RBI amends hedging guidelines for multinational entities and their Indian subsidiaries

With a view to providing operational flexibility to multinational entities and their Indian subsidiaries exposed to currency risk arising out of current account transactions emanating in India, the extant hedging guidelines have been amended by the Reserve Bank of India. Necessary amendments (Notification No.FEMA No.384/2017-RB dated March 17, 2017) to Foreign Exchange Management (Foreign Exchange Derivatives Contracts) Regulations, 2000 (Notification No. FEMA.25/RB-2000 dated May 3, 2000) (Regulations) have been notified in the Official Gazette vide G.S.R.No.260 (E) dated March 17, 2017 These regulations have been issued under clause (h) of sub-section (2) of Section 47 of FEMA, 1999 (42 of 1999).

Operational flexibility for Indian subsidiaries of Non-resident Companies

1. Purpose
To provide operational flexibility for booking derivative contracts to hedge the currency risk arising out of current account transactions of Indian subsidiaries of Multi-National Companies (MNCs).

2. Users
Non-resident parent of an Indian subsidiary or its centralised treasury or its regional treasury outside India.

3. Products
All FCY-INR derivatives, OTC as well exchange traded that the Indian subsidiary is eligible to undertake as per FEMA, 1999 and Regulations and Directions issued thereunder.

4. Operational Guidelines, Terms and Conditions for hedging

- The transactions under this facility will be covered under a tri-partite agreement involving the Indian subsidiary, its non-resident parent / treasury and the AD bank. This agreement will include the exact relationship of the Indian subsidiary or entity with its overseas related entity, relative roles and responsibilities of the parties and the procedure for the transactions, including settlement. The ISDA agreement between the AD bank and the non-resident entity will be distinct from this agreement.
- The non-resident entity should be incorporated in a country that is member of the Financial Action Task Force (FATF) or member of a FATF-Style Regional body.
- The AD Bank may obtain KYC/ AML certification on the lines of the format in Annex XVIII of the Master Direction on Risk Management and Inter Bank Dealings, as amended from time to time.
- The non-resident entity may approach an AD Cat-I bank directly which handles the foreign exchange transactions of its subsidiary for booking derivative contracts to hedge the currency risk of and on the latter’s behalf.
- The non-resident entity may contract any product either under the contracted route or on past performance basis, which the Indian subsidiary is eligible to use.

- The Indian subsidiary shall be responsible for compliance with the rules, regulations and directions issued under FEMA 1999 and any other laws/rules/regulations applicable to these transactions in India.
- The profit/ loss of the hedge transactions shall be settled in the bank account and books of accounts of the Indian subsidiary. The AD bank shall obtain from the Indian subsidiary an annual certificate by its Statutory Auditors to this effect.
- The concerned AD Bank shall be responsible for monitoring all hedge transactions (OTC as well as exchange traded) booked by the non-resident entity and ensuring that the Indian subsidiary has the necessary underlying exposure for the hedge transactions.
- AD banks shall report hedge contracts booked under this facility by the non-resident related entity to CCIL's trade repository with a special identification tag.

Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2017

In exercise of the powers conferred by clause (h) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank hereby makes the following amendments in the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification No. FEMA 25/RB-2000 dated May 3, 2000), namely:-
1. Short Title and Commencement
(i) These regulations may be called the Foreign Exchange Management (Foreign Exchange Derivative Contracts) (Amendment) Regulations, 2017.
(ii) They shall come in to force from the date of their publication in the Official Gazette.
2. Amendment under Schedule II: In the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification No. FEMA 25/RB-2000 dated May 3, 2000), in Schedule II, after the existing para 6, the following shall be added, namely:
A non-resident may enter into a foreign exchange derivative contract with an Authorised Dealer bank in India to hedge an exposure to exchange risk of and on behalf of its Indian subsidiary in respect of the said subsidiary's transactions subject to such terms and conditions as may be stipulated by the Reserve Bank from time to time.

Please contact for any query related to this mail to Ms. Surbhi Sharma, Senior Research Officer at surbhi@phdcci.in with a cc to Dr. S P Sharma, Chief Economist, PHD Chamber of Commerce & Industry.

Warm regards,

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