



FOREIGN INVESTMENT LAW UPDATES

The Reserve Bank of India (“**RBI**”) has issued various notifications in June which have brought about certain substantial changes in the foreign investment policies and the provisions of liberalised remittances from India. An extract of these changes are set out below:-

I. FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2018

The RBI vide an official gazette notification dated 1 June 2018, notified certain sections of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 which had the following implications: -

- (i) *When a person resident outside India who is a Foreign Portfolio Investor (“**FPI**”) and acquires capital instruments under Schedule 2 (Purchase/ Sale of capital instruments of a listed Indian company on a recognised stock exchange in India by FPI) of the aforesaid regulations and such acquisition results in a breach of the applicable aggregate FPI limits or sectoral limits provided, then the FPI shall be compelled to sell these capital instruments to a person resident in India eligible to hold such instruments within the time stipulated by RBI in consultation with the Central Government. Provided that the sale by FPI to a resident is within time limits, the acquisition and sale of these securities for the said period of time will not be considered a breach under these regulations.*
- (ii) *When a person resident outside India who is a Non-resident Indian (“**NRI**”) or an Overseas Citizen of India (“**OCI**”) and acquires capital instruments under Schedule 3 (Purchase/ Sale of capital instruments of a listed Indian company on a recognised stock exchange in India by NRI or OCI on repatriation basis) of the aforesaid regulations and such acquisition results in a breach of the applicable aggregate NRI or OCI limits or sectoral limits provided, then the NRI or OCI shall be compelled to sell these capital instruments to a person resident in India eligible to hold such*

instruments within the time stipulated by RBI in consultation with the Central Government. Provided that the sale by NRI or OCI to a resident is within time limits, the acquisition and sale of these securities for the said period of time will not be considered a breach under these regulations.

The RBI has not set out the timeline under the aforesaid regulations within which the FPI, NRI or OCI will be required to sell these shares and therefore there is ambiguity in this regard. However, it appears that these timelines may be stipulated by the RBI in consultation with Central Government from time to time.

II. REPORTING OF FOREIGN INVESTMENT IN SINGLE MASTER FORM

The RBI vide its circular dated 7 June 2018 has introduced an interface to input the total foreign investment in an Indian entity in a specified format for a specified period, prior to introducing the Single Master Form.

RBI had announced the introduction of a Single Master Form (“SMF”) in its first bi-monthly monetary policy review dated 5 April 2018, in order to consolidate reporting foreign investments in a single Indian entity in one form. However, vide the aforesaid circular, the RBI will now introduce an interface prior to implementation of the SMF.

This interface will be available on the RBI website from 28 June 2018 to 12 July 2018, during which period, all the Indian entities having foreign investment will have to undertake reporting on this interface.

The Indian entities having foreign investment are advised to be ready with the following details:

- (a) Details of Indian entity (Corporate Identity Number, Pan number, Date of incorporation, address);
- (b) Registration number, if any, as allotted by RBI;
- (c) Whether the company/LLP is under investigation by Directorate of Enforcement/CBI or any other investigative agency for violation of Foreign Exchange Management Act, 1999 (“FEMA”);
- (d) Main Business activity and NIC Code of the Indian entity;
- (e) Break up on FPI, NRI and other investments;
- (f) Calculation of Foreign investment in company/ LLP;

Indian entities failing to comply with the above will not be able to receive foreign investment and will attract penalty under FEMA.

While the above step taken by RBI may be towards a positive scenario to avoid any kind of confusion once the SMF comes into implementation, the timeline given by RBI for this interface of 15 days appears to be too short. Many Indian entities may be unable to comply with such a short time line which would add to further confusion of solving this issue as they would not be able to receive any foreign investment.

III. HARMONISATION OF DATA UNDER LIBERALISED REMITTANCE SCHEME (“LRS”)

The RBI’s circular dated 19 June 2018 makes it obligatory for the individual remitting under LRS to furnish his PAN Number during all such remittances. Further, the aforesaid circular also aligns the definition of ‘relative’ under the LRS in line with the definition of Companies Act, 2013 which with reference to any person, means anyone who is related to another, if— (i) they are members of a Hindu Undivided Family; (ii) they are husband and wife; or (iii) one person is related to the other in such manner as may be prescribed under the Companies Act, 2013.

The aforesaid circular helps the RBI to synchronize all the data in relation to the LRS for an individual based on his PAN Number and also aims to bring into line the definition of relative as per Companies Act, 2013 post the Companies Act, 2013 coming into force, so as to avoid any conflicts in this regard.

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