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RBI and FEMA

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C N K & Associates LLP

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Contents

Reserve Bank of India (RBI)/Foreign Exchange Management Act, 1999 (FEMA)

Notifications

- ### Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment)Regulations, 2018, as updated on 1st June 2018

The RBI has notified the following amendments in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 dated 26th March 2018 **effective from 2nd June 2018**-

- FDI in companies engaged in Investment and not registered as Non-Banking Financial Companies (NBFCs) or Core Investment Companies (CICs) will require prior Government approval. However, Foreign Investment in companies registered as NBFCs will continue to enjoy benefit of 100% automatic route subject to the Sectoral conditions attached therewith.
- Companies having FDI and who appointed an auditor/audit firm having international network, will now have to appoint joint auditor, wherein one of the auditors should not be part of the same network.
- FDI in Scheduled Air Transport Service/ Domestic Scheduled Passenger Airline and Regional Air Transport Service which earlier was allowed up to 49% only is now permitted up to 100% i.e. automatic up to 49% and government approval beyond 49%, subject to satisfaction of certain Sectoral conditions.
- Real estate broking services are now excluded from the definition of 'real estate business' paving way for 100% FDI in real estate broking services under automatic route.
- Much awaited notification of allowing FDI under 100% automatic routes for Single Brand Retail Trading is now notified. The same is notified with amendments in certain sectoral related conditions, the most prominent one being the introduction of incremental sourcing requirements.

For details refer: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11240&Mode=0

- ### Investment in the units of an infrastructure investment trust (InvIT) by sponsor CIC-NDSI

Notification- RBI/2017-18/189 dated 7th June 2018

In order to enable Systemically Important Core Investment Companies (CIC-NDSI) to act as a sponsor of InvITs, it has been decided to permit CIC-NDSIs to hold InvIT units only as a sponsor. Exposure of such CICs towards InvITs shall be limited to their holdings as sponsors and shall not, at any point in time, exceed the minimum holding of units and tenor prescribed in this regard by SEBI (Infrastructure Investment Trusts) Regulations, 2014.

The holdings of InvIT units shall be reckoned as investments in equity shares in group companies, for the purpose of compliance with the norms prescribed in the Master Direction - Core Investment Companies (Reserve Bank) Directions, 2016 (https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10564) as updated from time to time

For details refer: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11292&Mode=0

- ## Gold Monetization Scheme, 2015

  Notification- RBI/2017-18/192 dated 7th June 2018

  The RBI made an amendment to the RBI (Gold Monetization Scheme, 2015). https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10084&Mode=0

  Among other amendments, the key amendment is that the **short term deposits will be treated as bank's on-balance sheet liability**. These deposits will be made with the designated banks for a short period of 1-3 years (with a facility of roll over).

  The amendment will **come into force immediate effect**

  For details refer: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11295&Mode=0

- ## Prudential Norms for Classification, Valuation and Operation of Investment Portfolio by Banks – Spreading of MTM losses and creation of Investment Fluctuation Reserve (IFR)

  Notification- RBI/2017-18/200 dated 15th June 2018

  To address continuing rise in the yields on Government Securities, as also the inadequacy of time to build investment fluctuation reserve (IFR) for many banks, the RBI has decided to grant banks an option to spread provisioning for their mark to market (MTM) losses on all investments held in AFS and HFT for the quarter ending **(QE)** 30th June 2018 as well.

  The provisioning required may be spread equally over up to 4 quarters, commencing with the QE 30th June 2018.

  Banks utilising this option will make suitable disclosures in their Notes to Accounts/ Quarterly Results providing details of -

  - the provisions made for depreciation of the investment portfolio for the QE June 2018, and

- the balance required to be made in the remaining quarters.

For detail refer: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11304&Mode=0

- **Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards**

Notification- RBI/2017-18/201 dated 15th June 2018

The RBI has decided to permit banks, with effect from the date of circular DBR.BP.BC.No.2/21.04.098/2016-17 dated 21st July 2016 (https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10522&Mode=0), to reckon Government securities held by them up to another 2% of their Net Demand and Time Liabilities **(NDTL)**, under Facility to Avail Liquidity for Liquidity Coverage Ratio (FALLCR) within the mandatory SLR requirement, as Level 1 High Quality Liquid Assets **(HQLA)** for the purpose of computing their Liquidity Coverage Ratio **(LCR)**.

Hence, the carve-out from SLR, under FALLCR will now be 11%, taking the total carve-out from SLR available to banks to 13% of their NDTL.

For the purpose of LCR, banks will continue to value such government securities reckoned as HQLA at an amount not greater than their current market value (irrespective of the category under which the security is held, i.e., Held to Maturity (HTM), Available for Sale (AFS) or Held for Trading (HFT)).

For details refer: https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11305&Mode=0

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Circulars

- ### External Commercial Borrowings (ECB) Policy – Rationalisation and Liberalisation

RBI/2017-18/169 A.P. (DIR Series) Circular No.25 dated 27th April 2018

The RBI has issued a notification for rationalisation and liberalisation of the extant ECB guidelines. The said notification covers within its ambit the following:

- Rationalisation of all-in-cost for ECB under all tracks and Rupee denominated bonds, wherein uniform all-in-cost ceiling of 450 basis points over 6 month USD LIBOR has been prescribed for Track I and Track II; whereas for Track III (Rupee ECBs) and RDBs prevailing yield of the G-Sec bond has been prescribed.
- Increase in the ECB Liability to Equity Ratio under automatic route to 7:1, the requirement of this ratio will not be applicable if total of all ECBs raised by an entity is up to USD 5 million or equivalent.
- Expansion of Eligible Borrowers' list for the purpose of ECB by including Housing Finance Companies, Port Trusts constituted under the Major Port Trusts Act, 1963 or Indian Ports Act, 1908 and Companies engaged in the business of Maintenance, Repair and Overhaul and freight forwarding.
- Rationalisation of end-use provisions for ECBs by prescribing only one negative list for all tracks as against erstwhile positive and negative end use list for various Tracks.

For details refer: https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11267

- ### Monitoring of foreign investment limits in listed Indian companies

RBI/2017-18/172 A.P. (DIR Series) Circular No. 27 [(1)/20(R)] dated 3rd May 2018

In order to enable listed Indian companies to ensure compliance with various foreign investment limits, the RBI in consultation with Securities and Exchange Board of India (SEBI), has decided to put in place a new system for monitoring foreign investment limits, for which the necessary infrastructure and systems for operationalizing the monitoring mechanism, shall be made available by the depositories.

For details refer: https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11270

- ### Basel III Framework on Liquidity Standards – Net Stable Funding Ratio (NSFR) – Final Guidelines

RBI/2017-18/178 dated 17th May 2018

The RBI has issued final guideline on Basel III Framework on Liquidity Standards – Net Stable Funding Ratio **(NSFR)**. Among other matters, it requires that banks must publish the NSFR disclosure along with the publication of their Financial Statements **(FS)** (i.e. typically quarterly or semi-annually), irrespective of whether the FS are audited. The NSFR information must be calculated on a consolidated basis and presented in Indian Rupee

For details refer: https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11278

- **Withdrawal of Exemptions Granted to Government Owned Non-Banking Financial Companies (NBFCs)**

Circular- RBI/2017-18/181 dated 31st May 2018

Government owned companies, as defined under Section 2(45) of the Companies Act, 2013 and registered with the RBI as NBFCs, are currently exempt from:

- Sections 45-IB and 45-IC of the RBI Act, 1934
- Master Direction - NBFC - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 and Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016. (except provisions contained in paragraph 23 of these Directions)
- Master Direction - NBFCs Acceptance of Public Deposits (Reserve Bank) Directions, 2016. (except provisions contained in paragraph 36, 37 and 41 of these Directions)

RBI has now decided to make the NBFC regulations applicable to Government NBFCs as per the timeline stated in the circular and accordingly updated the relevant master directions

For details refer: https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11283

- **External Commercial Borrowings (ECBs) – Monthly reporting through ECB 2 Return**

RBI/2017-18/193 A. P. (DIR Series) Circular No. 29 dated 7th June 2018

The RBI issued a notification with the objective of capturing the details of the hedges for ECBs through a simplified format of ECB 2 Return. Part E of the said Return, accordingly, is modified so as to include only standard information on hedged/unhedged ECB exposure. The said revised monthly reporting will have to be done from month-end June 2018

For details refer: https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11296

- **Foreign Investment in India -Reporting in Single Master Form**

RBI/2017-18/194 A.P (DIR Series) Circular No.30 dated 7th June 2018

The RBI has introduced a system wherein all Indian companies having FDI will mandatorily be required to get registration completed with RBI and create an Entity Master through the above link latest by 12th July 2018. Subsequent to creation of Entity Master, complete details of foreign investments in the company against which shares have been issued will have to be updated in the said Entity master.

Further, all Indian entities who fail to comply with this pre-requisite will not be able to receive foreign investment (including indirect foreign investment) and will be non-compliant with Foreign Exchange Management Act, 1999 and regulations made there under.

For details refer: https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11297

- **Investment by Foreign Portfolio Investors (FPI) in debt-Review**
  RBI/2017-18/199 (DIR Series) Circular No. 31 dated 15th June 2018

  On review of the current regulations on debt investment by FPIs, the RBI has revised the existing investment limits, security-wise limits, Single/Group investor-wise limit in corporate bonds, concentration limits and minimum residual maturity requirement for FPIs. Further, a system for Online monitoring of G-sec utilisation limits has been introduced through Clearing Corporation of India Ltd. (CCIL) and the auction mechanism discontinued, with effect from 1st June 2018.

- **Liberalised Remittance Scheme – Harmonisation of Data and Definitions**
  RBI/2017-18/204 A.P. (DIR Series) Circular No. 32 dated 19th June 2018

  The RBI has through the abovementioned notification mandated the furnishing of Permanent Account Number (PAN) for all remittances under Liberalised Remittance Scheme **(LRS).**

  Further, in the context of remittances allowed under LRS for maintenance of close relatives, it has been decided, to align the definition of 'relative' with the definition given in Companies Act, 2013 instead of the erstwhile definition as per Companies Act, 1956.

  For details refer: https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=11309

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Press Releases

- ### Deferment of Ind AS implementation for Scheduled Commercial Banks

Press Release dated 5th April 2018

RBI vide its **circular no RBI/2015-16/315 dated 11th February 2016** (https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10274&Mode=0) had mentioned that Scheduled Commercial Banks (SCBs), excluding Regional Rural Banks (RRBs), were required to implement Indian Accounting Standards **(Ind AS)** from 1st April 2018.

However, necessary legislative amendments – to make the format of financial statements, prescribed in the 3rd Schedule to Banking Regulation Act 1949, compatible with accounts under Ind AS – are under consideration of the Government. In view of this, as also the level of preparedness of many banks, it has been decided to **defer implementation of Ind AS by 1 year i.e. 1st April 2019**.

For details refer: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=43574

- ### Enforcement action framework in respect of statutory auditors for the lapses in the statutory audit of commercial banks

Press Release dated 29th April 2018

In the interest of improving audit quality and with a view to instituting a transparent mechanism to examine accountability of Statutory Auditor's **(SA)** in a consistent manner, RBI has decided to put in place a graded enforcement action framework to enable appropriate action in respect of SA for any lapses observed in conducting a bank's statutory audit. The framework would cover, inter alia, instances of divergence identified in asset classification and provisioning during the RBI inspection vis-à-vis the audited FS of banks above the threshold specified etc.

For details refer: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=44357

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