January 2021 CNK & Associates LLP Quarterly Insights

This issue

In brief

To enhance the ease of doing business and quicken the approval process, the RBI has empowered AD banks in areas of direct dispatch of shipping documents, write-off of unrealized export bills, set-off of export receivables against import payables and refund of export proceeds

Foreign Exchange Management Act, 1999 (FEMA)

External Trade – Facilitation - Export of Goods and Services

[RBI/2020-21/77 dated 4th December 2020]

With a view to liberalize its policies and to enhance the ease of doing business in India, the RBI has further empowered the Authorised Dealer Category – I banks ("AD banks") with respect to direct dispatch of shipping documents, write-off of unrealized export bills, set-off of export receivables against import payables and refund of export proceeds.

- Direct Dispatch of Shipping Documents
  Earlier, AD banks were authorized to regularize cases of dispatch of shipping documents by the exporter direct to the consignee or his agent residing in the country of the final destination of goods, up to USD 1 million or its equivalent per export shipment. The RBI has decided to do away with this limit, subject to certain conditions as specified in the Circular.

- "Write off" of unrealized export bills
  To provide greater flexibility to the AD banks and to reduce the time taken on "write-off" of unrealized export bills, the extant procedure have been further liberalized by delegating the powers to the AD bank .The AD bank can now subject the documentary evidence, on request of the exporter, write-off unrealised export bills without any limit , in specified cases (a) Where overseas buyer has become insolvent; (b) The unrealized amount export proceeds is settled through the intervention of the Indian Embassy, Foreign Chamber of Commerce or similar organizations; (c)The goods had been auctioned or destroyed by the Port/ Customs/ Health authorities in the importing country.

  The limits of write-off by the AD bank shall be reckoned cumulatively and shall be

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available subject to the conditions such as, the exporter must be a regular customer of the AD bank for minimum 6 months and fully compliant with KYC guidelines.

- Set-off of Export receivables against import payables
  Earlier, AD banks allowed exporters/ importers to set-off their outstanding export receivables against outstanding import payables from/to the same overseas buyer/ supplier. Now, AD Banks are empowered to allow such set-off with the importers/exporters overseas group/associate companies either on net basis or gross basis, through an in-house or outsourced centralised settlement arrangement, and subject to the revised guidelines in supersession of the instructions contained in Circular dated 17th November 2011.

- Refund of Export Proceeds
  Until now, AD banks through whom the export proceeds were originally realised, could consider requests for refund of export proceeds of goods exported from India and being re-imported into India due to poor quality. Pursuant to present Circular, AD banks will be allowed to consider refund requests without insisting on re-import of goods that have reportedly been auctioned or destroyed in the importing country, subject to production of requisite documentary evidence and compliance with conditions as specified in this Circular.

The powers to compound the certain contraventions under FEMA have been delegated to the Regional Offices / Sub-Offices of the RBI for enhanced customer service and operational convenience

FEMA, 1999 (FEMA) - Compounding of Contraventions under FEMA, 1999

RBI/2020-21/67 dated 17th November 2020

As per this Circular, the powers to compound certain contraventions of Notification dated 3rd May 2000 and Notification dated 7th November 2017 have been delegated to the Regional Offices / Sub-Offices of the Reserve Bank for enhanced customer service and operational convenience.

The RBI earlier classified contraventions under FEMA as 'technical' or 'material' or 'sensitive/serious in nature'. It has now done away with contravention of 'technical' nature, which can now be regularized by a cautionary advice and by imposing minimal compounding penalty as per the compounding matrix.

Further, the RBI in order to provide reference to Compounding Orders, it has on or from 1st March 2020, decided to publish a summary information, instead of just the Compounding Orders on its website in the following format:

Sr. No.	Name of the Applicant	Details of contraventions (provisions of the Act/ Regulation/ Rules compounded)	Date of compounding order	Amount imposed for compounding of contraventions

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The RBI may consider restriction on the amount of Indian and/or foreign currency on case-to-case basis, that a person may bring into or take outside India and prescribe necessary conditions

The RBI has discontinued 17 returns/ reports to improve the ease of doing business and to streamline reporting requirements

Following the decision of the Hon'ble Supreme Court, the RBI has directed AD banks not to grant any approval to foreign law firm for opening of BO /LO / PO in India

As of date of this FEMA quarterly insight, the changes have not yet been made on the RBI website.

Foreign Exchange Management (Export and Import of Currency) (Second Amendment) Regulations, 2020

FEMA 6 (R)/(3)/2020-RB dated 3rd December 2020

The RBI has stated that it may, in consultation with the Central Government, consider restriction on the amount of Indian currency notes, and/or foreign currency, on case-to-case basis, that a person may bring into or take outside India and prescribe such conditions as it may deem necessary.

Discontinuation of Returns/Reports under Foreign Exchange Management Act, 1999

RBI/2020-21/66 dated 13th November 2020

With the continued objective of the Government to improve the ease of doing business and to streamline the existing reporting requirements under FEMA, 1999, the RBI has discontinued the 17 returns/reports with immediate effect.

Establishment of Branch Office (BO) / Liaison Office (LO) / Project Office (PO) or any other place of business in India by foreign law firms

RBI/2020-21/69 dated 23rd November 2020

The Hon'ble Supreme Court has while disposing of the case, held that since only those advocates enrolled under the Advocates Act, 1961 are entitled to practice law in India, foreign law firms/companies or foreign lawyers or any other person resident outside India cannot practice profession of law in India or establish any branch office, project office, liaison office or other place of business in India for practicing legal profession.

Hence RBI has directed AD banks not to grant any approval to foreign law firm for opening of BO /LO / PO in India.

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The DPIIT has introduced SOP for processing FDI proposals. Proposals for foreign investment in sectors / activities requiring Government approval will now be filed online through FIFP

Ministry of Commerce & Industry Department for Promotion of Industry & Internal Trade (DPIIT)

Standard Operating Procedure (SOP) for Processing FDI Proposals

Circular No.1/8/2016-FDI Policy dated 9th November 2020

The Department of Promotion of Industry & Internal Trade introduced Standard Operating Procedure (SOP) for Processing FDI Proposals. Now, proposals for foreign investment in sectors/activities requiring Government approval as per the Consolidated FDI Policy dated 15th October 2020 as amended from time to time and Foreign Exchange management (Non-Debt Instrument) Rules, 2019 dated 17th October 2019 would be filed online through the Foreign Investment Facilitation Portal (FIFP).

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Scheme for grant of ex-gratia to borrowers in specified loan accounts announced

Banks not to pay dividend pertaining to FY 2019-20

Rigorous dividend distribution procedures for NBFCs laid down

Reserve Bank of India (RBI)

Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for 6 months to borrowers in specified loan accounts

RBI/2020-21/61 dated 26th October 2020

The Government of India has announced the Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for 6 months to borrowers in specified loan accounts (1st March to 31st August 2020) on 23rd October 2020, which mandates ex-gratia payment to certain categories of borrowers by way of crediting the difference between simple interest and compound interest for the period between 1st March 2020 to 31st August 2020 by respective lending institutions.

Declaration of dividends by banks

RBI/2020-21/75 dated 4th December 2020

To further strengthen the banks' Balance Sheets, while at the same time support lending to the real economy, the RBI has decided that banks will not make any dividend payment on equity shares from the profits pertaining to the financial year **(FY)** ended 31st March 2020.

Draft Circular on Declaration of Dividend by NBFCs

Press Release dated 9th December 2020

To infuse greater transparency and uniformity in practice, the RBI has prescribed guidelines on distribution of dividend by NBFCs. *Inter alia*, the guideline has laid down eligibility criteria for declaration of dividend.

- **Capital Adequacy and Leverage:** NBFCs should comply with the prescribed minimum capital adequacy and leverage ratio as under:
  - Deposit taking Non-Banking Financial Company (NBFC-D) and Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND-SI) should have Capital to Risk Assets Ratio (CRAR) of at least 15% for last 3 years, including the accounting year for which it proposes to declare dividend.
  - Non-Systemically Important Non-Deposit taking Non-Banking Financial Company (NBFC-ND) should have leverage ratio of less than 7 for the last 3 years, including the accounting year **(AY)** for which it proposes to declare dividend.
  - Core Investment Company (CIC) should have Adjusted Net Worth (ANW) of at least 30% of its aggregate risk weighted assets on Balance Sheet and risk adjusted value of off-Balance Sheet items for last 3 years, including the AY for which it proposes to declare dividend.

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- **Non- Performing Asset (NPA)**
  The net NPA ratio should be less than 6% in each of the last 3 years, including the accounting year for which it proposes to declare dividend.
- Other
  - NBFCs should comply with the provisions of Section 45 IC of the RBI Act, 1934.
  - NBFCs should comply with the prevailing regulations/ guideline issued by RBI.
  - The proposed dividend should be payable only out of the current year's profit.
  - The RBI should not have placed any explicit restrictions on the NBFC on declaration of dividend.

The above guidelines will be applicable for dividend to be declared for the FY beginning 1st April 2020 (FY 2020-21) onwards.

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Key Take Away

- To enhance the ease of doing business and to streamline operations, the RBI has discontinued various returns / reports, further empowered AD banks, delegated powers to compound certain contraventions under FEMA to Regional Offices / Sub-Offices of the RBI and modified the way the compounding orders will be shown on RBI's website to make it more accessible to the general public.
- The RBI has directed AD banks not to grant any approval to foreign law firm for opening of BO /LO / PO in India.
- The DPIIT has introduced SOP for processing FDI proposals whereby the proposals for foreign investment in sectors/activities requiring Government approval would be filed online through FIFP.
- With no dividend payouts, banks will be able to conserve capital and create room for fresh lending.

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