



Recent Amendments in FEMA

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LRS Clarification post reduction of limit

- Shares of Listed and Unlisted companies can be acquired
- Gift and Donation are within LRS however, following are exclusive and over and above LRS
 - Medical Expenses overseas
 - Maintenance upto U\$ 25000 of patient or attendant
 - U\$ 100000 for studies abroad
 - Other current account transactions



ECB for Foreign Equity Holder

- For **General Purposes**, under **Approval Route**:
 - Minimum paid up of 25% held by holder
 - Should not be used for prohibited purposes under existing ECB guidelines
 - Repayment in minimum 7 years average maturity
 - No prepayment allowed
 - Effective September 4 2013



Bank Guarantee on Behalf of NR

- No Approval required
- For Shares / debentures to be acquired under open offers, delisting, exit offers subject to
 - SBI (SAST) Regulations
 - Guarantee is covered by counter guarantee of bank of international repute
 - Guarantee is co-terminus with offer of acquisition/sale of equity/debentures
- Invocation to be reported to RBI with reasons



Acquisition of shares from SE under FDI

- NR/NRI holds equity under FDI
- Complies with SEBI(SAST)
- Payment can be by
 - Inward remittance
 - Debit to NRE/FCNR
 - Debit to Non-interest bearing Escrow account maintained under FEMA
 - Out of dividend payable to the acquirer against his present holding
 - Pricing as per FEMA guidelines



Foreign Investment in India - I

- Guidelines for calculation of total FI in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies are modified by making small change in Clause 6)ii)(d) of Para E of circular number AP DIR Circular 1 of July 4, 2013.



Foreign Investment in India -II

Two clauses are relevant.

6(i) states that downstream investment by an Indian company not owned or controlled by another resident entity will be governed by Sectorial Caps and

6(ii)(d) which prescribes that funds will be from outside India, no debt will be raised in India for this investment, internal accruals permitted if the company is engaged in investing in capital of other India Companies as per the rules above and guidelines below

In the revised guidelines clause

6(i) is not changed

but in 6(ii)(d) two changes are made. Now ANY Indian company will be allowed to use internal accruals for such investment and the investment will be governed by boundaries under 6(i).

Meaning that the investing company will be owned/controlled by non-resident and will invest within the sectorial caps. In this revised version on 6(i) and sub clauses of 6(ii)(d) are binding.



Export of Goods and Services

- GR/PP forms discontinued and replaced with Export Declaration Form (EDF) for all types of exports from Non-EDI ports. All exports including less than USD 25000 will need to be declared in this form.
- Softex will be used to declare all software exports - bulk or single
- Forms will be generated online from RBI website.



ECB amendment

- Definition of Infrastructure widened. Energy, communication, Transport, Water and sanitation, Mining, Social Infrastructure and Commercial infrastructure have now been defined in greater detail.



Trade Credits - relaxation

- Banks can allow companies in all sectors to avail of trade credit not exceeding USD 20 million up to a maximum period of five years for import of capital goods as classified by Director General of Foreign Trade (DGFT).
- It has also been decided to relax the *ab-initio* contract period of 15 (fifteen) months for all trade credits to 6 (six) months.



Definition of Group Companies - FDI

- The extant FDI policy has since been reviewed and it has been decided to incorporate the definition for 'group company' as under;
- 'Group company' means two or more enterprises which, directly or indirectly, are in position to:
 - (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or
 - (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.



Listing in overseas SE – revision

- Issue of FCCB and Ordinary Shares (through Depository Receipt mechanism) Scheme 1993 amended. Unlisted companies were not allowed to access overseas listing without simultaneous Domestic listing.
- After amendment overseas listing has been delinked from domestic listing subject to conditions in the circular.



3rd Party payment of Import/Export

- Existing
- All payments to be received from same party as indicated in EDF
- All payments in home currency of buyer/seller or USD
- BoE to be submitted as proof of import to Bank
- Revised
- 3rd Party can make/receive payment
- Firm and irrevocable order
- Tripartite Agreement for this arrangement
- More conditions prescribed



NOC for investment in Fin. services

- Earlier requirement of obtaining NOC from Regulator before investment in Financial services company is done away with. Regulator will prescribe a “fit and proper due diligence” process which will have to be complied with.