2014 w.e.f. 17th April 2014)

1] Agriculture & Animal Husbandry Sector:

- Earlier, 100% FDI was allowed in Animal Husbandry “under controlled conditions”
- Reference of National Livestock Policy 2013 has now been given while defining the scope of term “under controlled conditions”

2] Defence Sector:

- Vide Press Note 6 of 2013 dated 22nd August 2013, DIPP had prohibited portfolio investment by FIIs in the Defence Sector but had not clarified about the status of existing FII investments
- Consolidated Policy 2014 has clarified that FII investments existing as on 22/08/13 would remain capped at the level existing on such date & that no fresh FII/FPI investments would be permitted in the event of decrease in existing level of FII investments



Inbound Investments

Consolidated FDI Policy

3] Telecom Sector:

- Vide Press Note 6 of 2013 dated 22nd August 2013, DIPP had reclassified services under Telecom Sector along with changes in FDI caps too
- It has now specified that Service Providers other than for those services listed under the Telecom Sector ('other service providers') would be eligible for 100% FDI under automatic route

4] Pharmaceutical Sector:

- An undertaking in the form of Certificate from Prospector Investor as well as Recipient Entity has been prescribed for brownfield investments in Pharmaceutical Sector
- Such undertaking inter alia contains disclosure & declaration about the agreements entered into between Prospector Investor and Recipient Entity as well as declaration about non-insertion of non-compete clause in any of the agreements

Foreign investment in the Insurance Sector

(Press Note Nos. 2 (2014 Series) dated February 4, 2014) / (A.P. (DIR Series) Circular No. 139 dated 5th June 2014)

- 26% cap under automatic route to now include FDI, FII and NRI investments
- Sector classified into 4 segments – Insurance Company, Insurance Brokers, TPA, Surveyors and Loss Assessors

Inbound Investments

FDI – Reporting Mechanism – FC-TRS

(A.P. (DIR Series) Circular No. 127 dated 2nd May 2014)

Earlier Position	Current Position
<ul style="list-style-type: none">• FIIs, QFIs, NRIs who have acquired and continue to hold control in an Indian company in accordance with SEBI Takeover Code have been permitted under the FDI scheme to acquire shares of that company on a stock exchange in India through a registered broker.• <u>No specific reporting mechanism had been prescribed for the same.</u>	<p>In such cases, investee company would have to file form FC-TRS with the AD Category-I bank.</p>
<ul style="list-style-type: none">• Form FC-TRS has to be submitted to the AD Category – I bank transferor / transferee, whoever is resident in India within 60 days from the date of receipt of the amount of consideration• AD Category – I bank seeks approval from the RBI, Central Office before certifying the form FC-TRS received by them beyond the prescribed period of 60 days	<p>AD Category-I bank can now approach Regional Office concerned of RBI, Foreign Exchange Department to regularize the delay in submission of form FC-TRS, beyond the prescribed period of 60 days</p>



Inbound Investments

Pledge of shares for business purposes in favour of NBFCs

(A.P. (DIR Series) Circular No. 141 dated 6th June 2014)

- Currently pledge of shares of Indian Company by a non-resident investor in favour of an bank in India is allowed to be processed by AD Cat-I Bank.
- Similarly, pledge of equity shares of an Indian Company held by non-resident investor/s in favour of NBFCs (whether listed or not) to secure the credit facilities extended to the resident investee company for bona-fide business purposes would be allowed to be processed by AD Cat-I Bank, subject to following:
 - **only listed equity shares** (on a recognised stock exchange/s in India) can be pledged
 - in case of invocation of pledge, **credit concentration norms** for systemically important non-deposit taking NBFC (under NBFC Prudential Norms) have to be adhered to
 - If there is a breach of credit concentration norms on invocation of pledge, the shares have to be sold and the breach shall be rectified within a period of 30 days from the date of invocation of pledge
 - **Ex-ante BR from BOD** that loan proceeds would be utilised for declared purpose
 - **Ex-post certificate from Statutory Auditor** that loan proceeds have been utilised for declared purpose
 - Indian company has to follow the **relevant SEBI disclosure norms**, as applicable

Inbound Investments

Annual Return on Foreign Liabilities and Assets – Revised format

(A.P. (DIR Series) Circular No. 145 dated 18th June 2014)

- Annual Return on Foreign Liabilities and Assets (FLA) has to be filed with RBI by sending it in soft copy to the Reserve Bank by July 15 every year by all Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year.
- RBI has now modified FLA Return in order to collect information on Indian companies' Outward Foreign Affiliated Trade Statistics (FATS) as per the multi-agency global 'Manual on Statistics of International Trade in Services'.

Section IV-A

Outward Foreign Affiliates Trade Statistics (Outward FATS)

Please provide the amount in foreign currency (in actual) in all blocks of Section IV-A

Block-3B: Imports, Exports, Total Sales and Total Purchase of Direct Investment Enterprise (DIE) Abroad (more than 50% equity holding by Indian reporting company)

Name of the DIE	Item	Currency	Amount in Foreign Currency actual (During the year)	
			Previous Year (April - March)	Latest Year (April - March)
	3.8 Total Sales			
	3.8.1 of which Exports			
	3.9 Total Purchases			
	3.9.1 of which Imports			



Inbound Investments

Issue of Partly Paid Shares & Warrants to Foreign Investors

(A.P. (DIR Series) Circular No. 3 dated 14th July 2014)

1] Eligible instruments and investors:

- *Eligible Instruments:* **Partly paid equity shares** and **warrants** (in accordance with the provision of the Companies Act, 2013 and the SEBI guidelines)
- *Investors:* **FDI & FPI**

2] Pricing and receipt of balance consideration:

(a) **Partly paid equity shares**

- *Pricing:* Determined upfront
- *Receipt:* 25% upfront (including share premium); balance within a period of 12 months (Exception for receipt of balance consideration- Issue size > Rs. 500 Cr & issuer appoints monitoring agency (AD Cat-1 bank) under ICDR Regulations. Similarly, for unlisted Indian company too, where the issue size > Rs. 500 Cr & issuer appoints monitoring agency on the same lines of ICDR Regulations.

(b) **Warrants**

- *Pricing & Price/Conversion Formula:* Determined upfront
- *Receipt:* 25% upfront; balance within a period of 18 months. Also price at the time of conversion should be > fair value worked out at the time of issuance of such warrants.



Inbound Investments

Issue of Partly Paid Shares & Warrants to Foreign Investors

3] Reporting:

Partly paid equity shares / Warrants

- *FDI*: Filing Report of receipt of consideration towards upfront / each call payment in Advance Reporting Form and Form FC-GPR and FC-TRS for issue and transfer of partly paid up shares (For Warrants: Head 'Others' under FC-GPR and FC-TRS)
- *FPI*: Form LEC by AD (For Warrants: Head 'Others' under LEC)

4] Compliance:

- *On Investment*: *FDI* - Investee Company (Also under CA 2013); *FPI Threshold*- FPIs
- *On Transfer*: Resident Transferor/Transferee

5] Other Conditions:

- Sector **under Government Route** would require **FIPB Approval**
- Forfeiture on non-payment of call money to be in accordance with CA 2013 & ITA
- Sectoral caps should not be breached on Shares/Warrants becoming fully paid up
- Deferment/Shortfall of consideration to be governed under CA 2013 & not to be treated as subscription hereunder

6] NRIs: Investments in partly paid up shares & warrants allowed even under Schedule 4



Inbound Investments

Issue/Transfer of Shares or Convertible Debentures - Revised pricing guidelines

(A.P. (DIR Series) Circular No. 4 dated 15th July 2014)

Earlier Position	Current Position
<u>Issue of Shares: Listed Company</u>	
<ul style="list-style-type: none">• \geq Price worked out in accordance with the SEBI guidelines	No change
<u>Issue of Shares: Unlisted Company</u>	
<ul style="list-style-type: none">• \geq Fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per discounted free cash flow method	<ul style="list-style-type: none">• \geq Fair valuation of shares done as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker
<u>Issue of Shares: Preferential Allotment</u>	
<ul style="list-style-type: none">• \geq Price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines	Provision omitted

Inbound Investments

Issue/Transfer of Shares or Convertible Debentures - Revised pricing guidelines

Earlier Position	Current Position
<u>Transfer of Shares from R to NR: Listed Company</u>	
<ul style="list-style-type: none">• \geq Price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable	No change
<u>Transfer of Shares from R to NR: Unlisted Company</u>	
<ul style="list-style-type: none">• \geq Fair valuation to be determined & certified by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per discounted free cash flow method	<ul style="list-style-type: none">• \geq Fair valuation of shares done as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker
<u>Transfer of Shares from NR to R: Listed & Unlisted Company</u>	
<ul style="list-style-type: none">• \leq Price as applicable to transfer of shares from R to NR	No change

- An Indian company taking on record in its books any transfer as above has to disclose in its B/S for the FY, in which the transaction took place, the **details of valuation** of share or convertible debentures, the **pricing methodology adopted** for the same as well as the **agency that has given/certified the valuation**

Inbound Investments

Issue/Transfer of FDI Instruments with Optionality Clause - Revised pricing guidelines (A.P. (DIR Series) Circular No. 86 dated 9th January 2014)

(A.P. (DIR Series) Circular No. 4 dated 15th July 2014)

- **Optionality Clause?** : Clause which obliges the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return.

Position after Circular 86 dt 09/01/2014	Current Position
<u>Exit from investment by NR: Listed Company</u>	
• At the market price prevailing at the recognised stock exchanges	No change
<u>Exit from investment by NR: Unlisted Company</u>	
• Equity Shares:- \leq Annualised return based on ROE as per latest audited B/S	• \leq Price worked out as per any internationally accepted pricing methodology on arm's length basis, duly certified by a Chartered Accountant or a SEBI registered Merchant Banker
• CCD/CCPS:- \leq Price worked out as per any internationally accepted pricing methodology, duly certified by a CA or a SEBI registered Merchant Banker	

- **Lock in period: 1 yr or minimum as per sector specific FDI Regulations**



Inbound Investments

FDI – Switching over from NIC 1987 to NIC 2008

(Press Note Nos. 3 (2014 Series) dated June 27, 2014)

(A.P. (DIR Series) Circular No. 6 dated 18th July 2014)

- Indian companies are required to report the NIC Codes in the FCGPR and FCTRS forms as per the NIC 2008 version, henceforth

Inbound Investments – Other than Schedule 1 specifically

A.P. (DIR Series) Circular	Subject
Circular No. 74 dated 11 th November 2013	Participation by SEBI registered FIIs, QFIs and SEBI registered long term investors in credit enhanced bonds
Circular No. 99 dated 29 th January 2014	Change in investment limits for SEBI registered Long term investors in Government dated Securities
Circular No. 104 dated 14 th February 2014	Change in investment limits for SEBI registered FII, QFI and long term investors in Corporate Debt
Circular No. 112 dated 25 th March 2014	Introduction of Foreign Portfolio Investor Scheme (subsuming PIS for FII and QFI)



Inbound Investments

Inbound Investments – Other than Schedule 1 specifically

A.P. (DIR Series) Circular	Subject
Circular No. 118 dated 7 th April 2014	New investments in Government dated securities having residual maturity of one year and above only
Circular No. 140 dated 6 th June 2014	Participation by registered FPIs, SEBI registered long term investors and NRIs in listed non-convertible/redeemable preference shares or debentures of Indian companies (repatriation as well as non-repatriation)
Circular No. 13 dated 23 rd July 2014	Change in investment limits for SEBI registered Long term investors in Government dated Securities

Outbound Investments

Important Changes



9th August 2014

Matunga CPE Study Circle of WIRC

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Outbound Investments

Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI)

(A.P. (DIR Series) Circular No. 23 dated 14th August 2013)

(A.P. (DIR Series) Circular No. 30 dated 4th September 2013)

(A.P. (DIR Series) Circular No. 1 dated 3rd July 2014)

Earlier Position	Intermediate Position	Current Position
Total financial commitment by an Indian Party in JV/WOS (Indian Company investing in the overseas unincorporated entities in the energy and natural resources sectors) not to exceed 400% of its net worth as on date of last audited B/S under Automatic Route	<ul style="list-style-type: none">• Reduction the existing limit of 400% to 100% of net worth of Indian party (Indian Company investing in the overseas unincorporated entities in the energy and natural resources sectors) under Automatic Route.• <u>Any ODI in excess of 100% of the net worth to be considered under Approval Route by RBI.</u> (Exception: ECB funded ODI)	<ul style="list-style-type: none">• Restoration of Limit to 400% of net worth.• Any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year would <u>require prior approval of the RBI</u> even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet)



Outbound Investments

Setting up JV / WOS outside India by Resident Individuals

(A.P. (DIR Series) Circular No. 24 dated 14th August 2013)

(Notification No. FEMA.263/RB-2013 dated 5th March 2013)

1] Overseas Direct Investments by Resident Individuals:

- Resident individual (single or in association with another resident individual or with an ‘Indian Party’ may make overseas direct investment in the *equity shares and compulsorily convertible preference shares* of JV/WOS outside India subject to following :
 - JV or WOS should **not be engaged** in the **real estate business** or **banking business** or in the **business of financial services activity**. Only **bonafide business activity**.
 - JV/WOS **cannot be located** in “**non co-operative countries & territories**” as identified by FAFT
 - Resident individual **cannot be on the RBI’s Exporters Caution List** or **List of defaulters to the banking system** or **under investigation** by any investigation / enforcement agency or regulatory body
 - Permissible **ceiling limit** is **permissible amount under LRS** from time to time. **No exception** for investment out of **EEFC/RFC A/c** under this ceiling limit.
 - Only **operating JV/WOS**. **No further step down entity** permitted.
 - **Valuation norms** as applicable to ODI transactions applicable here.
 - Investment only in equity shares covered under ODI. (No Loan, Guarantee, etc)



Outbound Investments

Setting up JV / WOS outside India by Resident Individuals

2] Post Investment Changes:

- Any alteration in shareholding pattern of JV or WOS to be **reported to the designated AD within 30 days** as well as reported in **APR**

3] Disinvestment by Resident Individuals:

- Resident individual may disinvest (partially or fully) by way of **transfer / sale** or by way of **liquidation / merger** of the JV or WOS
- Disinvestment to be **allowed after one year from the date of making first remittance** for setting up or acquiring the JV or WOS abroad
- **Disinvestment proceeds** to be **repatriated to India immediately** (not later than 60 days from the date of disinvestment) and the same may be reported to the designated AD
- **No write off** shall be allowed

4] Reporting Requirements:

- Submit Part-I of Form ODI within 30 days of making remittance to designated AD
- Submit APR by 30th June and FLA by 15th July
- Disinvestment to be reported in Part-IV of Form ODI within 30 days of receipt of disinvestment proceeds



Outbound Investments

Issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries

(A.P. (DIR Series) Circular No. 41 dated 10th September 2013)

Earlier Position	Current Position
Issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries considered under the Approval Route, provided the Indian Party directly or indirectly holds 51% or more stake in the overseas subsidiary for which such guarantee is intended to be issued	Issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries considered under the Approval Route, provided the Indian Party indirectly holds 51% or more stake in the overseas subsidiary for which such guarantee is intended to be issued

Overseas Direct Investments –LLP as Indian Party

(A.P. (DIR Series) Circular No. 131 dated 19th May 2014)

- LLP registered under the Limited Liability Partnership Act, 2008 (6 of 2009) is now notified as an ‘Indian Party’ for purpose of making ODI
- LLPs can henceforth make financial commitment to / on behalf of a JV / WOS abroad in terms of the extant FEMA provisions
- Reporting requirements as applicable to other ODI would also be applicable here



Outbound Investments

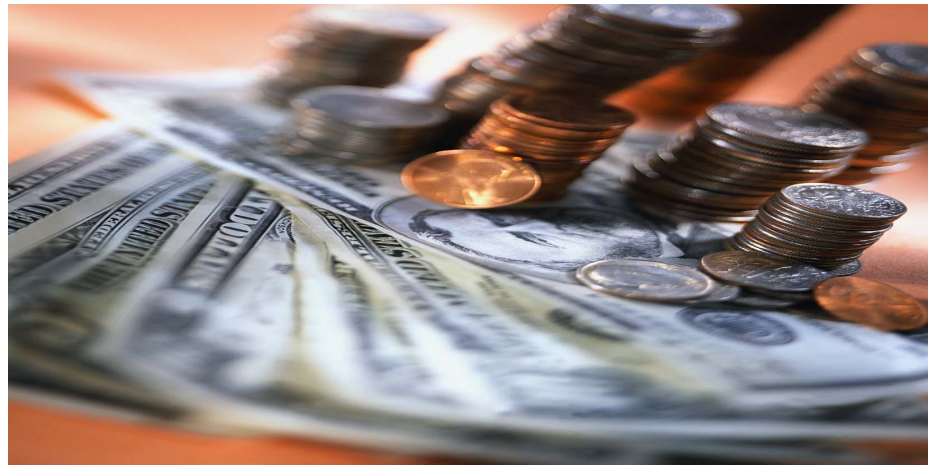
Overseas Direct Investments – Rollover of Guarantees

(A.P. (DIR Series) Circular No. 83 dated 3rd January 2014)

- 100% of amount of guarantee issued by Indian Party is counted towards Financial Commitment permitted to be made for investment in JV/WOS abroad
- Now onwards, **renewal / rollover of an existing / original guarantee**, which is part of the total financial commitment of the Indian party **would not be treated / reckoned as a fresh financial commitment**, provided that :
 - Existing / original guarantee was issued in terms of the then extant FEMA guidelines;
 - There is **no change in the end use of the guarantee**, i.e. the facilities availed by the JV / WOS / Step Down Subsidiary;
 - There is **no change in any of the terms & conditions**, including the amount of the guarantee except the validity period;
 - **Reporting** of the rolled over guarantee would be done as a fresh financial commitment in Part II of Form ODI, as hitherto; and
 - If the Indian party is under investigation by any investigation / enforcement agency or regulatory body, the concerned agency / body shall be kept informed about the same.
- If above conditions not met, then rollover / renewal of the existing guarantee would be covered under approval route

External Commercial Borrowings (ECB) and Trade Credits

Important Changes





External Commercial Borrowings (ECB) and Trade Credits

New category of Eligible Borrower – NBFC-AFC:

(A.P. (DIR Series) Circular No. 6 dated 8th July 2013)

Earlier Position	Current Position
<p>NBFC allowed to avail ECB to <u>finance import of infrastructure equipment for leasing to infrastructure projects</u>:-</p> <ul style="list-style-type: none">• Approval Route• From multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks only• Minimum average maturity of 5 years	<p>NBFC-AFC allowed to avail ECB to <u>finance import of infrastructure equipment for leasing to infrastructure projects</u>:-</p> <ul style="list-style-type: none">• Minimum average maturity of 5 years• All recognised lenders• Currency Risk to be hedged in full• If ECB in form of FCB: Only from FATF compliant member country having regulator governing capital markets• Automatic Route: Upto 75% of owned funds of NBFC-AFCs; max of \$ 200 mln or its equivalent per FY• Approval Route: > 75% of owned funds



External Commercial Borrowings (ECB) and Trade Credits

ECB under \$10 bln scheme for cos having JV/WOS/Assets abroad :

(A.P. (DIR Series) Circular No. 12 dated 15th July 2013)

- Under \$10 bln scheme, Indian cos in the mfg, infra sector & hotel sector, which are consistent foreign exchange earners, are allowed to avail of ECB for *repayment of outstanding Rupee loan(s)* availed of from the domestic banking system and / or *for fresh Rupee capital expenditure* **under Approval Route**.
- Extension of benefit under \$10 bln scheme to Indian companies in the above sectors which have established JV / WOS / have acquired assets overseas, subject to following:
 - **Purpose:** Should be for Repayment of (a) term loans from domestic banks having avg residual maturity of 5 years & above for overseas investment in JV/WOS; (b) credit facilities availed from domestic banks for overseas investment in JV/WOS
 - **Limit for ECB amount:** Higher of (a) 75% of the avg forex earnings realized during past 3 Fys; (b) 75% of the estimate avg forex earnings potential for next 3 FYs of Indian cos from the JV / WOS / assets abroad as certified by Statutory Auditors / Chartered Accountant / Certified Public Accountant / Category I Merchant Banker registered with SEBI / foreign registered Investment Banker
 - **Repayment:** Only out of forex earnings from overseas JV / WOS / assets abroad. (Past earnings in the form of dividend/repatriated profit/ other forex inflows like royalty, technical know-how, fee, etc from overseas JV/WOS/assets will be reckoned as forex earnings)



External Commercial Borrowings (ECB) and Trade Credits

Refinancing / Rescheduling of ECB at higher all-in-cost:

(A.P. (DIR Series) Circular No. 10 dated 11th July 2013)

(A.P. (DIR Series) Circular No. 59 dated 30th September 2013)

- Refinancing / Rescheduling an existing ECB at a higher all-in-cost was allowed under the approval route subject to the condition that the enhanced all-in-cost did not exceed the all-in-cost ceiling prescribed as per extant guidelines
- Such facility has been discontinued w.e.f. 1st October 2013

ECB from the foreign equity holder:

(A.P. (DIR Series) Circular No. 31 dated 4th September 2013)

(A.P. (DIR Series) Circular No. 130 dated 16th May 2014)

ECB for General Corporate Purpose:

- **Automatic Route** - for companies belonging to mfg, infra, hotels, hospitals & software sectors only; **Approval Route** - for others
- **Minimum average maturity of 7 years**; No prepayment allowed before such maturity
- Minimum paid-up equity of 25% should be held directly by the lender
- Such ECBs should not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India)



External Commercial Borrowings (ECB) and Trade Credits

ECB from the foreign equity holder:

ECBs from indirect equity holders and group companies:

- **Automatic Route** - for companies belonging to mfg, infra, hotels, hospitals, software & miscellaneous service sectors only; Miscellaneous service sector includes companies engaged in training activities (but not educational institutes), research and development activities and companies supporting infrastructure sector
- ECB for general corporate purpose **from indirect equity holders and group companies not permitted**
- Proposals involving change of lender when the ECB is from FEH – direct / indirect equity holders and group company now covered under Automatic Route

Liberalisation of definition of Infrastructure Sector

(A.P. (DIR Series) Circular No. 48 dated 18th September 2013)

Earlier definition of Infrastructure sector:

- | | |
|--------------------------|--|
| • Power | • Mining, exploration and refining |
| • Telecommunication | • Urban infrastructure (water supply, sanitation and sewage projects) |
| • Railways | • Cold storage or cold room facility, including farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat |
| • Road including bridges | |
| • Sea port and airport | |
| • Industrial parks | |



External Commercial Borrowings (ECB) and Trade Credits

Liberalisation of definition of Infrastructure Sector

(A.P. (DIR Series) Circular No. 48 dated 18th September 2013)

(A.P. (DIR Series) Circular No. 85 dated 6th January 2014)

Revised definition of Infrastructure sector:

Energy:

- Electricity generation
- Electricity transmission
- Electricity distribution

Communication:

- Mobile telephony services / companies providing cellular services

Transport:

- Railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading / unloading terminals, stations and buildings)
- Roads and bridges
- Ports
- Inland waterways

- Oil pipelines
- Oil/gas/liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil)
- Gas pipelines (includes city gas distribution network)
- Fixed network telecommunication (includes optic fibre / cable networks which provide broadband / internet)
- Telecommunication towers
- Airport ('Maintenance, Repairs and Overhaul' (MRO) will also be treated as a part of airport infrastructure. Accordingly, MRO, as distinct from the related services which are other than infrastructure, will be considered as part of the sub-sector of Airport in the Transport Sector of Infrastructure)
- Urban public transport (except rolling stock in case of urban road transport)



External Commercial Borrowings (ECB) and Trade Credits

Liberalisation of definition of Infrastructure Sector

(A.P. (DIR Series) Circular No. 48 dated 18th September 2013)

Revised definition of Infrastructure sector:

Water & Sanitation:

- Water supply pipelines
- Solid waste management
- Water treatment plants
- Sewage projects (sewage collection, treatment and disposal system)
- Irrigation (dams, channels, embankments, etc.)
- Storm water drainage system

Mining, Exploration & Refining

Social & Commercial Infrastructure:

- Hospitals (capital stock and includes medical colleges and para medical training institutes)
- Hotel Sector which will include hotels with fixed capital investment of Rs. 200 crore and above, convention centres with fixed capital investment of Rs. 300 crore and above & three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value)
- Common infrastructure for industrial parks, SEZs, tourism facilities
- Fertilizer (capital investment)
- Post harvest storage infrastructure for agriculture and horticulture produce including cold storage
- Soil testing laboratories
- Cold chain (includes cold room facility for farm level pre-cooling, for preservation or storage or agriculture and allied produce, marine products and meat)

External Commercial Borrowings (ECB) and Trade Credits

Extension of Trade Credit period to 5 years for import of capital goods:

(A.P. (DIR Series) Circular No. 53 dated 24th September 2013)

Earlier Position	Current Position
<p><u>Classification as per maturity:</u></p> <ul style="list-style-type: none">• 1 year – Normal imports permissible under Foreign trade Policy• > 1 Year and < 3 Years – Import of Capital Goods as per DGFT classification• < 5 Years – <i>Companies under Infrastructure sector</i> for import of Capital Goods as per DGFT classification. Further, ab-initio contract period should be <i>15 months</i>.	<p><u>Classification as per maturity:</u></p> <ul style="list-style-type: none">• 1 year – Normal imports permissible under Foreign trade Policy• > 1 Year and < 5 Years – <i>For all Companies</i> towards import of Capital Goods as per DGFT classification. Further, ab-initio contract period should be <i>6 months</i>.

End use - acquisition of PSU shares under disinvestment programme:

(A.P. (DIR Series) Circular No. 57 dated 30th September 2013)

Earlier Position	Current Position
<p><u>ECB proceeds permitted to be used in:</u></p> <ul style="list-style-type: none">• 1st stage acquisition of PSU shares• 2nd stage offer to the public under the Government's disinvestment programme	<p><u>ECB proceeds permitted to be used in:</u></p> <ul style="list-style-type: none">• all subsequent stages of acquisition of shares in the disinvestment process (i.e. for multiple rounds of disinvestment of PSU shares)



External Commercial Borrowings (ECB) and Trade Credits

ECB by Holding Companies / CIC for the project use in SPVs:

(A.P. (DIR Series) Circular No. 78 dated 3rd December 2013)

RBI has now permitted Hold Cos / CICs coming under the regulatory framework of the Reserve Bank to raise ECB under the automatic route/approval route subject to:

- Business activity of the SPV should be in the infrastructure sector and to implement infrastructure project exclusively;
- ECB proceeds to be **utilized** for either (a) fresh capital expenditure (capex) or (b) for refinancing of existing Rupee loans (under the approval route) availed of from the domestic banking system for capex as per the extant norms on refinancing;
- ECB for SPV can be **raised up to 3 years** after the Commercial Operations Date of SPV;
- **No other method of funding**, such as, trade credit (if for import of capital goods), etc. should be utilized for that portion of fresh capex financed through ECB proceeds;
- ECB proceeds should be **parked in a separate escrow account** pending utilization for permissible end-uses;
- In case of Holding Companies that come under CIC regulatory framework of RBI:
 - ECB availed should within the ceiling of leverage stipulated for CICs,
 - In case of CICs with asset size below Rupees 100 crore, the ECB availed of should be on fully hedged basis.



External Commercial Borrowings (ECB) and Trade Credits

Rate of Exchange for conversion of ECB into Equity:

(A.P. (DIR Series) Circular No. 94 dated 16th January 2014)

- Rate of Exchange prevailing on the date of Swap Agreement (i.e. issue of Equity Shares against outstanding ECB) should be assigned to ECB
- Further, fair value of the equity shares to be issued to be worked out with reference to the date of conversion only
- RBI would not have any objection if borrower company issues equity shares for a rupee amount < that arrived at as mentioned above by a mutual agreement with the ECB lender.

ECB-2 Return modified:

(A.P. (DIR Series) Circular No. 105 dated 17th February 2014)

- Part E: (a) Details of the financial hedges contracted by corporates, of their foreign currency exposure relating to ECB and (b) Details of their foreign currency earnings and expenditure have to be given now in new ECB-2 Return.

ECB for working capital for civil aviation sector:

(A.P. (DIR Series) Circular No. 113 dated 26th March 2014)

- Scheme for availing ECB by airline companies for working capital as a permissible end-use under the approval route extended till 31st March 2015.

External Commercial Borrowings (ECB) and Trade Credits

Additional conditions for rescheduling ECB:

(A.P. (DIR Series) Circular No. 128 dated 9th May 2014)

Earlier Position	Current Position
<p>1. Modifications allowed in drawdown / repayment schedule of already availed ECB (availed either automatic or approval route) subject to the condition that average maturity period is maintained</p> <p>2. Modifications in drawdown schedule only of already availed ECB (availed either automatic or approval route) subject to condition that (a) no modification in repayment schedule; (b) avg maturity period should be reduced & should comply with min avg maturity period norms; (c) change in all-in-cost ceiling is solely due to reduction in average maturity period</p>	<p>Additional conditions for rescheduling ECB for any of the situations:</p> <ul style="list-style-type: none">• Re-schedulement is allowed only once, before the maturity of the ECB• If the lender is an overseas branch of a domestic bank, the prudential norms applicable on account of re-schedulement should be complied with• The borrower should not be in the default / caution list of RBI and should not be under the investigation of Directorate of Enforcement

Prohibition on raising ECB from overseas branch / subsidiary of Indian Bank:

(A.P. (DIR Series) Circular No. 129 dated 9th May 2014)

- Eligible Indian cos will not be permitted to raise ECB from overseas branches / subsidiaries of Indian banks for the purpose of refinance / repayment of the Rupee loans raised from the domestic banking system



External Commercial Borrowings (ECB) and Trade Credits

Continuation of current all-in-cost ceilings till 31st December 2014

Trade Credits for imports

(A.P. (DIR Series) Circular No.56 dt 30th Sept 2013; 122 dt 10th April 2013; 16 dt 28th July 2014)

Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points
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)	
	*for the respective currency of credit or applicable benchmark

ECB

(A.P. (DIR Series) Circular No.58 dt 30th Sept 2013; 121 dt 10th April 2013; 17 dt 28th July 2014)

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

Realisation and Repatriation of export proceeds

(A.P. (DIR Series) Circular No. 14 dated 22nd July 2013)

Earlier Position	Clarification
<p><u>A.P. (DIR Series) Circular No. 52 dated November 20, 2012 (w.e.f. October 01, 2012 till March 31, 2013):</u></p> <p>Extending the enhanced period of realization and repatriation to India of the amount representing the full export value of goods or software exported – from 6 months to 12 months</p>	<p>Effective period mentioned in Circular itself i.e. October 01, 2012 till March 31, 2013</p>
<p><u>A.P. (DIR Series) Circular No. 105 dated May 20, 2013 (with immediate effect, valid till September 30, 2013):</u></p> <p>Period of realization and repatriation to India of the amount representing the full export value of goods or software exported – Reduced from 12 months to 9 months</p>	<p>Effective Period clarified to be from April 01, 2013 onwards till September 30, 2013 since Circular issued on 20th May 2013 and stated to be effective immediately</p> <p>(Partial retrospective effect)</p>



Export of Goods and Services

Simplification and Revision of Declaration Form for Exports of Goods/Softwares

(A.P. (DIR Series) Circular No. 43 dated 13th September 2013)

- **EDF Form:**
 - New form devised to declare all types of export of goods from **Non-EDI** ports.
 - The EDF will replace the existing GR/PP form used for declaration of export of Goods.
 - The procedure relating to the exports of goods through EDI ports will remain the same and SDF form will be applicable as hitherto.
- **SOFTEX Form:**
 - Common form to declare to declare single as well as bulk software exports
- SOFTEX Form No. & EDF Form No. generation to take place online. The present facility of manual allotment of single as well bulk SOFTEX form number by Regional Offices of RBI would be dispensed with accordingly.
- Instructions effective from 1st October 2013.

Export of Goods - Long Term Export Advances

(A.P. (DIR Series) Circular No. 132 dated 21st May 2014)

- Until now, AD Category- I banks have been permitted to allow exporters to receive **advance payment for export of goods which would take more than one year** to manufacture and ship and where the 'export agreement' provides for the same



Export of Goods and Services

Export of Goods - Long Term Export Advances

- AD Category- I banks have now been permitted to allow **exporters having a minimum of 3 yrs satisfactory track record** to receive **long term export advance up to a maximum tenor of 10 years** to be utilized for execution of long term supply contracts for export of goods subject to the following conditions:
 - **Firm irrevocable supply orders** should be in place. The contract with the overseas party /buyer should be vetted and clearly state specified clauses.
 - Indian Company should have **capacity, systems and processes in place** to ensure that the orders over the duration of the said tenure can actually be executed.
 - Entity should **not have come under the adverse notice of Enforcement Directorate** or any such regulatory agency or have not been caution /listed.
 - Such advances should be **adjusted through future exports**.
 - The rate of interest payable, if any, should **not exceed LIBOR plus 200 basis points**.
 - The **documents should be routed through one Authorized Dealer bank** only.
 - AD should ensure AML / KYC guidelines compliance & also undertake due diligence for the overseas buyer so as to ensure it has good standing / sound track record.
 - Such export advances shall **not be permitted to be used to liquidate Rupee loans**, which are classified as NPA as per the Reserve Bank of India asset classification norms.
 - **Double financing for working capital** for execution of export orders **should be avoided**.
 - Receipt of such advance of USD 100 million or more should be immediately reported to the Trade Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai



Export of Goods and Services

Export of Goods - Long Term Export Advances

- In case **AD banks** are required to **issue bank guarantee (BG) / Stand by Letter of Credit (SBLC)** for export performance, the following guidelines may also be adhered to:
 - Issuance of BG / SBLC, being a non-funded exposure, should be rigorously evaluated as any other credit proposal keeping in view, among others, prudential requirements based on board approved policy. Such facility will be extended only for guaranteeing export performance.
 - BG / SBLC may be issued for a **term not exceeding two years at a time** and further rollover of not more than two years at a time may be allowed subject to satisfaction with relative export performance as per the contract.
 - BG / SBLC should **cover only the advance on reducing balance basis**.
 - BG / SBLC issued from India in favour of overseas buyer **should not be discounted by the overseas branch / subsidiary of bank in India**.
 - AD bank should duly evaluate and monitor the progress made by the exporter on utilisation of the advance and **submit an Annual Progress Report** to the Trade Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai in prescribed format within a month from the close of each financial year.



Export of Goods and Services

Closing of Old Outstanding Bills: Export-Follow-up –XOS Statements

(A.P. (DIR Series) Circular No. 62 dated 14th October 2013)

- AD Category – I banks are required to furnish to the Regional Office concerned of the Reserve Bank, a consolidated statement in **Form XOS** giving details of **all export bills outstanding beyond six months from the date of export** on a half yearly basis as at the end of June and December every year
- As a **one time measure**, an **old export bill may be closed** by AD banks, subject to following:
 - Case is not subject matter of any **pending civil suit /criminal suit**
 - Exporter has not come to the **adverse notice of the Directorate of Enforcement (DoE) / Central Bureau of Investigation (CBI)/Directorate of Revenue Intelligence (DRI) /any such other law enforcement agency**
 - Case has **no externalisation problems** with the export receipt countries
 - Export bill falls under following categories:
 - ❖ With ceiling of USD 1, 00,000 and outstanding beyond 15 years as on December 31,2012
 - ❖ With ceiling of USD 50,000 and outstanding for > 5 years as on December 31, 2012, where customers not traceable subject to proof of non traceability from competent authority and under bank's internal boards approved policy.
- **Report of closed cases** should be submitted to concerned Regional Offices of Reserve Bank of India in prescribed format & after closing of cases, there will be **no further follow up by ADs** and these outstanding bills will not be reported in future Export Outstanding Statements (XOS)



Export of Goods and Services

Third party payments for export / import transactions

(A.P. (DIR Series) Circular No. 70 dated 8th November 14) / (A.P. (DIR Series) Circular No. 100 dated 4th February 14)

1] Export transactions:

- Until now, Normally payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as mentioned in the EDF irrespective of the country of residence of the buyer.
- AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to conditions as under:
 - Either Firm irrevocable purchase order / tripartite agreement or Production of **documentary evidence** for (a) circumstances leading to third party payments; or (b) name of the third party being mentioned in the irrevocable order/ invoice;
 - **Third party payment** to come from **FATF compliant country** & thru banking channel only
 - The exporter should declare the third party remittance in the Export Declaration Form;
 - It would be responsibility of the Exporter to realize and repatriate the export proceeds from such third party named in the EDF;
 - Reporting of outstandings, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS; and
 - In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country.



Export of Goods and Services

Third party payments for export / import transactions

2] Imports transactions:

- Until now, the payments for the import were to be made to the original overseas seller of the goods and the AD had to ensure that the importer furnishes evidence of import, such as, Exchange Control copy of the Bill of Entry to satisfy itself that goods equivalent to the value of remittance have been imported.
- AD banks are allowed to make payments to a third party for import of goods, subject to conditions as under:
- Either Firm irrevocable purchase order / tripartite agreement or Production of **documentary evidence** for (a) circumstances leading to third party payments; or (b) name of the third party being mentioned in the irrevocable order/ invoice;
- **Third party payment** to come from **FATF compliant country** & thru banking channel only
- The Invoice should contain a narration that the related payment has to be made to the (named) third party;
- **Bill of Entry should mention** the name of the shipper as also the **narration that the related payment has to be made to the (named) third party**;
- Importer should comply with the related extant instructions relating to imports including those on advance payment being made for import of goods;

Import of Goods and Services

Important Changes





Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

(A.P. (DIR Series) Circular No. 15 dated 22nd July 2013)

(A.P. (DIR Series) Circular No. 25 dated 14th August 2013)

(A.P. (DIR Series) Circular No. 73 dated 11th November 2013)

(A.P. (DIR Series) Circular No. 82 dated 31st December 2013)

(A.P. (DIR Series) Circular No. 103 dated 14th February 2014)

(A.P. (DIR Series) Circular No. 133 dated 21st May 2014)

- There have been numerous changes in regulations dealing with Import of Gold. For the sake of brevity, portions of Master Circular on Import of Goods & Services concerning revised regulations for Import of Gold have been reproduced here:

8/9/2014

Reserve Bank of India

C.12.1. Import of Gold by Nominated Banks / Agencies/Entities

- i. The import of gold should be strictly in accordance with the extant Foreign Trade Policy.
- ii. Import of gold in the form of coins and medallions is now prohibited.
- iii. Import of gold on consignment basis is permitted only to meet the genuine needs of exporters of gold jewellery.
- iv. All Letters of Credit (LC) to be opened by Nominated Banks for import of gold will be only on 100% cash margin basis. All imports of gold will necessarily have to be on Documents against Payment (DP) basis.



Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

- v. All Nominated Banks/Agencies and other entities to ensure that at least 20%, of every lot of import of gold imported to the country is exclusively made available for the purpose of exports and the balance for domestic use.
 - vi. Nominated Banks/ Agencies and other entities shall make available gold for domestic use only to the entities engaged in jewellery business/bullion dealers and to banks authorised to administer the Gold Deposit Scheme, against full upfront payment only.
 - vii. The Nominated Banks/Agencies/Refineries and other entities shall ensure that there is no front loading of imports, particularly in the first and second lots of imports. Such imports shall be linked to normal quantities of gold supplied to the exporters by the nominated banks/agencies and shall not exceed the highest quantity supplied during any one year out of last three years. In case of nominated banks do not have previous record of having supplied gold to the exporters; they would need to seek prior approval from RBI before placing orders for import of gold for the first lot under the 20/80 scheme.
 - viii. Entities/units in the SEZ and EoUs, are permitted to import gold exclusively for the purpose of exports only.
 - ix. Head Offices / International Banking Divisions of AD Category - I banks shall henceforth submit the following statements to: The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Central Office, Trade Division, Amar Building, Fort, Mumbai-400001. The statements may also be sent by email to [email](#).
 - (a) Statement on **half yearly** basis (end March / end September), showing the quantity and value of gold imported by the nominated banks/ agencies/ EOUs/ SEZs in Gem & Jewellery Sector, mode of payment-wise, as per Annex-1.
 - (b) Statement on **monthly basis** showing the quantity and value of gold imports by the nominated agencies (other than the nominated banks)/ EOUs/ SEZs in Gem & Jewellery sector during the month under report as well as the cumulative position as at the end of the said month beginning from the 1st month of the Financial Year, as per Annex - 2.
- Both the statements shall be submitted, even if there is 'Nil' position and they should reach the aforesaid office of RBI by the 10th of the following month / half year, to which it relates.



Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

C.12.2. Import of Gold under AA/DFIA Scheme

- i. Entities holding Advance Authorisation (AA) / Duty Free Import Authorisation (DFIA) need not follow the sequence of first import and then export if the export obligation has been met before August 14, 2013.
- ii. Any authorisation such as Advance Authorisation (AA) / Duty Free Import Authorization (DFIA) is to be utilised for import of gold meant for export purposes only and no diversion for domestic use shall be permitted. For any AA / DFIA issued prior to 14th August 2013, the condition of sequencing the imports prior to exports shall not be insisted upon even in case of entities/units in SEZ & EOUs, Premier & Star Trading Houses.
- iii. Notwithstanding any of the foregoing directions, entities/units in the SEZ and EOUs, Premier and Star Trading Houses (irrespective of whether they are nominated agencies or not) are permitted to import gold exclusively for the purpose of exports only. Similarly, exports towards fulfilment of obligation under AA/DFIA scheme shall not qualify as export for the purpose of the scheme of 20:80.

C.12.3. Import of Gold by STH/PTH

Star Trading Houses / Premier Trading Houses (STH/PTH) which are registered as nominated agencies by the Director General of Foreign Trade (DGFT) may import gold under 20:80 scheme subject to the following conditions:

- a) The STH/PTH should have imported gold prior to the introduction of 20:80 scheme. STH / PTH should get the required verification done by the Department of Customs at any port where they have imported gold consignment in the past.
- b) The first lot of gold under this scheme would be based on the highest monthly import during any of the last 24 months prior to the RBI's notification dated August 14, 2013, subject to a maximum of 2000 Kgs.
- c) As in the case of other nominated agencies, the eligible quantity may be imported by STH / PTHs from any port, subject to their eligibility limit / maximum quantity allowed to them.
- d) For proper compliance, before import, they must submit the import plan, port-wise and quantity-wise, to the concerned Customs office, where the verification of the figures of past performance was done. This information will be sent to all the other ports from which imports are permitted. The overall discipline of exporting 20% of each imported consignment before the next consignment is imported will be equally applicable to such STH/PTH importers.



Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

C.12.4. Import of Gold Jewellery Including Jewellery Made of Precious Metals or/and Studded With Diamonds / Precious Stones /Semi-precious.

- i. Import of gold in form of Jewellery/ Mounting's, etc; is outside the purview of 20:80 Scheme.
- ii. Suppliers' and Buyers' credit (trade credit) including the 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, should not exceed 90 days from the date of shipment.

C.12.5. Replenishment Scheme for Gold Imports

The Nominated Banks / Agencies / Entities may make available gold to the exporters (other than AA/DFIA holders) operating under the Replenishment Scheme. They can resort to import of gold for the purpose, if considered necessary. However, such import will be accounted for separately and will not entitle them for any further import.

C.12.6. Import of Gold Dore

- i. The refiners are allowed to import Gold Dore equal to 15% of their licence for each of the first two months.
- ii. In case, the quantity has already been identified by DGFT for first two lots, import of such quantity will be in compliance with the guidelines issued vide (A.P. (DIR Series) Circular No. 82 dated December 31, 2013.)
- iii. DGFT, through a notification, may include new refiners, and fix licenced quantity for them.
- iv. Before the next import, not more than 80% shall be allowed to be sold domestically.
- v. The dore so imported shall be refined and shall be released based on FIFO basis following 20:80 principle. This would be monitored by CBEC.
- vi. The imports, thereafter, shall be allowed only up to 5 times the quantum for which proof of export has been submitted. This shall be on accrual basis.
- vii. Import of gold in the third lot onwards will be lesser of the two:
 - a. Five times the export for which proof has been submitted; or
 - b. Quantity of gold permitted to a Nominated Agency in the first or second lot.



Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

Revised working example of the operations of 20/80
scheme for import of gold*

1. A Nominated Bank / Agency / any other entity, ABC, imports say 100 kg of gold, which shall be routed through custom bonded warehouses only. If considered necessary, the lot can be procured through two invoices – one for exporters (i.e. 20%) and the other one for domestic users (80%).
2. Out of the above import of 100 kg, 20 kg gold held in the bonded warehouse can be got released, in part or full, to be made available to the exporters of gold against an undertaking to Customs Authorities as is the practice now.
3. The balance 80 kg can be sold / lent in part or full to domestic entities engaged in jewellery business / bullion dealers/ banks operating the Gold Deposit Scheme (GDS) and Gold Metal Loan (GML). The sale of imported gold will be against full upfront payment, except in the case of GML, where nominated banks can give GML to domestic jewellery manufacturers to the extent of GML outstanding in their books as on March 31, 2013. In other words, no credit sale of gold in any form will be permitted for domestic use, except for GML. In case, the Nominated Bank itself is operating the Gold Deposit Scheme and extend Gold Metal Loans out of gold mobilized under GDS, the bank will be permitted to use, out of 80 kg, a portion for replenishing gold given as GML.
4. Next lot of import of 100 kg of gold by ABC shall be permitted by the Customs Authorities only after the proof of export (i.e. 20% of the imported lot) is submitted.
5. Import of gold in the third lot onwards will be lesser of the two:
 - i) *Five times the export for which proof has been submitted; or*
 - ii) *Quantity of gold permitted to a Nominated Agency in the first or second lot.*

Note: The same procedure is to be followed by the refineries and by any other entity importing gold in any other form / purity and in the case of import of Gold Dore also.

* First lot of gold import will not exceed 20% of the maximum of the imports done in any of the previous three financial years since the end of the preceding financial year’.



Import of Goods and Services

Advance Remittance for Import of Rough Diamonds

(A.P. (DIR Series) Circular No. 71 dated 8th November 2013)

(A.P. (DIR Series) Circular No. 116 dated 1st April 2014)

- Based on recommendations of GJEPC, RBI had notified names of 9 mining companies to whom an importer (other than a PSC or a Department / Undertaking of GOI / State Govt) was allowed to make advance remittance without any limit and without bank guarantee or stand by letter of credit for import of rough diamonds into India
- Now onwards, RBI would not notify names of overseas mining companies. AD Cat-1 Banks can permit importers to make advance remittance to such overseas mining companies without any limit and without bank guarantee or stand by letter of credit subject to **one additional condition** that such overseas mining company should have the recommendation of GJEPC

Import of Rough, Cut and Polished Diamonds

(A.P. (DIR Series) Circular No. 2 dated 7th July 2014)

Earlier Position	Further Relaxation
Suppliers' and Buyers' Credit (Trade Credit) , including the usance period of Letters of Credit for import of Rough, Cut and Polished Diamonds for should not exceeding 90 days from the date of shipment	Clean Credit [i.e. credit given by a foreign supplier to its Indian customer/ buyer, without any Letter of Credit (Suppliers' Credit) / Letter of Undertaking (Buyers' Credit) / Fixed Deposits from any Indian financial institution] can be permitted for a period not exceeding 180 days from date of shipment.



Import of Goods and Services

Merchanting Trade Transactions

(A.P. (DIR Series) Circular No. 95 dated 17th January 2014)

(A.P. (DIR Series) Circular No. 115 dated 28th March 2014)

Guidelines on merchanting trade transactions:

- For trade to be **classified as merchanting trade** following conditions should be satisfied:
 - Goods acquired **should not enter the Domestic Tariff Area** and
 - The state of the goods **should not undergo any transformation** ;
- Goods involved in the merchanting trade transactions would be the ones that are **permitted for exports / imports under the prevailing Foreign Trade Policy (FTP)** of India, as on the date of shipment and all the rules, regulations and directions applicable to exports (except Export Declaration Form) and imports (except Bill of Entry), are complied with for the export leg and import leg respectively ;
- AD bank should be satisfied with the bonafides of the transactions. Further, KYC and AML guidelines should be observed by the AD bank while handling such transactions ;
- Both the legs of a merchanting trade transaction are **routed through the same AD bank**. The bank should verify the documents like invoice, packing list, transport documents and insurance documents (if originals are not available, Non-negotiable copies duly authenticated by the bank handling documents may be taken) and satisfy itself about the genuineness of the trade ;



Import of Goods and Services

Merchanting Trade Transactions

- The entire merchanting trade **transactions should be completed** within an overall period of 9 months & there **should not be** any outlay of **foreign exchange beyond 4 months** ;
- **Commencement of merchanting trade:** Date of shipment / export leg receipt or import leg payment, whichever is first; **Completion date:** Date of shipment / export leg receipt or import leg payment, whichever is the last;
- **Short-term credit** either by way of suppliers' credit or buyers' credit will be available for merchanting trade transactions, to the extent not backed by advance remittance for the export leg, including discounting of export leg LC by AD bank, as in the case of import transactions
- In case **advance against the export leg** is received by the merchanting trader, AD bank should ensure that the same is earmarked for making payment for the respective import leg. However, AD bank may allow short-term deployment of such funds for the intervening period in an interest bearing account ;
- Merchanting traders may be allowed to make **advance payment for the import leg** on demand made by the overseas seller. In case where inward remittance from the overseas buyer is not received before the outward remittance to the overseas supplier, **AD bank may handle such transactions by providing facility based on commercial judgement.** It may, however, be ensured that any such **advance payment for the import leg beyond USD 200,000/- per transaction**, the same should be paid against bank guarantee / LC from an international bank of repute except in cases and to the extent where payment for export leg has been received in advance;



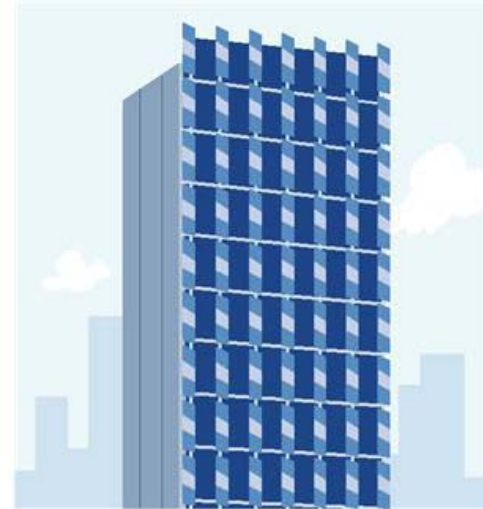
Import of Goods and Services

Merchanting Trade Transactions

- **Letter of credit to the supplier** is permitted against confirmed export order keeping in view the outlay and completion of the transaction within nine months ;
- **Payment for import leg** can also be allowed to be made **out of the balances in Exchange Earners Foreign Currency Account (EEFC)** of the merchant trader ;
- AD bank should ensure **one-to-one matching** in case of each merchanting trade transaction and report defaults in any leg by the traders to the concerned Regional Office of RBI, on half yearly basis in prescribed format, within 15 days from the close of each half year, i.e. June and December ;
- The names of defaulting merchanting traders, where **outstandings reach 5% of their annual export earnings, would be caution-listed.**
- The merchanting traders have to be **genuine traders of goods and not mere financial intermediaries**. Confirmed orders have to be received by them from the overseas buyers. AD banks should satisfy themselves about the capabilities of the merchanting trader to perform the obligations under the order. The overall merchanting trade should result in reasonable profits to the merchanting trader.

Establishment of LO/BO/PO

Important Changes





Establishment of LO/BO/PO

Establishment of LO/BO/PO by entities from specified nations:

(A.P. (DIR Series) Circular No. 93 dated 15th January 2014)

- Entities from or citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China need **prior permission of RBI** for setting up LO/BO/PO
- RBI has clarified that prior permission would also be required for entities from Hong Kong and Macau

Transfer of assets of LO/BO/PO:

(A.P. (DIR Series) Circular No. 142 dated 12th June 2014)

- Till now, transfer of assets of LO/BO/PO to WOS/JV/(other LO/BO/PO)/any other entity were allowed with **specific approval of RBI**
- Such powers have **now been delegated to AD Cat-1 Bank** subject to following:
 - **Transfer of Assets only on closure of LO/BO/PO**
 - No lapse in FEMA procedural compliances regarding LO/BO/PO till closure
 - (a) Certificate from Stat Auditor regarding block details & sale consideration to be submitted. (b) Stat Auditor also to confirm that assets were not re-valued. (c) **Sale consideration cannot be > book value in each case.**
 - Assets should have been acquired only from inward remittances. No intangible assets to be included, neither any revenue expenses (whether capitalised or otherwise) to be considered.
 - Credits to bank accounts of LO/BO/PO on transfer would be a permissible credit. AD to ensure payment of applicable taxes on such transfer.

Compounding of Contraventions & Penalties

Important Changes



Compounding of Contraventions & Penalties

Additional Disclosure – Application for Compounding of Contraventions

(A.P. (DIR Series) Circular No. 20 dated 12th August 2013)

- **ECS Mandate form** has to be filled up alongwith compounding application
- **Details of income-tax PAN and the activity as per NIC codes – 1987** to be included in Annexes relating to compounding for FDI, ECB, ODI & BO/LO

Delegation of Powers to compound offences to Regional RBI Office

(A.P. (DIR Series) Circular No. 117 dated 4th April 2014)

Position Hitherto:

FEMA Regulation	Offence to be compounded	Regional RBI office
Paragraph 9(1)(A) & 9(1)(B) of Schedule I to FEMA 20/2000-RB dt May 3, 2000 ('TISPRO')	<ul style="list-style-type: none">• Delay in reporting inward remittance received for issue of shares• Delay in filing form FC(GPR) after issue of shares.	<ul style="list-style-type: none">• Bhopal, Bhubaneswar, Chandigarh, Guhawati, Jaipur, Jammu, Kanpur, Kochi, Patna, Panaji for amts < Rs. 1 Cr• Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi for amounts without limits
Paragraph 8 of Schedule I to FEMA 20/2000-RB dated May 3, 2000	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.	Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi for amounts without limits

Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

Now onwards:

FEMA Regulation	Offence to be compounded	Regional RBI office
Paragraph 9(1)(A) of Schedule I of TISPRO	Delay in reporting inward remittance received for issue of shares	<ul style="list-style-type: none">• Kochi and Panaji for amounts < Rs. 1 Cr• All other Regional RBI offices for amounts without any limits
Paragraph 9(1)(B) of Schedule I of TISPRO	Delay in filing form FC(GPR) after issue of shares	
Paragraph 8 of Schedule I of TISPRO	Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.	
Paragraph 5 of Schedule I of TISPRO	Violation of pricing guidelines for issue of shares	
Regulation 2(ii) read with Regulation 5(1) of TISPRO	Issue of ineligible instruments such as non-convertible debentures, partly paid shares, shares with optionality clause, etc.	
Paragraph 2 or 3 of Schedule I of TISPRO	Issue of shares without approval of RBI or FIPB respectively, wherever required	

Miscellaneous

Important Changes



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Miscellaneous under FEMA

Liberalised Remittance Scheme for Resident Individuals

(A.P. (DIR Series) Circular No. 24 dated 14th August 2013)

- Limit reduced to \$75,000. Prohibition on acquisition of immovable property.

(A.P. (DIR Series) Circular No. 32 dated 4th September 2013)

- Clarifications:
 - LRS can be used to acquire both listed and unlisted shares of an overseas company. (Although setting up WOS/JV now permitted under ODI regulations)
 - All current a/c remittance limits over and above LRS limits (except gift & donation)
 - Payment can be made towards pending installments for immovable property for which contracts were entered on or before 14/08/13

(A.P. (DIR Series) Circular No. 138 dated 3rd June 2014)

- Limit restored to \$ 1,25,000 per year. Prohibition on acquisition of immovable property remains.

(A.P. (DIR Series) Circular No. 5 dated 17th July 2014)

- LRS can now again be used for acquisition of immovable property outside India



Miscellaneous under FEMA

Export and Import of Currency

(A.P. (DIR Series) Circular No. 39 dated 6th September 2013)

(A.P. (DIR Series) Circular No. 45 dated 16th September 2013)

(A.P. (DIR Series) Circular No. 146 dated 19th June 2014)

A. Any person resident in India:

- can take outside India (other than to Nepal and Bhutan) Indian currency notes up to Rs. 25,000; and
- who had gone out of India on a temporary visit, can bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), Indian currency notes up to Rs. 25,000.

B. Any person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India:

- can take outside India, Indian currency notes up to Rs. 25,000 while exiting only through an airport; and
- can bring into India, Indian currency notes up to Rs. 25,000 while entering only through an airport.



Miscellaneous under FEMA

Borrowing & Lending in Rupees - Investments by persons resident outside India in the tax free, secured, redeemable, non-convertible bonds

(A.P. (DIR Series) Circular No. 81 dated 24th December 2013)

- Regulation No. 6 (2) of FEMA Notification No. FEMA 4/2000 [Foreign Exchange Management (Borrowing & Lending in Rupees)] imposes restrictions on person resident in India who have borrowed in Rupees from a person resident outside India to state that such borrowed funds **cannot be used for any investment**, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, **or for relending**.
- In a move to relax the above restrictions, RBI has allowed resident entities/companies in India authorised by GOI which have issued tax-free, secured, redeemable, non-convertible bonds in rupees to persons resident outside India to use such borrowed funds for following purposes:
 - **lending/re-lending to the infrastructure sector**; and
 - keeping in **fixed deposits with banks in India pending utilisation** for permissible end-uses.

Resident Bank account maintained by residents in India – Joint holder – liberalization (A.P. (DIR Series) Circular No. 87 dated 9th January 2014)

- Hitherto, individuals resident in India were permitted to include nonresident close relative(s) (relatives as defined in section 6 of the Companies Act, 1956) as a **joint holder(s) in their resident savings bank accounts on “former or survivor” basis**. Such non-resident Indian close relatives were however not eligible to operate the account during the life time of the resident account holder in terms of said instructions.



Miscellaneous under FEMA

- RBI has now decided to allow AD banks to include a NRI close relative (relatives as defined in section 6 of the Companies Act, 1956) in existing/new resident bank accounts as **joint holder with the resident account holder on “Either or Survivor” basis** subject to the following conditions :
 - Such **account would be treated as resident bank account** for all purposes and all regulations applicable to a resident bank account would be applicable.
 - Cheques, instruments, remittances, cash, card or any other proceeds **belonging to the NRI close relative would not be eligible for credit** to this account.
 - NRI close relative has to operate such account only **for and on behalf of the resident** for domestic payment and not for creating any beneficial interest for himself.
 - Where due to any eventuality, the **non-resident account holder becomes the survivor** of such an account, it would be categorised as **NRO account** as per the extant regulations.
 - Onus would be on the non-resident account holder to keep AD bank informed to get the account categorised as NRO account and all such regulations as applicable to NRO account would be applicable.
 - The above joint account holder facility can be extended to **all types of resident accounts** including savings bank account.
- While extending this facility the AD banks have been asked to verify actual need for such a facility and also obtain a declaration duly signed by the non-resident account holder as given in the Circular.



Miscellaneous under FEMA

Provisions under section 6 (4) of Foreign Exchange Management Act, 1999 – Clarifications (A.P. (DIR Series) Circular No. 90 dated 9th January 2014)

- In terms of section 6(4) of FEMA, 1999, a person resident in India can hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.
- RBI has given clarifications on the scope of transactions covered under section 6(4):
 - **Foreign currency accounts opened** and maintained by such a person when such person was a resident outside India;
 - **Income earned through employment or business or vocation outside India taken up or commenced** while such person was resident outside India, or **from investments made while** such person was resident outside India, or **from gift or inheritance received while** such a person was resident outside India;
 - Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India;
 - A person resident in India can freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.



Miscellaneous under FEMA

Remittances to non-residents – Deduction of Tax at Source

(A.P. (DIR Series) Circular No. 151 dated 30th June 2014)

- RBI had previously issued A.P. (DIR Series) Circular No. 56 dated November 26, 2002 and A. P. (DIR Series) Circular No. 3 dated July 19, 2007 with regard to the procedure to be followed by Authorised Dealers in respect of deduction of tax at source while allowing remittances to the non-residents.
- The Central Board of Direct Taxes (CBDT) has since revised the existing instructions to be followed while allowing remittances to the non-residents, with effect from October 1, 2013. It has issued Income Tax (14th Amendment) Rules, 2013 vide Notification No. S.O 2659(E) dated September 2, 2013 on furnishing of information under Section 195(6) of the Income Tax Act, 1961 and prescribed the rules and forms to this effect.
- After review of the policy relating to issue of instructions under Foreign Exchange Management Act, 1999 (FEMA) for clarifying tax issues, Reserve Bank of India has stated that it **would not issue any instructions under the FEMA, in this regard.** Henceforth, it would be mandatory on the part of Authorised Dealers to comply with the requirement of the tax laws, as applicable. Further, RBI has also stated that **Authorised Dealers could approach CBDT for any clarification** in this regard.

Miscellaneous under FEMA

Other Miscellaneous Important Circulars

A.P. (DIR Series) Circular	Subject
Circular No. 46 dated 17 th September, 2013	Overseas forex trading through electronic / internet trading portals (Prohibited; Credit Card and Online A/c to be closed and reported to RBI)
Circular No. 63 dated 18 th October, 2013	Memorandum of Procedure for channeling transactions through Asian Clearing Union (ACU) (Scope of transactions largely now restricted to exports and imports of goods and services; Inter-resident transfers removed)
Press Release: 2013-2014/1261 dated 24 th December, 2013.	Risks of using Virtual Currency (Not authorised by RBI)
Circular No. 88 dated 9 th January, 2014	Expanding the scope of Rupee Drawing Arrangements (RDAs) (Payments to utility service providers in India, tax payments & EMI repayments covered now)
Circular No. 111 dated 13 th March 2014	RDA - Increase in trade related remittance limit (Rs 2 lakhs to Rs 5 lakhs per transaction)
Circular No. 136 dated 20 th May, 2014	Crystallization of Inoperative Foreign Currency Deposits (Foreign Exchange Management (Crystallization of Inoperative Foreign Currency Deposits) Regulations, 2014) (Conversion into INR after 3 years from dt of maturity)
Various Circulars	Risk Management

Important Master Circulars 2014

Important Changes



9th August 2014

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Important Master Circulars 2014

- Master Circulars are issued on 1st 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 1st July 2014 will stand withdrawn on July 1, 2015 and be replaced with an updated Master Circular.

1] Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad:

- Instructions to Form ODI:
 - Annual Performance Report (APR) (Part III) should be submitted online
 - All amounts of foreign currency(FCY) & Indian rupees(INR) should be in actuals only

2] Master Circular on External Commercial Borrowings and Trade Credits:

- Automatic Route:
 - The rate of penal interest should not be more than 2% of the all-in-cost of ECB
 - The proceeds of the ECBs should not be used for acquisition of land

Thank You

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