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SECURITY AND EXCHANGE BOARD OF INDIA

Review of Offer for Sale (OFS) of Shares through Stock Exchange Mechanism

Securities and Exchange Board of India ("**SEBI**") vide its circular no. CIR/MRD/DP/36 /2016 dated February 15, 2016 issued Circular regarding Review of Offer for Sale ("**OFS**") of Shares through Stock Exchange Mechanism.

This Circular has been issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The guidelines are as follows:

1. Comprehensive guidelines on sale of shares through Offer for Sale mechanism were issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified based on the representation/ suggestion received from various stakeholders from time to time.

2. In order to further streamline the process of OFS with an objective to encourage greater participation of all investors including retail investors, it has been decided that:-

   a. The Seller shall notify to the stock exchanges its intention for sale of shares latest by 5 pm on T-1 day (T day being the day of the OFS). Stock exchanges shall inform the market immediately upon receipt of such notice;

b. On the commencement of OFS on T day only non-retail investors shall be permitted to place their bids. Cut off price shall be determined based on the bids received on T day as per the extant guidelines;

c. The retail investors shall bid on T+ 1 day and they may place a price bid or opt for bidding at cut off price. The seller shall make appropriate disclosures in this regard in the OFS notice;

d. Settlement for bids received on T+1 day shall take place on T+3 days (T+1 day being trade day for retail investors). Discount, if any to retail investors, shall be applicable to bids received on T+1 day;

e. In order to ensure that shares reserved for retail investors do not remain unallocated due to insufficient demand by the retail investors, the bids of non- retail investors shall be allowed to carry forward to T+1 day.

f. Unsubscribed portion of the shares reserved for retail investors shall be allocated to non-retail bidders (un-allotted bidders on T day who choose to carry forward their bid on T+1 day) on T+1 day at a price equal to cut off price or higher as per the bids. In this regard, option shall be provided to such non-retail bidders to indicate their willingness to carry forward their bids to T+1 day. If the non-retail bidders choose to carry forward their bids to T+1 day, then, they may be permitted to revise such bids. Settlement for such bids shall take place on T+3 day;

3. Accordingly, para 5 b & (d) (i) & 8 (i) of circular dated July 18, 2012, para 2.5 & 2.9 of circular dated January 25, 2013, para 3.9 & 3.10 of OFS circular dated August 08, 2014, 2.1.1 of circular dated December 01, 2014 and para 2.1 of circular dated June 26, 2015 stands modified as above. All other conditions for sale of shares through OFS framework contained in the circulars CIR/MRD/DP/18/2012 dated July 18, 2012, CIR/MRD/DP/04/2013 dated January 25, 2013, CIR/MRD/DP/17/2013 dated May 30, 2013,CIR/MRD/DP/ 24 /2014 August 08, 2014, CIR/MRD/DP/32 /2014

December 01, 2014 and circular CIR/MRD/DP/12/2015 dated June 26, 2015 remain unchanged.

4. Stock Exchanges are advised to:
   a. take necessary steps and put in place necessary systems for implementation of above on or before March 01, 2016;
   b. make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision;
   c. bring the provisions of this circular to the notice of the member brokers of the stock exchange to also to disseminate the same on their website;
5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the SEBI Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

For further information, please visit the link provided herein

RESERVE BANK OF INDIA

Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015

Reserve Bank of India ("**RBI**") vide its Circular no. RBI/2015-16/312 A.P. (DIR Series) Circular No.47/2015-16 [(1)/11(R)] dated February 4, 2016 has invited the attention of Authorised Dealers ("**ADs"**) to Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015 ("**FEM Possession and Retention Regulations, 2015**") notified vide Notification No. FEMA. 11(R)/2015-RB dated December 29, 2015, c.f. G.S.R. No.1006 (E) dated December 29, 2015, which supersedes the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2000 ("**FEM Possession and Retention Regulations, 2000**") and all amendments thereto.

The directions contained in this circular have been issued under Section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) ("**FEMA, 1999**") and are without prejudice to permissions/ approvals, if any, required under any other law.

Synopsis of the FEM Possession and Retention Regulations, 2015 is as under:

A. Following are the limits for possession or retention of foreign currency or foreign coins, namely :-

   i) possession without limit of foreign currency and coins by an authorised person within the scope of his authority;

   ii) possession without limit of foreign coins by any person;

   iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;

a. was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India;

b. or was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or

c. was acquired by him by way of honorarium or gift while on a visit to any place outside India; or

d. represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

B. A person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the FEMA, 1999.

For further information, please visit the link provided herein

Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015

RBI vide its Notification no. RBI/2015-16/308 A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] dated February 4, 2016 has invited the attention of ADs to A.D.(M.A. Series) Circular No. 11 dated May 16, 2000 in terms of which ADs were advised of various Rules, Regulations, Notifications/ Directions issued under the FEMA, 1999. On a review it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2000 ("**FEM Acquisition and Transfer of Immovable Property outside India Regulations, 2000**"), as amended from time to time.

Accordingly, in consultation with the Government of India, the said regulations have been repealed and replaced by the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015 ("**FEM Acquisition and Transfer of Immovable Property outside India Regulations, 2015**").

The directions contained in this circular have been issued under Section 10(4) and 11(1) of the FEMA, 1999 and are without prejudice to permissions/ approvals, if any, required under any other law.

1. In terms of FEM Acquisition and Transfer of Immovable Property outside India Regulations, 2015 acquisition or transfer of any immovable property outside India by a person resident in India would require prior approval of RBI except in the following cases:

   a) Property held outside India by a foreign citizen resident in India;

   b) Property acquired by a person on or before 8th July, 1947 and held with the permission of RBI;

   c) Property acquired by way of gift or inheritance from:-

      - persons referred to in (b) above;
      - persons referred to in section 6(4) of the FEMA, 1999;

   d) Property purchased out of funds held in Resident Foreign Currency ("**RFC"**) account held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015;

   e) Property acquired jointly with a relative who is a person resident outside India provided there is no outflow of funds from India;

   f) Property acquired by way of inheritance or gift from a person resident in India who acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

2. Indian company having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the following limits prescribed for initial and recurring expenses, respectively:

a) 15 % (fifteen per cent) of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher;

b) 10% (ten per cent) of the average annual sales/ income or turnover during the last two financial years.

3. For the purpose of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

For further information, please visit the link provided herein

Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015

RBI vide its Circular no. RBI/2015-16/311 A.P. (DIR Series) Circular No.46/2015-16 [(1)/9(R)] dated February 4, 2016 has invited the attention of ADs to Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 notified vide Notification No. FEMA. 9(R)/2015-RB dated December 29, 2015, c.f. G.S.R. No.1005(E) dated December 29, 2015, which supersedes the Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 and all amendments thereto.

The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the FEMA, 1999 and are without prejudice to permissions/ approvals, if any, required under any other law.

Synopsis of the new regulations is given as under:

A. Duty of persons to realise foreign exchange due:-

A person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the FEMA, 1999 or the rules and regulations made thereunder, or with the general or special permission of the RBI, take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing

- that the receipt by him of the whole or part of that foreign exchange is delayed; or
- that the foreign exchange ceases in whole or in part to be receivable by him.

Manner of Repatriation :-

(1) On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and -

- sell it to an authorised person in India in exchange for rupees; or
- retain or hold it in account with an authorised dealer in India to the extent specified by the RBI; or
- use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the RBI.

(2) A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

C. Period for surrender of realised foreign exchange:-

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person, within the period specified below:-

- foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or
- in settlement of any lawful obligation, or
- an income on assets held outside India, or
- as inheritance, settlement or gift, within seven days from the date of its receipt;

in all other cases within a period of ninety (90) days from the date of its receipt.

D. Period for surrender in certain cases:-

1) Any person not being an individual resident in India who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person under sub-section (5) of Section 10 of the Act does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible under the provisions of the FEM, 1999 or the rules or regulations or direction or order made to thereunder**,** shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him.

2) Notwithstanding anything contained in sub-regulation (1), where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person -

- within ninety (90) days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and
- within one hundred eighty (108) days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

E. Period for surrender of received/realised/unspent/unused foreign exchange by Resident individuals.-

A person being an individual resident in India shall surrender the received/ realised/ unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of one hundred eighty 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of his return to India, as the case may be.

F. Exemption:-

Nothing in these regulations shall apply to foreign exchange in the form of currency of Nepal or Bhutan.

For further information, please visit the link provided herein

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2016

RBI vide Notification No. FEMA. 361/2016-RB dated February 15, 2016 has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2016 ("**FEM Transfer or issue of Security Amendment Regulations, 2016**").

The RBI states that as per the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India)(Amendment) Regulations, 2000 ("**FEM Transfer or issue of Security Regulations, 2000**"), the following amendment shall take place:-

1. Regulation 2 (vii) of FEM Transfer or issue of Security Regulations, 2000 which stated:-

> *"Non-resident Indian (NRI)', 'Overseas Corporate Body (OCB)', shall have the meanings respectively assigned to them in the Foreign Exchange Management (Deposit) Regulations,2000."*

Shall be substituted by Regulation 2 (vii)(a) of FEMA Amendment Regulations 2016 as follows:-

> *"(viia) Non-Resident Indian (NRI) means an individual resident outside India who is citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7 (A) of the Citizenship Act, 1955."*

2. Regulation 5(3) of FEM Transfer or issue of Security Regulations, 2000 which stated that:-

> *"A non-resident Indian or an overseas corporate body may purchase shares or convertible debentures of an Indian company—*
> *• on a stock exchange under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3; or/ and*
> *•on non-repatriation basis other than under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 4. "*

Shall be substituted by the following as per Regulation 5(3) of the FEMA Amendment Regulation 2016 as follows:-

- *"A Non- Resident Indian (NRI) may acquire securities or units on a Stock Exchange in India on repatriation basis under the Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3.*
- *A Non- Resident Indian (NRI) may acquire securities or units on a non-repatriation basis, subject to the terms and conditions specified in Schedule 4."*

3. Schedule 3 and Schedule 4 of the FEMA Amendment Regulations, 2016 have been amended as follows:-

"Schedule-3 [See Regulation 5(3) (i)]

Acquisition of Securities or Units by a Non-Resident Indian (NRI) on a Stock Exchange in India on Repatriation basis under the Portfolio Investment Scheme.

1. A Non-resident Indian (NRI) may purchase or sell shares, convertible preference shares, convertible debentures and warrants of an Indian company or units of an investment vehicle, on repatriation basis, on a recognised stock exchange, subject to the following conditions:
a.NRIs may purchase and sell shares /convertible preference shares/ convertible debentures /warrants and units under the Portfolio Investment Scheme through a branch designated by an Authorised Dealer for the purpose;
b.The paid-up value of shares of an Indian company purchased by any individual NRI should not exceed five percent of the paid-up value of shares issued by the company concerned;
c.the paid-up value of convertible preference shares or convertible debentures of any series purchased by any individual NRI on repatriation basis should not exceed five percent of the paid-up value of convertible preference shares or convertible debentures
d.the paid-up value of warrants of any series purchased by any individual NRI on repatriation basis should not exceed five percent of the paid-up value of warrants of that series issued by the company concerned;
e.*the aggregate paid-up value of shares of any company purchased by all NRIs on repatriation basis should not exceed ten percent of the paid-up value of shares of the company and the aggregate paid-up value of each series of convertible preference shares or convertible debentures or warrants purchased*

by all NRIs should not exceed ten percent of the paid-up value of that series of convertible preference shares or convertible debentures or warrants; Provided that the aggregate ceiling of ten per cent referred to in this clause may be raised to twenty-four per cent if a special resolution to that effect is passed by the General Body of the Indian company concerned;

f.The NRI investor should take delivery of the shares/convertible preference shares/ convertible debentures /warrants and units purchased and give delivery of the same when sold;

g.The investment shall be subject to the provisions of the FDI policy and Schedule 1 of these Regulations in respect of sectoral caps wherever applicable. Explanation: 'Investment Vehicles' and 'Units' and shall have the same meaning as defined in sub-regulation (ii g) and (xi A) of Regulation 2 of these Regulations."

4. Report to RBI

The reporting of transactions under this Schedule shall be made by the designated branch of the AD referred to in paragraph 1, in a manner specified by RBI.

5. Maintenance of accounts by an NRI for routing transactions for purchase and sale of shares / convertible debentures/ units, etc.

6. An NRI may open a designated NRE account [opened and maintained by AD bank in terms of the Foreign Exchange Management (Deposit) Regulations, 2000] for the purpose of investment under this scheme with a designated branch of an AD bank referred to in paragraph 1, for routing the receipt and payment for transactions relating to sale and purchase of shares /convertible preference shares/ convertible debentures/ warrants/ units under this Schedule. The designated account will be called an NRE (Portfolio Investment Scheme) Account. The designated branch shall ensure that sale proceeds of securities or units which have been acquired by modes other than Portfolio Investment Scheme such as underlying shares acquired on conversion of ADRs / GDRs, shares / convertible preference shares / convertible

debentures /warrants acquired under FDI Scheme or purchased outside India from other NRIs or acquired under private arrangement from residents/ non-residents or purchased while resident in India, do not get credited in the NRE (Portfolio Investment Scheme) Account and vice-versa.

7. Permitted Credits/ Debits in NRE(Portfolio Investment Scheme) account

Credits

- Inward remittances in foreign exchange though normal banking channels;.
- Transfer from the NRI's other NRE accounts or FCNR (B) accounts maintained with AD in India;
- Net sale proceeds (after payment of applicable taxes) of shares / convertible preference shares /convertible debentures /warrants/ units acquired on repatriation basis under the Scheme and sold on stock exchange through registered broker; and
- Dividend or income earned on investment made on repatriation basis under the Scheme

Debits

- Outward remittances of dividend or income earned;
- Amounts paid on account of purchase of shares /convertible preference shares/ convertible debentures /warrants/ units on repatriation basis on stock exchanges through registered broker under the Scheme; and
- Any charges on account of sale / purchase of securities or units under the Scheme
- Remittances outside India or transfer to NRE / FCNR (B) accounts of the account holder of the NRI or any other person eligible to maintain such account.

8. Saving

The existing NRO (PIS) accounts may be re-designated as NRO account

Schedule 4—Schedule-4 [See Regulation 5(3) (ii)]

Acquisition of Securities or units by a Non-Resident Indian (NRI), on Non-Repatriation basis

Permission to purchase

1. A NRI, including a company, a trust and a partnership firm incorporated outside India and owned and controlled by non-resident Indians, may acquire and hold, on non-repatriation basis, equity shares, convertible preference shares, convertible debenture, warrants or units, which will be deemed to be domestic investment at par with the investment made by residents. Without loss of generality, it is stated that:-
   a. An NRI may acquire, on non-repatriation basis, any security issued by a company without any limit either on the stock exchange or outside it.
   b. An NRI may invest, on non-repartition basis, in units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
   c. An NRI may contribute, on non-repatriation basis, to the capital of a partnership firm, a proprietary firm or a Limited Liability Partnership without any limit.

Prohibition on purchase

2. Notwithstanding what has been stated in paragraph 1, an NRI shall not make any investment, under this Schedule, in equity shares, convertible preference shares, convertible debenture, warrants or units of a Nidhi company or a company engaged in agricultural/plantation activities or real estate business or construction of farm houses or dealing in Transfer of Development Rights.

Method of payment for purchase

3. The consideration for investment under this Schedule shall be paid by way of inward remittance through normal banking channel from abroad or out of funds held in NRE/FCNR/NRO account maintained with a bank in India:

Sale/ Maturity proceeds

4. The sale/maturity proceeds (net of applicable taxes) of the securities or units acquired under this Schedule shall be credited only to NRO account irrespective of the type of account from which the considerations for acquisition were paid.
5. The amount invested under this Scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

For further information, please visit the link provided herein

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016

RBI (Foreign Exchange Department) vide its Notification no. FEMA.362/2016-RB dated February 15, 2016, in exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the FEMA, 1999, makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 namely, Foreign Exchange Management (Transfer or issue of Security by a person resident outside India) (Second Amendment) Regulations, 2016 ("**FEM Transfer or issue of Security Amendment Regulations, 2016**").

A. In Regulation 2 of the FEM Transfer or issue of Security Amendment Regulations, 2016, after clause (viiA) and before the existing clause (viia), the following clause has been inserted, namely:

> *"(vii AA) "Manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing- (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."*

B. In Regulation 14 of the FEM Transfer or issue of Security Amendment Regulations, 2016,

i. in sub-regulation 1, the existing clause (i) and clause (ia) has been amended as under respectively :

> *"(i) for the purpose of this regulation, the expression 'ownership and control' shall mean and include*
> *(a) a company shall be considered as owned by resident Indian citizens if more than 50% of the capital in it is beneficially owned by resident Indian citizens and/or Indian companies, which are ultimately owned and controlled by resident Indian citizens. A Limited Liability Partnership will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/ or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share;*
> *(b) A company owned by non residents shall mean an Indian company that is not owned by resident Indian citizens.*
> *(ia) 'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements."*

ii. *in sub-regulation 3, in clause (iv), the existing sub-clause (D) has been amended, namely:*

> *" D) In the I&B sector where the sectoral cap is up to 49%, the company would need to be 'owned and controlled' by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.*
> *A. For this purpose, the equity held by the largest Indian shareholder would have to be at least 51 % of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956 or Section 2 (72) of the Companies Act, 2013, as the case may be. The term `largest Indian shareholder', used in this clause, will include any or a combination of the following:*
> *(i) In the case of an individual shareholder;*
> *(aa) The individual shareholder,*
> *(bb) A relative of the shareholder within the meaning of Section 2 (77) of Companies Act, 2013.*

(cc) A company/group of companies in which the individual share holder/ HUF to which he belongs has management and controlling interest.

(ii) In the case of an Indian company,

(aa) The Indian company

(bb) A group of Indian companies under the same management and ownership control.

(b) For the purpose of this Clause, "Indian company" shall be a company which must have a resident Indian or a relative as defined under Section 2 (77) of Companies Act, 2013/ HUF, either singly or in combination holding at least 51% of the shares.

(c) Provided that, in case of a combination of all or any of the entities mentioned in Sub-Clauses (i) and (ii) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company."

C. The existing sub-regulation 5 has been amended as under, namely:

"Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors under government approval route

Foreign investment in sectors/activities under government approval route will be subject to government approval where:

(i) An Indian company is being established with foreign investment and is not owned by a resident entity; or

(ii) An Indian company is being established with foreign investment and is not controlled by a resident entity; or

(iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/ demerger, acquisition etc.; or

(iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non- resident entities through amalgamation, merger/demerger acquisition etc.;

(v) It is clarified that Foreign investment shall include all types of foreign investments i.e. FDI, investment by FIIs, FPIs, QFIs, NRIs, ADRs, GDRs, Foreign Currency Convertible Bonds (FCCB) and fully, mandatorily & compulsorily convertible preference shares/debentures, regardless of whether the said investments have been made under Schedule 1, 2, 2A, 3, 6, 8, 9 and 10 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations.

(vi) Investment by NRIs under Schedule 4 of FEMA (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000 will be deemed to be domestic investment at par with the investment made by residents.

(vii) A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule 4 of FEMA (Transfer or issue of Security by Persons Resident Outside India) Regulations, 2000 and such investment will also be deemed domestic investment at par with the investment made by residents."

D. in sub-regulation 6, the existing clause (ii) has been amended, namely:

" (ii) Downstream investments by Indian companies/LLPs will be subject to the following conditions:

a. Such a company/LLP is to notify SIA, DIPP and FIPB of its downstream investment in the form available at http://www.fipbindia.com within 30 days of such investment, even if capital instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme);

b. Downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a shareholders agreement, if any;

c. Issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

d. For the purpose of downstream investment, the Indian companies/ LLPs making the downstream investments would have to bring in requisite funds from abroad and not leverage funds from the domestic market. This would, however, not preclude downstream companies/LLPs, with operations, from raising debt in the domestic market. Downstream investments through internal accruals are permissible (For the purposes of FDI, internal accruals will mean as profits transferred to reserve account after payment of taxes), subject to the provision of clause (i) above and also as elaborated below:

- *Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in Annex B of Schedule I to these Regulations.*
- *Those companies, which are Core Investment Companies (CICs), will have to additional follow RBI's Regulatory Framework for CICs.*
- *For undertaking activities which are under automatic route and without FDI linked performance conditions, Indian company which does not have any operations and also does not have any downstream investments, will be permitted to have infusion of foreign investment under automatic route. However, approval of the Government will be required for such companies for infusion of foreign investment for undertaking activities which are under Government route, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps."*

E. The FDI recipient Indian company at the first level which is responsible for ensuring compliance with the FDI conditionalities like no indirect foreign investment in prohibited sector, entry route, sectoral cap / conditionalities, etc. for the downstream investment made by in the subsidiary companies at second level and so on and so forth would obtain a certificate to this effect from its statutory auditor on an annual basis as regards status of compliance with the instructions on downstream investment and compliance with FEMA provisions. The fact that statutory auditor has certified that the company is in compliance with the regulations as regards downstream investment and other FEMA prescriptions will be duly mentioned in the Director's report in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the Reserve Bank of India, Foreign Exchange Department (FED), Regional Office (RO) of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also obtain acknowledgement from the RO of having intimated it of the qualified auditor report RO shall file the action taken report to the

Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Central Office Building, Shahid Bhagat Singh Road, Mumbai 400001."

The following Scheduled has been also been amended vide these regulations:-

- Schedule 1
- Schedule 9
- Schedule 11

For further information, please visit the link provided herein

NBFC – Factors (Reserve Bank) Directions, 2012 – Review

RBI vide its Notification no. RBI/2015-16/326 DNBR.CC.PD.No.074/03.10.01/2015-16 dated February 18, 2016 had reviewed the guidelines on provision of factoring services by banks and specified certain conditions under which banks can departmentally undertake factoring activities. To ensure against regulatory gaps/ arbitrage if any, arising from differential regulations as between NBFC-Factors and banks, the following clarifications/ instructions are being issued to NBFC – Factors for meticulous compliance. The conditions are as follows:

i) It is clarified that receivable acquired by an NBFC- Factor which is not paid within such period of its due date, as applicable in terms of Systemically Important NonBanking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 or Non-Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 or Non-Banking Financial (Deposit Accepting or Holding) Companies

Prudential Norms (Reserve Bank) Directions, 2007, should be treated as Non-Performing Asset (NPA) irrespective of when the receivable was acquired by the NBFC - Factor or whether the factoring was carried out on "with recourse" basis or "non-recourse" basis.

ii) Exposure Norms-Single and Group Borrower Limits

It is clarified that for the purpose of compliance with concentration of credit norms, exposure shall be reckoned as under:

- In case of factoring on "with-recourse" basis, the exposure would be reckoned on the assignor.
- In case of factoring on "without-recourse" basis, the exposure would be reckoned on the debtor, irrespective of credit risk cover/ protection provided, except in cases of international factoring where the entire credit risk has been assumed by the important factor.

iii) Risk Management

α) Proper and adequate control and reporting mechanisms should be put in place before such business is undertaken.

- NBFC-Factors should carry out a thorough credit appraisal of the debtors before entering into any factoring arrangement or prior to establishing lines of credit with the export factor.
- Factoring services should be extended in respect of invoices which represent genuine trade transactions.
- Since under without recourse factoring transactions, the factor is underwriting the credit risk on the debtor, there should be a clearly laid down board approved limit for all such underwriting commitments.

b) Exchange of Information

- For the purpose of exchange of information, the assignor will be deemed to be the borrower.

- Factors and banks should share information about common borrowers. Factors must ensure to intimate the limits sanctioned to the borrower to the concerned banks/ NBFCs and details of debts factored to avoid double financing.

RBI vide its Notification no. DNBR.036/CGM (CDS)-2016 dated February 18, 2016 having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the Bank to regulate the financial system to the advantage of the country and to prevent the affairs of any Non-Banking Financial Company – Factor (NBFC-Factor) from being conducted in a manner detrimental to the interest of investors or in any manner prejudicial to the interest of such NBFC – Factors, it is necessary to amend the Non-Banking Financial Company – Factor (Reserve Bank) Directions, 2012 (Notification No. DNBS. PD.No.247/ CGM(US)-2012 dated July 23, 2012) (hereinafter referred to as 'the said Directions') in exercise of the powers conferred under section 3 of the Factoring Regulation Act, 2011, hereby directs that the said Directions shall be amended with immediate effect as follows:-

A. For Paragraph 8 of the said Directions, the following paras has been substituted;

8. **Prudential Norms**

8.1 The provisions of Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 or Non-Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 or Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms Reserve Bank) Directions, 2007, as the case may be and as applicable to a loan company shall apply to an NBFC-Factor.

8.2 The receivable acquired under factoring which is not paid within such period of due date as applicable, should be treated as non-performing asset (NPA) irrespective of when the receivable was acquired by the factor or whether the factoring was carried out on "with recourse" basis or "non-recourse" basis. The entity on which the exposure was booked should be shown as NPA and provisioning made accordingly.

B. After Paragraph 8, of the said Directions the following para has been inserted;

8.A Exposure Norms-Single and Group Borrower Limits

The facilities extended by way of factoring services would be covered within the overall exposure ceiling specified in the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 or Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, as applicable. The exposure shall be reckoned as under :

a) In case of factoring on "with-recourse" basis, the exposure would be reckoned on the assignor.

b) In case of factoring on "without-recourse" basis, the exposure would be reckoned on the debtor, irrespective of credit risk cover / protection provided, except in cases of international factoring where the entire credit risk has been assumed by the import factor.

C. After Paragraph 9, of the said Directions the following para has been inserted;

9.A Risk Management

Proper and adequate control and reporting mechanisms should be put in place before such business is undertaken.

a) NBFC-Factors should carry out a thorough credit appraisal of the debtors before entering into any factoring arrangement or prior to establishing lines of credit with the export factor.

b) Factoring services should be extended in respect of invoices which represent genuine trade transactions.

c) Since under without recourse factoring transactions, the factor is underwriting the credit risk on the debtor, there should be a clearly laid down board approved limit for all such underwriting commitments.

D. After Paragraph 10 of the said Directions, the following para has been inserted;

10.A For the purpose of exchange of information, the assignor will be deemed to be the borrower. Factors and banks should share information about common borrowers. Factors must ensure to intimate the limits sanctioned to the borrower to the concerned banks/ NBFCs and details of debts factored to avoid double financing.

For further information, please visit the link provided herein

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION

Order of the Hon'ble Maharashtra Electricity Regulatory Commission in Case No. 9 of 2015 of Indian Wind Power Association v/s Maharashtra State Electricity Distribution Company Limited

1. Indian Wind Power Association -Maharashtra State Council ("**IWPA"/ "Petitioner**") is an association of wind power generators.
2. Pursuant to revised procedure being issued by Maharashtra State Electricity Distribution Co. Ltd. ("**MSEDCL**"), IWPA had earlier filed Case No. 72 of 2014 wherein the Hon'ble Maharashtra State Regulatory Commission **("Commission"/ "MERC**") had directed MSEDCL to process the applications for grant of Open Access ("**OA**") filed prior to the notification of the MERC (Distribution Open Access Regulations), 2014 ("**DOA Regulations, 2014**") and in accordance with its Commercial Circular No. 194 dated April 9, 2013 and the Commission's Orders dated November 24, 2003 and January 3, 2013.
3. However, MSEDCL didn't comply with the Orders of the Hon'ble Commission and therefore, IWPA filed the present Petition. Five Members of IWPA had made applications for OA permission as Wind Power Generators to supply power to their chosen consumers within the area of MSEDCL as per the provisions of the then existing MERC (Distribution Open Access Regulations), 2005 ("the DOA Regulations, 2005") for the period April 1, 2014 to March 31, 2015.

4. MSEDCL rejected these applications on the following grounds, such as:
   - An application for OA can be made only by a consumer and not by a Generator;
   - Sourcing from multiple sources is not permitted;
   - OA would be effective only from the date of installation of Special Energy Meters ("SEM") operational at both the generating and consumer ends.
5. The Hon'ble Commission thereafter in its Order dated February 8, 2016 directed as follows:
   - With regards of sourcing power from multiple Generators, the Hon'ble Commission upheld the decision of the Hon'ble Appellate Tribunal for Electricity ("APTEL"), in its Order dated 22 April, 2015 in Appeal No. 169 of 2014 (against the Commission's Order dated 6 May, 2014 in Case No. 44 of 2014), wherein APTEL has held that OA under the DOA Regulations, 2005 cannot be denied on the ground that power is sought to be sourced from multiple Generators. The same is challenged by MSEDCL in the Supreme Court, but it has not been stayed.
   - With reference to the rejection of applications on the ground that the Generator had applied instead of the consumer, it is held by the Hon'ble Commission that the restriction that OA applications from consumers alone would be considered was introduced by MSEDCL in its Revised Procedure for OA effective from 1 April, 2014, purportedly on its interpretation of the DOA Regulations, 2005. Such interpretation is not supported by any finding of the Hon'ble Commission. It was further held that the Revised Procedure was set aside by the Hon'ble Commission in its Order dated 20 August, 2014 in Case No. 72 of 2014 and also in other Cases. Thus, the ground for rejection of the OA applications made by IWPA's Members for FY 2014-15 has no basis.

- With reference to the requirement for OA that SEMs be installed at both the generation and consumer ends, Regulation 7.1 of the DOA Regulations, 2005. The Hon'ble Commission held that in its Order dated 3 January, 2013 in Case Nos. 8, 18, 20 and 33 of 2012, the Hon'ble Commission has noted that such installation of SEM is mandatory under the DOA Regulations, 2005, Therefore the Hon'ble Commission held that the OA could be granted only from the date of installations of SEMs at both the generation and consumer ends.
- The Hon'ble Commission further directed MSEDCL to approve OA in respect of the applications cited in these proceedings (and in all other such cases) from the date on which it was sought or the date of due installation of SEMs at both the generation and consumer ends, whichever is later.

IWPA was represented by Eternity Legal at the Hon'ble Commission in Case No. 72 of 2014 as well as Case No. 9 of 2015.

APPELLATE TRIBUNAL FOR ELECTRICITY

Order of the Hon'ble Appellate Tribunal for Electricity Commission in Appeal No. 210 of 2014 of Indian Wind Power Association v/s Maharashtra Electricity Regulatory Commission & Ors

Order of the Hon'ble Appellate Tribunal for Electricity Commission in Appeal No. 210 of 2014 of Indian Wind Power Association v/s Maharashtra Electricity Regulatory Commission & Ors :

1. Indian Wind Power Association -Maharashtra State Council ("**IWPA"/ "Appellant**") is an association of wind power generators.
2. The Appellant had filed a Case No. 93 of 2013 before the Maharashtra State Electricity Regulatory Commission ("**Respondent No.1" / "MERC**") wherein IWPA sought for directions against the Maharashtra State Electricity Distribution Co. Ltd. (**"MSEDCL"/ "Respondent No.2"** herein), to enter into Power Purchase Agreement ("**PPA**") at tariff approved for the FY 2013-14 as per order dated March 22, 2013 in Case No. 6 of 2013 and Commercial Circular No.196 dated April 29, 2013 issued by the MSEDCL.
3. MSEDCL unilaterally modified the PPA without seeking prior approval of the Hon'ble Commission and included three clauses viz; payment for period from commissioning till 30.09.2013 will be made on best efforts basis and such payment will not attract interest; right of refusal in favour of MSEDCL at same tariff or such other tariff determined by Hon'ble Commission whichever is lower and such two clauses shall form integral part of the PPA. The impugned clauses are reproduced below:

"1) (Proviso added to Section 11.04: Payments)
Provided that the payments to the seller for the period from the date of commissioning of the project up-to 30.09.2013 will not be governed by clause / Section No. 11.04 of EPA. The payment for this period will be effected by MSEDCL on best effort basis without interest. The terms and conditions of the Section 11.04: Payments, shall be applicable for the energy injected into grid" w.e.f. 01.10.2013. .,

2) Section 4.03: First Right of Refusal Post Expiring EPA
After completion of EPA tenure of 13 years from the date of commissioning of the wind power project, MSEDCL, shall reserve First Right of Refusal to procure power at the same rate (MERC determined tariff as may be applicable for the said wind power project as per MERCRE tariff order dated 22.03.2013 in Case No. 6 of 2013) or the rate as may be decided by the MERC whichever is lower till the end of life of wind power project (i.e. 20/25 years as the case may be).

3) (Added as Section 4.04 & 11:07) It is mutually agreed that the above said terms and conditions shall form integral part of this Energy Purchase Agreement."

4. Some developers signed the PPA with the impugned clauses under duress and some signed under protest. IWPA objected to inclusion of such clauses in PPA. However, Respondent No. 1 i.e.; MERC held that since the PPA was signed inclusive of the modifications by MSEDCL and wind power producers, therefore the prayer of the Petitioner to direct Respondent No.1 to enter into PPA at a tariff determined by the Respondent No. 1 i.e.; MERC vide Order dated 22 March, 2013 in Case No. 6 of 2013 with the wind power producers, so desirous had become infructuous.
5. Aggrieved by the said order, the Appellant filed the present Appeal before the Hon'ble APTEL.

6. The Hon'ble APTEL decided in the favour of the Appellant held that the impugned clauses included in the PPA cannot be allowed:

IWPA was represented by Eternity Legal at the Hon'ble Commission in Case No.93 of 2013 as well as Appeal No. 210 of 2014.

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Warm Regards,

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