

**ICAI Bengaluru**

**One Day Seminar on FEMA**

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# **Non-resident Indians (NRI) and Overseas Citizens of India (OCI)**

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# FEM – Debt Instruments Regulations 2019

- Issued by Financial Market Regulation Department of RBI
- NRI – Individual resident outside India **who is a citizen of India**
- OCI – means a person resident outside India who is a **registered OCI Cardholder under Section 7(A) of Citizenship Act, 1955**
  
- SCHEDULE I – B - Permission for NRI / OCI – **Repatriation Basis**  
**NRI / OCI can purchase, without restriction**
  - Units of MF / ETF (50% in Equity)
  - Bonds of PSU / Infrastructure Debt Funds
  - Listed NCD , RPS , Debentures
  - NPS of NFRDA – Upto 60 Yrs – NRI Branch of Bank
  
- SCHEDULE I – C - Permission for NRI / OCI – **Non-Repatriation Basis**  
**NRI / OCI can purchase, without restriction**
  - Units of MF / ETF (<50% in Equity) – or Debt MF also
  - Chit funds authorised by State Registrar of Chits
  
- Sale permitted; repatriation subject to taxes. Maturity proceeds of non-repatriation instruments to NRO Account – Else NRE / FCNR(B).  
*Note if investment through NRO – only credit to NRO – specified*

# OVERVIEW – Debt Instrument Regulations 2019

## FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019

NOTIFICATION NO. G.S.R. 796(E) [NO. FEMA 396/2019-RB (F.NO. 1/14/EM/2015)], DATED 17-10-2019

### **B. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Repatriation basis**

(1) A Non-resident Indian (NRI) or an Overseas Citizen of India (OCI) may, without limit, purchase the following instruments on repatriation basis – T Bills, G Sec, PSU Bonds, Listed RPS/Debentures, NPS Subscription, etc.

(2) An NRI or an OCI may purchase on repatriation basis debt instruments issued by banks, eligible for inclusion in regulatory capital.

(3) An NRI may subscribe to National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/accumulated saving will be repatriable:

**Provided** that NRI/OCIs may offer such instruments as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-regulation 2 of regulation 5.

### **C. Permission to Non-resident Indians (NRIs) or Overseas Citizens of India (OCIs) – Non-Repatriation basis**

(1) An NRI or an OCI may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50 percent in equity, or National Plan/Savings Certificates.

(2) An NRI or an OCI may, without limit, purchase on non-repatriation basis, listed non-convertible/redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations.

(3) An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

# FEM – Non-Debt Instruments Rules 2019

- Issued by Department of Economic Affairs – Ministry of Finance
- NRI – Individual resident outside India **who is a citizen of India**
- OCI – means a person resident outside India who is a **registered OCI Cardholder under Section 7(A) of Citizenship Act, 1955**
- Chapter V – **For Investment** by NRI or OCI
  - NRI / OCI may, on repatriation basis, purchase or sell **equity instruments, of listed Indian Co and other securities as per Schedule III**  
(Schedule III – Listed Co equity instruments; units of domestic equity MF(50%); shares of PSU; subscription to NPS)
  - NRI / OCI may, on non-repatriation basis, purchase or sell **equity instruments, of Indian Co and other securities OR contribute to LLP OR firm OR Proprietary Concern as per Schedule IV**  
(Schedule IV – equity instruments, convertible notes, or units or capital contribution of LLP; domestic equity MFs – No to agricultural land, farm houses, plantation, real estate business, TDR)

# FEM – Non-Debt Instruments Rules 2019

- Rule 13 – **Transfers of equity instruments** held on repatriation basis permitted – sectoral caps, aggregate NRI holding conditions (individuals 5% and overall 10% of total paid up capital on repatriation basis) in listed companies
- **Where acquisition by NRI / OCI results in breach of limits** – sell to residents within timelines stipulated by RBI – will not result in contravention
- Rule 13(2) – non-repatriable investments - can be transferred to PROI as per sectoral guidelines, pricing, etc to other PROI by way of sale
- Rule 13(3) – Gifts of non-repatriable equity instruments to PROI permitted
  - done should be eligible
  - Gift <5% of paid up capital (single person to person basis)
  - Sectoral Cap not to be breached
  - donor and donee should be relatives – as per Co Act 2013
  - value of security along with earlier transfer in any FY should be less than USD 50K

# FEM – Mode of Payment and Reporting of NDI

- Issued by Foreign Exchange Department of RBI
- SCHEDULE III Investment by NRI / OCI – **Repatriation Basis**
  - Inward Remittance OR NRE Account Funds
  - NRE Account redesignated as NRE (PIS)
  - MF Units – NRE / Remittance from Overseas
  - NPS Subscription – NRE / FCNR (B) / NRO
  - Sale proceeds credited to NRE PIS Accounts (Net of Taxes)
  - MF / NPS out of NRO = NRO Deposit
- SCHEDULE IV – Investment by NRI / OCI – **Non-Repatriation Basis**
  - Equity / LLP Capital Contribution**
    - Investment Consideration out of inward remittance / NRE / NRO
    - Sale Proceeds ONLY NRO Account (both investment and capital appreciation – not repatriable, specifically mentioned)
  - Firm / Proprietary Concern**
    - Investment Consideration out of inward remittance / NRE / NRO
    - Sale Proceeds ONLY NRO Account (both investment and capital appreciation – not repatriable, specifically mentioned)

# MD – Deposit and Accounts

- NRE ; NRO ; FCNR(B) ; RFC
- Change from NRI / OCI to Resident – NRE and FCNR(B) to RFC Account
- Change from Resident to NRI – SB Account to NRO Account
- **NRE – Schedule 1**
  - Non-resident External Account as per Sch 1 of FEM Deposit Regulation
  - NRE himself to operate not POA (some transactions permitted for resident-relative joint holders
  - SB, Current, RD, FD modes permitted
  - Co-op Banks also permitted
  - Permitted Credits – remittances to India in forex; interest on NRE FCNRB; other NRE transfers; sale of repatriable investments made through NRE mode etc; refund of EMD for non allotment of Commercial / Residential property; etc
  - Permitted Debits – Loan disbursements; remittances outside India; Trf to NRE / FCNR B / permitted investments
  - Loans against balances – housing property, non-repatriable investment, business other than relending, real estate, agri
  -



# MD – Deposit and Accounts

- **FCNR (B) – Schedule 2**
  - Period term deposits primarily
  - Forex remittances from outside India – source of funds
  - Permitted Credits – same as NRE
- **NRO – Schedule 3**
  - Permitted for non-residents in India and also for overseas NRI / OCI (some cases LTV and LTV Applicants also permitted)
  - Permissible Credits – all legitimate dues in India of the A/c Holder – rent, interest, dividends etc
  - Transfer from other NRO and overseas repatriation also creditable
  - Current Income can be repatriated, net of taxes
  - **Balances which have lost identity as remittable funds will only be considered by the RBI for repatriation**
- **Schedule 6 – Deposits from NRI / OCI – 3 year or more public deposits**
- **Schedule 7 – Company or Firm in India accepting NRI / OCI Deposits – private arrangement, 3 year maturity, non-repatriable, restrictions apply, reporting – May 17,2000? ++ Co Act 2013**

# MD – Remittance of Assets

- Remittances permitted
  - Remittances of OCI – retirement benefits, inheritance, NR widow /widower inheritance from Indian National spouse
  - <USD 1 Million
  - Limit does not include proceeds from repatriable investments
  - NRO Account balances – sale proceeds of assets / inheritance
  - in case of more than one installment, same bank and branch
- >USD 1 Million – RBI Permission required and hardship to be justified

# Relative

## **Definition of "relative" as given in Section 6 of Companies Act, 2013.**

A person shall be deemed to be a relative of another, if, and only if:

- (a) they are members of a Hindu undivided family ; or
- (b) they are husband and wife ; or
- (c) the one is related to the other in the manner indicated in Schedule IA (as under)

1. Father.
2. Mother (including step-mother).
3. Son (including stepson).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.
11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brother).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.

# NRI / OCI – RETURNING TO INDIA / MIGRATING TO INDIA

## A.P. (DIR Series) Circular No. 37, October 19, 2011

- (a) in terms of sub-section 4 of Section (6) of FEMA, 1999, a person resident in India is free to hold, own, transfer or **invest** in foreign currency, foreign security or any immovable property situated outside India ***if such currency, security or property was acquired, held or owned by such person when he was resident outside India*** or inherited from a person who was resident outside India.
- (b) an ***investor can retain and reinvest the income earned on investments made under the Liberalised Remittance Scheme.***

## APPLICABILITY OF THIS CIRCULAR TO RETURNING NRI / OCI

# Master Direction on Other Remittance Facilities

- **Medical Expenses of NRI while in India**

Where the medical expenses in respect of NRI close relative (relative as defined in Section 2 (77) of the Companies Act, 2013) are paid by a resident individual, such a payment being in the nature of a resident to resident transaction may be covered under the term “services related thereto” under Regulation 2(i) of [Notification No. FEMA 16 /2000- RB dated May 3, 2000](#). ***(NO LRS LIMIT APPLICABLE ?)***

- **International Credit Cards from Indian Banks to NRI / OCI**

ADs may issue ICCs to NRIs/PIOs, **without prior approval** of the Reserve Bank, subject to the condition that charges on the use of ICCs should be settled by the concerned NRIs/PIOs only out of **inward remittances** or **balances held in their Non-Resident External (NRE) Accounts/ Foreign Currency Non-Resident (FCNR) Accounts**. ***(NO NRO ACCOUNT MENTIONED)***

# Master Direction on Other Remittance Facilities

- **Rupee Gift to NRI / OCI**

**Resident individual can make rupee gift** to a NRI/PIO who is a **close relative** of the resident individual

- by way of **crossed cheque /electronic transfer**

- the amount should be **credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c** of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c.

- the gift amount would be **within the overall limit of USD 250,000** per financial year as permitted under the Liberalised Remittance Scheme (LRS) for a resident individual.

- it would be the responsibility of the **resident donor to ensure that the gift amount being remitted is under the LRS** and all the remittances under the LRS during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

# Master Direction on Borrowing and Lending in INR between Resident and NRI / OCI

## **Borrowing in INR - by persons other than companies in India –**

**A person resident in India, not being a company incorporated in India, may borrow in INR from NRIs/PIOs after satisfying the following terms and conditions:**

- Borrowing shall be only on a non-repatriation basis;
- The amount of loan should be received either by inward remittance from outside India or by debit to NRE/NRO/FCNR(B)/NRNR/NRSR account of the lender, maintained with an authorised dealer or an authorised bank in India;
- Period of loan shall not exceed 3 years;
- Rate of interest on the loan shall not be more than two per cent above Bank Rate prevailing on the date of availment of loan;
- Payment of interest and repayment of principal shall be made only to the NRO account of the lender.

# Master Direction on Borrowing and Lending in INR between Resident and NRI / OCI

- Lending to NRI – AD Loans against shares / immovable property – end use – where FDI is permitted + no repatriation / credit to NRE  
- for own business not restricted sectors for NRI / OCI
- Lending to NRI – AD lending for ESOP Shares of Indian Co (90% of purchase price or INR 20L – lower)
- Lending to NRI – AD lending for housing is also permitted
- INR Loans to NRI / PIO employees – by Indian Corporate
- INR Loans to NRI by Resident Individual – relative + 1 Yr + Int free + LRS limits



# Master Direction on Borrowing and Lending in INR between Resident and NRI / OCI

## **Borrowing in INR - by companies in India –**

A company incorporated in India may borrow in INR, on repatriation or non-repatriation basis, from NRIs/PIOs after satisfying the following terms and conditions:

- i. Borrowing company does not and shall not - carry on agricultural/plantation/real estate business or TDR Trade or Chits***
- ii. Borrowing is by issuance of non-convertible debentures (NCDs);***
- iii. The issue of NCDs is made by public offer;***
- iv. The rate of interest is not more than SBI PLR plus three per cent;***

v. Period of loan shall not be less than **three years**;

vi. Repatriation basis - Debt Equity Ratio maintenance as per ECB / FDI

Further, the funds towards borrowing should be received through inward remittance from outside India or by debit to NRE/FCNR (B) account of the investor maintained with an authorised dealer or an authorised bank in India;

vii. If the borrowing is on non-repatriation basis from NRIs/PIOs then the amount of loan should be received either by inward remittance from outside India or by debit to NRE/NRO/FCNR(B)/NRNR/NRSR account of the investor maintained with an authorised dealer or an authorised bank in India.

**Non Repatriation Cases - Payment of interest and repayment of principal shall be made only to the NRO account of the lender.**

## **Reporting – nearest office + 30 days + its CS Certificate**

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# NRI / OCI – Becoming Resident

- Section 2(v) of FEMA - any person residing in India for more than 182 days, during the preceding financial year, to be a person resident in India.
- Additional inference that persons can become resident in India, if:
  - They take up employment in India
  - Carry on business or vocation in India
  - Any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.
- Re-designate all NRE and NRO accounts as Resident Accounts for Banking purposes
- Can continue to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India – See Section 6(4) of FEMA

# NRI / OCI – Becoming Resident

- Continue to hold life or general insurance policies issued when he was a non-resident
- Repatriate all amounts accrued OR due OR income on assets accrued to him, on becoming a resident, immediately to India, via Authorised Dealers (Bankers generally). The time limits prescribed are 7 days or 90 days, based on the nature of dues or accruals.

- Black Money Regulation requires disclosures from ROR / excludes RNOR from the definition of Assessee – reference to Section 6(6) of IT Act.

# NRI / OCI – ACQUISITION OF IMMOVABLE PROPERTY

## ACQUISITION:

- **Acquisition by PURCHASE** of immovable property – NRI / OCI – OK (other than agricultural land, plantation, farm house)
- **Acquisition by GIFT** of immovable property – NRI / OCI – OK (other than agricultural land, plantation, farm house) – **only from relative**
- **Acquisition by INHERITANCE** of immovable property – NRI / OCI – OK – **FROM PERSON RESIDENT IN INDIA – NO CONDITIONS**
- **Acquisition by INHERITANCE** of immovable property – NRI / OCI – OK – **FROM PERSON RESIDENT OUTSIDE INDIA – CONDITION that acquisition should be in compliance with forex regulations at time of acquisition**

## TRANSFER:

- NRI / OCI can transfer to person resident in India
- **NRI / OCI can transfer to other OCI / NRI –other than agricultural land, farm house, plantation – transfer to relative permitted**

# NRI / OCI – ACQUISITION OF IMMOVABLE PROPERTY

## Other Considerations:

- Payments can be through direct remittance / FCNR (B) / NRE / NRO Account
- Joint Acquisition by spouse of NRI / OCI (other than agricultural land, farm house, plantation) – with NRI / OCI permitted
- NO TC / FC Notes for acquisition
- Registered Marriage for 2 years prior to the acquisition of property
- Acquisition by Long-term Visa Holders
- Repatriation:
  - Para 1.2 of Part II cases – RBI Permission (while resident / inheritance – F National)
  - NRI / PIO – Remittance of Assets Regulations – USD 1 Mil
  - NRI / OCI – other than agricultural land – acquired under FEM (IP) Regulations – can repatriate – if acquired per regulations+ NRE / FCNR B / Inward remittance
  - Residential property – only 2 properties

# Master Direction – Miscellaneous upto Nov 2018

## **Repatriation of income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement and repatriation of income and sale proceeds of assets acquired abroad through remittances under Liberalised Remittance Scheme – Clarification**

(a) in terms of sub-section 4 of Section (6) of FEMA, a person resident in India is free to hold, own, transfer or **invest** in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(b) Sub-section 4 of Section (6) of FEMA covers the following transactions:

- i.Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- ii.Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- iii.Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.

iv.A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/ or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

(b) an investor can retain and reinvest the income earned on investments made under the Liberalised Remittance Scheme.

# Master Direction – Miscellaneous upto Nov 2018

## **Resident bank account maintained by residents in India - Joint holder -liberalization**

Individuals resident in India are permitted to include non-resident Indian (NRI) close relative (s) (NRI as defined in regulation 2(vi) of [1Notification No. FEMA 5\(R\)/2016-RB dated April 01, 2016](#), as amended from time to time and relative as defined in [2Section 2 \(77\)](#) of the Companies Act, 2013) as a joint holder(s) in [3](#) all types of resident bank accounts on “Either or Survivor” basis subject to the following conditions:

- a. Such account will be treated as resident bank account for all purposes and all regulations applicable to a resident bank account shall be applicable.
- b. Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.
- c. The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.
- d. Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all the resident bank account holders.
- e. Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per the extant regulations.
- f. Onus will be on the non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.
- g. The above joint account holder facility may be extended to all types of resident accounts including savings bank account.

# Master Direction – Miscellaneous upto Nov 2018

## **Resident bank account maintained by residents in India - Joint holder -liberalization**

While extending this facility the AD bank should satisfy itself about the actual need for such a facility and also obtain the following declaration duly signed by the non-resident account holder:

“I am the joint account holder of SB/FD/RD/Current Account bearing No ..... which stands in my name and in the name of Shri/Smt. .... who is my ..... (state relationship). I hereby undertake that I shall not use the proceeds lying in the above account for any transaction in contravention of the provisions of the Foreign Exchange Management Act (FEMA) 1999, Rules/Regulations made thereunder and the related circulars/instructions issued by the Reserve Bank from time to time. I further undertake that if any such transaction is put through the said account in contravention of the FEMA, 1999 or Rules/Regulations made thereunder, I shall be held responsible for the same. I shall intimate my bank in the event of any change in my Non-resident / Resident status.”



# **External Commercial Borrowings**

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# Regulations – Borrowing Or Lending in Forex

- FOREIGN EXCHANGE MANAGEMENT  
(BORROWING OR LENDING IN FOREIGN EXCHANGE) REGULATIONS, 2000
- FEMA 3/2000-RB, dated 3-5-2000 [GSR 386(E), dated 3-5-2000] Superseded  
By Notification No. G.S.R. 1213(E) [No. Fema 3(R)/2018-RB], Dated 17-12-2018
- Change consequent to deletion of Section 6(3)
- Consequent Amendment to Section 6(2) – Capital Account Transactions
- Power under Section 47 – encompasses all of Section 6

# Regulations – Borrowing Or Lending in Forex

## Capital account transactions.

6. (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

(2) The Reserve Bank may, in consultation with the Central Government, specify<sup>8</sup>—

<sup>9</sup>[(a) *any class or classes of capital account transactions, involving debt instruments, which are permissible;*]

(b) the limit up to which foreign exchange shall be admissible for such transactions;

<sup>10</sup>[(c) *any conditions which may be placed on such transactions;*]

<sup>11</sup>[**Provided** *that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.*]

<sup>12</sup>[(2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

(a) *any class or classes of capital account transactions, not involving debt instruments, which are permissible;*

(b) *the limit up to which foreign exchange shall be admissible for such transactions; and*

(c) *any conditions which may be placed on such transactions.*]

(3) <sup>13</sup>[\*\*\*]

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India<sup>14</sup>.

# Regulations – Borrowing Or Lending in Forex

## **Power to make regulations.**

**47.** (1) The Reserve Bank may, by notification, make regulations to carry out the provisions of this Act and the rules made thereunder.

(2) Without prejudice to the generality of the foregoing power, such regulations may provide for,—

<sup>45</sup>[(a) *the permissible classes of capital account transactions involving debt instruments determined under sub-section (7) of section 6, the limits of admissibility of foreign exchange for such transactions, and the prohibition, restriction or regulation of such capital account transactions under section 6;*]

(b) the manner and the form in which the declaration is to be furnished under clause (a) of sub-section (1) of section 7;

(c) the period within which and the manner of repatriation of foreign exchange under section 8;

(d) the limit up to which any person may possess foreign currency or foreign coins under clause (a) of section 9;

(e) the class of persons and the limit up to which foreign currency account may be held or operated under clause (b) of section 9;

(f) the limit up to which foreign exchange acquired may be exempted under clause (d) of section 9;

(g) the limit up to which foreign exchange acquired may be retained under clause (e) of section 9;

<sup>46</sup>[(ga) *export, import or holding of currency or currency notes;*]

(h) any other matter which is required to be, or may be, specified<sup>47-48</sup>.

<sup>46</sup>[(3) *All regulations made by the Reserve Bank before the date on which the provisions of this section are notified under section 6 and section 47 of this Act on capital account transactions, the regulation making power in respect of which now vests with the Central Government, shall continue to be valid, until amended or rescinded by the Central Government.*]

# OVERVIEW

## SECTION 6 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 - CAPITAL ACCOUNT TRANSACTIONS - NOTIFIED DEBT INSTRUMENTS

NOTIFICATION NO S.O. 3722(E) [F.NO. 1/14/EM/2015], DATED 16-10-2019

In exercise of the powers conferred by sub-section (7) of section 6 of the Foreign Exchange Management Act, 1999 (42 of 1999), the **Central Government** hereby determines the following instruments as debt instruments, namely:—

(i)	Government bonds;
(ii)	corporate bonds;
(iii)	all tranches of securitisation structure which are not equity tranche;
(iv)	<b>borrowings by Indian firms through loans;</b>
(v)	depository receipts whose underlying securities are debt securities.

# OVERVIEW

## FOREIGN EXCHANGE MANAGEMENT (DEBT INSTRUMENTS) REGULATIONS, 2019 NOTIFICATION NO. G.S.R. 796(E) [NO. FEMA 396/2019-RB (F.NO. 1/14/EM/2015)], DATED 17-10-2019

In exercise of the powers conferred by clause (a) of sub-section (2) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), and **in supersession of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2017**, the Reserve Bank makes the following regulations to regulate investment in India by a Person Resident Outside India, namely:—

### CHAPTER I

#### PRELIMINARY

##### Short title and commencement

**1. (1) These Regulations may be called the Foreign Exchange Management (Debt Instruments) Regulations, 2019.**

**NOTE : No supersession of the ‘borrowing and lending in forex regulations’**

# Regulations – Borrowing Or Lending in Forex

- FOREIGN EXCHANGE MANAGEMENT  
(BORROWING OR LENDING IN FOREIGN EXCHANGE) REGULATIONS, 2000
- 6 Regulations only + 3 Schedules (Auto Route; Approval Route and Trade Credit) and Form ECB
- Reg 5 – Borrowing in Forex by persons other than AD
  - Foreign Credit to Indian Importer - from Supplier – not more than 6 Months
  - Individual Borrowing from Relatives – USD 250K; interest free; min maturity of 1 year
- Reg 6
  - Person resident in India (other than Branch and Office of PROI) may raise ECBs under **Auto** Route – Schedule I
  - Person resident in India (other than Branch and Office of PROI) may raise ECBs under **Approval** Route – Schedule II
  - Trade Credits not exceeding USD 20 Million per import transaction
- Master Direction - MD – Upto Aug 2019

# Master Direction – ECB

- Important Terms:
  - All in cost – interest, fees, expenses, guarantee fees, (incl. INR) – no TDS in INR
  - Bench mark rate – 6M LIBOR of Currency
  - ECB Liability-Equity Ratio – Forex Debt to Equity
  - Equity = paid up capital and free reserves (including share premium received in forex)
  - More than one foreign equity holder – only foreign lender amounts to be considered
  - Foreign equity holder – direct foreign equity with minimum 25% direct holding
  - Foreign equity holder – indirect equity holder with minimum indirect equity holding of 51%
  - Foreign equity holder - Group Company with common overseas parent



# Master Direction - ECB

## SCHEDULE 1 – AUTOMATIC ROUTE

- Eligible Borrowers: Entities eligible for receiving ECB
- Currency – INR Denominated or any foreign convertible currency
- Forms include – debentures (other than FCCD), loans, bonds, TC over 3 yrs, Finance Lease
- Preference Shares – included in INR denominated only as per MD
- Recognized Lenders
- MAMP – Min Average Maturity period (3 yrs generally; 1 Year for Mfg Co USD 50M or lesser; 5 years from Equity Holder – WC Purposes; 7 yrs for repayment or INR borrowings, etc)
- AIC p.a. – BR + 450bps
- -

# Master Direction - ECB

- Negative End Use – real estate; capital markets; equity investment; working capital – with conditions; on-lending
- Limits and Leverage – USD 5 Million or less; ECB: Equity cannot exceed 7:1
- Procedure – Approval cases then Form ECB
- LRN – all drawdown only after obtaining LRN
- Changes in terms
- Monthly reporting
- LSF for delayed reporting of Form ECB and Form ECB 2
- Security for raising ECB and Creation of Charge – Immovable ; Movable; FS; Personal Guarantee

# Master Direction - ECB

## Start-up Companies

- Eligibility – recognized start-up
- MAMP – 3 years
- Recognized Lender – resident of FATF compliant country
- Forms – partially convertible preference shares; optionally convertible PS , non-conv..
- Currency – INR or Convertible Forex
- USD 3 Million per year – ceiling
- AIC – mutually agreed
- Security and Guarantees

# Master Direction - ECB

## Trade Credits and Structured Obligations

- Buyers Credit / Suppliers Credit – in this case Indian Importer
- Upto USD 50 Mil per import transaction (higher for some sectors)
- Lender = Supplier outside India; Foreign Equity holders; Banks outside India
- Period = 3 Years for capital goods and for non-capital 1 year or operating cycle
- Benchmark rate + 250bps
- Bank Guarantees as Security permissible
  
- Structured Obligations – Resident fund or non-fund facilities are guaranteed by non-resident group entity
- No transaction in forex till guarantee is invoked

# Master Direction – ECB

- INR denominated ECB:
  - Loans incl bank loans / pref shares / TC / Fin Lease
  - all eligible borrowers
  - MAMP / cost similar to FC denominated ECB
  - Overseas investors eligible to hedge with AD Cat 1 Banks
  - Change from INR to other FC not permitted
- Parking of ECB abroad / domestically
- Procedure – AD Bank (Auto Route) or Empowered Committee by RBI (Approval route)
- Changes in terms
- Late Submission Fees – Form ECB 2 INR 5K to INR 100K per year
- ‘Untraceable Entity’ – SOP – reference to Stat Auditors
- Conversion of ECB to Equity
- Security and creation of charge
- Start ups / TC / Structured Obligations

# Master Direction – ECB

## Form ECB 2

### Reporting of actual transactions of External Commercial Borrowings (ECB) under Foreign Exchange Management Act, 1999

(for all categories and any amount of loan)

Return for the Month ended of \_\_\_\_\_.

1. This return should be filled in for all categories of ECB. It should be submitted within 7 working days from the close of the month through the designated Authorised Dealer to the Director, External Commercial Borrowings Division, Department of Statistics and Information Management, Reserve Bank of India, C-9, Bandra-Kurla Complex, Bandra (East), Mumbai-400 051. If there is no transaction during a particular period, a **Nil Return** should be submitted.
2. Please do not leave any column blank. Furnish complete particulars against each item. In case an item is not applicable, write “N.A.” against it.
3. All dates should be in format YYYY/MM/DD (*e.g.*, 2012/01/21 for January 21, 2012).
4. Borrowers obtaining sub-loans through DFIs/Banks/NBFCs etc. should not complete this form as the concerned financial institution would directly submit Form ECB-2.
5. The Company Secretary / Chartered Accountant must scrutinise related original documents and ensure that the return is complete and in order as per ECB guidelines issued by Government/RBI, before forwarding it to RBI.
6. Loan Registration Number should be specified for all the loans approved after February 01, 2004. For earlier loans, Loan Identification Number (LIN) / Registration Number allotted by RBI should be specified.

# Master Direction – ECB

## **Certificate from Company Secretary / Chartered Accountant**

We hereby certify that the ECB availed vide LRN \_\_\_\_\_ in terms of approval granted by Government or RBI or under approval route / automatic route is duly accounted in the books of accounts. Further, ECB proceeds have been utilised by the borrower for the purpose of \_\_\_\_\_ during month ended \_\_\_\_\_. We have verified all the related documents and records connected with the utilisation of ECB proceeds and found these to be in order and in accordance with the terms and conditions of the loan agreement and with the approval granted by GoI (MoF) or RBI or under approval route / automatic route and is in conformity with the applicable ECB Guidelines.

Place :

Date :

Authorised Signatory

Name & Address

Registration No.

[Stamp]

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