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News Alert – on FEMA 1st April, 2016

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News Alert on FEMA Following three notifications were issued by Reserve Bank of India

1. FEMA/5/RB-2000---Foreign Exchange Management (Deposit) Regulations, 2000
2. FEMA/13/RB-2000---Foreign Exchange Management (Remittance of Assets) Regulations, 2000
3. FEMA/22/RB-2000---Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000

1. Foreign Exchange Management (Deposit) Regulations, 2016

On 1st April, 2016 , RBI has issued Foreign Exchange Management (Deposit) Regulations, 2016, in supersession of Notification No. FEMA 5/2000-RB dated May 3, 2000 . The aforesaid Regulations prescribes rules and directions for Deposits between a person resident in India and a person resident outside India.

The Amendments incorporated with the above notification inter alia includes the following:

A. Restrictions on deposits between a person resident in India and a person resident outside India:

- No person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India; provided that the Reserve Bank may, on an application made to it and on being satisfied that it is necessary so to do, allow a person resident in India to accept or make deposit from or with a person resident outside India.
- For certain exemptions granted with respect to the aforesaid restrictions please refer the below pasted link.

B. Acceptance of deposits by an authorised dealer/ authorised bank from persons resident outside India:

- An authorised dealer in India may accept deposit under the under the Non-Resident (External) Account Scheme (NRE account), specified in Schedule 1, from a non-resident Indian; under the Foreign Currency (Non-Resident) Account Banks Scheme, (FCNR(B) account), specified in Schedule 2, from a non-resident Indian; under the Non-Resident (Ordinary) Account Scheme, (NRO account), specified in Schedule 3, from any person resident outside India.
- Without prejudice to sub-regulation (1), deposits under NRE and NRO Account Schemes referred to in clauses (i) and (iii) and deposits under FCNR(B) Account Schemes referred to in clause (ii) of that sub-regulation, may also be accepted by a Regional Rural Bank, in accordance with the provisions contained in the Schedule, subject to the conditions prescribed by Reserve Bank in this regard.

C. Acceptance of deposits by persons other than authorised dealer/ authorised bank:

- A company registered under Companies Act, 2013 or a body corporate created under an Act of Parliament or State Legislature shall not accept deposits on repatriation basis from a non-resident Indian or a person of Indian origin. The company may, however, renew the deposits which had been accepted on repatriation basis from an NRI or a PIO subject to terms and conditions mentioned in Schedule 6.

➤ A company registered under Companies Act, 2013 or a body corporate, a proprietary concern or a firm in India may accept deposits from a non-resident Indian or a person of Indian origin on non-repatriation basis, subject to the terms and conditions mentioned in Schedule 7.

➤ An Indian company may accept deposits by issue of Commercial Paper to a non-resident Indian or a person of Indian origin or a foreign portfolio investor registered with the Securities and Exchange Board of India subject to certain conditions.

D. Other deposits made or held by authorised dealer:

➤ A shipping or airline company incorporated outside India, may open, hold and maintain a Foreign Currency Account with an authorized dealer for meeting the local expenses in India of such airline or shipping company; provided that the credits to such accounts are only by way of freight or passage fare collections in India or by inward remittances through banking channels from its office outside India.

➤ An authorised dealer in India, may subject to the directions issued by the Reserve Bank, allow unincorporated joint ventures (UJV) of foreign companies/ entities, with Indian entities, executing a contract in India, to open and maintain non-interest bearing foreign currency account and a SNRR account as specified in schedule 4 for the purpose of undertaking transactions in the ordinary course of its business. The debits and credits in these accounts shall be incidental to the business requirement of the UJV; Provided that the tenure of the account is concurrent to the tenure of the contract/ period of operation of the UJV. Provided further that all operations in the account shall be in accordance with the provisions of the Act or the rules or regulations made or the directions issued there under.

➤ The link for the aforesaid features is as under:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10325&Mode=0>

2. Foreign Exchange Management (Remittance of Assets) Regulations, 2016

On 1st April, 2016 RBI had issued Foreign Exchange Management (Remittance of Assets) Regulations, 2016 in supersession of Notification No. FEMA 13/2000-RB dated May 3, 2000 in respect of remittance outside India by a person whether resident in India or not, of assets in India. The Amendments incorporated with the above notification inter alia includes the following:

A. Permission for remittance of assets in certain cases:

➤ A citizen of foreign state, not being a Person of Indian origin (PIO) or a citizen of Nepal or Bhutan, who (i) has retired from an employment in India, or (ii) has inherited the assets from a person referred to in sub-section (5) of section 6 of the Act; or (iii) is a widow/ widower resident outside India and has inherited assets of the deceased spouse who was an Indian citizen resident in India, may remit through an authorised dealer an amount, **not exceeding USD 1,000,000 (US Dollar One million only)** per financial year on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter.

➤ A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) may remit through an authorised dealer an amount, not exceeding USD 1,000,000 (US Dollar One million only) per financial year,

- Out of the balances held in the Non-Resident (Ordinary) Accounts (NRO accounts) opened in terms of Foreign Exchange Management (Deposit) Regulations, 2016/ sale proceeds of assets/ the assets acquired by him by way of inheritance/ legacy on production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter;
- Under a deed of settlement made by either of his parents or a relative (relative as defined in Section 2(77) of the Companies Act, 2013) and the settlement taking effect on the death of the settler, on production of the original deed of settlement; provided that where the remittance under Clause (i) and (ii) is made in more than one instalment, the remittance of all instalments shall be made through the same Authorised Dealer, provided further that where the remittance is to be made from the balances held in the NRO account, the account holder shall furnish an undertaking to the Authorised Dealer that “the said remittance is sought to be made out of the remitter’s balances held in the account arising from his/ her legitimate receivables in India and not by borrowing from any other person or a transfer from any other NRO account and if such is found to be the case, the account holder will render himself/ herself liable for penal action under FEMA.”
- An authorised dealer in India may, also allow remittance out of the assets of Indian companies under liquidation under the provisions of the Companies Act, 2013 subject to certain conditions.

B. Reserve Bank's prior permission in certain cases:

- A person who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:
 - (i) Remittance exceeding USD 1,000,000 (US Dollar One million only) per financial year –
 - (a) on account of legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
 - (b) by a Non-Resident Indian (NRI) or Person of Indian Origin (PIO), out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
 - (ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made.
- On consideration of the application made under sub-regulation (1), the Reserve Bank may permit the remittance, subject to such terms and conditions as it deem necessary.
- A brief description of the above mentioned factors is available in the link as under: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10326&Mode=0>

3. Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

On 31st March 31, 2016, RBI had issued Foreign Exchange Management (Establishment of a Branch office or a liaison office or a Project office or any other place of business) Regulations, 2016 in supersession of existing Foreign Exchange Management (Establishment of a Branch office or a liaison office or a Project office or any other place of business) Regulations 2000 (the "Old Regulations") is replaced.

Key Highlights of the aforesaid regulation are as follows:

➤ **Prohibition against opening a branch office or a liaison office or a project office or any other place of business in India and exception thereof :**

No person resident outside India shall without prior approval of the Reserve Bank open in India a branch office or a liaison office or a project office or any other place of business by whatever name called except as laid down in these Regulations, provided----

- i. An insurance company resident outside India shall not require any approval under these Regulations for establishing any office in India if such company has obtained approval from the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999
- ii. A company resident outside India shall not require any approval under these Regulations to establish a branch office in the Special Economic Zones (SEZs) to undertake manufacturing and service activities, subject to certain conditions.

➤ **Approval for opening a branch office or a liaison office or a project office or any other place of business in India and time period :**

With the above mentioned Regulation a time period of Six (6) months is prescribed within which the branch / liaison/ project office is to be established. This time period can be extended further by 6 months subject to the Authorised Dealer (AD) discretion. An application will be required to be made to RBI for extension thereafter.

The validity period for a liaison office set up by entities engaged in construction and development sectors (other than infrastructure activities) and non-banking financial companies is for two (2) years.

Fresh application for setting up an each additional branch office or liaison office will be required to be made to the Authorised Dealer along with justification for setting such each additional office.

Above Regulation has introduced new requirement for persons from Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau, to register a branch / liaison/ project office established by them with the State Police Authority. A copy of such registration is required to be submitted to the AD who in turn shall be required to submit such registration with the Ministry of Home Affairs, Internal Security Division-1 < Government of India, New Delhi.

➤ **Approval of the Reserve Bank in certain cases for establishment of branch office, liaison office or project office or any other place of business in India**

Any application from a person resident outside for opening of a branch office or a liaison office or a project office or any other place of business in India shall require prior approval of Reserve Bank in the certain cases.

For detailed notification please refer below mentioned link:

<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10327&Mode=0>

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