

RBI releases Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

Short Title & Commencement

These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017.

They shall come into force from the date of their publication in the Official Gazette.

Amendment of the Regulations

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in Regulation 5, for the existing sub-regulation (9), the following shall be substituted, namely:

“5 (9) A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an Limited Liability Partnerships (LLP) under Foreign Direct Investment, subject to the terms and conditions as specified in Schedule 9”

Schedule 9 shall be substituted, namely

The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.

Eligible Investors: A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP.

Eligible investment: Contribution to the capital of an LLP would be an eligible investment under the scheme. Investment by way of 'profit share' will fall under the category of reinvestment of earnings

Eligibility of a LLP: FDI in LLPs is permitted, subject to the following conditions:

- FDI is permitted under the automatic route in LLPs operating in sectors / activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions.
- An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another

company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions.

- FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008. A company having foreign investment can be converted into an LLP under the automatic route only if it is engaged in a sector where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

Pricing: FDI in a LLP either by way of capital contribution or by way of acquisition / transfer of profit shares, would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted / adopted as per market practice (hereinafter referred to as "fair price of capital contribution / profit share of an LLP") and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government. In case of transfer of capital contribution / profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than the fair price of capital contribution / profit share of an LLP. Further, in case of transfer of capital contribution / profit share from a non-resident to resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution / profit share of an LLP.

Mode of payment: Payment by an investor towards capital contribution in LLPs shall be made:

- (i) by way of inward remittance through banking channels; or
- (ii) by debit to Non-Resident (External) NRE / Foreign Currency Non Resident (FCNR(B) account of the person concerned, maintained with an AD Category - I bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

Reporting

- (i) Reporting of foreign investment in LLPs and disinvestment/transfer of capital contribution or profit shares between a resident and a non-resident may be made in a manner as prescribed by Reserve Bank of India from time to time.
- (ii) All LLPs which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified 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,

Dr. S P Sharma
Chief Economist & Director-Research

PHD Chamber of Commerce and Industry
PHD House, 4/2 Siri Institutional Area
August Kranti Marg, New Delhi-110016
Ph.: + 91-11-26863801-04, 49545454
Fax: +91- 26855450, 49545451
Email: spsharma@phdcci.in
Website: www.phdcci.in

"Lead the Change - Make the Difference"

PHD CHAMBER OF COMMERCE AND INDUSTRY

PHD House, 4/2 Siri Institutional Area, August Kranti Marg, New Delhi - 110 016 (India)

Tel. : +91-112686 3801-04, 49545454, 49545400 · Fax : +91-11-2685 5450 · E-mail : research@phdcci.in · Website : www.phdcci.in