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Regulatory Update **April 19, 2016, New Delhi, INDIA**

REGULATORY UPDATE

If you have questions or would like additional information on the material covered in this Newsletter, please contact us at info@lexcounsel.in:

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Recommended by:

CHAMBERS ASIA

Foreign Exchange Management Act ("FEMA")/Foreign Investment

- ***Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director***

  The Reserve Bank of India ("**RBI**") has clarified that keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from the RBI. Refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty-five (25) percent votes, will be accorded the same treatment. (*Reference: A.P. (DIR Series) Circular No.59 of April 13, 2016*).

- ***Review of FDI policy –Insurance sector***

  FDI limits in the insurance sector has been enhanced from twenty-six (26) percent to forty-nine (49) percent under the automatic route subject to certain terms and conditions which have been notified (through *Notification No. FEMA. 366/2016-RB dated March 30, 2016*), including without limitation:

  - approval/verification by the Insurance Regulatory and Development Authority of India;

- any increase in foreign investment in an Indian Insurance company will be in accordance with the pricing guidelines specified by the RBI under FEMA regulations; and

- ownership and control of the Indian insurance company remains at all times in the hands of resident Indian entities as determined by the Department of Financial Services/Insurance Regulatory and Development Authority of India as per the rules/regulation issued by them from time to time.

(*Reference: A.P. (DIR Series) Circular No.58 of March 31, 2016*)

- ***External Commercial Borrowings (ECB) – Revised framework***

The following changes have been made in the ECB framework:

1. Companies in the infrastructure sector, non-banking financial companies-infrastructure finance companies ("**NBFC-IFCs**"), NBFCs-asset finance companies ("**NBFC-AFCs**"), holding companies and core investment companies ("**CICs**") are also eligible to raise ECB under Track **I** of the framework with minimum average maturity period of 5 years, subject to 100 percent hedging, to be verified by the designated authorized dealer ("**AD**") Category-I bank who will also report the same to the RBI. The aforesaid companies will need to have a Board approved risk management policy.

2. For the purpose of ECB, "Exploration, Mining and Refinery" sectors which are not included in the harmonised list of infrastructure sector but were eligible to avail of ECB under the previous ECB framework (*A.P. (DIR Series) Circular No. 48 dated September 18, 2013*) will be deemed as in the infrastructure sector, and can access ECB as applicable to infrastructure sector under 1 above.

3. Companies in the infrastructure sector will utilize ECB proceeds raised under Track I for the end uses permitted for this Track. NBFCs-IFCs and NBFCs-AFCs will, however, be allowed to raise ECB only for financing infrastructure.

4. Holding companies and CICs will use ECB proceeds only for on-lending to infrastructure special purpose vehicles (SPVs).

	5. The individual limit of borrowing under the automatic route for the above referred companies will be as applicable to companies in the infrastructure sector (currently US$ 750 million). 6. Companies in the infrastructure sector, holding companies and CICs will continue to have the facility of raising ECB under Track II of the ECB framework subject to the conditions prescribed thereof. It is further clarified with respect to the ECB framework announced vide aforesaid Circular dated November 30, 2015, that: 1. Designated AD Category-I banks may, under delegated powers, allow refinancing of ECBs raised under the previous ECB framework, provided the refinancing is at lower all-in-cost, the borrower is eligible to raise ECB under the extant ECB framework and residual maturity is not reduced (i.e., it is either maintained or extended). The provisions regarding delegation of powers to designated AD Category-I banks is not applicable to Foreign Currency Convertible Bonds (“**FCCBs**”)/Foreign Currency Exchangeable Bonds (“**FCEBs**”). 2. The ECB framework is not applicable in respect of investment in non-convertible debentures (NCDs) in India made by Registered Foreign Portfolio Investors (RFPIs). 3. Minimum average maturity of FCCBs/FCEBs is 5 years irrespective of the amount of borrowing. Further, the call and put option, if any, for FCCBs will not be exercisable prior to 5 years. 4. Only NBFCs which are covered under the regulatory purview of the Reserve Bank are permitted to raise ECBs. Under Track III, NBFCs may raise ECBs for on-lending for any activities including infrastructure as permitted by the concerned regulatory department of RBI. 5. In the ECB forms, the term “Bank loans” will be read as “loans” since foreign equity shareholders/institutions other than banks, are recognized lenders. (*Reference: A.P. (DIR Series) Circular No.56 of March 30, 2016*)

	Feedback