



FOREIGN EXCHANGE LAWS

N. A. SHAH **BULLETIN**

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N.A.SHAH ASSOCIATES LLP
Chartered Accountants

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EXECUTIVE SUMMARY

- The Letter of Undertakings and Letter of Comforts for Trade Credits has been discontinued by RBI.
- Further amendments to the Foreign Direct Investment regulations have been made.
- RBI has introduced the Cross Merger Regulations detailing the conditions and permissions on merger, amalgamation or arrangement between an Indian company and foreign company.
- New regulations for Transfer and acquisition of Immovable Property in India has been introduced.

1. Discontinuance of LOUs and LOCs for Trade Credits

AD Category - I Banks i.e. Commercial, State Co-op and Urban Co –op Banks were permitted to issuance of Letter of Undertakings (LoUs) / Letter of Comfort (LoCs) for Trade Credits for imports. In wake of the recent developments and review of the extant policies, RBI has decided to discontinue the practice of issuance of LoUs/ LoCs for Trade Credits for imports into India by AD Category –I banks with effect from 13th March 2018. AD Category - I Banks however can continue to issue Letters of Credit and Bank Guarantees for Trade Credits for imports into India subject to compliance with the relevant provisions contained in 'Guarantees and Co-acceptances'.

2. Amendments on Foreign Investments Regulations

RBI has issued amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017. The key amendments are as under:

Particulars	Extant position	Revised Position
Foreign Investment in NBFCs and CICs	The extant provisions provided for blanket prior approval of Reserve Bank for Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies.	Now, it is clarified that foreign investment in RBI registered NBFCs will be under 100% automatic route.
Joint Audit	Not Applicable	Where a foreign investor specifies a particular international network of auditor/audit firm, then a joint audit by another network of auditor/audit firm shall be required.
Issue of Capital Instruments (in Swap)	Earlier, prior government approval was required.	Now, Indian investee company engaged in an automatic route sector does not require prior government approval.

Particulars	Extant position	Revised Position
Sectoral Limits		
Real Estate Broking Services	Not Applicable	Real Estate Broking has been specifically excluded from the definition of Real Estate Business. Also, it is clarified that 100% foreign investment under the automatic route is permissible for Real Estate Broking.
Single Brand Product Retail Trading	Investment beyond 49% was under approval route.	Investment up to 100% is under automatic route. Further, the sourcing norms are relaxed for all, where during the initial 5 years, mandatory sourcing requirement will be calculated on cumulative sourcing for global and domestic operations. Also, claims for relaxation of sourcing norms for 'state of art' and 'cutting edge' technology will be monitored by the a committee of DIPP Chairman and members of NITI Aayog.
Pharmaceuticals	Greenfield investment upto 100% and Brownfield investment upto 74% is under automatic route subject to certain conditions.	The investment limit and routes remain the same. Certain conditions have undergone a change.
Power Exchanges	Investment upto 49% is permissible under the automatic route subject to the following conditions.	These conditions have been done away with.

Particulars	Extant position	Revised Position
	<p>(a) Investment by FPIs shall be restricted to secondary market only.</p> <p>(b) A person resident outside India including persons acting in concert should not hold more than 5 percent.</p> <p>(c) The investment would be in compliance with Securities and Exchange Board of India Regulations, other applicable laws/regulations, security and other conditionalities.</p>	

3. Cross Border Merger Regulations

The regulations deal with merger, amalgamation or arrangement between Indian companies and foreign companies. The regulations apply to ongoing Cross Border Mergers as on date and for all future cross border mergers. Subject to compliance with other rules and regulations under FEMA, the salient provisions of the Cross Border Merger regulations are as under:

Particulars	Inbound Merger	Outbound Merger
Meaning	A merger or amalgamation of foreign company with an Indian company.	A merger or amalgamation of Indian company with a foreign company.
Issue / Acquisition of securities pursuant to cross-border merger	Resultant Indian company is required to comply with pricing guidelines, entry routes, sectoral caps, attendant conditions and reporting requirements for issue/ acquisition of securities.	A person resident in India is permitted to acquire or hold securities of the resultant foreign company.

Particulars	Inbound Merger	Outbound Merger
Office outside/ in India	An office outside India of the foreign company, shall be deemed to be the branch/office outside India of the resultant Indian company and the resultant Indian company may undertake any transaction as permitted to a branch/ office.	An office in India of the Indian company may be deemed to be a branch office in India of the resultant foreign company and it is permitted undertake any transaction as permitted to a branch office.
Restrictions on Borrowings	<p>Any borrowings or guarantees of the foreign Company from overseas source which becomes the borrowing of the resultant Indian company is required to conform with External Commercial Borrowing norms or Trade Credit norms or other foreign borrowings norms within a period of two years. For such borrowings, end use restrictions shall not apply.</p> <p>Further, in the initial two years, the Indian company will not be able to make remittance for repayment of the foreign liability.</p>	<p>Foreign company shall be liable to repay outstanding borrowings or guarantees as as sanctioned in the scheme by NCLT.</p> <p>However, the resultant foreign company shall not acquire liability payable to lender in India if the same is not in conformity with FEMA regulations.</p> <p>Further, no objection certificate (NOC) is required to be obtained from the lenders in India of the Indian company.</p>
Acquisition / Holding of assets or securities	An Indian company is permitted to acquire and hold any assets/ securities outside India upon merger.	Foreign Company is permitted to acquire and hold any assets/securities in India upon merger.

Particulars	Inbound Merger	Outbound Merger
Transfer of assets / securities not permitted to be acquired / held	<p>In a situation where an Indian company is not permitted to acquire or hold any assets/ securities outside India which is forming part of the foreign Company under an inbound merger, such assets/ securities need to be transferred by the resultant Indian company within a period of two years from the date of sanction of the scheme and sale proceeds shall be repatriated to India immediately through banking channels.</p> <p>Any liabilities not permitted to be held by the Indian company, the same may be extinguished from the sale proceeds of such overseas assets within a period of two years.</p>	<p>In a situation where foreign company is not permitted to acquire or hold any assets/securities in India which is forming part of an Indian Company under an outbound merger, such assets/ securities can be transferred by the resultant foreign company within a period of two years from the date of sanction of the scheme and sale proceeds shall be repatriated outside India immediately through banking channels.</p> <p>Repayment of Indian liabilities from sale proceeds of such assets/securities within a period of two years shall be permissible.</p>
Bank accounts	The resultant Indian company is permitted to open a bank account overseas, in foreign currency for a maximum period of 2 years from the date of sanction of scheme.	The resultant foreign company is permitted to open Special Non-resident Rupee ("SNRR") account in India for a maximum period of 2 years from the date of sanction of scheme.

Further, any transaction on account of a cross border merger undertaken in accordance with these Regulations will be deemed to have prior approval of the Reserve Bank as required under the Companies Act. Also, a certificate from the Managing Director/Whole Time Director and Company Secretary, if available, of the company (ies) concerned ensuring compliance to these Regulations is required to be furnished along with the application made to the National Company Law Tribunal for sanction of the Cross Border Merger.

4. Acquisition and Transfer of Immovable Property in India

RBI has issued Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 superseding the regulations issued in the year 2000. The key changes are as under:

- a. General permission available to Person of Indian Origin has been withdrawn. The regulations now provide general permission is applicable only to NRI and OCI for acquisition and transfer of immovable property.
- b. Prior RBI approval will be required if a person being a citizen from specified countries acquires Immovable Property on lease for a period exceeding five years. Citizen shall include natural persons and legal entities. However, this prohibition shall not apply to an OCI.

Countries specified are Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Hong Kong, Macau, Nepal, Bhutan and Democratic People's Republic of Korea (DPRK).

- c. Specific permission has been granted to person resident outside India being spouse of an NRI or OCI for acquisition of one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to the conditions prescribed.
- d. Specific permission has been provided to Long-Term Visa holder being citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by the Central Government for purchase of one residential immovable property in India as dwelling unit for self-occupation and one immovable property for carrying out self-employment subject to the conditions prescribed.
- e. An Authorized Dealer in India being the Indian correspondent of an overseas lender is now permitted to create a mortgage on an immovable property in India owned by an NRI or an OCI, being a director of a company outside India, for a loan to be availed by the

company from the said overseas lender, subject to the following conditions:

- i. the funds shall be used by the borrowing company only for its core business purposes overseas;
 - ii. in case of invocation of charge, the Indian bank shall sell the immovable property to an eligible acquirer and remit the sale proceeds to the overseas lender.
- f. All Any transaction involving acquisition or transfer of immovable property under these regulations are required to be undertaken through banking channels in India and will be subject to payment of applicable taxes and other duties/ levies in India.

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From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com