FOREIGN EXCHANGE LAWS

N. A. SHAH BULLETIN

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EXECUTIVE SUMMARY

- For the purpose of the Annual Performance Report (APR), where the law of the host country does not mandatorily require the books of accounts of JV /WOS to be audited, the statutory auditor is only required to certify the above fact. Erstwhile statutory auditor had to certify that the un-audited annual accounts reflect a true and fair picture of the affairs of the JV/WOS.

- RBI has issued new FDI regulations [Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017] superseding the regulation issued in the year 2000. Key changes have been highlighted.

- Reporting delays in FDI transactions can now be regularized without undergoing the compounding procedure by paying late submission fees.

- Overseas branches/subsidiaries of Indian banks are now permitted to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs.

- Banks may consider requests for Export Declaration Form waiver subject to certain prescribe conditions.

- The limit for investment by Foreign Portfolio Investors (FPI) in Government securities has been revised by the Reserve Bank of India (RBI).

1. Annual Performance Report of overseas JV/WOS

An Indian Party which has made investment in overseas Joint Venture (JV)/Wholly Owned Subsidiary (WOS) under the Overseas Direct Investment (ODI) route is required to submit an Annual Performance Report (APR) every year.

The APR is to be based on audited annual accounts of the foreign JV/WOS for the preceding year. However, where the law of the host country does not mandatorily require the books of accounts to be audited, the statutory auditor of the Indian Party had to certify that the unaudited annual accounts reflect a true and fair picture of the affairs of the JV/WOS.

The above certification has been done away with and now the statutory auditor is only required to certify that the host country does not mandatorily require auditing of books of accounts of the JV / WOS and that the APR is based on un-audited accounts of the overseas JV/WOS.

The above exemption from filing the APR based on un-audited accounts will not be available where the host country / jurisdiction is either under observation under Financial Action Task Force (FATF) or where enhanced due diligence is recommended by FATF or RBI.

2. New Regulation on Foreign Investments

RBI has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 superseding the regulations issued in the year 2000. The key changes are as follows:

Topic	Extant position	Revised Position
Acquisition through a Rights Issue	The extant provisions are silent on NR investing in rights shares that are renounced by the person to whom the right's shares are offered.	The conditions for a non-resident to invest via rights issue shall also be applicable if the NR invests in a rights issue that are renounced by the person to whom it was offered.
Pricing Guidelines	An unlisted company's shares are required to be valued by a chartered accountant or a merchant banker	Now a practicing cost accountant can also value the same.

Topic	Extant position	Revised Position
Merger, Demerger etc.	The transferee or the new company is required to file a report within 30 days with RBI giving details of shares held by NR before and after the merger/ demerger etc. as well as furnish a confirmation that all terms stipulated in the scheme approved by the Court have been complied with.	Now, the regulation does not require such reporting to RBI.
Time limit for issue of Capital instruments	The capital instruments are required to be issued within 180 days of receipt of consideration.	Now the capital instruments are required to be issued in compliance with the Companies act, 2013 therefore, they have to issue the shares within 60 days of receipt of consideration.

The transfer provisions under the new regulations is summarized hereunder:

Transferor	Transferee	Mode	Route
Resident	Non Resident including NRI	Sale	Automatic
		Gift	Approval*
Non Resident including NRI	Resident/ Non Resident	Sale	Automatic
		Gift	Automatic
NRI/Eligible investor holding securities under on non- repatriation basis (NRI-Non Repatriation)	Non Resident	Sale	Automatic
	Non Resident excluding NRI-Non Repatriation	Gift	Approval*
	NRI-Non Repatriation	Gift	Automatic

**amongst other conditions gift does not exceed (a) 5% of paid up capital /each series of debenture/ each mutual fund scheme (on cumulative basis) (b) USD 50,000 including value of security gifted to any other person during the financial year (c) is between relatives defined under Companies Act, 2013*

3. Late submission fee (LSF) on delays in reporting FDI transactions

a. Reporting delays in FDI transactions can now be regularized without undergoing the compounding procedure. The amount of LSF will be as per the following Matrix:

Amount involved in reporting (in Rs.)	LSF as % of amount involved *	Maximum amount of LSF applicable
Up to 10 million	0.05 percent	Rs.1 million or 300% of the amount involved, whichever is lower
More than 10 million	0.15 percent	Rs.10 million or 300% of the amount involved, whichever is lower
* The % of LSF will be doubled every twelve months The floor (minimum applicable amount) for LSF will be Rs 100		

b. The date of reporting to the bank shall be deemed to be the date of reporting to the Reserve Bank provided the prescribed documentation is complete in all respects.

c. In case the reporting form (whether in physical or electronic form) is incomplete then the delay will continue till such time the form is received complete in all respects.

d. The applicant cannot claim a refund in any manner for the amount already deposited as LSF.

4. Refinancing of External Commercial Borrowings (ECBs)

Overseas branches/subsidiaries of Indian banks are now permitted to refinance ECBs of highly rated (AAA) corporates as well as Navratna and Maharatna PSUs, provided the outstanding maturity of the original borrowing is not reduced and all-incost of fresh ECB is lower than the existing ECB. Partial refinance of existing ECBs will also be permitted subject to same condition.

5. Grant of Export Declaration Form (EDF) waiver

Banks may consider requests for EDF waiver as under:

a. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of Rupees One Crore (earlier INR 10 Lacs) or 2% of average annual export realisation during preceding three licensing years, whichever is lower.
b. For export of pharma products by pharmaceutical companies, the annual limit would be 2% of average annual export realisation during preceding three licensing years.
c. In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN,WHO-PAHO and Government health programmes, the annual limit shall be upto 8% of the average annual export realisation during preceding three licensing years.
d. Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

6. Investment by Foreign Portfolio Investors in Government Securities

The revised aggregate Foreign Portfolio Investors (FPI) investments limits in the Government Securities are as follows:

(INR in billions)

Particulars	**Existing limit**	**Revised limit***
<u>Central Government securities</u>		
General	1,897	1,913
Long Term	603	651
Sub- Total	**2,500**	**2,564**
<u>State Development Loans</u>		
General	300	315
Long Term	93	136
Sub- Total	**393**	**451**
Grand Total	**2,893**	**3,015**

* w.e.f. 1st January, 2018

All other existing conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, will continue to apply.

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