April 2021 CNK & Associates LLP Quarterly Insights

This issue

In brief

Exporters can now re-export leased aircraft / helicopter and / or engines / auxiliary power units in knocked down condition without furnishing the declaration subject to certain conditions and permission

RIs are now permitted to make remittances under LRS to IFSCs set up in India subject to certain conditions. RIs may also open a non-interest bearing FCA in IFSCs, to make the permissible investments under LRS

Foreign Exchange Management Act, 1999 (FEMA)

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Notification No. FEMA 23(R)/(4)/2021-RB dated 8th January 2021

The RBI amended the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015. Exporters can now re-export leased aircraft / helicopter and / or engines / auxiliary power units in knocked down condition without furnishing the declaration, subject to certain conditions and permission from the Directorate General of Civil Aviation / Ministry of Civil Aviation.

Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)

RBI/2020-21/99 A.P. (DIR Series) Circular No. 11 dated 16th February 2021

The RBI, to strengthen the financial markets in IFSCs and to provide an opportunity to diversify portfolios, has permitted Resident Individuals (“RIs”) to make remittances under LRS to IFSCs set up in India under the Special Economic Zone Act, 2005. The remittance should be made only for making investments in IFSCs in securities, other than those issued by entities/companies resident (outside IFSC) in India. RIs may also open a non-interest-bearing Foreign Currency Account (FCA) in IFSCs to make these investments. Any funds lying idle in the FCA for a period up to 15 days from the date of its receipt into the account should be immediately repatriated to the domestic INR account of the investor in India. However, RIs should are not allowed to settle any domestic transactions with other residents through these FCAs. Further, while allowing the remittances, AD Banks should ensure compliance with all other terms and conditions, including reporting requirements.

In brief

AD Banks may post and collect margin in India for a permitted derivative contract entered into with a person resident outside India

FPI investment in defaulted CBs are exempt from short-term limit and minimum residual maturity requirement. Investments by FPI in NCDs/bonds under default in repayment of principal on maturity or principal instalment in the case of amortising bond from the aforesaid requirements are now exempted

OCI Cardholder shall now be granted multiple entry lifelong visa for visiting India and shall be exempt from registration. They shall have parity with NRIs in purchase or sale of most immovable properties and pursuing certain professions in India. In respect of fields not specified in this notification or by the RBI, they shall be treated as a foreigner

Margin for Derivative Contracts

RBI/2020-21/98 A. P. (DIR Series) Circular No. 10 dated 15th February 2021

The RBI has allowed AD banks to post and collect margin for permitted derivative contracts between a person resident in India and a person resident outside India, in the form of Indian currency, freely convertible foreign currency, debt securities issued by Central Government and State Governments, and Rupee bonds issued by persons resident in India subject to applicable conditions.

Investment by Foreign Portfolio Investors (FPI) in Defaulted Bonds - Relaxations

As per the extant policy, investment by FPIs in corporate bonds ("CBs") was subject to a minimum lock-in period of 3 years. Further, the FPIs were permitted to invest in instruments maturing above 1 year if the short-term investment did not exceed 30% of their total investment in CBs. However, the investment in 'Security receipts and debt instruments issued by Asset Reconstruction Companies' and 'Debt instruments issued by an entity undergoing resolution process under the Insolvency and Bankruptcy Code, 2016' have been specifically been exempted from these requirements.

The RBI, during the monetary policy announcement on 5th February 2021, extended the same exemption to FPI investment in defaulted CBs from the short-term limit and the minimum residual maturity requirement.

Further, vide RBI/2020-21/105 A.P. (DIR Series) Circular No. 12 dated 26th February 2021, RBI exempted investments by FPI in NCDs/bonds which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortising bond from the aforesaid requirements.

Gazette of India notification No. 962 regarding OCI cardholders

The Ministry of Home Affairs vide Notification dated 4th March 2021, specified the rights entitled to an Overseas Citizen of India Cardholder ("OCI cardholder"). OCI Cardholder (including a PIO cardholder) is a foreign national holding passport of a foreign country and is not a citizen of India. Some of the rights are as follows:

1. Grant of multiple entry lifelong visa for visiting India for any purpose, subject to a special permission or Special Permit from competent authority for specified activities.
2. Exemption from registration with Foreigners Regional Registration Officer ("FRRO") or Foreigners Registration Officer ("FRO") for any length of stay in India. The OCI cardholders who are normally resident in India shall still intimate the jurisdictional FRRO or FRO whenever there is a change in permanent residential address and their occupation;

3. Parity with NRIs in purchase or sale of immovable properties other than agricultural land or farmhouse or plantation property; and pursuing certain professions in India as per the provisions contained in the applicable relevant statutes or Acts;
4. In respect of all other fields not specified in this notification or the rights and privileges not covered by the notifications made by the RBI, the OCI cardholder shall have the same rights and privileges as a foreigner.

In brief

Investments by an Indian entity owned and controlled by NRI on a non-repatriation basis, shall not be considered to calculate indirect foreign investment

Review of the FDI Policy on downstream investments made by Non-Resident Indians (NRIs).

Press Note No. 1 (2021) dated 19th March 2021

The Department for Promotion of Industry and Internal Trade ("DPIIT") has clarified that investments by NRIs on a non-repatriation basis under Schedule IV of FEM (Non-Debt Instruments) Rules 2019 are deemed to be domestic investments at par with the investments made by residents. Accordingly, an investment made by an Indian entity, which is owned and controlled by NRI on a non-repatriation basis, shall not be considered for calculation of indirect foreign investment.

DPIIT is finalising a dedicated digital portal "Atmanirbhar Niveshak Mitra" to target the specific investor interests and ensure swift clearances and approvals

"Invest India" focusing on sector-specific investor targeting and development of new partnerships to enable sustainable investments

To further strengthen efforts to promote domestic investments, DPIIT is in the process of finalising a digital portal "Atmanirbhar Niveshak Mitra" for information dissemination and facilitation of domestic investors. The portal will be ready for launch by 15th May 2021 and will facilitate domestic investors to directly connect or request meetings with the Invest India experts, and discuss their specific investment / doing business-related matters. It will help investors in finding investment and funding opportunities, exploring incentives and taxes applicable to their businesses, information and assistance for doing business in India, information on raw material availability, training, management requirement and tender information. The objective is to ensure swift clearances & approvals and the investors' interests.

AD banks have to submit more details of international transactions done by credit / debit card and UPI & their economic classification, through 'FETERS-Cards' return

FETERS - Cards: Monthly Reporting

RBI/2020-21/113 A.P. (DIR Series) Circular No.13 dated 25th March 2021

The RBI has made it mandatory for AD banks to submit more details of international transactions done using credit / debit card and UPI along with their economic classification, through a new return called 'FETERS-Cards' from 1st April 2021.

Return

In brief

Banks to ensure authority, stature, independence, resources to internal audit function

Reserve Bank of India (RBI)

Risk Based Internal Audit (RBIA) Framework – Strengthening Governance arrangements

RBI/2020-21/83 dated 7th January 2021

The Guidance Note on Risk-Based Internal Audit issued by RBI dated 27th December 2002 laid out the basic approach for risk based internal audit functions. RBI states that Banks are expected to re-orient their approach, in line with the evolving best practices, as a part of their overall Governance and Internal Control framework. Banks are encouraged to adopt the International Internal Audit standards, like those issued by the Basel Committee on Banking Supervision (BCBS) and the Institute of Internal Auditors (IIA). To bring uniformity in approach followed by the banks, as also to align the expectations on Internal Audit Function with the best practices, banks are advised as ensure

- **Authority, Stature, and Independence**
  The internal audit function must have sufficient authority, stature, independence and resources within the bank, thereby enabling internal auditors to carry out their assignments with objectivity.
- **Competence**
  Requisite professional competence, knowledge and experience of each internal auditor is essential for the effectiveness of the bank's internal audit function.
- **Staff Rotation**
  Except for the entities where the internal audit function is a specialised function and managed by career internal auditors, the Board should prescribe a minimum period of service for staff in the Internal Audit function.
- **Tenor for appointment of Head of Internal Audit (HIA)**
  Except for the entities where the internal audit function is a specialised function and managed by career internal auditors, the HIA shall be appointed for a reasonably long period, preferably for a minimum 3 years.
- **Reporting Line**
  The HIA shall directly report to either the Audit Committee of the Board (ACB) / MD & CEO or Whole Time Director (WTD).
- Remuneration
  The remuneration policies should be structured in a way that it avoids creating conflict of interest and compromising audit's independence and objectivity.

The internal audit function should not be outsourced

In brief

RBI has mandated RBIA framework for certain NBFCs and UCCBs

UCBs are not to make /provide/or renew any Director related loans

Banks to maintain CRR at 3.5% of their NDTL w.e.f. 27th March 2021 and 4% of their NDTL w.e.f. 22nd May 2021

Risk-Based Internal Audit (RBIA)

RBI/2020-21/88 dated 3rd February 2021

RBI has decided to mandate RBIA framework for the following Non-Banking Financial Companies (NBFCs) and Primary (Urban) Co-operative Banks (UCBs):

- All deposit taking NBFCs, irrespective of their size;
- All Non-deposit taking NBFCs (including Core Investment Companies) with asset size of Rs.5,000 crore and above; and
- All UCBs having asset size of Rs.500 crore and above

Such entities are required to implement the RBIA Framework by 31st March 2022.

Loans and advances to directors, their relatives, and firms / concerns in which they are interested

RBI/2020-21/89 dated 5th February 2021

Primary (Urban) Co-operative Banks **(UCBs)** are not to make, provide or renew any loans and advances or extend any other financial accommodation to or on behalf of their directors or their relatives, or to the firms / companies / concerns in which the directors or their relatives are interested (collectively called as "director-related loans").

Further, the directors or their relatives or the firms / companies / concerns in which the directors or their relatives are interested should also not stand as surety/guarantor to the loans and advances or any other financial accommodation sanctioned by UCBs. 'Advances' for the purpose shall include all types of funded / working capital limits such as cash credits, overdrafts, credit cards, etc.

The following categories of director-related loans will, however, be excluded from "loans and advances" for the purpose of these directions:

- Regular employee-related loans to staff directors, if any, on the Boards of UCBs;
- Normal loans, as applicable to members, to the directors on the Boards of Salary Earners' UCBs;
- Normal employee-related loans to Managing Directors / Chief Executive Officers of UCBs;
- Loans to directors or their relatives against Government Securities, Fixed Deposits and Life Insurance Policies standing in their own name.

The existing director-related loans sanctioned/granted by UCBs in terms of the earlier directives / instructions prior to the issue of this circular, if any, may continue till their respective maturity and shall not be renewed further.

Maintenance of Cash Reserve Ratio

RBI/2020-21/90 dated 5th February 2021

RBI, in its Circular dated 27th March 2020 had reduced the cash reserve ratio **(CRR)**

In brief

of all banks by 100 basis points to 3% of their Net Demand and Time liabilities **(NDTL)** effective from the reporting fortnight beginning 28th March. The dispensation was available for a period of 1 year ending 26th March 2021.

As announced in paragraph 2 of the **Statement on Developmental and Regulatory Policies dated 5th February 2021**, it has been decided to gradually restore the CRR in 2 phases in a non-disruptive manner. Accordingly, banks are required to maintain the CRR at 3.50% of their NDTL effective from the reporting fortnight beginning 27th March 2021 and 4% of their NDTL effective from fortnight beginning 22nd May 2021.

Inter alia, repo rates remain unchanged as per the Monetary Policy

Monetary Policy 2021-22

Publication dated 7th April 2021

RBI announced the first bi-monthly Monetary Policy Statement of fiscal 2021-22. *Inter alia*, it has decided to keep the repo rate unchanged at 4% and the reverse repo rate at 3.35%.

Return

Key Take Away

- In order to facilitate business and reduce regulatory litigation the need was felt to amend the laws that have outlived their time. The need for which being further accelerated due to changing global environment and world scenario in post COVID-19 era.
- Further, as India has been projected as one of the fasted growing emerging markets of the world, and to live up to the said expectation, the Government has bought about these amendments, some of which are clarificatory in nature.

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