

Reporting under Foreign Exchange Management Act, 1999

A.P. (DIR Series 2012-13) Circular No. 76, dated 17-1- 2013

In terms of section 11(2) of FEMA, 1999, the Reserve Bank may, for the purpose of ensuring the compliance with the provisions of the Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit. Accordingly, RBI has entrusted to the Authorised Dealers (ADs) the responsibility of complying with the prescribed rules/regulations for the foreign exchange transactions and reporting the same as per the directions issued from time to time.

2. During the compounding process, on a number of occasions, it has been brought to our notice by the applicants that the contraventions of the provisions of FEMA by corporates and individuals are due to the acts of omission and commission of the Authorised Dealers and some of the applicants have also produced documentary evidence in support of their claim. Such contraventions being dealt with by the Reserve Bank mainly relate to:

- i.* Draw down of External Commercial Borrowing (ECB) without obtaining Loan Registration Number (LRN) [Regulations 3 and 6 of FEMA 3/2000];
- ii.* Allowing draw down of ECB under the automatic route from unrecognised lender, to ineligible borrower, for non-permitted end uses, etc. [Regulations 3 and 6 of FEMA 3/2000];
- iii.* Non-filing of form ODI for obtaining UIN before making the second remittance to overseas WOS/JV for Overseas Direct Investment (ODI) [Regulation 6(2)(vi) of FEMA 120/2004];
- iv.* Non-submission of Annual Performance Reports (APRs)/copies of Share Certificates to the AD (and non-reporting thereof by the AD to Reserve Bank) in respect of overseas investments [Regulation 15 of FEMA 120/2004];
- v.* Delay in submission of the Advance Reporting Format in respect of Foreign Direct Investment (FDI) to the concerned Regional Office of the Reserve Bank [paragraph 9(1)(A) of Schedule I to FEMA 20/2000];
- vi.* Delay in filing of details after issue of eligible instruments under FDI within 30 days in form FC-GPR to the concerned Regional Office of the Reserve Bank [paragraph 9(1)(B) of Schedule I to FEMA 20/2000];
- vii.* Delay in filing of details pertaining to transfer of shares for FDI transactions in form FC-TRS by resident individual/companies [Regulation 10(A)(b) of FEMA 20/2000]; etc.

3. From the data on compounding cases received by Reserve Bank, it is observed that more than 70% of the total cases pertain to FDI within which about 72% relate to delay in

advance reporting/submission of FCGPR. In the case of ECB, 24% of the cases received relate to drawdown without obtaining LRN. Similarly, 66% of the ODI cases relate to non-reporting of overseas investments online. Authorised Dealers have an important role to play in avoidance of such contraventions and accordingly, the dealing officials in the banks need to be sensitised and trained to discharge this function efficiently.

4. All the transactions involving Foreign Direct Investment (FDI), External Commercial Borrowing (ECB) and Outward Foreign Direct Investment (ODI) are important components of our Balance of Payments statistics which are being compiled and published on a quarterly basis. Any delay in reporting affects the integrity of data and consequently the quality of policy decisions relating to capital flows into and out of the country. Authorised Dealers are, therefore, advised to take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions so that contraventions of provisions of FEMA, 1999 attributable to the Authorised Dealers do not occur.

5. In this connection, it is reiterated that in terms of section 11(3) of FEMA, 1999, the Reserve Bank may impose on the authorized person a penalty for contravening any direction given by the Reserve Bank under this Act or failing to file any return as directed by the Reserve Bank.

6. 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).