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RESERVE BANK OF INDIA

Foreign Exchange Management (Remittance of Assets) Regulations

The Reserve Bank of India vide [Notification No. FEMA 13 \(R\)/2016-RB dated April 01, 2016](#) provides for Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (“**FEMA Regulations 2016**”) in respect of remittance outside India by a person whether resident in India or not, of assets in India.

FEMA Regulations, 2016 provides as follows:-

Regulation 3 – Prohibition on Remittance outside India of assets held in India

This Regulation states that no person whether resident in India or no shall make remittance of any asset held in India by him or by any other person; however the RBI may under certain circumstances allow remittance of any asset held in India by him or any other person as in Regulation 4.

Regulation 4 – Permission of remittance of assets in certain cases

The following persons are permitted remittance of assets:-

- i) A citizen of foreign state, not being a Person of Indian Origin (“**PIO**”) or citizen of Nepal or Bhutan who:-
 - Retired from employment in India;
 - Inherited assets;
 - Widow or widower resident outside India and has inherited assets of deceased spouse who was an India citizen may remit amount not exceeding USD 1,000,000 per financial year on production of

documentary evidence in support of acquisition, inheritance or legacy of assets by remitter.

- ii) A Non-Resident Indian (“NRI”) or a PIO may remit an amount not exceeding USD 1,000,000 per financial year;
- Out of balances held in Non-Resident (Ordinary) Accounts opened in terms of Foreign Exchange Management (Deposit) regulations, 2016/ sale proceeds of assets/assets acquired by way of inheritance;
 - Under deed of settlement made by parents or relatives of NRI or PIO and the settlement taking effect on the death of the seller, on production of original deed of settlement.
- iii) An authorised dealer in India may also allow remittance out of the assets of Indian Companies under liquidation under the provisions of the Companies Act, 2013 (“Act 2013”) subject to the following conditions:-
- Remittance is in compliance with order issued by a court in India/order issued by official liquidator or liquidator in case of voluntary winding up;
 - No remittance allowed unless Applicant submits :-
 - a) Auditors’ certificate confirming liabilities in India have been either paid or provided for;
 - b) Auditors certificate confirming winding up is in accordance with Act 2013 and in case winding up otherwise than by a Court, auditors certificate confirming there is no legal proceeding pending in any court in India.



Regulation 5 – Permission to an Indian entity to remit funds in certain cases

Any entity India may remit amount towards provident funds/pension fund for expatriate staff in its employment who are resident in India but not permanently resident therein.



Regulation 6 - Permission for remittance of assets on closure or remittance of winding up proceeds of branch office/ liaison office (other than project office)

Any branch office established in India by a person resident outside India, shall for making remittance of assets on closure or remittance of its winding up proceedings apply to the authorised dealer with the following documents:-

- i) Copy of RBIs permission for establishing branch in India;
- ii) Auditors Certificate :-
 - Indicating manner in which remittable amount has been arrived and the manner of disposal of assets;
 - Confirming liabilities in India including arrears of gratuity and other benefits have been either paid or provided for;
 - Confirming winding up is in accordance with Act 2013 and in case winding up otherwise than by a Court, auditors certificate confirming there is no legal proceeding pending in any court in India;
 - Confirming No income accruing from sources outside India has remained un-repatriated to India;
 - Confirming that branch has complied with all requirements;Report from Registrar of Companies regarding compliance with the provision of the Act, 2013.

Regulation 7 - Reserve Bank's prior permission in certain cases:-

A person who desires to make a remittance of assets in the following cases may apply to RBI:

- i) Remittance exceeding USD 1,000,000 (USD Dollar One Million only) per financial year;
- ii) Remittance to a person resident outside India on the ground that hardship will be caused to person if remittance from India is not made.

Foreign Exchange Management (Deposit) Regulations

RBI vide [Notification No. FEMA 5 \(R\)/2016-RB dated April 01, 2016](#) provides for Foreign Exchange Management (Deposit) Regulations, 2016 (“**FEMA Deposit Regulations 2016**”)

FEMA Deposit Regulations, 2016 provides as follows:-

Regulation 1 - These Regulations may be called as “**Foreign Exchange Management (Deposit) Regulation, 2016**.”

Regulation 2- Regulation 2 provides for various definitions.

Regulation 3- Restrictions on deposits between a person resident in India and a person resident outside India

This Regulation states that no person resident in India shall accept or make any deposit with a person resident outside India. However RBI may on application and on being satisfied may allow a person resident in India to accept or make deposit with a person resident outside India.

Regulation 4 – Exemptions

Nothing contained in these Regulations, shall apply to the following:-

- i) Deposits held in rupee accounts maintained by foreign diplomatic missions and personnel in India;
- ii) Deposits held by diplomatic missions and personnel in special rupee account – Diplomatic Bond Stores Account for facilitating purchases of bonded stocks from companies subject to the following conditions:-
 - Credits shall be by way of proceeds of inward remittance received from outside India ;
 - All cheque leaves issued shall be super scribed as “Diplomatic Bond Stores Account No.”;

- Debits shall be for local disbursements or for purchase of bonded stocks to companies;
 - Funds may be repatriated outside India without approval of RBI.
- iii) Deposits held by diplomatic missions and personnel non-diplomatic staff, in foreign currency account subject to the following conditions:-
- Credits shall be by way of proceeds of inward remittance received from outside India and transfer of funds from rupee account of diplomatic mission in India, collected in India as visa fees ;
 - Funds held if converted in rupees shall not be converted back into foreign currency;
 - Account may be current or term deposit account and in case of diplomatic personnel and non-diplomatic staff in the form of savings account;
 - Rate of interest on savings or term deposit shall be as determined by dealer maintaining the account;
 - Funds may be repatriated outside India without approval of RBI.
- iv) Deposits held in account maintained in rupees by a person resident in Nepal and Bhutan;
- v) Deposits held in account by any multilateral organization and its subsidiary/ affiliate bodies.

Regulation 5 – Acceptance of deposits by an authorised dealer/authorised bank from persons resident outside India

- i) An authorised dealer in India may accept deposit under:-
- Non-Resident (External) Account Scheme (“NRE”) from a non-resident Indian as given in Schedule 1 of FEMA Deposit Regulations 2016;
 - Foreign Currency (Non-Resident) Account (“FCNR (b)”) banks Scheme from a non-resident Indian as given in Schedule 2 of FEMA Deposit Regulations 2016;
 - Non-Resident (ordinary) Account Scheme (“NRO”) from any person resident outside India as given in Schedule 3 of FEMA Deposit Regulations 2016.
- ii) All deposits under NRE and NRO account scheme shall be accepted by an authorised bank as per the conditions prescribed by RBI;
- iii) All deposits under FCNR (B) Account Schemes may also be accepted by Regional Rural Bank as per the conditions prescribed by RBI;
- iv) Any person resident outside India having a business interest in India may open, hold and maintain a Special Non-Resident Rupee Account as given in Schedule 4 of FEMA Deposit Regulations 2016;
- v) Resident or Non-Resident may also open, hold and maintain an Escrow Account as given in Schedule 5 of FEMA Deposit Regulations 2016.

Regulation 6 – Acceptance of deposits by person other than authorised dealer/ authorised bank

A company or body corporate cannot accept deposits on repatriation basis from a non-resident Indian or person of Indian or person of Indian origin however deposits that have been accepted can be renewed on repatriation basis from NRI or PIO as given in schedule 6.

- ii) A company or body corporate can accept deposits from a non-resident Indian or person of Indian origin on non-repatriation basis as given in Schedule 7;
- iii) An Indian Company can accept deposit by issue of Commercial paper to a NRI or person of Indian origin with Securities and Exchange Board of India subject to the following conditions:-
 - Issue is in compliance with Non-banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989 issued by RBI or any other law, rule, directions issued by Government;
 - Payment for issue of commercial paper is done by way of inward remittance from outside India or out of funds held in deposit account of NRI or person of Indian origin;
 - Amount invested in commercial paper shall not be eligible for repatriation outside India; and shall not be transferable.

Regulation 7 – Other deposits made or held by authorised dealer

- i) Deposit made by authorised dealer with its branch or head office or correspondent outside India or a deposit made by branch correspondent outside India shall be governed by RBI;
- ii) A shipping or airline Company outside India may open and maintain Foreign Currency Account with authorised dealer for meeting local expenses; and credits shall only be by way of freight or passage fare collection in India or by inward remittance;
- iii) Authorised dealers may as per directions of RBI allow unincorporated joint venture of foreign companies with Indian Companies to open and maintain non-interest bearing foreign currency account and SNRR account;

- iv) An authorised dealer shall with prior approval of RBI may open account in foreign currency in name of person resident outside India for adjustment of value of goods imported in India against value of goods exported from India.

Regulation 8 – Nomination

Authorised dealers may provide nomination facility in respect of deposits/ accounts in regulations maintained by individual account holders.

Acceptance of deposits by Indian Companies from a person resident outside India for nomination as Director

RBI vide [Circular No. A.P. \(DIR Series\) Circular No. 59 dated April 13, 2016](#) provides for acceptance of deposits by Indian Companies from a person resident outside India for nomination as Director.

RBI states that as per section 160 of the Companies Act, 2013, a person who nominates himself or any other person as a director in an Indian Company has to place deposit with the said company. However there were ambiguity whether such deposits shall require approval from RBI. In this context RBI has clarified that deposits by persons resident outside India, with Indian company and refund of such deposits arising due to selection of person as director or getting more than twenty five percent votes shall not require any approval from RBI as it is a current account transaction as per section 160 of the Companies Act, 2013.


Non-Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011 – Acting as Channelizing Agents for Schemes operated by Central/State Government

1. RBI vide [Circular no. RBI/2015-16/370, dated April 13, 2016](#) provides for Non-Banking Financial Company-Micro Finance Institutions (Reserve Bank) Directions, 2011 (NBFC- MFIs) and has also referred to the Non-Banking Financial Company -Micro Finance Directions, 2011(the Directions) issued by RBI earlier vide Notification DNBS.PD.No.234/ CGM (US)- 2011 dated December 02, 2011, which has been modified time and again.
2. RBI in the NBFC –MFIs stated that one of the eligibility criteria for loans granted by NBFC-MFIS, is that the variance between maximum and minimum interest rate should not exceed 4 percent Many Companies are providing loans also approaching banks to allow use of NBFC-MIFs for channelizing such loans. However since these loans are provided at concessional interest rate, they are exempted from maximum permissible variance in the interest rates.
3. In order to use NBFC-MFI network to distribute such targeted loans, it has been decided that:-
 - i) Loans disbursed or managed by NBFC-MFIs as channelizing agent shall be considered as separate business segment and these assets shall not be included either in the numerator or denominator for the purpose of determining the minimum qualifying assets at 85%;
 - ii) Interest charged on such loans shall be excluded for determining variance between maximum and minimum interest rate;
Cost of such funds shall not be arrived at average cost of funds as well as interest rates charged to borrowers as per NBFC-MFIs directions.



4. NBFC_MFIS are granted permissions to act as channelizing agent for distribution of loans subject to the following conditions:-
 - i) Accounts and records of such loans and funds received shall be maintained in books of NBFC-MFIs distinct from other assets and liabilities and depicted in final accounts/balance sheet with details and disclosure as a separate segment;
 - ii) Loans shall be subject to applicable asset classification, income recognition and provisioning as well as prudential norms applicable to NBFC-MFIs;
 - iii) Loans shall be reported to Credit information companies to prevent multiple borrowings and present complete picture of indebtedness of a borrower.

Master Directions – Issue & Pricing of Shares by Private Sector banks, Direction , 2016



RBI vide [Circular no. RBI/DBR/2015-16/21](#) and [Master Direction DBR.PSBD.NO.95/16.13.100/2015 16 dated April 21, 2016](#), with powers conferred by 35A of the Banking Regulation Act, 1949 RBI being necessary and interest of public, issues the said directions. The said Master Direction - Issue and Pricing of shares by Private Sector Banks, Directions, 2016 “Directions 2016” provides as follows:-

1. Short Title & Commencement

These Master Directions shall be called the Reserve Bank of India (Issue and Pricing of Shares by Private Sector Banks) Directions, 2016 and shall come into effect when placed on the official website of RBI.

2. Applicability

These Direction 2016 shall apply to private sector banks licensed by RBI to operate in India. These Directions 2016 provides for definition.

3. Definitions

These Directions 2016 shall provide for definition of Private Sector Banks as follows:-

“Private Sector Banks” means banks licensed to operate in India under Banking Regulation Act, 1949, other than Urban Co-operative Banks, Foreign Banks and banks licensed under specific Statutes.

4. Type of Issues

Banks issue shares by :-

- i) Public issues
 - Initial Public offer
 - Further Public Offer

- ii) Private Placement
 - Preferential Issue
 - Qualified Institutional Placement

- iii) Rights Issue

- iv) Bonus Issue

5. Issue & pricing of Shares – General Permission

A private sector bank, listed and unlisted has general permission to issue shares by all routes mentioned in section 4 above but subject to the following conditions:-

- i) Issue of shares shall be in Compliance with provisions of Foreign Exchange Management Act, 1999, Foreign Investment Policy of Government of India, SEBI guidelines and provisions of Companies Act.;

- ii) Issue of shares shall have approval of banks board/AGM in compliance with SEBI guidelines & Companies Act 2013;
- iii) For Listed Bank pricing of shares shall be as per SEBI formula and for unlisted bank as per Companies Act;
- iv) Allotment of shares to Investors shall be as per RBI Master Direction dated November 19, 2015;
- v) Specific regulatory limits permitted to shareholders or promoters shall not be breached on account of fresh subscription, own entitlement, renouncement of rights of otherwise;
- vi) After allotment complete details of issue shall be reported to RBI.

Master Direction – Amalgamation of Private Sector Banks, Directions, 2016

Reserve Bank of India (“RBI”) vide its [Master Direction DBR.PSBD.No.96/16.13.100/2015-16 dated April 21, 2016](#), in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 and pursuant to the Section 44A of the Banking Regulation Act, 1949 (“**Regulation 1949**”), makes the following Directions:

- i) These directions may be called the Reserve Bank of India (Amalgamation of Private Sector Banks) Directions, 2016 (“**Directions**”). The scope of these Directions shall lie to (i) Amalgamation of two banking companies; and (ii) Amalgamation of a Non-Banking Financial Companies (“**NBFC**”) with banking companies.
- ii) They shall come into effect on the day it is placed on the official website of the Reserve Bank of India (RBI).



- ii) They are applicable to (i) private sector banks licensed with RBI; (ii) NBFC registered with RBI; and (iii) public sector banks if deemed appropriate accordingly.
- iii) These Directions highlight the statutory provision in Regulation 1949 that empower the RBI with discretionary powers to approve voluntary amalgamation of two banking companies. They also provide that the amalgamation between an NBFC and a banking company is governed by Companies Act.
- v) These Directions also lay down the procedure to be adopted for amalgamation such as the approval should be made by 2/3 of the Board of the Banking Company and the shareholders as well.
- vi) These Directions also contain a Schedule that lay down that the documents and their format while approaching the RBI for approval.

SECURITIES EXCHANGE BOARD OF INDIA

Electronic book mechanism for issuance of debt securities on private placement basis

The Securities and Exchange Board of India vide [Circular No. CIR/IMD/DF1/48/2016 dated April 21, 2016](#) provided for electronic book mechanism for issuance of debt securities on private placement basis.

1. SEBI (issue & Listing of Debt Securities) Regulations 2008 govern public issue and listing of Debt Securities on public or private placement basis on recognized stock exchange.
2. To streamline the procedure for issuance of debt securities on private placement basis a framework has to be laid down for issuance of debt securities on private placement basis through electronic book mechanism.
3. This Electronic book mechanism shall be mandatory for all private placement of debt securities with issue size of Rs. 500 crores including green shoe option.
4. The following issuers shall have option of using electronic book mechanism or existing mechanism:-
 - i) Issues with single investor;
 - ii) Issues wherein issue size is less than Rs.500 crore including green shoe option. If issue size is less than Rs. 500 crore, issuer shall disclose details such as coupon yield, amount raised, number and category of investors to Electronic book provider in the format as specified.

5. Electronic book provider
 - i) Electronic book mechanism shall be provided by recognised stock exchange after prior approval from SEBI;
 - ii) Such recognized stock exchange shall be called Electronic Book Provider (“EBP”).
 - iii) The eligibility conditions for stock exchange to act as EBP are as follows:-
 - EBP shall provide an on-line platform for receiving bids in private placement of debt securities;
 - EBP shall own website to offer services;
 - EBP shall have necessary infrastructure to discharge the activities of EBP;
 - EBP shall ensure adequate backup, disaster management, recovery plans for electronic book mechanism provided by EBP, safety, secrecy, integrity and retrievability of data;
 - Electronic book mechanism provided by EBP shall be subject to periodic audit by Certified Information Systems Auditor (CISA).

6. Participants in Electronic book mechanism
 - i) Merchant banker, RBI registered primary dealers or intermediaries notified by SEBI may act as Arranger;
 - ii) Broker registered with SEBI may act as Sub-Arranger.

7. Roles and Responsibilities of participants in electronic book mechanism shall be as follows:-
 - i) The arranger or sub-arranger or EBP shall ensure Know Your Client (KYC) of the participants before allowing them to make bids as follows:
 - If participants are qualified institutional buyers, KYCs shall be ensured by EBP but if other participants then by arranger or sub-arranger;

- Arranger or sub-arranger or EBP may undertake KYC by utilising existing KYCs of clients registered with SEBI.
 - ii) Issuer shall ensure compliance with requisite rules and regulations etc. for private placement of debt securities;
 - iii) For Disclosure of PPM the Issuer shall ensure that:
 - Disclosure specifies minimum issue size inclusive of green shoe option;
 - Details of green shoe options shall be disclosed with reasons for retention of excess amount;
 - PPM may contain upper ceiling limit and not coupon details.
 - iv) Issuer shall enter into agreement with EBP for terms for usage of electronic book mechanism;
 - v) EBP shall lay operational procedures for uploading private placement offer letter etc., which shall be disclosed to eligible participants;
 - vi) EBP shall be responsible for timely secured bidding process of electronic bid by eligible bidders;
 - vii) Any dispute between issuer and bidder or EBP or bidder shall be settled as per their agreement and post listing as per arbitration by-laws of exchange.
8. The procedure for electronic book mechanism is as follows:-
- i) Pre-Bid Procedure
 - Participants have to enrol with EBP before entering bids
 - Qualified institutional buyer may participate in the bidding process and details of qualified institutional buyer and other participants enrolled shall be provided to the issuer.
 - Enrolled participants wishing to participate on issue either directly or through arranger shall be required to pre-register before being allowed access to PPM or any other information.

But if number of pre-registrations exceed 20 in a year , in that case eligible bidders would be determined by draw of first come first basis;

- Only eligible participants shall have access to PPM and other information and bidding portal provided by EBP. Bidding time window shall be decided by issuer in consultation with EBP, which shall be disclosed to bidders by EBP in advance.

ii) Bidding Procedure

- Bidding shall be allowed by issuer in bidding time window;
- Bid shall be made in Rupees and coupon yield in basis points;
- Participants can enter into multiple bids;
- EBP shall provide facility for generation of acknowledgment number against such bids.

iii) Post Bidding Procedure

- All bids received within bidding time window shall be provided by EBP to issuer and issuer shall have option to accept or reject bids;
- Issuer shall provide details of accepted bids to depositories for allotment;
- EBP shall display details of bid on the end of bidding time window and shall disclose aggregate volume data, total bids received, category of investor, etc.
- For issues below Rs.500 crore, issuer shall upload details with EBP as above;
- EBP shall upload allotment data on website to be made available to public.

This Circular shall be effective from July 01, 2016

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Warm Regards,

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