

Recent updates in FEMA



Speaker – CA Tanvi Vora

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Outbound Investments

Important Changes



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

Overseas Investments by Alternate Investments Fund (AIF)

(A.P. (DIR Series) Circular No. 48 dated 9th December 2014)

- RBI has allowed Overseas Investments by Indian Alternative Investment Fund (AIF)
- Such AIF should be registered with SEBI
- Subject to the provisions contained under A.P. (DIR Series) Circulars No. 49 and 50 dated April 30, 2007 and May 04, 2007 respectively - DVCFs
- Such investment is permitted in equity and equity-linked instruments of off-shore Venture Capital Undertakings only.



Outbound Investments

Overseas Direct Investments by Indian Party – Rationalization / Liberalization

(A.P. (DIR Series) Circular No. 54 dated 29th December 2014)

Creation of charge on shares of JV / WOS / step down subsidiary (SDS) in favour of domestic / overseas lender

AD bank may permit creation of charge / pledge on the shares of the JV / WOS / SDS (irrespective of the level) in favour of a domestic or overseas lender of an Indian party for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its JV / WOS / SDS (irrespective of the level) – Automatic Route – subject to :

- Compliance to the provisions of Regulation 6 (and Regulation 7, if applicable) of the Notification w.r.t. financial commitment
- Compliance to the provisions under Regulation 18 of the Notification
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created
- The loan / facility availed by the JV / WOS / SDS from the domestic / overseas lender shall be utilized only for its core business activities overseas and not for investing back in India in any manner
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD

Outbound Investments

- The invocation of charge resulting into the domestic lender acquiring the shares of the overseas JV / WOS / step down subsidiary shall be governed by the extant FEMA provisions / regulations issued by the Reserve Bank from time to time;
- The facilities (funded or non-funded) extended by the domestic lender to the Indian party or to its group / sister / associate concern or to any of its overseas JV / WOS / SDS shall also be governed by the prudential norms and other guidelines issued by the Department of Banking Regulation (DBR, the erstwhile DBOD), Reserve Bank of India from time to time

Creation of charge on the domestic assets in favour of overseas lenders to the JV / WOS / step down subsidiary

AD bank may permit creation of charge (by way of pledge, hypothecation, mortgage, or otherwise) on the domestic assets of an Indian party (or its group companies / sister concerns / associate concerns including the individual promoters / directors) in favour of an overseas lender for securing the funded and / or non-funded facility to be availed of by the JV / WOS / SDS (irrespective of the level) of the Indian party - Automatic Route - subject to:

- Compliance to the provisions of Regulation 6 (and Regulation 7, if applicable) of the Notification w.r.t. financial commitment
- Compliance to the provisions under Regulation 18A(1) of the Notification
- The domestic assets, on which charge is being created, are not securitized
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created
- The loan / funds raised overseas by the JV / WOS / SDS should be utilized only for its core business activities overseas and not for investing back in India in any manner



Outbound Investments

- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / funds raised overseas by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD
- The overseas lender is required to undertake that, in the event of enforcement of charge, they shall transfer the domestic assets by way of sale to a resident only
- In case of invocation of charge, the resultant remittance of the proceeds exceeding the prescribed limit of the financial commitment of the Indian party (prevailed at the time of creation of charge) shall require prior approval of the Reserve Bank
- Wherever creation of charge involves pledge of shares of an Indian company, the pledge shall also be governed by the extant FEMA provisions / regulations issued by the Reserve Bank and the consolidated Foreign Direct Investment (FDI) policy issued by the Government of India from time to time

Creation of charge on overseas assets in favour of domestic lender

AD bank may permit creation of charge (by way of hypothecation, mortgage, or otherwise) on the overseas assets (excluding the shares) of the JV / WOS / SDS (irrespective of the level) of an Indian party in favour of a domestic lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its overseas JV / WOS / SDS (irrespective of the level) - Automatic Route - subject to:

- Compliance to the provisions of Regulation 6 (and Regulation 7, if applicable) of the Notification w.r.t. financial commitment
- Compliance to the provisions under Regulation 18A(2) of the Notification
- The overseas assets, on which charge is being created, are not securitized



Outbound Investments

- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created
- The loan / facility availed by the JV / WOS / SDS from the domestic lender should be utilized only for its core business activities overseas and not for investing back in India in any manner
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD
- The invocation of charge resulting into the domestic lender acquiring the overseas assets shall require prior approval of the Reserve Bank



Outbound Investments

Overseas Direct Investments by Proprietorship Concerns/ Unregistered Partnership Firms in India

(A.P. (DIR Series) Circular No. 59 dated 22nd January 2015)

Due to changes in the definition/ classification of the exporters as per the Foreign Trade Policy (FTP), RBI has reviewed the policy framework for Overseas Direct Investments (ODI) by a proprietorship concern/unregistered partnership firm in India under the approval route. Following conditions have to be complied with:

- The proprietorship concern/unregistered partnership firm in India is classified as ‘Status Holder’ as per the Foreign Trade Policy;
- The proprietorship concern/unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;
- The AD bank is satisfied that the proprietorship concern/unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;
- The proprietorship concern/unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters’ caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and
- The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years’ export realisation or 200 per cent of the net owned funds of the proprietorship concern/unregistered partnership firm in India, whichever is lower.

Inbound Investments

Important Changes



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"> ≥ 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"> ≥ 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"> ≥ 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"> ≤ 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

Position after Circular 86 dt 09/01/2014	Current Position
<u>Exit from investment by NR: Listed Company</u>	
<ul style="list-style-type: none">At the market price prevailing at the recognised stock exchanges	No change
<u>Exit from investment by NR: Unlisted Company</u>	
<ul style="list-style-type: none">Equity Shares:- \leq Annualised return based on ROE as per latest audited B/SCCD/CCPS:- \leq Price worked out as per any internationally accepted pricing methodology, duly certified by a CA or a SEBI registered Merchant Banker	<ul style="list-style-type: none">\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



Inbound Investments

FDI – Switching over from NIC 1987 to NIC 2008

(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

Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

(A.P. (DIR Series) Circular No. 22 dated 28th August 2014)

- Eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, subject to such terms and conditions
- With a view to providing flexibility, **government securities** can be acquired by eligible investors viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, without any stipulation as to the manner of acquisition.
- Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice



Inbound Investments

Issue of equity shares under the FDI Scheme against legitimate dues

(A.P. (DIR Series) Circular No. 31 dated 17th September 2014)

- Indian company under the automatic route may **issue equity shares** against any other funds payable by the investee company, remittance of which does not require prior permission of GOI or RBI under FEMA, 1999. Subject to:
 - The equity shares should be issued in accordance with the extant FDI guidelines on **sectoral caps, pricing guidelines** etc. as amended by Reserve bank of India, from time to time;
 - The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity **should be net of applicable taxes**

Explanation: Issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of FEMA 20 or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines

Inbound Investments

Reporting under FDI Scheme on the e-Biz platform

(A.P. (DIR Series) Circular No. 77 dated 12th February 2015)

(A.P. (DIR Series) Circular No. 95 dated 17th April 2015)

Under the aegis of the e-Biz project of the Government of India has enabled online filing of the following forms:

- Advance Remittance Form (ARF) - used by the companies to report the foreign direct investment (FDI) inflow to RBI
- FCGPR Form - which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow
- E-Biz platform enables the customer to login into the e-Biz portal, download the reporting forms (ie ARF and FCGPR), complete and then upload the same onto the portal using their **digitally signed certificates**.

Applicable to AD Banks:

- The AD Banks will be required to download the completed forms, verify the contents from the available documents, and if necessary call for additional information and then upload the same for RBI to process and allot the Unique Identification Number (UIN).
- The ADs are required to access the e-Biz portal using a Virtual Private Network (VPN) Account obtained from NIC. The financial aspects for obtaining/using the VPN accounts has been notified to the AD Banks vide A.P. (DIR Series) Circular No. 95 dated 17th April 2015.



Inbound Investments

Depository Receipts Scheme

(A.P. (DIR Series) Circular No. 61 dated 22nd January 2015)

- A new scheme called ‘Depository Receipts Scheme, 2014’ (DR Scheme, 2014) for investments under ADR/GDR have been notified by the Central Government effective from December 15, 2014
- This scheme repeals the extant guidelines under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 except to the extent relating to foreign currency convertible bonds
- Some of the salient features of the new scheme are:
 - The securities in which a person resident outside India is allowed to invest under Schedule 1, 2, 2A, 3, 5 and 8 of Notification No. FEMA. 20/2000-RB dated 3rd May 2000 shall be **eligible securities** for issue of Depository Receipts in terms of DR Scheme 2014;
 - A person will be eligible to **issue or transfer** eligible securities **to a foreign depository** for the purpose of issuance of depository receipts as provided in this DR Scheme 2014.
 - The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, **shall not exceed the limit on foreign holding** of such eligible securities under the extant FEMA regulations, as amended from time to time.



Inbound Investments

Depository Receipts Scheme (Cont..)

- The eligible securities shall not be issued to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue of such securities to domestic investors under FEMA, 1999.
- It is to be noted that if the issuance of the depository receipts adds to the capital of a company, the issue of shares and utilisation of the proceeds shall have to comply with the relevant conditions laid down in the Regulations framed and Directions issued under FEMA, 1999.
- The domestic custodian shall report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 in 'Form DRR' within 30 days of close of the issue/ program.

Inbound Investments

Foreign investment in India by SEBI registered Long term investors in Government dated Securities

(A.P. (DIR Series) Circular No. 13 dated 23rd July 2014)

Earlier Position	Current Position
Limit for investments by FIIs, QFIs and long term investors in Government securities stands at USD 30 billion, out of which a sub-limit of USD 10 billion is available for investment by long term investors in Government dated securities	<ul style="list-style-type: none">• Enhanced the investment limit in government securities available to FIIs/QFIs/FPIs by USD 5 billion by correspondingly reducing the amount available to long term investor from USD 10 billion to USD 5 billion within the overall limit of USD 30 billion• The incremental investment limit of USD 5 billion shall be required to be invested in government bonds with a minimum residual maturity of three years• All future investment against the limit vacated when the current investment by an FII/QFI/FPI runs off either through sale or redemption shall also be required to be made in government bonds with a minimum residual maturity of three years• Clarification - No lock-in period and FIIs/QFIs/FPIs shall be free to sell the securities (including that are presently held with less than three years of residual maturity) to the domestic investors



Inbound Investments

Foreign investment in India by Foreign Portfolio Investors

(A.P. (DIR Series) Circular No. 71 dated 3rd February 2015)

(A.P. (DIR Series) Circular No. 73 dated 6th February 2015)

- As per the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 3, 2015, all **future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years**. Consequently:
 - All future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years
 - All future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years
 - FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes
 - There will be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to **domestic investors**
 - All other existing conditions for investment by FPIs in the debt market remain unchanged
- RBI received a number of enquiries and therefore provided the following clarifications in A.P. (DIR Series) Circular No. 73 dated 6th February, 2015
 - Applicability of the directions to investment by FPIs in commercial papers (CPs) – Any fresh investments shall be permitted in any type of debt instrument in India with a minimum residual maturity of three years. Accordingly, FPIs shall not be allowed to make any further investment in CPs
 - Applicability of these guidelines on debt instruments having maturity of three years and over but with optionality clause of less than three years – FPIs shall not be allowed to make any further investments in debt instruments having minimum initial/residual maturity of three years with optionality clause exercisable within three years



Inbound Investments

Foreign investment in India by Foreign Portfolio Investors

(A.P. (DIR Series) Circular No. 72 dated 5th February 2015)

- In terms of the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 3, 2015, reinvestment of coupons in Government securities will be enabled even when the existing limits are fully utilized.
- Accordingly, **FPIs are permitted to invest in Government securities, the coupons received on their existing investments in Government securities.**
- These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities.
- AD banks shall ensure reporting of such investments as may be prescribed from time to time. RBI has directed the AD category-I banks to ensure reporting of the investments from time to time.
- All other existing conditions for investment by FPIs in the Government securities market remain unchanged for this additional facility as well.

Inbound Investments

Review of FDI policy – Defence Sector

(Press Note. 7 (2014 Series) dated 26th August 2014)

(A.P. (DIR Series) Circular No. 46 dated 8th December 2014)

Sector	Amendment
Defence	<ul style="list-style-type: none">• Sectoral cap for Foreign Investment ie. FDI, FII,s RFPIs, NRIs, FVCIs and QFIs in defence increased to 49% under the government approval route and above 49% under the approval of Cabinet Committee on Security (CCS)• However, portfolio investment by FPIs, FIIs, NRIs, QFIs and investments by FVCIs collectively shall not exceed 24% of the total equity of the investee or Joint Venture Company• The applicant should be an Indian Company only. Partnership firm is no longer permitted.• Chief Security Officer (CSO) of the investee / joint venture company should be resident Indian Citizen• The condition of three-year lock in period and prior approval for transfer of equity from NR to NR has been dispensed with.• Additional Condition: The investee company/joint venture company should be self sufficient in the areas of product design and development.

Inbound Investments

Review of FDI policy – Railway Infrastructure

(Press Note. 8 (2014 Series) dated 27th August 2014)

(A.P. (DIR Series) Circular No. 47 dated 8th December 2014)

Sector	Newly Introduced
Railway Infrastructure	<ul style="list-style-type: none">• Newly opened to private investment• 100% FDI permitted under Automatic Route• FDI permitted for construction, operation and maintenance of :<ul style="list-style-type: none">• Suburban corridor projects through PPP;• High speed train projects• Dedicated freight lines;• Rolling stock including train sets and locomotives/coaches manufacturing and maintenance facilities;• Railway electrification;• Signaling systems;• Freight terminals;• Passenger terminals;• Infrastructure in industrial park pertaining to railway line,• Mass Rapid Transport Systems• FDI beyond 49 per cent of the equity of the investee company in sensitive areas from security point of view will be brought before the Cabinet Committee on Security (CCS) for consideration on a case to case basis.

Inbound Investments

Review of FDI policy – Construction Development

(Press Note. 10 (2014 Series) dated 3rd December 2014)

(A.P. (DIR Series) Circular No. 60 dated 22nd January 2015)

Sector	Amendment
Construction Development	<ul style="list-style-type: none">• Roads and Bridges added to the activities specifically included under Construction Development.• Minimum Area to be developed :<ul style="list-style-type: none">• Developed Serviced Plots - No minimum land area required as against requirement on 10 hectares prior to this circular• Construction-development Projects- Minimum floor area of 20,000 sq.m. as against 50,000 sq.m. prior to this circular• Minimum FDI of US\$ 5 Million to be brought in within 6 months of commencement of project.• Commencement of project has been clarified to be the date of approval of building plan by the statutory authorities.• Relaxation provided to bring in subsequent tranches till a period of 10 years from commencement of project or before completion• Investor allowed to exit on completion or after development of trunk infrastructure. Requirement of lock-in period of 3 years removed.• Government may permit repatriation of FDI or transfer from NR to NR before completion of project on a case to case basis

Inbound Investments

Review of FDI policy – Construction Development (Cont..)

(Press Note. 10 (2014 Series) dated 3rd December 2014)

(A.P. (DIR Series) Circular No. 60 dated 22nd January 2015)

Sector	Amendment
Construction Development	<ul style="list-style-type: none">• Indian investee company permitted to sell only Developed Plots• The responsibility of obtaining all necessary approvals has been casted on investee company – Investors' responsibility has been removed.• Some important clarifications provided in the Press Note:<ul style="list-style-type: none">• FDI not permitted in real estate business, construction of farm houses and trading in TDRs• Conditions regarding minimum area, minimum FDI and exit shall not apply to Hotels & Tourist resorts, Hospitals, SEZs, Educational Institutions, Old Age homes and Investments by NRIs• 100% FDI under Automatic Route permitted in completed projects for operation and management of townships, malls/shopping complexes and business centres

Inbound Investments

Review of FDI policy – Pharmaceuticals Sector

(Press Note. 2 (2015 Series) dated 2nd March 2015)

(A.P. (DIR Series) Circular No. 70 dated 2nd February 2015)

Earlier Position	Amendment
<ul style="list-style-type: none">• FDI up to 100 per cent is permitted under automatic route for greenfield investments• FDI up to 100 per cent is permitted under Government Approval route for brownfield investments (i.e. investments in existing companies) in pharmaceuticals sector	<ul style="list-style-type: none">• Special carve out for medical devices:<ul style="list-style-type: none">✓ FDI up to 100% is permitted for manufacturing of Medical Devices under the automatic route in both greenfield and brownfield sectors.✓ Other conditions such as non-compete clause not to apply.

Review of FDI policy – Pension Sector

(Press Note. 4 (2015 Series) dated 24th April 2015)

Sector	Newly Introduced
Pension Sector	<ul style="list-style-type: none">• FDI up to 49% is permitted in the Pension sector• FDI up to 26% is permitted under the automatic route and FDI beyond 26% and up to 49% is allowed under approval route• Foreign investment limit in the pension sector will be linked with the ceiling in the insurance sector, which has gone up to 49% from 26%.

Inbound Investments

Review of FDI policy – Insurance Sector

(Press Note. 3 (2015 Series) dated 2nd March 2015)

(A.P. (DIR Series) Circular No. 94 dated 8th April 2015)

Sector	Amendment
Insurance Sector	<ul style="list-style-type: none">• Foreign Capital in Insurance Company is restricted to 49% of the paid-up equity capital• FDI up to 26% will be allowed under Automatic route. FDI beyond 26% but up to 49% shall be under Government Route• Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities• An Indian Insurance Company shall ensure that the ownership remains with the resident Indian Entities• FPI in the Insurance Company shall be governed by FEMA and SEBI



Inbound Investments

Other amendments made through Consolidated FDI Policy 2015 dated 12th May 2015 – Corresponding RBI circulars not available

- It has been clarified that government approval shall not be required for transfer of shares from NR to NR in sectors which are under automatic route. However, approval of Government will be required for transfer of stake from one NR to another NR in sectors which are under approval route
- It has been clarified that FIPB approval shall not be required for mergers and acquisitions taking place in sectors under automatic route
- It has been clarified that Government approval is not required for issue of ESOPs in sectors under automatic route
- Fresh approval shall not be required for additional foreign investment into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary



Inbound Investments

Other amendments made through Consolidated FDI Policy 2015 dated 12th May 2015

- New Reporting requirements provided in FDI Policy 2015–
 - Investee company made liable to report the transfer of shares to NR, including NRI, on the stock exchange under the FDI scheme.
 - Investee company issuing partly paid equity shares to furnish a report not later than 30 days from the date of receipt of each call payment and file a report in form FC-GPR to the extent they become paid up
 - The domestic custodian to report the issue/transfer of sponsored/unsponsored depository receipts as per DR Scheme 2014 within 30 days of close of the issue/ program. Corresponding form prescribed. Earlier this liability was on the issuing company.
 - List of documents to be submitted by a person resident in India for transfer of shares to a person resident outside India by way of gift updated to include a declaration from the donee accepting partly paid shares or warrants that donee is aware of the liability as regards calls in arrear and consequences thereof.

External Commercial Borrowings (ECB) and Trade Credits

Important Changes



External Commercial Borrowings (ECB) and Trade Credits

Continuation of current all-in-cost ceilings till 31st March 2015

Trade Credits for imports

(A.P. (DIR Series) Circular No. 16 dt 28th July 2014; No. 81 dt 3rd March 2015)

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)	

ECB

(A.P. (DIR Series) Circular No. 17 dt 28th July 2014; 80 dt 3rd March 2015)

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

External Commercial Borrowings (ECB) and Trade Credits

Parking of ECB proceeds

(A.P. (DIR Series) Circular No. 39 dated 21st November 2014)

Earlier Position	Current Position
Eligible ECB borrowers are required to bring ECB proceeds , meant for Rupee expenditure in India for permitted end uses, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc., immediately for credit to their Rupee accounts with AD Banks in India.	Eligible ECB borrowers can park ECB proceeds (both under the automatic and approval routes) in term deposits with AD Banks in India for a maximum period of six months pending utilisation for permitted end uses

ECB for working capital for civil aviation sector:

(A.P. (DIR Series) Circular No. 109 dated 11th June 2015)

- Scheme for availing ECB by airline companies for working capital as a permissible end-use under the approval route extended till 31st March 2016.

ECB for low cost affordable housing projects

(A.P. (DIR Series) Circular No. 108 dated 11th June 2015)

- Scheme for availing ECB for low cost affordable housing projects by eligible borrowers under the approval route will continue for financial year 2015-16.

External Commercial Borrowings (ECB) and Trade Credits

Refinancing of ECB at lower all-in-cost – Simplification of procedure

(A.P. (DIR Series) Circular No. 21 dated 27th August 2014)

- Currently, refinancing of existing ECB by raising fresh ECB at lower all-in-cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained. The cases, where the Average Maturity Period (AMP) of the fresh ECB is more than the residual maturity of existing ECB, are examined by the Reserve Bank under the approval route
- To simplify the procedure RBI has delegated powers to the AD Banks to approve even those cases where the AMP of the fresh ECB is exceeding the residual maturity of the existing ECB under the automatic route subject to the following conditions:
 - Both the existing and fresh ECBs should be in compliance with the applicable guidelines;
 - All-in-cost of fresh ECB should be less than that of the all-in-cost of existing ECB;
 - Consent of the existing lender is available;
 - Refinancing is to be undertaken before the maturity of the existing ECB;
 - Borrower should not be in the default / Caution List of RBI and should not be under the investigation of the Directorate of Enforcement (DoE);
 - Overseas branches / subsidiaries of Indian banks will not be permitted to extend ECB for refinancing an existing ECB; and
 - All requirements in respect of reporting arrangements like filing of revised Form 83, etc. are followed.



External Commercial Borrowings (ECB) and Trade Credits

External Commercial Borrowings (ECB) in Indian Rupees

(A.P. (DIR Series) Circular No. 25 dated 3rd September 2014)

(A.P. (DIR Series) Circular No. 103 dated 21st May 2015)

- In AP (DIR Series) Circular No. 27 dated September 23, 2011, all **eligible borrowers** were eligible to raise ECB in Indian Rupees from foreign equity holders as per the extant ECB guidelines
- As a greater flexibility for structuring of ECB arrangements, RBI has decided that **recognised non-resident ECB lenders** may extend loans in Indian Rupees subject to the following conditions:
 - The lender should mobilise Indian Rupees through swaps undertaken with an AD Bank in India
 - The ECB contract should comply with all other conditions applicable to the automatic and approval routes as the case may be
 - The all-in-cost of such ECBs should be commensurate with prevailing market conditions
- For the purpose of executing swaps for ECBs denominated in Indian Rupees, the recognised ECB lender, if it desires, may set up a representative office in India following the prescribed laid down process.
- Subsequently, A.P. (DIR Series) Circular No. 103 dated 21st May 2015 has provided further facilitation to ECB lending denominated in INR by overseas lenders, whereby such lenders may enter into swap transactions with their overseas bank which shall, in turn, enter into a back-to-back swap transaction with any AD Bank in India

External Commercial Borrowings (ECB) and Trade Credits

External Commercial Borrowings (ECB) in Indian Rupees (cont...)

Procedure

- The recognised non-resident lender approaches his overseas bank with appropriate documentation as evidence of an underlying ECB denominated in INR with a request for a swap rate for mobilising INR for onward lending to the Indian borrower.
- The overseas bank, in turn, approaches an AD Bank for a swap rate along with documentation furnished by the customer that will enable the AD Bank in India to satisfy itself that there is an underlying ECB in INR (scanned copies would be acceptable).
- A KYC certification on the end client shall also be taken by the AD Bank in India as a one-time document from the overseas bank.
- Based on the documents received from the overseas bank, the AD Bank in India should satisfy itself about the existence of the underlying ECB in INR and offer an indicative swap rate to the overseas bank which, in turn, will offer the same to the non-resident lender on a back-to-back basis.
- The continuation of the swap shall be subject to the existence of the underlying ECB at all times.
- On the due date, settlement may be done through the Vostro account of the overseas bank maintained with its correspondent bank in India.
- All other Operational Guidelines, Terms and Conditions as contained in the annex to A.P. (DIR Series) Circular No.63 dated December 29, 2011 governing hedging of ECBs denominated in INR shall apply, mutatis mutandis.
- The concerned AD Cat-I bank shall keep on record all related documentation for verification by Reserve Bank.



External Commercial Borrowings (ECB) and Trade Credits

Routing of funds raised abroad to India

(A.P. (DIR Series) Circular No. 41 dated 25th November 2014)

- The RBI has noticed that some Indian companies are accessing overseas market for debt funds through overseas holding / associate / subsidiary / group companies. There are also cases wherein such borrowings are raised at rates exceeding the ceiling applicable in terms of extant FEMA regulations and that the funds so raised are routed to the Indian companies which accounts for sole/major operations of the group. Different modalities/structures are resorted to for channeling such funds for Indian operations including investment in rupee bonds floated by the Indian company.
- As a reminder of the existing regulatory framework, RBI has clarified the following:
 - Indian companies or their AD Banks are not allowed to issue any direct or indirect guarantee or create any contingent liability or offer any security in any form for such borrowings by their overseas holding / associate / subsidiary / group companies except for the purposes explicitly permitted in the relevant Regulations
 - Further, funds raised abroad by overseas holding / associate / subsidiary / group companies of Indian companies with support of the Indian companies or their AD Banks as mentioned at (i) above cannot be used in India unless it conforms to the general or specific permission granted under the relevant Regulations.
 - Indian companies or their AD Banks using or establishing structures which contravene the above shall render themselves liable for penal action as prescribed under FEMA, 1999.

External Commercial Borrowings (ECB) and Trade Credits

Security for External Commercial Borrowings

(A.P. (DIR Series) Circular No. 55 dated 1st January 2015)

- RBI has authorised AD Banks to create charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised/raised by the borrower, subject to the following conditions:
 - The underlying ECB is in compliance with the extant ECB guidelines
 - There exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender /security trustee, on immovable assets /movable assets/financial securities/issuance of corporate and/or personal guarantee,
 - No objection certificate, wherever necessary, from the existing lenders in India has been obtained
- Upon meeting the aforesaid stipulations, the AD Banks are authorised to permit creation of charge subject to the following:-
 - **Creation of charge on immovable assets-** This shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000. In the event of enforcement / invocation of the charge, the immovable asset/property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.
 - **Creation of charge on movable assets** – In the event of enforcement/invocation of the charge, the claim of the lender will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country.



External Commercial Borrowings (ECB) and Trade Credits

Security for External Commercial Borrowings (Cont..)

- **Creation of charge over financial securities** – Pledge of shares of the borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted. In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with AD Category-I banks in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/promoter can also be in the form of escrow arrangement or debt service reserve account. In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable.
- **Issue of Corporate or Personal Guarantee**– On the basis of Board Resolution for the issue of corporate guarantee/specific requests from individuals to issue personal guarantee.



External Commercial Borrowings (ECB) and Trade Credits

Simplification of Procedure

(A.P. (DIR Series) Circular No. 64 dated 23rd January 2015)

- RBI had delegated powers to AD Banks to deal with cases related to change in draw-down and repayment schedules of ECBs subject to conditions stipulated therein.
- As a measure of further simplification of the existing procedure for rescheduling / restructuring of ECBs and in supersession of aforesaid provisions, RBI has now delegated powers to the designated AD Banks to allow:
 - Changes / modifications (irrespective of the number of occasions) in the draw-down and repayment schedules of the ECB whether associated with change in the average maturity period or not and / or with changes (increase/decrease) in the all-in-cost.
 - Reduction in the amount of ECB (irrespective of the number of occasions) along with any changes in draw-down and repayment schedules, average maturity period and all-in-cost.
 - Increase in all-in-cost of ECB, irrespective of the number of occasions.
 - Changes in the name of the lender of ECB after satisfying themselves with the bonafides of the transactions and ensuring that the ECB continues to be in compliance with applicable guidelines
 - Transfer of the ECB from one company to another on account of reorganisation at the borrower's level in the form of merger/demerger/amalgamation/acquisition duly as per the applicable laws/rules after satisfying themselves that the company acquiring the ECB is an eligible borrower and ECB continues to be in compliance with applicable guidelines
- AD Banks to ensure that the revised average maturity period and / or all-in-cost is / are in conformity with the applicable ceilings / guidelines and the changes are effected during the tenure of the ECB. If the lender is an overseas branch/ subsidiary of an Indian bank, the changes shall be subject to the applicable prudential norms

Export of Goods and Services

Important Changes





Export of Goods and Services

Project Exports

(A.P. (DIR Series) Circular No. 11 dated 22nd July 2014)

(A.P. (DIR Series) Circular No. 93 dated 1st April 2015)

- Until now, the Working Group (consisting of representatives from Exim bank, ECGC & RBI) were permitted to consider project exports and deferred service exports proposals for contracts exceeding USD 100 Million in value. However, now the AD banks / Exim Bank can consider awarding post-award approvals without any monetary limit and permit subsequent changes in the terms of post award approval within the relevant FEMA guidelines / regulations
- The stipulation of time limit of 30 days for the exporter undertaking Project Exports and Service contracts abroad to submit form DPX1/ PEX-1 /TCS-1 to the Approving Authority (AA) for seeking post award approval will not apply henceforth
- Submission of forms DPX1, PEX-1, TCS-1 and DPX-3 to the Regional Office of the RBI by the Approving Authority (AA), such as, the AD Bank / Exim Bank/ Working Group has also been dispensed with.
- A.P. (DIR Series) Circular No. 93 dated 1st April 2015 - To further liberalize the provisions and since the Working Group structure has been dismantled, RBI has withdrawn the limit of USD 20 million for Buyer's credit which may be extended to foreign buyers in connection with export of goods on deferred payment terms and turnkey projects from India.



Export of Goods and Services

Period of Realisation and Repatriation of Export Proceeds – For exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs and BTPs

(A.P. (DIR Series) Circular No. 37 dated 20th November 2014)

- Period of realization and repatriation of export proceeds shall be nine months from the date of export for **all** exporters including Units in SEZs, Status Holder Exporters, EOUs, Units in EHTPs, STPs & BTPs until further notice
- Period of realization and repatriation to India of the full exports made to warehouses established outside India remain unchanged

Declaration of Exports of Goods/Software

(A.P. (DIR Series) Circular No. 101 dated 14th May 2015)

- Hitherto every exporter of goods or software has to declare the same in one of the forms stated in Regulation 6 of the Notification No.FEMA 23/2000-RB dated May 3, 2000
- Now the requirement of declaring the export of Goods /Software in the SDF in case of exports taking place through the EDI ports has been dispensed with since the mandatory statutory requirements contained in the SDF have been subsumed in the Shipping Bill format

Export of Goods and Services

Delay in Utilization of Advance Received for Exports

(A.P. (DIR Series) Circular No. 74 dated 9th February 2015)

- There was a substantial increase in the number and amount of advances received for exports remaining outstanding beyond the stipulated period on account of non-performance of exports as allowed under Notification No. FEMA 23 / RB-2000, dated May 3, 2000, as amended from time to time
- AD banks are threrefore advised to efficiently follow up with the concerned exporters in order to ensure that export performance are completed within the stipulated time period
- AD banks should also exercise proper due diligence and ensure compliance with KYC and AML guidelines so that only bonafide export advances flow into India.
- Doubtful cases as also instances of chronic defaulters may be referred to Directorate of Enforcement (DoE) for further investigation.
- A quarterly statement (as below) indicating details of such cases are to be forwarded by the AD Banks to the concerned Regional Offices of RBI within 21 days from the end of each quarter

Quarterly Statement showing details of overdue Export Advances
(Statement for the quarter ended , 20...)

Name and Address of the Bank:

S. No	AD Code (Part-I code)	AD reference No.	Name & Address of the Exporter	Name & Address of the Foreign buyer	Details of Advance Received			Amount outstanding (in case of part exports)	Reasons for non-export	If reference made to DoE	
					Date	Currency	Amount			Date	Reasons

Import of Goods and Services

Important Changes



Import of Goods and Services

Import of Rough, Cut and Polished Diamonds

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

Earlier Position	Further Relaxation
AD Banks permitted to approve Suppliers' and Buyers' Credit (Trade Credit) , including the usance period of Letters of Credit for import of Rough, Cut and Polished Diamonds 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 into India

(A.P. (DIR Series) Circular No. 76 dated 12th February 2015)

Earlier Position	Further Relaxation
Applications by persons, firms and companies was required for making payments, exceeding USD 5,000 or its equivalent towards imports into India must be made in Form A-1	To liberalise and simplify the procedure, the requirement to submit request to the AD Banks for making payments towards imports into India in Form A-1 has been dispense with. AD Banks however, need to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transactions before effecting the remittance



Import of Goods and Services

Import of Gold by Nominated Banks/Agencies/Entities

(A.P. (DIR Series) Circular No. 42 dated 28th November 2014)

(A.P. (DIR Series) Circular No. 79 dated 18th February 2015)

- There have been numerous changes in regulations dealing with Import of Gold (under 20:80 Scheme) by Nominated Banks / Agencies / Entities starting with A.P.(DIR Series) Circular No.25 dated August 14, 2013 and resting with the A.P. (DIR Series) Circular No.133 dated May 21, 2014
- RBI has now withdrawn the 20:80 scheme and restrictions placed on import of gold with immediate effect.
- Further clarification provided in A.P. (DIR Series) Circular No. 79 dated 18th February 2015 on some of the operational aspects of the guidelines on import of gold consequent upon the withdrawal of 20:80 scheme:
 - The obligation to export under the 20:80 scheme will continue to apply in respect of unutilized gold imported before November 28, 2014, i.e., the date of abolition of the 20:80 scheme.
 - Nominated banks are now permitted to import gold on consignment basis. All sale of gold domestically will, however, be against upfront payments. Banks are free to grant gold metal loans.
 - Star and Premier Trading Houses (STH/PTH) can import gold on **DP basis** as per entitlement without any end use restrictions.
 - While the import of gold coins and medallions will no longer be prohibited, pending further review, the restrictions on banks in selling gold coins and medallions are not being removed



Import of Goods and Services

Merchanting Trade to Nepal and Bhutan

(A.P. (DIR Series) Circular No. 97 dated 30th April 2015)

- The revised merchanting trade guidelines were stipulated in A.P. (DIR Series) Circular No. 115 dated 28th March 2014:
- 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 ;
- Since Nepal and Bhutan are landlocked countries there is a facility of transit trade whereby the goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries
- In consultation with Government of India, RBI has clarified that goods consigned to the importers of Nepal and Bhutan from third countries under merchanting trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively

Compounding of Contraventions & Penalties

**Important
Changes**



Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

(A.P. (DIR Series) Circular No. 36 dated 16th October 2014)

POSITION HITHERTO :

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	

Compounding of Contraventions & Penalties

Delegation of Powers to compound offences to Regional RBI Office

NOW FOLLOWING ADDITIONAL POWERS DELEGATED TO REGIONAL OFFICES:

FEMA Regulation	Offence to be compounded	Regional RBI office
Regulation 10 A (b)(i) read with paragraph 10 of Schedule I of TISPRO	Delay in submission of form FC-TRS on transfer of shares from Resident to Non-Resident.	<ul style="list-style-type: none"> • Kochi and Panaji for amounts < Rs. 1 Cr • All other Regional RBI offices for amounts without any limits
Regulation 10 B(2) read with paragraph 10 of Schedule I of TISPRO	Delay in submission of form FC-TRS on transfer of shares from Non-Resident to Resident	
Regulation 4 of TISPRO	Taking on record transfer of shares by investee company, in the absence of certified form FC-TRS	
FEMA 7/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property outside India	<ul style="list-style-type: none"> • Kochi and Panaji for amounts < Rs. 1 Cr • All other Regional RBI offices for amounts without any limits • Or • FED, CO Cell, Reserve Bank of India, New Delhi
FEMA 21/2000-RB, dated 3-5-2000	Contraventions relating to acquisition and transfer of immovable property in India	
FEMA 22/2000-RB, dated 3-5-2000	Contraventions relating to establishment in India of Branch office ,Liaison Office or project office	
FEMA 5/2000-RB, dated 3-5-2000	Contraventions falling under Foreign Exchange Management (Deposit) Regulations , 2000	

Miscellaneous

Important Changes



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 from \$200,000

(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

(A.P. (DIR Series) Circular No. 19 dated 11th August 2014)

- Post facto reporting stipulated in Sr.No.4 of A.P. (DIR Series) Circular No.32 dated September 04, 2013 regrading payment towards pending installments for immovable property for which contracts were entered on or before 14/08/13 stands withdrawn



Miscellaneous under FEMA

Liberalised Remittance Scheme for Resident Individuals

(A.P. (DIR Series) Circular No. 106 dated 1st June 2015)

- All current account transactions under Schedule III now covered within LRS limit of USD 2,50,000/- viz. permitted current or capital account transaction or a combination of both
- The permissible Capital Account Transactions by an individual under LRS are:
 - opening of foreign currency account abroad with a bank;
 - purchase of property abroad;
 - making investments abroad;
 - setting up Wholly owned subsidiaries and Joint Ventures abroad;
 - extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.
- The permissible Current Account Transactions by an individual are:
 - Private visits to any country (except Nepal and Bhutan)
 - Gift or donation.
 - Going abroad for employment
 - Emigration
 - Maintenance of close relatives abroad
 - Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
 - Expenses in connection with medical treatment abroad
 - Studies abroad
 - Any other current account transaction



Miscellaneous under FEMA

Liberalised Remittance Scheme for Resident Individuals

(A.P. (DIR Series) Circular No. 106 dated 1st June 2015)

- However, for Emigration, Expenses in connection with medical treatment abroad and Studies abroad, one can remit above USD 2,50,000/- without RBI permission if it is so required by a country of emigration, medical institute offering treatment or the university respectively
- Gift in Indian Rupees by resident individuals to NRI relatives as defined in the Companies Act, 2013 shall also be subsumed under the LRS limit
- A person who is resident but not permanently resident in India and is a citizen of a foreign State other than Pakistan; or is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions)
- This Scheme cannot be made use for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc



Miscellaneous under FEMA

Liberalised Remittance Scheme for Resident Individuals

(A.P. (DIR Series) Circular No. 106 dated 1st June 2015)

- Current Account Transactions- **Facilities for persons other than individuals:**
 - The following remittances shall require prior approval of the Reserve Bank of India:
 - Donations by corporate exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for a) creation of Chairs in reputed educational institutes, b) contribution to funds (not being an investment fund) promoted by educational institutes; and c) contribution to a technical institution or body or association in the field of activity of the donor Company
 - Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
 - Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
 - Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.



Miscellaneous under FEMA

Issue of Prepaid Forex Cards- Due Diligence and Adherence to KYC norms

(A.P. (DIR Series) Circular No. 14 dated 25th July 2014)

RBI has clarified that prepaid foreign currency cards are a form of forex similar to foreign currency notes or travellers cheques and therefore instructed authorised dealers and full-fledged money changers to comply with the same rigorous standards of due diligence and KYC as they would in case they were selling foreign currency notes/ travellers cheques to their customers

Constitution of Special Investigating Team – Sharing of Information

(A.P. (DIR Series) Circular No. 18 dated 30th July 2014)

Special Investigation Team (SIT) under the chairmanship of Hon'ble Justice M.B. Shah was constituted in pursuance of Hon'ble Supreme Court Judgment dated July 4, 2011. On the directions of the SC, all Authorised Persons are advised to ensure that information/documents required by the SIT are made available, as and when required

Three divisions of Foreign Exchange Department shifted to FED CO Cell at New Delhi

(A.P. (DIR Series) Circular No. 23 dated 2nd September 2014)

All cases pertaining to Foreign Investment Division (FID) viz. Liaison/Branch/Project Office (LO/BO/PO) Division, Non Resident Foreign Account Division (NRFAD) and Immovable Property and monthly statements as per circulars and various other reporting such as for extension or closure of LOs/BOs shall be sent to the FED CO Cell, Foreign Exchange Department, Reserve Bank of India, New Delhi Regional Office, 6, Parliament Street, New Delhi - 110 001, India



Miscellaneous under FEMA

Acquisition/Transfer of Immovable property – Payment of taxes

(A.P. (DIR Series) Circular No. 38 dated 20th November 2014)

Doubts persisted in the members of public regarding requirement of payment of taxes while undertaking property transactions under Foreign Exchange Management (Acquisition and Transfer of immovable property in India) Regulations, 2000 notified vide Notification No. FEMA 21 /2000-RB dated 3rd May 2000

RBI has clarified that transactions involving acquisition of immovable property under the above regulations shall be subject to the applicable tax laws in India.

Release of Foreign Exchange for Haj/ Umrah pilgrimage

(A.P. (DIR Series) Circular No. 40 dated 21st November 2014)

RBI has permitted Authorised Dealers and Full Fledged Money Changers to release the full amount of **BTQ entitlement in cash or up to the cash limit specified by the Haj Committee of India**, to the Haj/ Umrah pilgrims.

Remittance of Assets – Submission of Auditor's certificate

(A.P. (DIR Series) Circular No. 43 dated 2nd December 2014)

To bring in line with CBDT notification dated September 2, 2013 which revised the instructions regarding furnishing of tax declarations and submission of Form 15CA and 15CB, RBI has amended the Principal Regulations through the Foreign Exchange Management (Remittance of Assets) (Amendment) Regulations, 2014 notified vide Notification No. FEMA. 324/2014-RB dated October 31, 2014, c.f. G.S.R. No. 803 (E) dated November 14, 2014, with respect to submitting certificates on tax payments



Miscellaneous under FEMA

Foreign Exchange Management (Deposit) Regulations, 2000 - Exemption thereof

(A.P. (DIR Series) Circular No. 51 dated 17th December 2014)

With the objective of bringing all the multilateral organisations at par, for opening of accounts in India, the extant instructions have been reviewed and it has been decided to **include in the exemptions**, laid down in Foreign Exchange Management (Deposit) Regulation, 2000, issued vide Notification No. FEMA 5/2000-RB dated May 3, 2000 (as amended from time to time), deposits held in accounts maintained with an authorised dealer by **any multilateral organization of which India is a member nation, and its subsidiary/affiliate bodies in India, and its or their officials in India**

Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 – Remittance of salary

(A.P. (DIR Series) Circular No. 62 dated 22nd January 2015)

Queries: Whether remittance of salary outside India can be affected for 1) employees on deputation to a group company in India and 2) for employees of Limited Liability Partnership

RBI Clarification: 1) Facility as available to an employee of a company under Regulation 7(8) of Notification No. FEMA 10 shall also be available to an employee who is deputed to a group company in India. 2) The term ‘company’ referred to in the said regulation will include ‘Limited Liability Partnership’ as defined in the LLP Act, 2008

Miscellaneous under FEMA

Acquisition/transfer of immovable property – Prohibition on citizens of certain countries

(A.P. (DIR Series) Circular No. 83 dated 11th March 2015)

- Hong Kong and Macau, two Special Administrative Regions of China have been added to the list of countries which are prohibited to acquire/transfer immovable property in India.
- Accordingly, citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau are not allowed to acquire/transfer immovable property in India without prior permission of Reserve Bank other than lease, not exceeding five years

Export and Import of Currency

(A.P. (DIR Series) Circular No. 63 dated 22nd January 2015)

Earlier Position	Further Relaxation
A person may take or send out of India to Nepal or Bhutan and bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations up to Rs.100/-	<u>Individuals visiting from India to Nepal or Bhutan:</u> an individual may carry to Nepal or Bhutan, currency notes of Reserve Bank of India denominations above Rs.100/- i.e. currency notes of Rs.500/- and/or Rs.1000/- denominations, subject to a limit of Rs.25000/-.



Miscellaneous under FEMA

Operational guidelines on International Financial Services Centre (IFSC)

(A.P. (DIR Series) Circular No. 92 dated 31st March 2015)

- Foreign Exchange Management (International Financial Services Centre) Regulations 2015 dated March 2, 2015 were notified in the Indian Gazette on 23rd March 2015
- As per the regulations, a financial institution or a branch of a financial institution set up in the IFSC shall be treated as **person resident outside India**
- Transaction with a person resident in India shall be treated as a transaction between a resident and non- resident and shall be subject to the provisions of Foreign Exchange Management Act, 1999 and the Rules/Regulations/Directions issued thereunder
- **Financial Transaction** in this context shall mean making or receiving payment, drawing, issuing or negotiating any bills of exchange or promissory note, transferring any security or acknowledging any debt.
- **Financial service** shall mean any activity which a financial institution is permitted to carry on by the Respective Act of the Parliament or Government of India or any Regulatory Authority empowered to regulate the concerned financial institution



Miscellaneous under FEMA

Foreign Currency (Non-Resident) Account (Banks) (FCNR(B)) Scheme

(A.P. (DIR Series) Circular No. 98 dated 14th May 2015)

- AD Banks are insisting on various requirements at the time of closure of FCNR (B) deposits and subsequent remittance of funds as under:
 - Submission of A2 Form
 - Insisting on physical presence of the account holder
 - Asking for purpose of remittance
- RBI has now clarified that A2 Form is to be filed at the time of purchase of foreign exchange using rupee funds and hence is not applicable while remitting FCNR (B) funds.
- Further, RBI has also instructed that banks, with the help of technology, will have to devise better alternatives/ methods for ensuring bonafides of the transaction rather than insisting on physical presence of the account holder, in order to ensure hassle free remittance of funds to the account holder



Miscellaneous under FEMA

Non-resident guarantee for non-fund based facilities entered between two resident entities

(A.P. (DIR Series) Circular No. 56 dated 6th January 2015)

- Non-resident guarantee for non-funded facilities such as Letters of Credit / guarantees / Letters of Undertaking (LoU) / Letter of Comfort (LoC) entered between two persons resident in India is allowed under the general permission route
- RBI has clarified that residents that are subsidiaries of multinational companies can also hedge their foreign currency exposure through permissible derivative contracts executed with an AD Bank in India on the strength of guarantee of its non-resident group entity.
- The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor shall continue to be governed, as hitherto, by the provisions of A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

Websites:

FEMA (RBI) – www.rbi.org.in

DIPP – www.dipp.nic.in

Thank You

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