

CNK & Associates LLP

Quarterly Insights- RBI/FEMA, January 2019

RBI

Micro, Small and Medium Enterprises (MSME) sector Restructuring of Advances vide Notification No. RBI/2018-19/100

The RBI has issued a notification wherein, in order to facilitate meaningful restructuring of MSME accounts {MSME as defined in the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006} that have become stressed, to permit a one-time restructuring of existing loans to MSMEs classified as 'standard' without a downgrade in the asset classification subject to conditions specified in the notification.

Banks and NBFCs should make appropriate disclosures in their Financial Statements, under 'Notes on Accounts', relating to the MSME accounts restructured in the format specified therein.

In Brief

The Banks and NBFCs should make appropriate disclosures in their Financial Statements, under 'Notes on Accounts', relating to the restructured MSME accounts

FEMA

Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 vide Notification No. FEMA 3(R)/2018-RB

In Brief

The present notification has consolidated FEMA3, FEMA 4 and Regulation 21 of FEMA 120 into one notification FEMA 3(R).

The definition of various terms has been consolidated at one place

The definition of Indian Entity has been amended to include LLP

The definition of Real Estate been widen to now also include leased out properties.

The Notification earlier provided for eligible end uses which has been widened and now provides for restricted end uses.

RBI has vide its above notification dated 17 December 2018, superseded the earlier notification, The key definitions and changes are summarized below:

DEFINITION

The RBI has consolidated and amended various definitions in the said notification, the key definitions with significant changes are:

- ♦ The definition of “Indian entity” has been amended to include Limited Liability Partnership (LLP) and Companies. The said definition excludes from its ambit non corporate entities such as firm.
- ♦ The regulation has expanded the definition of Real Estate Activities to read as follows:
“Real Estate Activity” means any activity involving own or leased property for buying, selling and renting of commercial and residential properties or land and also includes activities either on a fee or contract basis assigning real estate agents for intermediating in buying, selling, letting or managing real estate. However, this would not include development of integrated township, purchase/ long term leasing of industrial land as part of new project / modernisation or expansion of existing units or any activity under ‘infrastructure subsectors’ as given in the Harmonised Master List of Infrastructure sub-sectors approved by the Government of India vide Notification F. No. 13/06/200r9-INF, as amended/ updated from time to time.”

KEY CHANGES

- ♦ The definition of Eligible borrower’s states that all entities eligible to receive Foreign Direct Investment would be eligible to raise ECB. RBI in consultation with Government of India may specify any other entity/sector eligible for ECB or amend the existing eligibility norm.
- ♦ The definition of Eligible lenders states that the lender should be a resident of Financial Action Task Force (FATF) or International organization of Securities commissions (IOSC) compliant country. RBI in consultation with Government of India may provide clarity on any other conditions to be complied with, for being an eligible lender.
- ♦ **Lending by AD in INR:****
An AD in India may now also grant loan to a NRI/OCI Cardholder for acquisition of a residential accommodation in India/ acquisition of motor vehicle in India / or for any purpose as per the loan policy of AD.

In Brief

The loan repayment on maturity, in case of change in residential status of lender from Resident to Non - Resident can be made to any other account of the lender in India and from Non - Resident to Resident, to resident bank account of the lender.

The limit on trade credits has been revised
-From USD 20 million to USD 50 million
-Maximum period is reduced from 5 to 3 years.
-SEZ are now allowed to raise loans under trade credit
-Trade credits can now be raised in INR.

NRI close relatives can now be included as joint holders by resident individuals in all types of resident bank accounts on "Either or Survivor", subject to prescribed conditions.

- ◆ Continuation of loan in the event of change in the residential status of the lender:**
 - ▲ In case of change of status of a lender from resident to non – resident before repayment of loan, the repayment can be paid by the resident borrower by credit **to any other account** (as against Non-Resident Rupee Account earlier) of the lender maintained with a bank in India.
 - ▲ In case of a change of status of a lender from non-resident to resident, the loan should be repaid by the resident borrower on maturity **to the resident bank account** of the lender in India.
- ◆ **Trade Credit on Import:**
 - ▲ Trade credit limit for import - of capital or noncapital goods has been revised from USD 20 million to USD 50 million equivalent per import transaction and for import of capital goods maximum period of Trade credit has been reduced to 3 years as against 5 years earlier.
 - ▲ Trade Credit is now permissible within SEZ
 - ▲ Trade Credits can now be raised in INR.

***All the above regulation come with standard direction that they are subject to the directions or guidelines issued by the Reserve Bank from time to time, and the Regulatory Authority of the country.*

The notification has consolidated borrowing and lending provisions under 3 schedules:

- *Schedule I -Borrowings from outside India by a person resident in India;*
- *Schedule II- Trade Credits on Import; and*
- *Schedule III- Lending to borrowers outside India by a person resident in India*

Amendment to FED Master Direction No. 19/2015-16 on Miscellaneous

Individuals resident in India are permitted to include non-resident Indian (NRI) close relative(s) as a joint holder(s) in ‘all types of resident bank accounts’ (as against ‘resident savings account’ earlier) on “Either or Survivor” basis subject to the prescribed conditions.

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