

Regulatory connect



Foreword

In line with the 'Make in India' campaign promulgated by the government, there has been a conscious effort to pave the way for a thorough Foreign Direct Investment ('FDI') Policy. The central government has been adopting a two pronged approach, on one hand by raising the ceiling on FDI in various key sectors to attract fresh foreign investment and on the other hand easing the existing norms in sectors that were already open for FDI. Consistent with the overall objectives set by the central government, the Reserve Bank of India ('RBI') has been constantly evaluating the macroeconomic situation in India and making an attempt to simplify the design of procedures and compliances prevalent in the foreign exchange regulation law. The Ministry of Corporate Affairs has also addressed the concerns of corporates and removed some of the ambiguities

in the Companies Act, 2013. It certainly comes as a positive sign to further raise the confidence levels of foreign investors and Indian corporates alike towards a progressive business aura that has now taken centre stage.

We would like to keep you informed of the developments on the regulatory front and its implications on the way you do business in India. We would be delighted to receive your suggestions on ways to make this Regulatory Connect more relevant, going forward.

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FEMA and FDI Policy

Foreign Direct Investment

Amendment to FDI policy in the Insurance Sector

The Department of Industrial Policy and Promotion ('DIPP') vide issue of Press Note 3, has raised the cap on FDI in the insurance sector to 49 per cent from 26 per cent.

Foreign investment [i.e. FDI + Foreign Portfolio Investor (Foreign Institutional Investor + Qualified Foreign Investors) + Non Resident Indians + Foreign Venture Capital Investor + Depository Receipt] up to 49 per cent would be permitted in the insurance sector (under the automatic route up to 26 per cent and Government route beyond 26 per cent to 49 per cent).

Recently, the central government had notified rules in respect of foreign investment in Indian Insurance companies.¹

Source: Press Note No. 3 dated 2 March 2015 issued by the DIPP

Review of FDI policy in the Pharmaceutical sector

With an intent to encourage FDI inflows into the medical devices/medical equipment sector, the Government of India recently reviewed its policy for FDI in the pharmaceutical sector. It has now permitted 100 per cent FDI under the automatic route (both greenfield investments and brownfield investments) for manufacturing of medical devices without any conditions.

Further, the Government has also specifically defined 'medical devices', however, its definition would be subject to amendment in the Drugs and Cosmetics Act.

Source: Press Note No. 2 dated 6 January 2015 issued by the DIPP

Review of FDI policy in Construction Development Sector

The DIPP has amended the FDI policy in the Construction Development Sector.

100 per cent FDI is permitted under Automatic Route in the Construction Development Sector. The DIPP has eased the conditions relating to minimum area to be developed, minimum capitalisation, lock-in period,

Condition	Amended Policy	Extant Policy
Minimum area to be developed		
- In case of serviced plots	No minimum land area requirement	10 hectares
- In case of construction development projects	Minimum floor area of 20,000 square meters	Minimum floor area of 50,000 square meters
Minimum capital to be brought by Investee Company as FDI	USD5 million within six months of commencement of the project. Subsequent tranches can be brought till the period of 10 years from commencement of the project or before completion of the project, whichever expires earlier.	USD10 million for wholly owned subsidiary and USD5 million for joint ventures.
Exit of foreign investor	An investor will be permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lightning, drainage, sewerage.	Lock-in period of three years

- #Commencement of the project will be the date of approval of the building/layout plan by the relevant statutory authority.
- Conditions related to minimum area to be developed and minimum capitalisation shall not apply to investee/joint venture companies which commit at least 30 per cent of the total project cost for low cost affordable housing.

Source: Press Note No. 10 dated 3 December 2014 issued by the DIPP

External Commercial Borrowings

Review of all-in-cost ceiling for External Commercial Borrowings ('ECB') and Trade Credits

The RBI has reviewed the all-in-cost ceilings applicable for ECB and Trade Credits. The RBI has announced that the all-in-cost ceilings as specified would continue to be applicable till March 31, 2015. The applicable all-in-cost ceilings are provided in the table below:

1. Indian Insurance Companies (Foreign Investment) Rules, 2015



	ECB		Trade credits		
Average Maturity Period	Three years and up to five years	More than five years	Up to one year	More than one year and up to three years	More than three years and up to five years
All-in-cost ceilings over 6 month LIBOR*	350 basis points	500 basis points	350 basis points		

*for the respective currency of borrowing or applicable benchmark

Source: A.P. (DIR Series) Circular No.80 and 81 dated 3 March 2015

Other areas

Acquisition and Transfer of Immovable Property in India

The RBI has included Macau and Hong Kong in its list of prohibited countries by amending the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000. Citizens of Macau and Hong Kong would now require prior approval of the RBI for acquiring/transferring immovable property in India otherwise than by way of lease not exceeding 5 years.

Source: A.P. (DIR Series) Circular No. 83 dated 11 March 2015

Reporting for import of goods into India

Hitherto, applications by persons, firms and companies for making payments exceeding USD5,000 or its equivalent towards imports into India were to be made in Form A-1.

The RBI has done away with the requirement of submitting request in Form A-1 to the AD Banks for making payments towards imports into India. However, before effecting the remittance, the AD Bank would need to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transaction.

Source: A.P. (DIR Series) Circular No.76 dated 12 February 2015

Limit under the Liberalised Remittance Scheme ('LRS') enhanced to USD250,000

In the Sixth Bi-Monthly Monetary Policy Statement, the RBI has decided to enhance the limit under LRS to USD250,000 per person per financial year.

Further, all the facilities for release of foreign exchange/remittances for current account transactions available to resident individuals under Schedule III to FEM (Current Account Transactions) Rules, 2000, as amended from time to time, shall also be subsumed under this limit.

The RBI is yet to issue a formal circular in this regard.

Source: RBI Sixth Bi-Monthly Monetary Policy Statement (2014-2015) – Press Release dated 3 February 2015

Clarification on remittance of salary outside India

The RBI has clarified that an employee on deputation to a group company in India may also avail the facility of remitting its salary outside India under Regulation 7(8) of Notification No. FEMA 10 (as amended from time to time).

Further, the term 'Company' referred to in the said regulation will also include 'Limited Liability Partnership' as defined in the LLP Act, 2008.

Source: A.P. (DIR Series) Circular No.62 dated 22 January 2015

Overseas Direct Investments ('ODI') by proprietorship concern/unregistered partnership firm in India

As part of the review of the ODI policy, henceforth, the RBI may consider proposals of ODI made by a proprietorship concern/unregistered partnership firm in India under the approval route subject to the following revised terms and conditions:

- Is classified as 'Status Holder' as per the Foreign Trade Policy;
- Has proven track record - i.e. the export outstanding does not exceed 10 per cent of the average export realisation of the preceding three years and a consistently high export performance;
- Is KYC compliant, engaged in the proposed business and has turnover as indicated;
- Amount of proposed investment outside India does not exceed 10 per cent of its average of last three years' export realisation or 200 per cent of its net owned funds, whichever is lower;
- Has not come under the adverse notice of any Government agency or the exporter's caution list of RBI or list of defaulters to the banking system.

Source: A.P. (DIR Series) Circular No.59 dated 22 January 2015

Compliance procedures

New and secure FIPB portal

The Department of Economic Affairs, Ministry of Finance has recently launched an upgraded and secure website (www.fipb.gov.in) for e-filing

of applications for FDI. Prior to this, applications were filed online at www.fipbindia.com.

The upgraded website (operational with effect from February 17, 2015), shall receive applications regarding FDI in approval route sectors. With this development, an applicant will now have to submit a single copy of the application for records with the FIPB Secretariat instead of 15-18 copies which were being filed earlier.

Source: Press release issued by the Press Information Bureau, Government of India dated 17 February 2015

Reporting under FDI scheme on the e-Biz platform

To simplify the reporting procedure, the RBI has enabled online filing of the following returns:

- Advance Remittance Form ('ARF') - Reporting the inflow of FDI.
- Form FC-GPR – Reporting by the Indian company issuing eligible instruments to the overseas investor.

The online process for such reporting has been operationalised on the e-Biz platform from February 19, 2015.

In a nutshell, once the Indian company uploads the returns (along with the supporting documents) on the e-Biz platform, the Authorised Dealer Bank ('AD Bank') shall download the completed forms, verify its contents, seek additional information (if required) and upload the same for RBI to process and allot a Unique Identification Number ('UIN'). A detailed user manual for these services has been issued by the RBI.

Reporting on the e-Biz platform is an additional facility provided to the Indian companies to undertake their ARF and FC-GPR reporting and the manual system of reporting would continue till further notice is issued.

Source: A.P. (DIR Series) Circular No.77 dated 12 February 2015

Companies Act, 2013

The central government has passed an order called the Companies (Removal of Difficulties) Order, 2015 pursuant to which the following amendments have been made.

Companies (Removal of Difficulties) Order, 2015

Amendment to Section 2(85)

As per Section 2(85) of the Companies Act, 2013 'small company' means a company, other than a public company whose:

- paid-up share capital does not exceed INR50 lakh; or
- turnover of which as per its last profit and loss account does not exceed INR2 crore.

The central government has replaced the word '**or**' with the word '**and**' in Section 2, in clause (85), in sub-clause (i) so as to clarify that both the conditions need to be satisfied by a company in order to be classified as a small company.

Amendment to Section 186(11)

Section 186 of the Companies Act, 2013 lays down the provisions relating to the companies giving a loan, guarantee or providing any security to any other person or body corporate or making any investment in securities of any other body corporate.

The central government has amended the Section 186(11) to state that banking company or an insurance company or a housing company, making acquisition of securities in the ordinary course of business will also be exempted from the provisions of Section 186 (except sub section 1).

Source: Order – S.O. 504(E) dated 13 February 2015

Clarification with regard to Section 185 and 186 of the Companies Act, 2013 - Loans and Advances to employees

The Ministry of Corporate Affairs has clarified that granting of loans and advances by companies to its employees, other than managing or whole time directors (which is governed by section 185) shall not be governed by the requirements of Section 186 of the Companies Act, 2013 provided the loans and advances are in accordance with the conditions of service applicable to employees and remuneration policy.

Source: General Circular No. 4 dated 10 March 2015

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