

RBI/2013-14/566 A.P. (DIR Series) Circular No. 123

April 16, 2014

Foreign Direct Investment (FDI) in Limited Liability Partnership (LLP)

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to Schedule I to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (The Principal Regulations), notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. In terms of extant instructions, only a Company incorporated under the Companies Act, 1956 or a Venture Capital Fund is eligible to accept FDI.

2. It has now been decided that Limited Liability Partnership (LLP) formed and registered under the Limited Liability Partnership Act, 2008 shall be eligible to accept Foreign Direct Investment (FDI) subject to the conditions given in Annex I.

3. A copy of Press Note No. 1 (2011 series) dated May 20, 2011 issued in this regard by Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce & Industry, Government of India is enclosed. A reference is also drawn to paragraph 3.2.5 of the Consolidated FDI Policy Circular 1 of 2013 dated April 5, 2013 issued by DIPP, in the matter.

4. Reserve Bank has since amended the Principal Regulations through the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment) Regulations, 2014 notified vide Notification No. FEMA. 298 /2014-RB dated March 13, 2014 c.f. G.S.R. No.190(E) dated March 19, 2014.

5. The instructions issued in this circular shall be effective from May 20, 2011. However, reporting requirement of FDI in LLP shall come into force from the date of issue of instructions by the Reserve Bank in this regard. The LLP which have received foreign investment in terms of FIPB approval between May 20, 2011 to the date of this circular, shall comply with the reporting requirement in respect of FDI within 30 or 60 days, as applicable, from the date of this circular.

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

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

Yours faithfully,

(Rudra Narayan Kar)
Chief General Manager-in-Charge

Scheme for Acquisition/ Transfer by a person resident outside India of capital contribution
or
profit share of Limited Liability Partnerships (LLPs)

The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLPs) formed and registered under the Limited Liability Partnership Act, 2008.

1. Eligible Investors:

A person resident outside India or an entity incorporated outside India shall be eligible investor for the purpose of FDI in LLPs. However, the following persons shall not be eligible to invest in LLPs:

- (i) a citizen/entity of Pakistan and Bangladesh or
- (ii) a SEBI registered Foreign Institutional Investor (FII) or
- (iii) a SEBI registered Foreign Venture Capital Investor (FVCI) or
- (iv) a SEBI registered Qualified Foreign Investor (QFI) or
- (v) a Foreign Portfolio Investor registered in accordance with Securities and Exchange Board of India(Foreign Portfolio Investors) Regulations, 2014 (RFPI).

2. Eligibility of LLP for accepting foreign Investment:

(i) An LLP, existing or new, operating in sectors/activities where 100% FDI is allowed under the automatic route of FDI Scheme would be eligible to receive FDI. For ascertaining such sectors, reference shall be made to Annex-B to Schedule 1 of Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

(ii) An LLP engaged in the following sectors/activities shall not be eligible to accept FDI:

- a) Sectors eligible to accept 100% FDI under automatic route but are subject to FDI-linked performance related conditions (for example minimum capitalisation norms applicable to 'Non-Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects', etc.); or
- b) Sectors eligible to accept less than 100% FDI under automatic route; or
- c) Sectors eligible to accept FDI under Government Approval route; or
- d) Agricultural/plantation activity and print media; or

e) Sectors not eligible to accept FDI i.e. any sector which is prohibited under the extant FDI policy (Annex-A to Schedule 1 to Notification No. FEMA. 20/ 2000-RB dated 3rd May 2000) as well as sectors/activities prohibited in terms of Regulation 4(b) to Notification No. FEMA.1/ 2000-RB dated 3rd May 2000, as amended from time to time.

3. Eligible investment:

Contribution to the capital of a LLP would be an eligible investment under the Scheme. Note: Investment by way of 'profit share' will fall under the category of reinvestment of earnings

4. Entry Route:

Any FDI in a LLP shall require prior Government/FIPB approval.

Any form of foreign investment in an LLP, direct or indirect (regardless of nature of 'ownership' or 'control' of an Indian Company) shall require Government/FIPB approval.

5. Pricing:

FDI in an LLP either by way of capital contribution or by way of acquisition / transfer of 'profit shares', would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted/ adopted as per market practice (hereinafter referred to as "fair price of capital contribution/profit share of an LLP") and a valuation certificate to that effect shall be issued by a Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

In case of transfer of capital contribution/profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution/profit share of an LLP. Further, in case of transfer of capital contribution/profit share from a non-resident to a resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution/profit share of an LLP.

6. Mode of payment for an eligible investor:

Payment by an eligible investor towards capital contribution/profit share of LLPs will be allowed only by way of cash consideration to be received -

i) by way of inward remittance through normal banking channels; or

ii) by debit to NRE/FCNR(B) account of the person concerned, maintained with an AD Category - I bank.

7. Reporting:

(i) LLPs shall report to the Regional Office concerned of the Reserve Bank, the details of the receipt of the amount of consideration for capital contribution and profit shares in Form FOREIGN DIRECT INVESTMENT-LLP(I) as given in Annex II, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor in Annex IV, through an AD Category - I bank, and valuation certificate (as per paragraph 5 above) as regards pricing at the earliest but not later than 30 days from the date of receipt of the amount of consideration. The report would be acknowledged by the Regional Office concerned, which would allot a Unique Identification Number (UIN) for the amount reported.

(ii) The AD Category - I bank in India, receiving the remittance should obtain a KYC report in respect of the foreign investor from the overseas bank remitting the amount.

(iii) Disinvestment / transfer of capital contribution or profit share between a resident and a non-resident (or vice versa) shall require to be reported within 60 days from the date of receipt of funds in Form FOREIGN DIRECT INVESTMENT-LLP(II) as given in Annex III.

8. Downstream investment:

a) An Indian company, having foreign investment (direct or indirect, irrespective of percentage of such foreign investment), will be permitted to make downstream investment in an LLP only if both, the company as well as the LLP, are operating in sectors where 100% FDI is allowed under the automatic route and there are no FDI-linked performance related conditions. Onus shall be on the LLP accepting investment from the Indian Company registered under the provisions of the Companies Act, as applicable, to ensure compliance with downstream investment requirement as stated above.

b) An LLP with FDI under this scheme will not be eligible to make any downstream investments in any entity in India.

9. Other Conditions:

(i) In case, an LLP with FDI, has a body corporate as a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the Limited Liability Partnership Act, 2008, such a body corporate should only be a company registered in India under the provisions of the Companies Act, as applicable and not any other body, such as an LLP or a Trust. For such LLPs, the designated partner 'resident in India', as defined under the 'Explanation' to Section 7(1) of the Limited Liability Partnership Act, 2008, would also have to satisfy the definition of 'person resident in India', as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.

(ii) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.

(iii) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except the stipulation as regards mode of payment) are met and with the prior approval of FIPB/Government.

(iv) LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).