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Company Laws

August 22, 2025

Draft Regulations on Cross Border Guarantees for Stakeholders' review – Step in the Right Direction

Background & Context

The **Foreign Exchange Management (Guarantees) Regulations, 2000** ("*Guarantee Regulations*") vide Notification No. FEMA 8 /2000-RB dated 3rd May 2000 has provided the framework for issuance of guarantees in cross-border transactions for nearly two and a half decades. These regulations issued under the Foreign Exchange Management Act, 1999 (FEMA) covered areas including, issuance of guarantees, transactions and conditions for which guarantees may be issued, restrictions thereof and the entities / organizations who can issue such guarantees. Reserve Bank of India ("RBI") from time to time has made amendments to the aforesaid regulations by way of notifications and circulars, taking cognizance of the

macroeconomic needs, systemic risks, and international best practices.

Recognizing the need for simplification and modernization as well as ensuring transparency and compliance, the RBI has released **draft Foreign Exchange Management (Guarantees) Regulations, 2025** ("*Regulations*"). The draft regulations are considerably different with the inclusion of more definitions for ease of understanding; introduction of structured reporting obligations and enhanced compliance checks so as to provide a more comprehensive and effective mechanism for issuance / change / invocation of guarantees.

The Table provided below shows a comparative analysis between the Guarantee Regulations in force and the draft Regulations:

Sr. No	Particulars	Extant Foreign Exchange Management (Guarantees) Regulations, 2000 Dt. 3 rd May, 2000	Draft FEM Guarantees Regulations, 2025 circulated on 14 th August, 2025 (for feedback)	KCM Remarks
1	Definitions/ Terminology	Definitions included only "Act" and "Authorised Dealer"	New Definitions introduced include "Guarantee", "Principal debtor", "Surety" and "Creditor" apart from "Act" and "Authorised Dealer".	More definitions have been introduced for greater clarity and ease of understanding and usability.

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2	Prohibitions and Restrictions	<p>No person resident in India will provide guarantee / surety in respect of or undertake transaction which has the effect of guaranteeing, a debt / obligation / liability to a person resident outside India, unless otherwise permitted.</p> <p>Restrictions also cast on obtaining overseas guarantees.</p>	<p>The draft regulation has restricted the resident to act as surety, debtor, or creditor if the underlying or resultant transaction is a current or capital account transaction which is not permitted under FEMA.</p>	<p>The word "prohibition" has been deleted, and the wordings / language has been modified with the introduction of new definitions with focus on clarity.</p> <p>The implications / restrictions remain in respect of a person resident in India acting as a principal debtor / creditor / surety for a guarantee involving transaction of any nature (i.e.) capital or current. So instead of specific prohibitions, the language has moved to unless otherwise permitted, it is prohibited.</p> <p>This step is towards liberalization and opening up cross border transactions wherein guarantees can be issued for ease of business.</p>
3	Exemptions	<p>No specific exemptions carved out but contained in the head "<i>Guarantees which may be issued by an authorised dealer</i>".</p>	<p>Two exemptions specifically stated in the draft Regulations:</p> <ol style="list-style-type: none"> 1. Branch of an AD Bank outside India in the ordinary course of its business 2. AD custodian banks issuing IPCs for FPIs and the same is permissible under Foreign Exchange Management (non-debt instruments) Rules, 2019. 	<p>Exemptions have been included in the draft Regulations wherein transactions of such nature would not be covered under the said draft Regulations.</p> <p>RBI has identified certain transactions undertaken by AD Banks in normal course of business which will not be construed as guarantees, thus not be governed by the Guarantee Regulations.</p> <p>This is again a step to remove ambiguity in respect of interpretation as to what is covered under the regulations.</p>

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4	Cases where Guarantees may be issued (Permissibility)	<p>The guarantees could be issued in the following cases by:</p> <ol style="list-style-type: none"> Authorised Dealer - <ol style="list-style-type: none"> Export/import obligations Margin money in commodity hedging Stock exchange IPCs SEBI takeover offers Counter-guarantees for international trade Other than Authorised Dealer - <ol style="list-style-type: none"> Indian Exporting Company for a project outside India Indian Party setting up JV/ WOS outside India Agent of Shipping/Airline Company outside to Government Authority of India 	<p>The guarantees can be issued to a Person resident in India in the following cases where:</p> <p>any underlying transaction and the resultant transaction, in case of invocation of the guarantee is not in contravention, either directly or indirectly, of the Act or Rules or Regulations or Directions issued under the Foreign Exchange Management Act, 1999 ("Act").</p>	<p>The language has been amply modified to ensure that there is greater clarity in respect of which transactions will be permitted / covered under the Guarantee Regulations.</p> <p>Instead of identifying specific transactions, the thrust is now to provide clarity by confirming that all permissible FEMA transactions will be governed by / covered under the Guarantee Regulations.</p>
5	Conditions for Issuance of Guarantees	<p>Conditions for issuance of guarantees were specific to the nature of underlying transaction such as guarantee in respect of a debt / obligation / liability incurred by a Person resident outside India which is owed to a Person resident in India for a <i>bona fide</i> transaction will have to be backed by a counter guarantee of bank of international repute resident abroad.</p>	<p>Person resident in India may guarantee subject to:</p> <ol style="list-style-type: none"> Underlying & resultant transactions not violating FEMA provisions. If surety is in India and the debtor is abroad, the invocation of guarantee must comply with <i>Foreign Exchange Management (Borrowing and Lending) Regulations, 2018</i>. AD cannot give Letter of Comfort ("LoC") / Letter of Undertaking ("LoU"). AD must comply with guidelines issued by Department of Regulation, RBI. 	<p>Conditions are directly linked to stricter compliance to FEMA requirements and applicable to all Persons resident in India, including AD Banks.</p> <p>Furthermore, issuance of Letter of Comfort / Letter of Undertaking by AD Banks, which was permitted under the extant Guarantee Regulations has been prohibited in the draft regulations.</p> <p>The draft regulations have tightened controls on AD Banks, so as to ensure that guarantees are issued to customers in a more circumspect manner and ensure better monitoring and compliance.</p>

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5	Reporting Requirements	No reporting formats or timelines were specified in the extant Regulations.	<p>Mandatory reporting through AD banks within 7 days in prescribed formats by Principal Debtor, Creditor and Surety.</p> <p>The reporting compliances have to be undertaken at the time when (a) guarantee is given, (b) changes made in amount of guarantee / validity of guarantee and (c) on invocation of the same.</p>	The draft Regulations formalizes reporting compliances and format along with stringent timelines for reporting so as to ensure transparency and accountability.
6	Late Submission Fees	The extant provisions did not specify and penalties for violations on non-reporting / delayed reporting of guarantees.	<p>Late submission fees ("LSF") becomes applicable for any violations.</p> <p>Penalties will be in the manner as prescribed by RBI.</p>	Introduction of LSF has been undertaken with the intent to ensure better accountability for reporting of transactions . The penalty will also ensure that there is a reduction in non-reporting / delayed reporting while issuing / amending the terms of guarantee given.

KCM Comments

The draft Foreign Exchange Management (Guarantees) Regulations, 2025 is a step towards bringing ease of taking guarantees and will result in more transparency and better compliance. The inclusion of more definitions as well as modifying the language of the said Regulation is to ensure that the law is understood in a better manner so as to ensure timely compliance in a user friendly manner. The thrust by the regulator is to ensure that all stakeholders i.e. Authorized Dealers (AD), corporates, and financial institutions enhance their internal controls and reporting mechanisms for accurate and timely compliance.

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For further analysis and discussion, you may please reach out to us.

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