

FEMA UPDATES

Brief of some important FEMA updates:

1. Liberalisation of ECB policy for Infrastructure Finance Companies:

Further showing commitments to budget proposals and subsequent facilities to IFC, RBI has further relaxed ECB norms for IFC, enabling these companies to get ECB 50% of their owned funds under automatic route.

Other terms and conditions such as USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognized lender, end-use, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged.

(External Commercial Borrowings (ECB) Policy A.P. (DIR Series) Circular No. 51, dated 11-5-2010)

2. Through Press note 2/2010 dt. 10.05.2010 Government of India has banned FDI in manufacture of Cigars & Cigarettes. Earlier for this sector was under approval route with permission of 100% FDI.

(Review of the policy on foreign direct investment in the manufacture of Cigarettes etc.-Press Note No. 2 (2010 Series), dated 10-5-2010)

3. Release of Foreign Exchange for Visits Abroad: Limit of USD 2000 has been increased upto USD 3000.

(A.P. (DIR Series) Circular No. 50/A.P. (FL Series) Circular No. 7, dated 4-5-2010 Release of Foreign Exchange for Visits Abroad – Currency Component)

4. In a very important amendment RBI has issued the pricing guidelines for issues /transfer of shares to NON RESIDENT. Old CCI guidelines has been replaced by new sets of guidelines. In case of listed shares/ securities valuation shall be done on the basis of SEBI guidelines on preference issues of shares. In case of non listed shares/ securities valuation to be done by Merchant Banker -1 or Chartered Accountants on the basis of free cash flow method.

A. P. (DIR Series) Circular No. 49, dated 4-5-2010 -Foreign Direct Investment (FDI) in India - Transfer of Shares / Preference Shares / Convertible Debentures by way of Sale - Revised pricing guidelines)
Corresponding Notification No. G.S.R. 341(E) [No. FEMA 205/2010-RB], dated 7-4-2010 in regulation 6.

(All relevant notification all given below for reference)

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External Commercial Borrowings (ECB) Policy

A.P. (DIR Series) Circular No. 51, dated 11-5-2010

Attention of Authorized Dealer Category - I (AD Category - I) banks is invited to the A.P. (DIR Series) Circular No.05 dated August 1, 2005 and A.P. (DIR Series) Circular No.39 dated March 02, 2010 relating to External Commercial Borrowings (ECB).

2. On a review of the policy, it has been decided to modify the extant ECB policy in respect of the Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) categorised as IFCs by the Reserve Bank. As per the extant norms, IFCs have been permitted to avail of ECBs for on-lending to the infrastructure sector, as defined in the extant ECB policy, under the **approval route**. As a measure of liberalisation of the existing procedures, it has been decided to permit the IFCs to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds under the **automatic route**, subject to their compliance with the prudential guidelines already in place. ECBs by IFCs above 50 per cent of their owned funds would require the approval of the Reserve Bank and will, therefore, be considered under the **approval route**. Designated Authorized Dealer banks should ensure compliance with the extant norms while certifying the ECB application both under the automatic and approval routes.

3. All the other aspects of ECB policy such as USD 500 million limit per company per financial year under the automatic route, eligible borrower, recognised lender, end-use, average maturity period, prepayment, refinancing of existing ECB and reporting arrangements remain unchanged.

4. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

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

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Review of the policy on foreign direct investment in the manufacture of Cigarettes etc.

Press Note No. 2 (2010 Series), dated 10-5-2010

1.0 The Present Position

The present policy of Government of India permits 100% Foreign Direct Investment (FDI) under Government route i.e. with prior approval of Foreign Investment Promotion Board (FIPB) in the manufacture of Cigars & Cigarettes, subject to obtaining industrial license under the Industries (Development & Regulation) Act, 1951.

2.0 Revised Position

The Government of India has reviewed the extant policy and it has been decided to prohibit FDI in manufacturing of 'Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes' (Code 24.02 of Indian Trade Classification which follows the Harmonized Commodity Description and Coding System) and to include the activity in the list of activities/sectors prohibited for FDI.

3.0 Accordingly, the following amendments are made in the Consolidated FDI Policy issued vide Department of Industrial Policy & Promotion Circular 1 of 2010 dated March 31, 2010.

3.1 Para 5.7 relating to Cigars & Cigarettes, stands deleted.

3.2 In paragraph 5.1, which lists the sectors where FDI is prohibited, a new entry below the entry (i) is inserted as follows:

" j) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. "

4.0 The above decision will take immediate effect.

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A.P. (DIR Series) Circular No. 50/

A.P. (FL Series) Circular No. 7, dated 4-5-2010

Release of Foreign Exchange for Visits Abroad – Currency Component

Attention of Authorised Persons in foreign exchange is invited to A.P.(DIR Series) Circular No. 19 dated October 30, 2000 and A.P. (DIR Series) Circular No.11 [A.P. (F.L. Series) Circular No.1] dated November 13, 2001, in terms of which Authorised Dealers and Full Fledged Money Changers are permitted to sell foreign exchange in the form of foreign currency notes and coins, up to USD 2,000 or its equivalent, to the travellers proceeding to countries other than Iraq, Libya, Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States. The existing limits have been reviewed and it has been decided to increase this ceiling, with immediate effect, to USD 3,000 (US Dollar Three thousand only) to the travellers proceeding to these countries, without the prior permission from the Reserve Bank. Authorised Dealers and Full Fledged Money Changers may accordingly sell foreign exchange in the form of foreign currency notes and coins, up to USD 3,000 or its equivalent, out of the overall foreign exchange released.

2. Authorised Dealers and Full Fledged Money Changers may, as hitherto, continue to sell foreign exchange in the form of foreign currency notes and coins up to USD 5,000 or its equivalent to the travellers proceeding to Iraq or Libya, out of the overall foreign exchange released and full foreign exchange may be released in the form of foreign currency notes and coins to the travellers 2

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proceeding to the Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States.

3. Authorised Persons may bring the contents of this circular to the notice of their constituents and customers concerned.

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

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A. P. (DIR Series) Circular No. 49, dated 4-5-2010

**Foreign Direct Investment (FDI) in India -
Transfer of Shares / Preference Shares / Convertible Debentures
by way of Sale - Revised pricing guidelines**

Attention of the Authorised Dealer Category – I (AD Category - I) banks is invited to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

2. In terms of Schedule 1 of the Notification, an Indian company may issue equity shares, compulsorily convertible preference shares and compulsorily convertible debentures (equity instruments) to a person resident outside India under the FDI policy, subject to inter alia, compliance with the pricing guidelines. Further, in terms of the A. P. (DIR Series) Circular No.16 dated October 4, 2004 and A. P. (DIR Series) Circular No. 63 dated April 22, 2009, general permission is available for transfer of equity instruments, by way of sale, from residents to non-residents (including transfer of subscriber's shares) of an Indian company in sectors other than financial services sector (i.e. Banks, NBFCs, Insurance, Asset Reconstruction Companies, Infrastructure companies in securities market namely, Stock Exchanges, Depositories and Clearing Corporations, Credit Information Companies and Commodity Exchanges) from residents to non-residents and vice versa. 2

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3. The extant guidelines have been reviewed in consultation with the Government of India and accordingly the pricing guidelines in respect of issue of shares including preferential allotment have been revised. A copy of the Notification No. FEMA 205/2010-RB dated April 7, 2010, notified vide G.S.R. No.341 (E) dated April 21, 2010, amending the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated May 3, 2000) issued in this regard is enclosed (Annex-II).
4. Further, the pricing guidelines for transfer of equity instruments from a resident to a non-resident and vice versa issued vide A. P. (DIR Series) Circular No.16 dated October 4, 2004 have also been reviewed and the paragraph Nos. 2.2 and 2.3 of the Annex to the circular have been accordingly amended. The revised instructions applicable to transfer of shares of an Indian company in all sectors are given in the Annex-I. All the other instructions of A. P. (DIR Series) Circular No.16 dated October 4, 2004 shall remain unchanged.
5. These directions will become operative with immediate effect.
6. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.
7. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law. 3

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Foreign Exchange Management (Transfer or Issue of Security by a person Resident Outside India) (Amendment) Regulations, 2010 – Amendment in regulation 6 and Schedule I

Notification No. G.S.R. 341(E) [No. FEMA 205/2010-RB], dated 7-4-2010

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB dated 3rd May, 2000), namely :-

1. Short Title and Commencement:-

- (i) (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Amendment) Regulations, 2010.
- (ii) They shall come into force from the date of their publication in the Official Gazette.

2. Amendment of Regulation

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000, (Notification No. FEMA 20/2000-RB dated 3rd May, 2000), (hereafter referred to as “the principal regulations”)

- (i) (i) In Regulation 6, in sub-regulation (2), for clause (iv), the following shall be substituted, namely :-
“(iv) The offer on right basis to the persons resident outside India shall be:
 - (a) (a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company
 - (b) (b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.”
- (ii) (ii) In Schedule 1, for paragraph 5, the following paragraph shall be substituted, namely :-

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“5. Issue price

Price of shares issued to persons resident outside India under this Schedule, shall not be less than :-

- (a) (a) the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognized stock exchange in India;
- (b) (b) the fair valuation of shares done by a SEBI registered Category-I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognized stock exchange in India; and
- (c) (c) the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.”

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Foreign Exchange Management (Foreign Currency Accounts By a Person Resident in India) (Amendment) Regulation, 2010 – Amendment in regulation 6

Notification No. G.S.R. 340(E) [NO. FEMA 204/2010-RB], dated 5-4-2010

In exercise of the powers conferred by clause (b) of Section 9 and clause (e) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), Reserve Bank of India makes the following amendments to the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 (Notification No. FEMA 10/2000-RB dated 3rd May, 2000), as amended from time to time, namely :—

1. Short Title and Commencement :

- (i) (i) These Regulations may be called the Foreign Exchange Management (Foreign Currency accounts by a Person Resident in India) (Amendment) Regulations, 2010,
- (ii) (ii) They shall come into force from the date(s) specified hereunder.

2. Amendment of the Regulations :

In the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000, in Regulation 6 after sub-regulations (2), the following sub-regulation shall be added, namely :—

- (i) (i) “(3) An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow Project Officer set up in India by foreign companies in terms of clause (ii) of Regulation 5 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 foreign currency account in India for the projects to be executed in India.”

The regulation shall be deemed to have come into force from May 17, 2005.@

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- (ii) (ii) In sub-regulation (3) of Regulation 6 as amended by clause (i) above, for the words “foreign currency account” the words “one or more foreign currency account” the words “one or more foreign currency accounts” shall be substituted, which shall be deemed to have come into force from July 31, 2008.