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JUNE 2016

RESERVE BANK OF INDIA

REFINANCING OF PROJECT LOANS

The Reserve Bank of India vide Notification No. DNBR.CC.PD.No.082/03.10.001/2015-16 dated June 02, 2016 provides for Refinancing of Project Loans.

1. Accordingly, NBFCs may refinance any existing infrastructure and other project loans by way of take-out financing, without a pre-determined agreement with other lenders, and fix a longer repayment period, the same would not be considered as restructuring if the following conditions are satisfied:
   i. Such loans should be 'standard' in the books of the existing lenders, and should have not been restructured in the past;
   ii. Such loans should be substantially taken over (more than 50% of the outstanding loan by value) from the existing financing lenders; and
   iii. The repayment period should be fixed by taking into account the life cycle of the project and cash flows from the project

2. For existing project loans where the aggregate exposure of all institutional lenders is minimum ₹ 1,000 crore, NBFCs may refinance such loans by way of full or partial take-out financing, even without a pre-determined agreement with other lenders, and fix a longer repayment period, and the same would not be considered as restructuring in the books of the existing as well as taking over lenders, if the following conditions are satisfied:

i. The project should have started commercial operation after achieving Date of Commencement of Commercial Operation (DCCO);

ii. The repayment period should be fixed by taking into account the life cycle of and cash flows from the project, and, Boards of the existing and new lenders should be satisfied with the viability of the project. Further, the total repayment period should not exceed 85% of the initial economic life of the project / concession period in the case of PPP projects;

iii. Such loans should be 'standard' in the books of the existing lenders at the time of the refinancing;

iv. In case of partial take-out, a significant amount of the loan (a minimum 25% of the outstanding loan by value) should be taken over by a new set of lenders from the existing financing lenders; and

v. The promoters should bring in additional equity, if required, so as to reduce the debt to make the current debt-equity ratio and Debt Service Coverage Ratio (DSCR) of the project loan acceptable to the NBFCs.

3. A lender who has extended only working capital finance for a project may be treated as 'new lender' for taking over a part of the project term loan as required under the guidelines.

4. The above facility will be available only once during the life of the existing project loans.

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FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) (AMENDMENT) REGULATIONS, 2016

The Reserve Bank of India vide Notification No. FEMA 10 (R)/(1)/2016-RB dated June 01, 2016 provides for Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2016

In exercise of the powers conferred by Section 9 and clause (e) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015 [Notification No. FEMA 10(R)/2015-RB dated January 21, 2016], namely:

1. Amendment to Regulation 5

i The existing sub-regulation (E) shall be re-numbered as (F).

ii In the re-numbered regulation (F), the existing sub-regulation (3) shall be substituted by the following namely:

> *"Insurance/reinsurance companies registered with Insurance Regulatory and Development Authority of India (IRDA) to carry out insurance/reinsurance business may open, hold and maintain a Foreign Currency Account with a bank outside India for the purpose of meeting the expenditure incidental to the insurance/reinsurance business carried on by them and for that purpose, credit to such account the insurance/reinsurance premia received by them outside India."*

iii After the existing sub-regulation (D), the following shall be inserted namely:

"(E) Accounts in respect of Startups:

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An Indian startup or any other entity as may be notified by the Reserve Bank in consultation with the Central Government, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to it foreign exchange earnings out of exports/ sales made by the said entity and/ or the receivables, arising out of exports/ sales, of its overseas subsidiary.

Provided that the balances in the account shall be repatriated to India within the period prescribed in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time, for realization of export proceeds.

Explanation: For the purpose of this sub-regulation a 'startup' means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India."

2. Amendment to Schedule 1

In Paragraph 1, in sub-paragraph (1), after the existing clause (vi), the following shall be inserted namely:

> *"vii) Payments received in foreign exchange by an Indian startup, or any other entity as may be notified by the Reserve Bank in consultation with the Central Government, arising out of exports/ sales made by the said entity or its overseas subsidiaries, if any.*
>
> *Explanation: For the purpose of this schedule a 'startup' means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India."*

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SCHEME FOR SUSTAINABLE STRUCTURING OF STRESSED ASSETS.

Reserve Bank of India issued guidelines vide the Circular DBR.No.BP.BC.103/21.04.132/2015-16 dated June 13, 2016 in order to strengthen the lenders' ability to deal with stressed assets and to put real assets back on track by providing an avenue for reworking the financial structure of entities facing genuine difficulties.

In order to ensure that adequate deep financial restructuring is done to give projects a chance of sustained revival, the Reserve Bank of India, after due consultation with banks, has decided to facilitate the resolution of large accounts, which satisfy the conditions set out as below:

1. **Eligible Accounts**: For being eligible under the scheme, the account should meet all the following conditions:
   - i The project has commenced commercial operations;
   - ii The aggregate exposure (including accrued interest) of all institutional lenders in the account is more than Rs.500 crore (including Rupee loans, Foreign Currency loans/External Commercial Borrowings,);
   - iii The debt meets the test of sustainability.
2. **Debt Sustainability:** A debt level will be deemed sustainable if the Joint Lenders Forum ("JLF")/Consortium of lenders/bank conclude through independent techno-economic viability ("TEV") that debt of that principal value amongst the current funded/non-funded liabilities owed to institutional lenders can be serviced over the same tenor as that of the existing facilities even if the future cash flows remain at their current level and for it to apply, the sustainable debt should not be less than 50% of current funded liabilities.

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1. **Sustainable Debt:**

   i The resolution plan may involve one of the following options with regard to the post-resolution ownership of the borrowing entity:

   a. The current promoter continues to hold majority of the shares or shares required to have control;

   b. The current promoter has been replaced with a new promoter, in one of the following ways:

      - Through conversion of a part of the debt into equity under SDR mechanism which is thereafter sold to a new promoter;
      - In the manner contemplated as per Prudential Norms on Change in Ownership of Borrowing Entities (Outside SDR Scheme);

   c. The lenders have acquired majority shareholding in the entity through conversion of debt into equity either under SDR or otherwise and

      - allow the current management to continue or
      - hand over management to another agency/professionals under an operate and manage contract.

Where malfeasance on the part of the promoter has been established, through a forensic audit or otherwise, this scheme shall not be applicable if there is no change in promoter or the management is vested in the delinquent promoter.

   ii In any of the circumstances mentioned above, the JLF/consortium/bank shall, after an independent TEV, bifurcate the current dues of the borrower;

   a. Determine the level of debt (including new funding required to be sanctioned within next six months and non-funded credit facilities crystallising within next 6 months) that can be serviced (both interest and principal) within the respective residual maturities of existing

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debt, from all sources, based on the cash flows available from the current as well as immediately prospective (not more than six months) level of operations. For this purpose, free cash flows (i.e., cash flow from operations minus committed capital expenditure) available for servicing debt as per latest audited/reviewed financial statement will be considered. Where there is more than one debt facility, the maturity profile of each facility shall be that which exists on the date of finalising this resolution plan. For the purpose of determining the level of debt that can be serviced, the assessed free cash flow shall be allocated to servicing each existing debt facility in the order in which its servicing falls due. The level of debt so determined will be referred to as Part A.

b. The difference between the aggregate current outstanding debt, from all sources, and Part A will be referred to as Part B in these guidelines.

c. The security position of lenders will, however, not be diluted and Part A portion of loan will continue to have at least the same amount of security cover as was available prior to this resolution.

4. **The Resolution Plan**:

i The Resolution Plan shall have the following features:

a. There shall be no fresh moratorium granted on interest or principal repayment for servicing of Part A.

b. There shall not be any extension of the repayment schedule or reduction in the interest rate for servicing of Part A.

c. Part B shall be converted into equity/redeemable cumulative optionally convertible preference shares. However, in cases where the resolution plan does not involve change in promoter, banks may, at their discretion, also convert a portion of Part B into optionally convertible debentures.

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ii Where the resolution plan does not involve a change in promoter or where existing promoter is allowed to operate and manage the company as minority owner by lenders, the principle of proportionate loss sharing by the promoters should be met. In such cases, lenders shall, therefore, require the existing promoters to dilute their shareholdings, by way of conversion of debt into equity /sale of some portion of promoter's equity to lenders, at least in the same proportion as that of part B to total dues to lenders. JLF/ Consortium/bank should also obtain promoters' personal guarantee in all such cases, for at least the amount of Part A.

iii The existing promoter or the new promoter, as the case may be, may have the right of first refusal in case the lenders decide to sell the share, at a price beyond some predetermined price. The lenders may also include appropriate covenants to cover the use of cash flows arising beyond the projected levels having regard to quasi-equity instruments held in Part B.

iv Other important principles for this scheme are the following:

a. The JLF/Consortium/bank shall engage the services of credible professional agencies to conduct the TEV and prepare the resolution plan. Further, from a risk management perspective, lenders should avoid concentration of such assignments in any one particular professional agency.

b. The resolution plan shall be agreed upon by a minimum of 75% of lenders by value and 50% of lenders by number in the JLF/ consortium/bank.

c. At individual bank level, the bifurcation into Part A and part B shall be in the proportion of Part A to Part B at the aggregate level.

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5. **<u>Overseeing Committee</u>:** An Overseeing Committee ("OC"), is an advisory body comprising of eminent persons, will be constituted by IBA in consultation with RBI. The members of OC cannot be changed without the prior approval of RBI. Also, the resolution plan shall be submitted by the JLF/consortium/bank to the OC. It shall also review the processes involved in preparation of resolution plan, etc. for reasonableness and adherence to the provisions of these guidelines, and opine on it.

6. **<u>Asset Classification and Provisioning</u>:**

   i Where there is a change of promoter: In case a change of promoter takes place, i.e. a new promoter comes in, the asset classification and provisioning requirement will be as per the 'SDR' scheme or 'outside SDR' scheme as applicable.

   ii Where there is no change of promoters:

      b. Asset classification as on the date of lenders' decision to resolve the account under these guidelines will continue for a period of 90 days from this date. If the resolution is not implemented within this period, the asset classification will be as per the extant asset classification norms, assuming there was no such 'stand-still'

      c. In respect of an account that is 'Standard', the entire outstanding (both Part A and part B) will remain Standard subject to provisions made upfront by the lenders being at least the higher of 40 percent of the amount held in part B or 20 percent of the aggregate outstanding (sum of Part A and part B).

   iii In respect of an account that is classified as non-performing asset on the date of this resolution, the entire outstanding (both Part A and part B) shall continue to be classified and provided for as a non-performing asset as per extant IRAC norms.

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iv Lenders may upgrade Part A and Part B to standard category after one year of satisfactory performance of Part A loans. In case of any pre-existing moratorium in the account, the upgrade will be permitted one year after completion of the longest moratorium, subject to satisfactory performance of Part A debt during this period. However, lenders will continue to mark to market Part B instruments as per the norms stated herein.

v If the provisions held by the bank in respect of an account prior to this resolution are more than the cumulative provisioning requirement prescribed in the applicable sub-paragraphs above, the excess can be reversed only after one year from the date of implementation of resolution plan (i.e. when it is reflected in the books of the lender, hereinafter referred to as 'date of restructuring'), subject to satisfactory performance during this period.

vi The resolution plan and control rights should be structured in such a way so that the promoters are not in a position to sell the company/firm without the prior approval of lenders and without sharing the upside, if any, with the lenders towards loss in Part B.

vii If Part A subsequently slips into NPA category, the account will be classified with slippage in category with reference to the classification obtaining on the reference date and necessary provisions should be made immediately.

viii Where a bank/NBFC/AIFI chooses to make the prescribed provisions/write downs over more than one quarter and this results in the full provisioning/write down remaining to be made as on the close of a financial year, banks/NBFCs/AIFIs should debit 'other reserves' [i.e., reserves other than the one created in terms of Section 17(2) of the Banking Regulation Act 1949] by the amount remaining un-provided/not written down at the end

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of the financial year, by credit to specific provisions. However, bank/NBFC/ AIFI should proportionately reverse the debits to 'other reserves' and complete the provisioning/write down by debiting profit and loss account, in the subsequent quarters of the next financial year. Banks shall make suitable disclosures in Notes to Accounts with regard to the quantum of provision made during the year under this scheme and the quantum of unamortised provisions debited to 'other reserves' as at the end of the year.

5. **Fees and Charges:** The IBA will collect a fee from the lenders as a prescribed percentage of the outstanding debt of the borrowal entity to the consortium/ JLF/consortium/bank and create a corpus fund. This fund will be used to meet the expenses of the OC.
6. **Mandatory Implementation:** Once the resolution plan prepared/presented by the lenders is ratified by the OC, it will be binding on all lenders. They will, however, have the option to exit as per the extant guidelines on Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP).

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PRUDENTIAL NORMS ON INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES - SPREAD OVER OF SHORTFALL ON SALE OF NON-PERFORMING ASSETS TO SECURITISATION COMPANIES/ RECONSTRUCTION COMPANIES

Reserve Bank of India ("**RBI**") vide its Circular DBR.No.BP.BC.102/21.04.048/2015-16 dated June 13, 2016 provided for prudential norms on income recognition, asset classification and provisioning pertaining to advances.

- In the RBI circular DBOD.BP.BC.No.98/21.04.132/2013-14 dated February 26, 2014, as an incentive for early sale of non-performing assets ("**NPAs**") to Securitisation Companies/Reconstruction Companies ("**SCs/RCs**") created under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, banks were allowed to spread over any shortfall, if the sale value is lower than the Net Book Value ("**NBV**"), over a period of two years for NPAs sold up to March 31, 2015 and was subject to necessary disclosures in the Notes to Account in Annual Financial Statements of the banks. Vide RBI's circular DBR.No.BP.BC.94/21.04.048/2014-15 dated May 21, 2015, this facility of spreading over the shortfall was extended for NPAs sold up to March 31, 2016 and was subject to necessary disclosures in the Notes to Account in Annual Financial Statements of the banks.
- On a review, it has been decided to extend the dispensation of amortising the shortfall on sale of NPAs to SCs/RCs upto March 31, However, for assets sold from April 1, 2016 to March 31, 2017, banks will be allowed to amortise the shortfall over a period of only four quarters from the quarter in which the sale took place.

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- Further, where a bank chooses to make the necessary provisions over more than one quarter and this results in the full provisioning remaining to be made as on the close of a financial year, banks should debit 'other reserves' [i.e., reserves other than the one created in terms of Section 17(2) of the Banking Regulation Act 1949] by the amount remaining un-provided at the end of the financial year, by credit to specific provisions. However, banks should proportionately reverse the debits to 'other reserves' and complete the provisioning by debiting profit and loss account, in the subsequent quarters of the next financial year.
- Banks shall make suitable disclosures in Notes to Accounts with regard to the quantum of provision made during the year to meet the shortfall in sale of NPAs to SCs/RCs and the quantum of unamortised provision debited to 'other reserves' as at the end of the year.

AMENDMENT TO FOREIGN EXCHANGE MANAGEMENT (FOREIGN CURRENCY ACCOUNTS BY A PERSON RESIDENT IN INDIA) REGULATIONS, 2015

In exercise of the powers conferred by Section 9 and clause (e) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and in supersession of Notification No. FEMA 10/2000-RB dated May 3, 2000, the Reserve Bank of India vide its Notification No. FEMA 10 (R) /2015- RB dated June 1, 2016 made the following amendment to the regulations for opening, holding and maintaining of Foreign Currency Accounts and the limits up to which amounts can be held in such accounts by a person resident in India, namely:

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1. **Restriction on holding foreign currency account by a person resident in India:**

   Save as otherwise provided in the Act or rules or regulations made there under, no person resident in India shall open or hold or maintain a foreign currency account:

   Provided that a Foreign Currency Account held or maintained before the commencement of these Regulations by a person resident in India with special or general permission of the Reserve Bank, shall be deemed to be held or maintained under these Regulations:

   Provided further that the Reserve Bank, may on an application made to it, permit a person resident in India to open or hold or maintain a Foreign Currency Account, subject to such terms and conditions as may be considered necessary.

2. **Opening, holding and maintaining Foreign Currency Accounts in India:**

   A. **Exchange Earners' Foreign Currency Account:-**

   i A person resident in India may open, hold and maintain with an authorised dealer in India, a Foreign Currency Account to be known as Exchange Earners' Foreign Currency (EEFC) Account, subject to the terms and conditions of the Exchange Earners' Foreign Currency Account Scheme specified in the Schedule I.

   B. Resident Foreign Currency Account:-

   i A person resident in India may open, hold and maintain with an authorised dealer in India a Foreign Currency Account, to be known as a Resident Foreign Currency (RFC) Account, out of foreign exchange:

   - received as pension or any other superannuation or other monetary benefits from his employer outside India; or
   - realised on conversion of the assets referred to in sub-section (4) of section 6 of the Act, and repatriated to India; or

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- received or acquired as gift or inheritance from a person referred to in sub-section (4) of section 6 of the Act; or
- referred to in clause (c) of section 9 of the Act, or acquired as gift or inheritance there from; or
- received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

i The funds in a Resident Foreign Currency Account opened or held or maintained in terms of sub-regulation (1) shall be free from all restrictions regarding utilization of foreign currency balances including any restriction on investment in any form, by whatever name called, outside India.

ii Resident individuals are permitted to include resident relative(s) as joint holder(s) in their Resident Foreign Currency account on 'former or survivor' basis. However, such resident Indian relative joint account holder shall not be eligible to operate the account during the life time of the resident account holder.

Explanation – For the purpose of this sub-regulation, the expression 'relative' shall have the same meaning as assigned to it under section 2 (77) of the Companies Act, 2013.

C. Resident Foreign Currency (Domestic) Account

i A resident Individual may open, hold and maintain with an Authorised Dealer in India a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers' cheques as under:

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

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- 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
- by way of honorarium or gift while on a visit to any place outside India; or
- in the form of unspent amount of foreign exchange acquired by him from an authorised person for travel abroad; or
- as gift from a relative;

  Explanation - For the purpose of this sub-regulation, the expression 'relative' shall have the same meaning as assigned to it under section 2(77) of the Companies Act, 2013.
- by way of earning through export of goods/ services, or as royalty, honorarium or by any other lawful means;
- representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/ GDRs under the DR Scheme, 2014 approved by the Government of India.
- by way of earnings received as the proceeds of life insurance policy claims/ maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority .

ii Debits to the account shall be for payments towards a current account transaction in accordance with the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and towards a capital account transaction permissible under the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

iii The account shall be maintained in the form of Current Account and shall not bear any interest.

iv There shall be no ceiling on the balances in the account.

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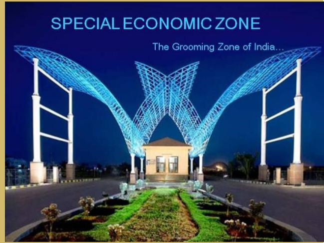
D. **A Unit in a Special Economic Zone (SEZ):** A unit located in a Special Economic Zone may open hold and maintain a Foreign Currency Account with an authorized dealer in India provided that,

i. all foreign exchange funds received by the unit in the Special Economic Zone (SEZ) are credited to such account,

ii. no foreign exchange purchased in India against rupees shall be credited to the account without prior permission from the Reserve Bank,

iii. the funds held in the account shall be used for bona fide trade transactions of the unit in the SEZ with the person resident in India or otherwise,

iv. the balances in the accounts shall be exempt from the restrictions imposed under Rule 5, except item 1(ii) of the Schedule III, of the Government of India Notification No.GSR.381(E) dated May 3, 2000, as amended from time to time.



Provided that the funds held in these accounts shall not be lent or made available in any manner to any person or entity resident in India not being a unit in Special Economic Zones.

E. Diamond Dollar Accounts (DDAs): An Authorized Dealer Category-I bank in India may allow firms and companies who comply with the eligibility criteria stipulated in the Foreign Trade Policy of Government of India, in force from time to time and the directions as may be issued by Reserve Bank of India, from time to time, to open, hold and maintain Diamond Dollar Accounts (DDAs) in India subject to the terms and conditions of the DDA Scheme specified in Schedule II.

F. **Exporters:** A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank in India, provided that:

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ii. approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015 has been obtained for undertaking the contract/ project/ export of goods or services, and

iii. the terms and conditions stipulated in the letter of approval have been duly complied with.

G. Other cases:

i. The Indian agent of a shipping or an airline company incorporated outside India, may open, hold and maintain a Foreign Currency Account with an authorized dealer in India for meeting the local expenses in India of such airline or shipping company:

Provided that the credits to such accounts are only by way of freight or passage fare collections in India or from his principal outside India.

ii. An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow shipmanning/ crew managing agencies in India to open and maintain non-interest bearing foreign currency accounts in India for the purpose of undertaking transactions in the ordinary course of their business.

iii. An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow Project Offices set up in India by foreign companies in terms of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000 dated May 3, 2000, as amended from time to time to open, hold and maintain non-interest bearing one or more foreign currency accounts in India for the projects to be executed in India.

iv. An Indian company receiving foreign investment under FDI route in terms of Foreign Exchange Management (Transfer or Issue of security by a Person Resident outside India) Regulations, 2000 dated May 3, 2000, may open and maintain a foreign currency account with an Authorized Dealer in India.

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Provided that the Indian investee company has impending foreign currency expenditure and the account shall be closed immediately after the requirements are completed and in no case shall be operational for more than six months from the date of opening of such account.

v. An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow opening temporary foreign currency accounts by organisers of international seminars, conferences, conventions etc. for holding such events in India for the receipt of the delegate fees and payment towards expenses including payment to special invitees from abroad.

3. Opening, holding and maintaining a Foreign Currency Account outside India:

A. Accounts of authorised dealers or their branches:

i. An authorised dealer in India may open, hold and maintain with his branch or head office or correspondent outside India, a Foreign Currency Account for the purpose of transacting foreign exchange business and other matters incidental thereto, in accordance with the provisions of the Act or the rules or regulations made or the directions issued thereunder.

ii. A branch outside India of a bank incorporated or constituted in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of carrying on normal banking business outside India, subject to compliance with the directions or guidelines issued from time to time by the Reserve Bank, and the regulatory authority in the country where the branch is located.

B. Account by a company/ firm in the name of its office/ branch/ representative outside India: A firm or a company or a body corporate registered or incorporated in India (hereinafter referred to as 'the Indian entity') may open, hold and maintain in the name of its office (trading or non-trading) or its branch set up outside India or its representative posted outside India, a foreign currency account with a bank outside India by making

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remittances from India for the purpose of normal business operations of the office/ branch or representative; Provided that:

i. the overseas branch/ office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;

ii. the total remittances made under this sub-Regulation by the Indian entity, to all such accounts in an accounting year shall not exceed

- 15 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, where the remittances are made to meet initial expenses of the branch or office or representative; and
- 10 per cent of such average annual sales/ income or turnover during the last financial year where the remittances are made to meet recurring expenses of the branch or office or representative;

i. the overseas branch/ office/ representative shall not enter in any contract or agreement in contravention of the Act, Rules or Regulations made thereunder;

ii. the account so opened, held or maintained shall be closed,

- if the overseas branch/ office is not set up within six months of opening the account, or
- within one month of closure of the overseas branch/ office, or
- where no representative is posted for six months,

and the balance held in the account shall be repatriated to India;

Provided further that the restriction contained in clause (b) of the first proviso shall not apply in a case where:

- the remittances to the account maintained under this sub-Regulation are made out of funds held in EEFC account of the Indian entity, or

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- the overseas branch/ office is set up or representative posted by a 100% Export Oriented Unit (EOU) or a unit in Export Processing Zone (EPZ) or in a Hardware Technology Park or in a Software Technology Park, within two years of establishment of the Unit.

Explanation: For the purpose of this sub-Regulation,

- *Purchase of acquisition of office equipment and other assets required for normal business operations of the overseas branch/ office/ representative will not be deemed as a capital account transaction;*
- *Transfer or acquisition of immovable property outside India, other than by way of lease not exceeding five years, by the overseas branch/ office/ representative will be subject to the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.*

C. **Exporters:** A person resident in India, being an exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank outside India, provided that -

i. approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015 has been obtained for undertaking the contract/ project/ export of goods or services, and

ii. the terms and conditions stipulated in the letter of approval have been duly complied with.

D. **For making Overseas Direct Investment:** An Indian party may open, hold and maintain Foreign Currency Account abroad for the purpose of making overseas direct investments subject to the following terms and conditions:

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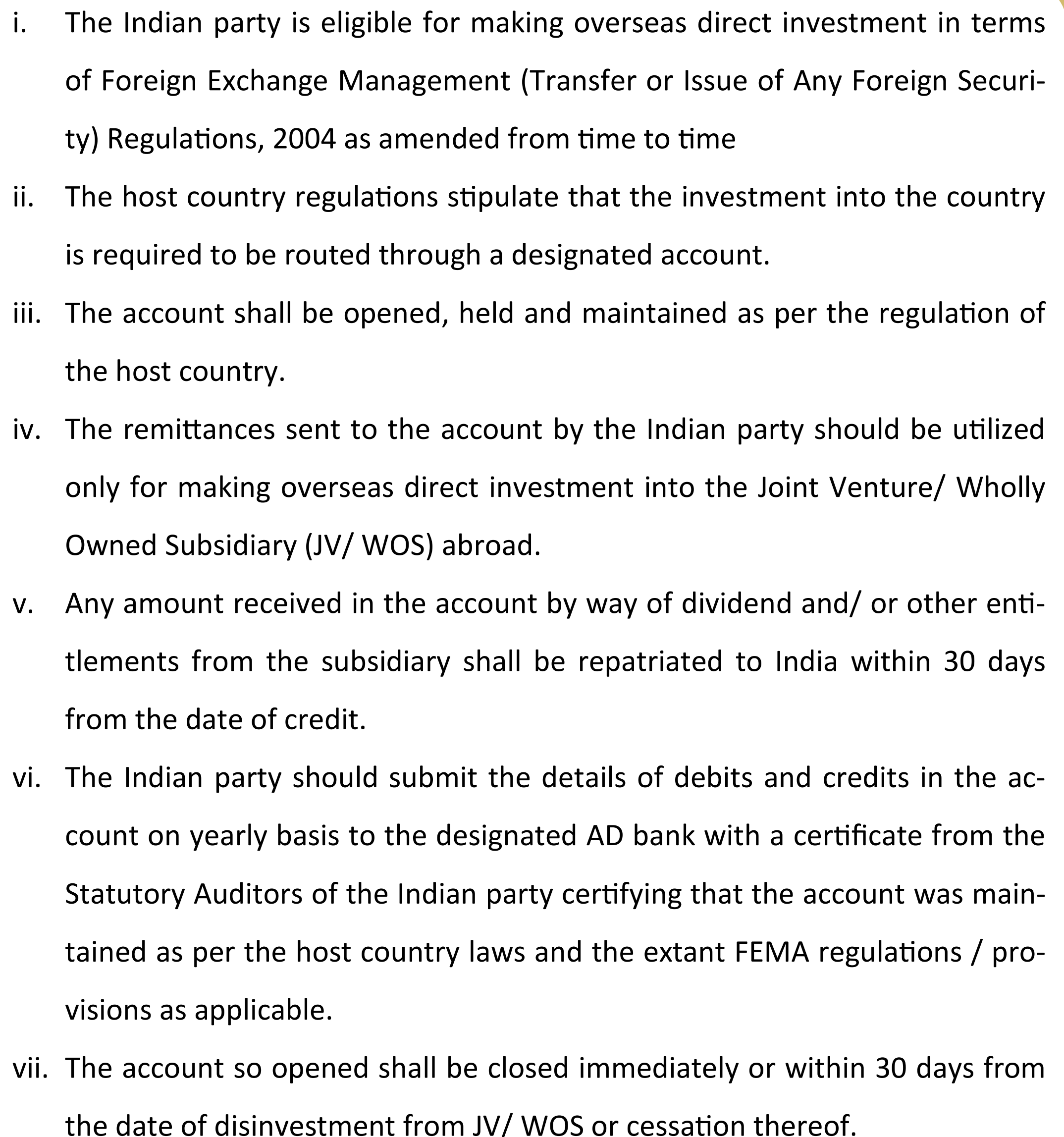

i. The Indian party is eligible for making overseas direct investment in terms of Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 as amended from time to time
ii. The host country regulations stipulate that the investment into the country is required to be routed through a designated account.
iii. The account shall be opened, held and maintained as per the regulation of the host country.
iv. The remittances sent to the account by the Indian party should be utilized only for making overseas direct investment into the Joint Venture/ Wholly Owned Subsidiary (JV/ WOS) abroad.
v. Any amount received in the account by way of dividend and/ or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
vi. The Indian party should submit the details of debits and credits in the account on yearly basis to the designated AD bank with a certificate from the Statutory Auditors of the Indian party certifying that the account was maintained as per the host country laws and the extant FEMA regulations / provisions as applicable.
vii. The account so opened shall be closed immediately or within 30 days from the date of disinvestment from JV/ WOS or cessation thereof.

Explanation: For the purpose of this regulation, the expression 'Indian party' shall have the same meaning as assigned to it in Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004."

E. **Accounts in respect of Startups:** An Indian startup or any other entity as may be notified by the Reserve Bank in consultation with the Central Government, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to it foreign exchange earnings out of exports/ sales made by the said entity and/ or the receivables, arising out of exports/ sales, of its overseas subsidiary.

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Provided that the balances in the account shall be repatriated to India within the period prescribed in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time, for realization of export proceeds.

Explanation: For the purpose of this sub-regulation a 'startup' means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India."

F. Other Cases:

i. Subject to compliance with the conditions in regard to raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs), the funds so raised may, pending their utilisation or repatriation to India, be held in deposits in foreign currency accounts with a bank outside India.

ii. A shipping or airline company incorporated in India may open, hold and maintain with a bank outside India, a Foreign Currency Account for the purpose of undertaking transactions in the ordinary course of its business.

iii. Insurance/ reinsurance companies registered with Insurance Regulatory and Development Authority of India (IRDA) to carry out insurance/ reinsurance business may open, hold and maintain a Foreign Currency Account with a bank outside India for the purpose of meeting the expenditure incidental to the insurance/ reinsurance business carried on by them and for that purpose, credit to such account the insurance/reinsurance premia received by them outside India.

iv. Resident individuals may open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Liberalised Remittance Scheme ("**Scheme**"). The account may be used for putting though all transactions connected with or arising from remittances eligible under this Scheme

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v. A person resident in India who has gone out of India to participate in an exhibition/ trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/ trade fair:

Provided that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/ trade fair.

vi. A person resident in India who has gone abroad for studies may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India.

Provided that all credits from India into the account shall be made in accordance with the Act, Rules and Regulations made thereunder.

Provided further that on his return to India, after completion of studies, such an account will deemed to have been opened under the Liberalised Remittance Scheme.

vii. A person resident in India who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India.

viii. A citizen of a foreign State, resident in India, being an employee of a foreign company or a citizen of India, employed by a foreign company outside India and in either case on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India of such foreign company may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture/ group company in India of such foreign company, by credit to such account, subject to payment of taxes, as

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applicable in India.(ii) A citizen of a foreign State resident in India being in employment with a company incorporated in India may open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees, to such account, for the services rendered to such an Indian company, subject to payment of taxes, as applicable in India.

Explanation:- For the purpose of this sub regulation, the expression 'company' shall include a 'Limited Liability Partnership' as defined under The Limited Liability Partnership Act, 2008.

4. **Types of accounts:** Unless otherwise specified in these Regulations, a Foreign Currency Account with an authorised dealer in India under these Regulations may be opened, held and maintained:

   i. in the form of current or savings or term deposit account in cases where the account holder is an individual, and in the form of current account or term deposit account in all other cases:

   Provided that the EEFC account referred to in Regulation 4 (A), shall be opened, held or maintained in a manner as prescribed by the Reserve Bank from time to time.

   ii. singly or jointly in the name of person eligible to open, hold and maintain such account.

5. **Remittances out of the account after the account holder's death:** On the death of a foreign currency account holder:

   i. the authorised dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holder;

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ii. a nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve Bank for such remittance;

iii. A resident nominee of an account held outside India in accordance with Regulation 5 shall close the account and bring back the proceeds to India through banking channels.

6. **Responsibility of authorized dealers maintaining foreign currency accounts:** An authorized dealer maintaining foreign currency accounts shall:

i. comply with the directions issued by the Reserve Bank from time to time; and

ii. submit periodic return or statement, if any, as may be stipulated by the Reserve Bank.

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SECURITIES EXCHANGE BOARD OF INDIA

CONSULTATION PAPER FOR AMENDMENTS TO THE SEBI (INFRASTRUCTURE INVESTMENT TRUSTS) REGULATIONS,

The Securities and Exchange Board of India issued a Consultation Paper for amendments to the SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT regulations) on June 1, 2016. The Paper was issued based on the feed-back received on the InvIT regulations from aforesaid stakeholders and it also proposes certain other amendments.

The issues and the proposals for the amendments are:

i. **Removing the restrictions on the SPV (only in case of such SPV being a Holding Company) to invest in other SPVs holding the assets:** The current regulations state that a SPV is a company or LLP, which holds not less than 90 percent of its assets directly in infrastructure projects and does not invest in other SPVs. It has been proposed that InvITs be allowed to invest in infrastructure projects through such SPVs (HoldCo) which hold stake in other SPVs having Infrastructure Assets. In view of the feedbacks received from the market participants, the following options are proposed:

   - To retain the existing provision i.e. single layer SPV or;
   - To amend the regulation 2 (1) (zy) and other related regulations for allowing investments by InvIT in two level SPV structure.

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ii. **Mandatory sponsor holding in InvIT:** The current regulations require the sponsor(s) of the InvIT to hold on a collective basis, not less than twenty five percent of the total units of InvIT on a post issue basis for a period of not less than 3 years from the date of listing such unit or the sponsor would be provided with one of the following options:-

- Sponsor(s) of the InvIT would hold not less than 10% of the total units of the InvIT on a post-issue basis subject to certain conditions as provided in the Paper.
- The sponsor would divest upto 85% subject to the terms of the concession agreement under certain arrangements.

iii. Increase the number of sponsors from 3 to 5: The current requirement mandates that the InvIT can have maximum of 3 sponsors, which shall collectively hold 25 percent of the units of InvIT on post issue basis. The consultation paper suggests two options i.e. the existing criteria or the sponsor holding 10% or divesting 85% subject to the compliance with conditions.

iv. **Approval of related party transactions by the unit holders:** Currently the regulations require the approval of 60% of the unit holders, apart from related parties, for passing related party transactions that are procedural in nature under regulation 22(3) and 22(4). Regulation 22(5) requires approval of 75% of the unit holders, apart from related parties, for passing of special resolutions such as change in investment manager, investment strategy etc. Accordingly, the following thresholds are proposed:

- For the purpose of regulation 22(3) and 22(4), the matter shall be approved if the votes cast by the unit holders in favor of the proposal shall be more than the number of votes cast by the unit holders against it.
- For the purpose of regulation 22(5), the matter shall be approved if the votes cast by the unit holders in favor of the proposal shall be at least one and half times more than the number of votes cast by the unit holders against it.

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Further, in both the above cases, the voting by any person, who is a related party in such transaction, as well as associates of such person (s) shall not be taken into account.

v. **Aligning minimum public holding requirements with SCRR:** The current regime requires that the units proposed to be offered to the public shall not be less than twenty five per cent of the total outstanding units. Further, the minimum public holding for the units of the publicly offered InvIT after listing shall be 25% of the total number of outstanding units, at all times, failing which action may be taken as may be specified by the Board and by the designated stock exchanges including delisting of units.

vi. **Eligibility criteria for Investment Managers:** Regulations currently require the investment manager to have not less than five years experience in fund management or advisory services or development in the infrastructure sector.The other conditions as prescribed in regulation 4(2)(e) shall remain unchanged.

vii. **Responsibilities of the Trustee and its associates:** Regulation 2(zv) of the InvIT regulations provides that "**related parties**" of InvIT shall include: (i) parties to the InvIT;(ii) any unit holder holding, more than 20% of the units of the InvIT; (iii) associates, promoters, directors, and partners of the persons mentioned in (i) and (ii). Regulation 9(19) of the InvIT regulations provides that the Trustee or its associates shall not invest in units of the InvIT in which it is designated as Trustee. Also, schedule III-13(c)and Schedule IV-(17) of the InvIT regulations requires brief description of the material litigations and regulatory actions, whether completed or pending, against the InvIT, sponsor(s), Investment Manager, Trustee, or any of their associates, if any in the last 5 years.

It is proposed that::

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- Associates of the Trustees would not form a part of the parties to the InvIT.
- Associates of Trustees would be allowed to invest in units of the InvIT in which it is designated as Trustee, subject to such transactions being conducted at an arm's length basis.
- The disclosure of litigations of associates of Trustee as per Schedule III and Schedule IV of the InvIT regulations, may not be required.

viii. **Allowing InvIT to lend to the underlying SPVs:** The InvIT regulations have been proposed to be amended to allow lending. However, it may be restricted to only the SPVs in which InvIT has invested, subject to other conditions as deemed necessary.

ix. Operational aspects:

- SEBI has received representations that as the infrastructure assets identified at the time of registration of InvIT may change at the time of filing of offer document. The proposal states that accordingly, the InvIT regulations may be amended to clarity that only Project Management Agreement may be required to be filed at the time of filing of offer document with SEBI.
- As per the InvIT regulations, the liability of the unit holders is limited to the extent of the units held by them. It has been proposed to clarify that the unit-holder is an investor and his rights and obligations are limited to the amount of his investment in the units of InvITs.

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INVESTOR PROTECTION FUND OF DEPOSITORIES

Securities Exchange Board of India ("**SEBI**") vide its notification No. SEBI/HO/MRD/DP/CIR/P/2016/58 dated June 7, 2016 issued in exercise of the powers conferred by Section 11 (1) of Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996 to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

SEBI (Depositories and Participants) (Amendment) Regulations, 2012 require every depository to establish and maintain an Investor Protection Fund ("**IPF**"). Pursuant to the aforesaid committee recommendations, the SEBI (Depositories and Participants) Regulations were amended mandating the depositories to credit five per cent or such percentage as may be specified by the Board, of its profits from depository operations every year to the IPF.

The following guidelines are being issued with regard to IPF of the Depositories:

i. **Utilization of the IPF**: The IPF may be utilized for the following purposes with a focus on depository related services:

- Promotion of investor education and investor awareness programmes through seminars, lectures, workshops, publications (print and electronic media), training programmes etc. aimed at enhancing securities market literacy and promoting retail participation in securities market.
- To aid, assist, subsidise, support, promote and foster research activities for promotion/ development of the securities market.
- To utilize the fund for supporting initiatives of Depository Participants for promotion of investor education and investor awareness programmes.
- To utilize the fund in any other manner as may be prescribed/ permitted by SEBI in the interest of investors.

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ii. **Depositories** shall frame their internal guidelines on utilisation of the funds in accordance with the aforementioned objectives and post approval of their board, submit the same to SEBI within 30 days from the date of this circular. Depositories shall also keep SEBI informed of any subsequent changes in internal guidelines with regard to utilization of IPF.

iii. **Constitution and Management of the IPF:**

- The IPF shall be administered by way of a Trust created for the purpose.
- The IPF Trust shall consist of atleast one Public Interest Director ("**PID**") of the depository, one person of eminence from an academic institution from the field of finance / an expert in the field of investor education / a representative from the registered investor associations recognized by SEBI and Managing Director of the Depository.
- The Depository shall provide the secretariat for the IPF Trust.
- The Depository shall ensure that the funds in the IPF are kept in a separate account designated for this purpose and that the IPF is immune from any liabilities of the Depository.

iv. **Contribution to the IPF:** The following contributions shall be made by the Depository to the IPF:

- 5% of their profits from Depository operations every year. The depositories shall transfer the amount with effect from the Financial Year 2012-13 as specified in the SEBI (Depositories and Participants) (Amendment) Regulations, 2016.

- All fines and penalties recovered from Depository Participants and other users including Clearing Member pool account penalty as specified in SEBI circular no. SMDRP/Policy/Cir-05/2001 dated February 01, 2001.

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- Interest or Income received out of any investments made from the IPF. iv. Funds lying to the credit of IPR (Investor Protection Reserve) / BOPF (Beneficial Owners Protection Fund) of the Depository or any other such fund / reserve of the Depository shall be transferred to IPF.

- Any other sums as may be prescribed by SEBI from time to time.

v. **Investments of Fund:**

- Funds of the Trust shall be invested in instruments such as Central Government securities, fixed deposits of scheduled banks and any such instruments which are allowed as per the investment policy approved by the Board of the Depository. The investment policy shall be devised with an objective of capital protection along with highest degree of safety and least market risk.

- The balance available in the IPF as at the end of the month and the amount utilised during the month including the manner of utilization shall be reported in the Monthly Development Report of the Depository.

- The Depositories shall implement the provisions of this circular within three months from the date of issuance of this circular.

- The Depositories are advised to:

  i. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision, as may be applicable/necessary;
  ii. disseminate the provisions of this circular on their website;
  iii. communicate to SEBI, the status of implementation of the provisions of this circular in their Monthly Development Report.

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KNOW YOUR CLIENT NORMS FOR ODI SUBSCRIBERS, TRANSFERABILITY OF ODIS, REPORTING OF SUSPICIOUS TRANSACTIONS, PERIODIC REVIEW OF SYSTEMS AND MODIFIED ODI REPORTING FORMAT.

Securities Exchange Board of India ("**SEBI**") in exercise of powers conferred under SEBI Section 11 (1) of the Securities and Exchange Board of India Act, 1992 vide its Notification No. CIR/IMD/FPI&C/59/2016 dated June 10, 2016 laid down the conditions to be complied with regarding Overseas Direct Investment ("**ODI**"), Foreign Portfolio Investors ("**FPIs**") issuing ODIs (hereinafter referred to as ODI Issuers) under the SEBI (Foreign Portfolio Investors) Regulation, 2014 ("**FPI Regulations**").

This circular shall come into effect from July 01, 2016. The reporting of the ODI in new format shall be applicable from the month of July 2016 to be submitted on or before August 10, 2016.

i. **Applicability of Indian Know Your Client ("KYC")/AML norms for Client Due Diligence:**

- SEBI vide circular No. CIR/IMD/FIIC/20/ 2014 dated November 24, 2014 had aligned the applicable eligibility and investment norms of FPI regime with norms applicable for subscription through the ODI route.

- With regards to KYC of ODI subscribers, ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold as defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 i.e. 25 % in case of a company and 15 % in case of partnership firms/ trusts/ unincorporated bodies. ODI issuers shall also be required to identify and verify the person(s) who control the operations, when no beneficial owner is identified based on the aforesaid materiality threshold.

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- It is clarified that:-
  a. The definition of the term "**Beneficial Owner**" shall be as per sub-rule (3) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.
  b. The KYC documentation to be obtained by ODI Issuers from each of such ODI subscribers in respect of beneficial owner, who holds above the threshold limits in such ODI subscriber, should be as per **Annexure (I)**.
  c. The materiality threshold to identify the beneficial owner should be first applied at the ODI subscriber level and look through principle shall be applied to identify the beneficial owner of the material shareholder/ owner entity. Only beneficial owner with holdings equal & above the materiality thresholds in the subscriber need to be identified through the aforesaid look through principle. In such cases, identity and address proof as specified in **Annexure (I)**.

  d. Where no material shareholder/owner entity is identified in the ODI subscriber using the materiality threshold, the identity and address proof of the relevant natural person who holds the position of senior managing official of the material shareholder/owner entity should be obtained [as given in Annexure (I)]
  e. ODI Issuer shall ensure that any transfer of offshore derivative instruments issued by or on its behalf is carried out subject to the following conditions :

     A. Such offshore derivative instruments are transferred only to persons in accordance with Regulation 22 (1) of SEBI (Foreign Portfolio Investors) Regulations, 2014 ; and

     B. Prior consent of the foreign portfolio investor is obtained for such transfer, unless the person to whom the offshore derivative instruments are to be transferred to, are pre-approved by the foreign portfolio investor.

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C. Necessary changes in Regulation 22(2) of SEBI (FPI) Regulations, 2014 are separately being carried out.

D. The ODI issuers shall be required to maintain with them the KYC documents as prescribed above at all times and should be made available to SEBI on demand.

ii. **KYC Review:** The KYC review shall be done on the basis of the risk criteria as determined by the ODI issuers, as follows:

- At the time of on-boarding and once every three years for low risk clients.
- At the time of on-boarding and every year for all other clients.

It is clarified that in case of existing ODI Subscriber, the KYC review should be done within three years for low risk clients and one year for all other clients from the effective date of this circular and accordingly reported in revised ODI reporting format.

iii. **Suspicious Transactions Report:** ODI Issuers shall be required to file suspicious transaction reports, if any, with the Indian Financial Intelligence Unit, in relation to the ODIs issued by it.

iv. **Reporting of complete transfer trail of ODIs:** Presently, the details of the holder of ODIs have to be mandatorily reported to SEBI on a monthly basis. The ODI issuers are also required to capture the details of all the transfers of the ODIs issued by them and these can be made available to SEBI on demand. The Board decided that in the monthly reports on ODIs all the intermediate transfers during the month would also be required to be reported..

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v. **Reconfirmation of ODI positions:** ODI Issuers shall be required to carry out reconfirmation of the ODI positions on a semi-annual basis. In case of any divergence from reported monthly data, the same should be informed to SEBI in format provided.

vi. **Periodic Operational Evaluation:** ODI Issuers shall be required to put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A certificate in this regard should be submitted on an annual basis to SEBI by the Chief Executive Officer or equivalent of the ODI Issuer. The said certificate should be filed within one month from the close of every calendar year.

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Warm Regards,

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