

Compliance with FEMA - Role of Compliance Officer

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FEMA 1999

- facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India
- A civil law
- Govt/ RBI's authority clearly defined
- Sec. 10 (5): An AP shall before undertaking any transaction in foreign exchange on behalf of any person, require that person to make such declaration and to give such information as will reasonably satisfy him
- Sec. 10 (6): Utilisation of foreign exchange for permissible purpose is allowed subject to submission of documentary evidence

Role of the Authorised Persons

- Receipt and payment of forex through ADs
- Authorised person-AD (category -I & II), AD category-III, FFMC, offshore Banking units
- All forms/ applications are routed through APs
- All reports filed by or through APs
- All information submitted should be certified after due care by APs
- Primary responsibility is of the beneficiary, residual one is of the AD bank permitting the transaction to ensure compliance with FEMA Regulations.

Current A/c transactions..

- A transaction other than Capital account transaction and includes.....
 - payment due in connection with foreign trade, other current business, services...
 - interest on loans and net income from investments;
 - remittances for living expenses of parents, spouse and children residing abroad; and
 - expenses in connection with foreign travel, education and medical care of parents, spouse and children

Capital A/c transactions....

- A transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India
- Separate regulations for investments, borrowings, lending, deposits, export and import of currency, guarantees, surrender of foreign exchange, foreign currency accounts, remittance of assets, immovable property, derivative contracts, etc.
- Most of the transactions could be undertaken under the general permission.

Capital Account Transactions

- External Commercial Borrowings
- Foreign Direct Investment (FDI)
- FII – Portfolio Investment Scheme (PIS)
- NRI – Portfolio Investment Scheme (PIS)
- Overseas Investment
- Liaison Office / Branch Office
- Liberalised Remittance Scheme
- FX Derivatives
- Non resident Accounts
- Immovable Property

External Commercial Borrowing

ECB can be availed of under -

- ✓ Automatic Route (does not require approval from RBI) -USD 750 mn
- ✓ Approval Route (prior approval is required from RBI)

AD bank has to verify that application under automatic/approval route comply with:

- Borrower – categories eligible
- Lender categories – Recognised institutions
- Minimum Average Maturity – calculation wrong/inaccurate – weighted average duration of the amounts outstanding – holding period should not be less than average maturity
- All in cost – higher rupee expenses shown to circumvent permissible cost
- End Use - too vague – codes in application format
- Multiple end uses – details to be given
- Draw down schedules and repayment schedules to be given properly
- Lender status should be verified and clearly stated

Foreign Direct Investment

Except for the prohibited sector FDI is allowed by way of issue of fresh shares or transfer of existing shares under

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- **Automatic Route-** No Govt./RBI approval
- **Government Route-** FIPB approval

In either case, FDI by fresh issue of share has to be reported to RBI under two stage reporting :

- i) Within 30 days of receipt of FDI
- ii) Within 30 days of issue of share

In case of FDI by transfer of share, the same has to be reported to AD Bank by the resident buyer/seller within 60 days of receipt of share consideration

Preliminary Checklist

- KYC
- FIRC
- Date of inward remittance
- Compliance with FDI policy
 - Sectoral cap
 - FIPB/Automatic route
 - Other conditionalities
 - Country of origin (Pakistan / Bangladesh)
- Time lines – 30 days, 60 days and 180 days
- Mode of payment
- Purpose of remittance
- Third party remittances

Checklist.....

- Escrow arrangements
- Eligible instruments – Equity, CCPS, CCD
- **FIPB approvals – conditions therein**
- Valuation – CA certificate / Merchant Banker category I
- Delay in reporting
- Source of funds and route – Para 8 of Sch. 1 to FEMA 20
- **Delay in forwarding Form FCGPR to ROs**
- NOC from Overseas/ Local Regulator for Financial Sector
- Pricing Guidelines are followed

Portfolio Investment Scheme(PIS)

- FII registered with SEBI, NRIs and QFIs may purchase/sale shares/convertible debentures of Indian companies through registered brokers on recognized stock exchanges in India under PIS.

FII's are allowed to open a non-interest bearing Foreign Currency a/c (FC a/c) and a Special Non-Resident Rupee a/c(SNRR a/c) with designated AD bank.

Portfolio investment are subject to individual and aggregate limit

Investor Class	Individual limit	Aggregate Limit
FII	10 %	24 %
NRI	5 %	10%
QFI	5 %	10%

LEC- Reporting- Checklist

- Form to be verified from contract notes
- SEBI Registration number for FIIs
- Designated branch number for each AD which have allowed to have NRI/PIS accounts
- Code numbers for companies
- Match each entry PIS demat account with corresponding NRE/NRO/FC/Special Rupee Account
- If there are different ADs for the demat account and for the NRE/NRO/FC/Special Rupee Accounts then the one designated AD will have to report as a single point of reporting.
- If FII/NRI has accounts with another AD earlier, then a new account can be opened and operated only after the earlier one is closed and after an NOC is received from the earlier AD

Overseas Direct Investments

- Resident corporates/Registered Partnership Firms
 - can invest up to 400% of their net worth (with out any separate monetary ceiling, subject to reporting in form ODI) as on the date of the last audited balance sheet in any one financial year.
 - [400% ceiling includes – Equity + Loans + Guarantees]
- Investments by SEBI registered MFs- USD 8 billion
- Individuals -Can acquire foreign securities as a gift , cashless ESOP or by way of inheritance.
- Registered Trusts / Societies engaged in manufacturing / educational / hospital sector – in same sector(s) with RBI approval.

ODI -Reporting mechanism

- **On-line reporting of the ODI forms (w.e.f. from March 2, 2010). Enables -**
 - **on-line generation of the Unique Identification Number (UIN),**
 - **acknowledgment of remittance/s,**
 - **filing of the Annual Performance Reports (APRs), and**
 - **easy accessibility to data at the AD level for reference purposes.**

ODI Checklist

- Indian Party- not on RBI's Exporters caution list /list of defaulters of RBI/ Enforcement Directorate/ SEBI/IRDA.
- Investment through first level subsidiary permitted. Multi layered structure not encouraged. Investments in Real Estate Business and Banking has been prohibited.
- Investment in financial sector meets prescribed condition.
- AD Bank has duly scrutinised form ODI, verified averment in auditor's certificate and proposed investment is within the prescribed limit.
- In order to assess the viability of the project, a project feasibility report may be obtained, if felt necessary.
- Where multiple Indian parties are making investment in one overseas concern, Form ODI should be obtained from all the Indian parties jointly along with certificates from other authorised dealers if remittances are effected by the latter.
- Even if the remittances on behalf of multiple Indian parties have been made through multiple authorised dealers reporting should be done through only one authorised dealer designated in this regard.

Liaison Office-Branch Office(LO/BO)

- RBI grants approval to foreign company to set up LO/BO
- Applications through AD- Cat- I bank in Form FNC
- BO/ LO should establish themselves in India, within 6 months from the date of the RBI approval
- For extension of the 6 months deadline, BO/ LO should approach RBI, CO
- LO to confirm to RO concerned & BO to RBI, CO, through designated AD Bank
 - Postal address
 - Confirmation of having obtained PAN and RoC registration

LO-BO Cont.

- **Renewal LO licence -**
 - Request on the letter head of the LO before expiry
 - ADs to ensure
 - Submission of AACs
 - Maintenance of a/c as per the RBI approval
 - AACs were complete in all respects such as UIN, PAN etc.
 - Approval to be granted in maximum 1 month from receipt of request
 - Approval for NBFCs & Construction and development sectors (excluding infrastructure development companies) subject to a period of two years after which it has to either close down or Convert itself into JV/WOS

Liberalised Remittance Scheme(LRS)

- All resident individuals, including minors, are allowed to freely remit up to USD 200,000 per **financial** year (April – March) for any permissible current or capital account transaction or a combination of both
- Can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank

Prohibitions under LRS

- purchase of lottery tickets/sweep stakes,etc,
- remittance from India for margins or margin calls to overseas exchanges / overseas counterparty,
- purchase of FCCBs issued by Indian companies in the overseas secondary market,
- trading in foreign exchange abroad,
- remittance by a resident individual for setting up a company abroad,
- remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan,
- remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Role of AD bank

- AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by the Reserve Bank, in this regard from time to time
- The remittance should flow from a designated branch of an AD and the applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance.
- AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds

Safeguards while offering FX Derivatives to clients

- Establishing the exposure and limiting to plain vanilla products
- Certification by statutory auditors and self declaration
- Cost reduction structures, only with safeguards like Net worth/Turnover of the corporate, Compliance with accounting standards
- No leverage structures
- No exotic products
- Transformation of Rupee liability is also subject to safeguards
- Need to clearly establish the suitability and appropriateness
- Banks cannot offer products which they cannot price independently

Non-resident accounts

- NRI /PIO can without the permission from the RBI open, hold and maintain the different types of accounts with an AD bank in India.
- Individuals/ entities of Pakistan and entities of Bangladesh require prior approval of the Reserve Bank.
- Bank account-3 Types- NRO, NRE and FCNR(B)
A/c

Role of AD banks

- ADs should monitor the permissible debits/credits as prescribed in respect of each of these category of accounts
- ADs should ensure that the terms and conditions as applicable to these accounts in respect of joint accounts, nomination facility, repatriation of funds, etc. are adhered scrupulously

Immovable Property

Permitted Acquisitions

- NRI can acquire immovable property other than Agricultural Land, Plantation and Farm House
- PIO can acquire immovable property other than Agricultural Land, Plantation and Farm House
- BO or other places of business (excluding LO) can acquire for permitted activity
- General permission for acquisition of property by way of lease for a period not exceeding 5 years.

Restricted Acquisitions

- Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China Iran Nepal, Bhutan can acquire with prior RBI Approval

Reporting by ADs

In terms of Sec 11(2) of FEMA, RBI can direct any AP to furnish any information for the purpose of ensuring compliance with the provisions of FEMA.

RBI has entrusted the ADs the responsibility of complying with prescribed regulations for foreign exchange transactions and also its reporting from time to time

Some common violations

- Drawdown of ECB without obtaining the LRN
- Allowing ECB drawdown under the Automatic route from unrecognised lender, to ineligible borrower, for non-permitted purpose/end-use, etc.
- Non-filing of form ODI for obtaining the UIN before making the second remittance to overseas WOS/JV for Overseas Direct Investment.
- Delay in submission of the Advance Reporting Format in respect of FDI to the concerned RO of the RBI
- Delay in filing the details of after issue of eligible instruments under FDI within 30 days in form FC-GPR to the concerned RO of the RBI
- Delay in filing details pertaining to transfer of shares for FDI transactions in form FC-TRS by residents individuals/companies



Thank you