

Recent FEMA Updates

FOREIGN DIRECT INVESTMENT (FDI) IN INDIA - ISSUE OF EQUITY SHARES UNDER THE FDI SCHEME ALLOWED UNDER THE GOVERNMENT ROUTE

A. P. (DIR SERIES 2011-12) CIRCULAR NO. 120, DATED 8-5-2012

As per A.P. (DIR Series) Circular No. 74 dated June 30, 2011, and A.P. (DIR Series) Circular No. 55 dated December 09, 2011, issue of equity shares/preference shares permitted, under the Government route by conversion of import of capital goods/machineries/equipments (including second-hand machineries) and pre-operative/pre-incorporation expenses (including payments of rent, etc.), subject to the terms and conditions stated therein.

Now, with a view to incentivising use of machinery embodying the latest state-of-the-art technology, compliant with international standards, in terms of being green, clean and energy efficient, it has now been decided to exclude conversion of imported second-hand machinery from the purview of this provision.

Thus now onwards, issues of share capital against the import of second hand machinery is not allowed.

FOREIGN INVESTMENT IN COMMODITY EXCHANGES AND NBFC SECTOR - AMENDMENT TO THE FOREIGN DIRECT INVESTMENT (FDI) SCHEME

A. P. (DIR SERIES 2011-12) CIRCULAR NO. 121, DATED 8-5-2012

As per Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time read with para 2 of [A.P \(DIR Series\) Circular No.41 dated April 28, 2008](#), which allowed foreign investment in commodity exchanges, subject to a composite (FDI & FII) ceiling of 49 per cent with FDI limit of 26 per cent and FII limit of 23 per cent under Portfolio Investment Scheme (PIS), subject to conditions stated therein.

The extant policy for foreign investment in commodity exchanges, has since been reviewed and it has been decided that prior approval of the Government (FIPB) would be required only for FDI component and Government approval would not be required for investment by registered FIIs in commodity exchanges. All other conditions contained in A.P (DIR Series) Circular No.41 dated April 28, 2008 shall remain unchanged.

Further, under the extant FDI policy, 'leasing and finance' is one of the 18 NBFC activities wherein FDI up to 100 per cent is permitted under automatic route, subject to minimum capitalisation norms. It is hereby clarified that FDI is permitted only in 'financial leases' (financial leasing activity) and not in 'operating leases' (operating leasing activity).

Recent FEMA Updates

EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY - UTILIZATION OF ECB PROCEEDS FOR RUPEE EXPENDITURE

A. P. (DIR SERIES 2011-12) CIRCULAR NO. 119, DATED 7-5-2012

As per the current guidelines, ECB proceeds can be utilized for permissible foreign currency expenditure and Rupee expenditure. On a review, it has been decided that at the time of availing Loan Registration Number (LRN) from the Reserve Bank, borrowers should provide bifurcation of the utilization of the ECB proceeds towards foreign currency and Rupee expenditure in Form-83.

The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India as per A.P. (DIR Series) Circular No. 52, dated November 23, 2011 is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

The modifications to the ECB policy will come into force with immediate effect and subject to review. All other aspects of the ECB policy shall remain unchanged.

EASE OF FOREIGN EXCHANGE FOR MISCELLANEOUS REMITTANCES - LIMIT RAISED FROM USD 5000 TO USD 25000

A.P. (DIR SERIES 2011-12) CIRCULAR NO. 118, DATED 7-5-2012

As per current provisions, upto USD 5000 or its equivalent, can be released BY AD, for all permissible transactions on the basis of a simple letter from the applicant containing the basic information, viz., names and the addresses of the applicant and the beneficiary, amount to be remitted and the purpose of remittance. It was clarified in the circular that Authorised Dealers need not insist upon submission of A2 Forms in such cases. ([A.P.\(DIR Series\) Circular No. 55 dated December 23, 2003.](#))

With a view to further liberalizing the documentation requirements, the limit for foreign exchange remittance for miscellaneous purposes without documentation formalities, has been raised from USD 5000 to USD 25000 with immediate effect.

It is clarified that Authorised Dealers need not obtain any document, including Form A-2, except a simple letter as stated above as long as the foreign exchange is being purchased for a current account transaction (not included in the Schedules I and II of Government Notification on Current Account Transactions), and the amount does not exceed USD 25000 or its equivalent and the payment is made by a cheque drawn on the applicant's bank account or by a Demand Draft. AD banks shall prepare dummy A-2 so as to enable them to provide purpose of remittance for statistical inputs for Balance of Payment

Recent FEMA Updates

TRANSFER OF FUNDS FROM NON-RESIDENT ORDINARY (NRO) ACCOUNT TO NON-RESIDENT EXTERNAL (NRE) ACCOUNT

A. P. (DIR SERIES 2011-12) CIRCULAR NO. 117, DATED 7-5-2012

At present transfer of funds from NRO to NRE account is not permissible.

Now it has been decided that henceforth NRI as defined in [Foreign Exchange Management \(Deposit\) Regulations, 2000](#) contained in Notification No. FEMA.5/2000-RB, dated 3rd May 2000, as amended from time to time, shall be eligible to transfer funds from NRO account to NRE account within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable (*i.e.* as applicable if funds were remitted abroad). Such credit of funds to NRE account shall be treated as eligible credit in terms of paragraph 3(j) of Schedule-1 of Notification No. FEMA.5/2000-RB, dated 3rd May 2000.