

FEMA Update

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If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

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Liberalization of definition of Infrastructure Sector under ECB Policy

The Reserve Bank of India ("RBI") has, vide its A.P. (DIR Series) Circular No. 85 dated January 06, 2014, further liberalized the existing definition of 'Infrastructure Sector' under the extant external commercial borrowings policy ("ECB Policy"), to additionally include 'Maintenance, Repairs and Overhaul', which will be treated as part of sub-sector of Airport in the Transport sector of infrastructure.

Further to the liberalization as aforesaid, the 'Infrastructure sector' and its sub-sectors that can avail external commercial borrowings under the automatic route of the ECB Policy (subject to certain compliances) will be deemed to include:

- (a) Energy which will include (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) oil pipelines, (v) oil/gas/liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil) and (vi) gas pipelines (includes city gas distribution network);
- (b) Communication which will include (i) mobile telephony services / companies providing cellular services, (ii) fixed network telecommunication (includes optic fibre / cable networks which provide broadband / internet) and (iii) telecommunication towers;
- (c) Transport which will include (i) railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading / unloading terminals, stations and buildings), (ii) roads and bridges, (iii) ports, (iv) inland waterways, (v) airport (which will include maintenance, repairs and overhaul), and (vi) urban public transport (except rolling stock in case of urban road transport);

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- (d) Water and sanitation which will include (i) water supply pipelines, (ii) solid waste management, (iii) water treatment plants, (iv) sewage projects (sewage collection, treatment and disposal system), (v) irrigation (dams, channels, embankments, etc.) and (vi) storm water drainage system;
- (e) (i) mining, (ii) exploration and (iii) refining;
- (f) Social and commercial infrastructure which will include (i) hospitals, (ii) Hotel Sector which will include hotels with fixed capital investment of Rs. 200 crore and above, convention centres with fixed capital investment of Rs. 300 crore and above and three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value), (iii) common infrastructure for industrial parks, SEZs, tourism facilities, (iv) fertilizer (capital investment), (v) post harvest storage infrastructure for agriculture and horticulture produce including cold storage, (vi) soil testing laboratories and (vii) cold chain facility.

RBI's clarifications on issuance of non-convertible/redeemable bonus preference shares or debentures

Until recently, the RBI has been granting permission to Indian companies for issuing non-convertible/redeemable bonus preference shares or debentures to non-resident shareholders from their general reserves pursuant to a Scheme of Arrangement approved by a Court in India, on a case to case basis.

However, on January 06, 2014, the RBI vide its A.P. (DIR Series) Circular No.84, rationalized this procedure by granting a general permission to Indian Companies to issue non-convertible/redeemable bonus preference shares or debentures to non-resident shareholders (including the depositories that act as trustees for the ADR/GDR holders) by way of distribution as bonus from their general reserves under a Scheme of Arrangement approved by a Court in India, provided that a no-objection from the Income Tax Authorities has been procured.

The above general permission has been granted only with respect to such bonus issuance of non-convertible/redeemable bonus preference shares or debentures to non-resident shareholders, that possesses the attributes discussed above. Any other kinds of issuance of mandatorily convertible preference shares or debentures will continue to be subject to the provisions of the extant foreign direct investment policy of the Government of India.

RBI's clarifications on transactions covered under section 6(4) of Foreign Exchange Management Act,

1999



In terms of Section 6(4) of the Foreign Exchange Management Act, 1999 (“FEMA”) 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 (a) acquired, held or owned by such person when he was resident outside India, or (b) inherited from a person who was resident outside India.

However, the RBI has vide A.P. (DIR Series) Circular No. 90 dated January 09, 2014, clarified that the following transactions will be permitted for purposes of Section 6(4) of the FEMA:

- (a) Foreign currency accounts opened and maintained by a person when he was resident outside India;
- (b) Income earned through employment or business or vocation outside India taken up or commenced while a 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;
- (c) Foreign exchange including any income arising there from, 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;
- (d) A person resident in India may freely utilize all of his eligible assets abroad as well as income on such assets or sale proceeds thereof received after his 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.

Feedback

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