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RBI | New overseas investment rules, regulations, and directions

On August 22, the Reserve Bank of India (RBI) and the Central Government notified the Foreign Exchange Management (Overseas Investment) Regulations, 2022 (**OI Regulations**), the Foreign Exchange Management (Overseas Investment) Directions, 2022 (**OI Directions**) and the Foreign Exchange Management (Overseas Investment) Rules, 2022 (**OI Rules**). The OI Rules, the OI Regulations and the OI Directions (hereinafter collectively referred to as **New OI Norms**) have been issued, keeping in the spirit of liberalization and to promote ease of doing business. The RBI aims to simplify the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduce the need for seeking specific approvals, reducing compliance and associated costs.

These new OI Norms have been notified in supersession of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 (**Old OI Norms**).

Key aspects

Some of the key features/changes under the New OI Norms are as follows:

- **Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI):** Ending earlier ambiguity, OPI has now been clearly defined under the New OI Norms to mean investment other than ODI in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC. OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity. Further, though the financial commitment of an Indian entity under ODI is capped at 400% of its net worth (as on date of its last audited balance sheet), OPI by an Indian entity cannot exceed 50% of its net worth (as on date of its last audited balance sheet).
- **Definition of foreign entity:** The concept of Joint Venture and Wholly Owned Subsidiary under the Old OI Norms has now been changed to 'foreign entity' which is '*an entity formed or registered or incorporated outside India, including International Financial Services Centre (IFSC), that has limited liability*'. The restriction of limited liability does not apply to an entity with core activity in a strategic sector.
- **Control:** The New OI Norms have defined 'control' as '*the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten per cent or more of voting rights or in any other manner in the entity*'. This definition is consistent with the commonly accepted meaning; however, it should be noted that just 10% voting rights will be deemed 'control' under the New OI Norms.
- **Round tripping:** The New OI Norms have permitted outbound investments, known as 'round tripping', i.e., financial commitment in a foreign entity that has invested or invests into India, either directly or indirectly, without requiring prior RBI approval as long as the structure does not result in more than two layers of subsidiaries.
- **Pricing guidelines:** Under the Old ODI Norms, valuation was mandatory in certain cases such as transfer of shares or swap of shares. However, under the New ODI Norms, the concept of pricing guidelines (as applicable for foreign direct investment) has been introduced. The issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall now be subject to a price arrived on an arm's length basis. The Authorized Dealer (AD) bank is obliged to ensure compliance prior to facilitating a transaction, taking into consideration the valuation in accordance with any generally recognized international pricing methodology for valuation.
- **ODI in start-ups:** ODI in start-ups (recognized under the laws of the host country/jurisdiction) can only be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual. Usage of borrowed funds for the same has been disallowed.
- **ODI in financial services:** Under the New ODI Norms, an Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking and insurance, provide it has posted net profits during the preceding three financial years.
- **Deferred payment of consideration:** The New OI Norms have allowed deferred payment of consideration for acquisition or transfer of foreign securities, subject to certain conditions, which was not permitted in the Old OI Norms. Where a person resident in India acquires equity capital by way of subscription to an issue or by way of purchase from a person resident outside India or where a person resident outside India acquires equity capital by way of purchase from a person resident in India and where such equity capital is reckoned as ODI, the payment of amount of consideration for the equity capital acquired may be deferred for such definite period from the date of the agreement as provided in such agreement subject to – a) the foreign securities equivalent to the amount of total consideration shall be transferred or issued upfront by the seller to the buyer and b) the full consideration finally paid shall be compliant with the applicable pricing guidelines.
- **Introduction of late submission fee:** A person resident in India who delays submission of evidence/ reporting of overseas investment, may do so along with payment of late submission fee (LSF) within a period of 3 years from the due date.
- **Acquisition of immovable property:** Under the New ODI Norms, a person resident in India is permitted to acquire an immovable property outside India on a lease not exceeding 5 years, without the prior approval of RBI.

The New OI Norms aim to reduce the need for RBI approvals and are geared to help increase overseas investment by Indian entities and individuals by broadening the scope of investment and increasing ease of doing business. These changes to the regime for investment abroad address some of the issues long plaguing the Old ODI Norms. Minor ambiguities still present in the New ODI Norms may be further clarified by way of issue of FAQs by RBI.

RBI | Charges on UPI-based transfers

The Unified Payment Interface (UPI) has brought revolutionary changes in the payment ecosystem of India. While transactions made through UPI are free of cost at present, the RBI has now asked for feedback from stakeholders on the possibility of imposing a tiered charge on them.

The RBI released a discussion paper on charges in payment systems to structure its policies and streamline the framework of charges for different payment services/activities in India. These include the following:

- UPI
- IMPS (Immediate Payment Service)
- NEFT (National Electronic Funds Transfer)
- RTGS (Real-Time Gross Settlement)
- Payment instruments including debit cards, credit cards, and prepaid payment instruments (PPIs)

The banking regulator emphasized that the Payment System Providers or PSPs should earn income for continued operations of the system to facilitate investments in new technologies, systems and processes. Such charges would be reasonable and competitively determined for the users, to ensure wider acceptance of digital payment modes. As an illustration, RBI explained that different stakeholders will collectively incur a cost of INR 2 to process a UPI person-to-merchant transaction with an average value of INR 800.

While the industry says the days of free UPI transactions cannot continue forever, experts are contending that P2P payments should be kept free while the charges can be recovered from the merchants for P2M transactions. Despite its meteoric rise, UPI still has a long way to go in terms of adoption. Therefore, settling on any pricing mechanism will be a balancing act between growth of digital payments and incentivizing the system.

RBI | Hike in Repo Rate

RBI has hiked its repo rate by 0.40% to 4.40% now. The hike will mean higher EMIs for new loans and extended tenures for existing floating rate loans. Implications of the rate hike on different stakeholders are as follows:

- **FD operators:** The start of the rate hike cycle means that initially the interest rates on short-term FDs will increase. The rates offered by long-term deposits will take a bit more time before they see some good upward movement.
- **Equity investors:** The rate increase will hit the investor sentiments first. The announcement itself led to a mayhem

in the market since the rate-sensitive companies and sectors get impacted with this rate hike. However, equity returns may suffer in the short term.

- **Debt investors:** A rise in interest rates will have a negative impact on debt funds, with a portfolio of longer duration.
- **Floating loan owners:** The interest rate will go up, which will extend the tenure of the loan. The impact will be bigger on longer loans. In case of a 20-year loan, at 7%, every 0.25% hike in rate will increase the tenure by roughly 10 months.
- **Fixed income investors:** Banks have started increasing their deposit rates, which means higher returns for investors.
- **NPS:** When bond yields go up, the value of existing bonds falls. Bond funds and NPS funds that hold long-term securities have been the worst hit.

While the era of low interest rate seems to be over, the silver lining is that investors will own assets which will also appreciate.

SEBI | Regulatory framework for Social Stock Exchanges

SEBI has notified a framework for a Social Stock Exchange (SSE) for providing social enterprises an additional avenue to raise funds. Social enterprises include registered charitable trusts, societies and a company incorporated under Section 8 of the Companies Act, 2013. These enterprises have to promote healthcare, support education, generate employability and livelihoods, promote gender equality, engaged in empowerment of women and LGBTQIA+ communities, and/or support incubators of social enterprise.

Eligible SSEs

- Eligible Non-Profit Organizations (NPOs) can raise funds through zero-coupon zero principal bonds and mutual funds.
- For-profit social enterprises can mobilise capital through the issuance of equity shares on the main board.
- SME platform or equity shares issued to an alternative investment fund, including social impact fund.
- NPOs desirous of raising funds on the SSE will be required to be registered with the exchange.

New norms

- SSE will be a separate segment of the existing stock exchanges.
- Social enterprises who are eligible are as follows:
 - Non-profit organizations
 - For-profit social enterprise with a social intent and impact as their primary goal, as reflected through their focus on eligible social objectives for the underserved or less privileged populations or regions.
- Social enterprises will have to engage in a social activity out of 16 broad activities listed by the SEBI.

To bring about these changes, SEBI amended the rules governing Alternative Investment Funds, ICDR (Issue of Capital and Disclosure Requirements) rules and LODR (Listing Obligations and Disclosure Requirements) norms.

SEBI | Enhanced guidelines for Debenture Trustees

SEBI has now strengthened the Guidelines for Debenture Trustees (DTs) with respect to listed securities. In furtherance of the decision to strengthen the role of DTs taken by SEBI at its meeting held on September 29, 2020, SEBI has enacted the (i) Securities and Exchange Board of India (Debenture Trustees) (Amendment) Regulations, 2020; (ii) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2020; and (iii) Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020.

Key aspects

- DTs are now required to exercise due diligence to ensure that security on which charge is being created is free from any encumbrance or necessary consent from existing charge-holders has been obtained if the security has an existing charge and monitor asset cover on a quarterly basis.
- DTs will have to put in place an empanelment policy for empaneling external agencies for carrying out due diligence.
- The amendments mandate DTs to obtain a certificate on half yearly basis from issuer's statutory auditor regarding value of receivables/book debts.
- Debenture Trust Deed is required to be structured in a manner that statutory/standard information pertaining to the debt issue is mentioned in Part A and details specific to the particular debt issue in Part B.
- Before initiating due diligence, a DT and the listed entity will have to enter into an amended Debenture Trust Agreement with respect to security creation, initial due diligence and continuous monitoring by the DT concerned.
- Post carrying out the initial due diligence, the DT would have to issue a no-objection certificate to the issuer company for going ahead with proposed change in the structure or creation of security.
- After creation and registration of charge, the issuer company and the DT concerned would have to enter an amended Debenture Trust Deed. The latter should include all the terms and conditions arising out of the due diligence carried out by the DT as well as of the security created by the issuer company.

SEBI | Blue bonds proposed as an impetus to sustainable financing

SEBI had recommended blue bonds as a source of sustainable financing for diverse blue economy related activities, which comprise 4.1% of India's economy. The regulator is also keen to reinforce framework for green bonds by amplifying the definition of green debt securities. The proposals are aimed at aligning with the updated Green Bond Principles published by the International Capital Market Association.

At the COP - 26 summit in Glasgow, India had made the following commitments towards its climate change goals for sustainable finance through such bonds:

- Raising non fossil fuel-based energy capacity to 500 GW

- Lowering total projected carbon emission by one billion tons
- Meeting 50% of the country's energy needs through renewable sources
- Reduce the carbon intensity of the economy to sub 45% level
- Commitment to achieve net zero emissions by 2070
- Blue flag beach eco-tourism model that provides the tourists clean and hygienic bathing water facilities.

SEBI | AMCs and depositories directed to join the Accounts Aggregator Ecosystem

SEBI has directed stock market intermediaries such as Asset Management Companies (AMCs) and depositories to join the Accounts Aggregator Ecosystem framework introduced by the RBI. This is done with the aim of making all the financial data available with convenience in a single platform. Launched in September 2021, account aggregators are licensed NBFCs that enable instant exchange of financial data between FIP and FIUs. They are responsible for providing services that include the transfer of a customer's data.

Intermediaries eligible to join

- Players in the stock market ecosystem joining the aggregator framework
- NBFCs facilitates retrieval or collection of financial information pertaining to a customer from financial information providers
- The FIPs in the securities market will provide the financial information through any of the account aggregators registered with the RBI. Further, FIPs in the securities market will enter a contractual framework with the account aggregator
- Banks
- AMCs
- Pension funds or depositories
- Financial Information Users (entities that use this data to offer financial products and services to their customers) can access via requests through an aggregator

The SEBI Circular emphasizes on data protection. Recently, all 12 public sector banks joined the aggregator ecosystem, bringing into its fold over a billion accounts. The account aggregator framework will see the GST Network go live in a few months. SEBI aims to include the insurers and pension funds in the ecosystem too.

SEBI | Guidelines for settlement of running accounts

In an attempt to ensure uniformity in the settlement of running accounts, SEBI has announced fresh norms for settlement of running accounts of clients' funds or securities lying with stockbrokers. Further, the stock exchanges have been notified to issue operational guidelines to their members in this regard. SEBI has directed that the settlement of running account of

client funds should be done by the Trading Members (TM) after considering obligation of funds at the end of the day. The fresh provisions will come into effect from October 1, 2022.

New Rules:

- Settlement of running account of funds of the client shall be done by the TM after considering the End of Day (EOD) obligation of funds as on the date of settlement across all exchanges on the first Friday of the Quarter (i.e., Apr-Jun, Jul-Sep, Oct-Dec, Jan-Mar) for all the clients.
- The running account of funds shall be settled on the first Friday of October 2022, January 2023, April 2023, July 2023, and so on for all the clients. If the first Friday is a trading holiday, then such settlement shall happen on the previous trading day.
- Clients who chose monthly settlement, running account shall be settled on the first Friday of every month.
- Stock exchanges are directed to continue online monitoring of timely settlement of running account to verify that excess clients' funds are not retained by the TM as on the date of settlement of running account.
- Stock exchanges are required to put in place an appropriate reporting requirement by TM to enforce the above the system and communicate the status of the implementation of the provisions in their monthly development report to SEBI.

SEBI | FPI advisory committee

SEBI constituted a committee to explore measures for facilitating business through FPIs in India. The 15-member committee will be chaired by KV Subramanian, former chief economic adviser to the Government of India.

Key functions of the committee

- Advise SEBI on measures to facilitate doing business through FPIs in India.
- Suggest the necessary measures to encourage FPI's participation in the bond market.
- Advise on matters related to the investments and operations of FPI investors in Indian financial markets.
- Review investment avenues available to FPIs and advise on the feasibility of new investment avenues.
- Recommend measures for the simplification of FPI regulations and advise on custodial matters pertaining to such foreign investors.

Miscellaneous | Personal Data Protection Bill withdrawn by the Government

The Government withdrew the long-awaited Personal Data Protection Bill, 2019 (PDP) to replace it with a new bill with a 'comprehensive framework' and 'contemporary digital privacy laws'. Indian and foreign companies dealing with the data of Indian citizens had to comply with the now-withdrawn bill. This included ecommerce, social media, IT companies, real estate companies, telecom, hospitals and pharmaceutical companies, among others.

There were significant concerns over Article 12 (A) and Article 35 of the Bill, with the opposition and tech companies registering their non-compliance with the bill. The Government will bring a set of new legislation for a comprehensive legal framework for the digital economy considering 81 amendments and 12 recommendations proposed by the Joint Parliament Committee (JPC) and this will fit into the comprehensive legal framework of new digital economy.

The withdrawn Bill had proposed restrictions on the use of personal data without the explicit consent of citizens. It had also sought to provide the Government with powers to give exemptions to its probe agencies from the provisions of the Act, a move that was strongly opposed by the opposition MPs who had filed their dissent notes. The Bill had also proposed to specify the flow and usage of personal data, protect the rights of individuals whose personal data are processed, as it works out the framework for the cross-border transfer, accountability of entities processing data, and moots remedies for unauthorized and harmful processing.

The legislation was initially aimed at protecting the digital privacy rights of the internet subscribers and a nascent data economy. In the due course of events, it underwent a plethora of changes to include elements on regulating social media, hardware companies, as well as provisions on data localization and non-personal data. The legislation, following JCP review, drew rage from technology corporations and startups for what they termed as the 'high cost of compliance'.

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HSA AT A GLANCE

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INVESTIGATIONS



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RESTRUCTURING & INSOLVENCY



COMPETITION & ANTITRUST



DISPUTE RESOLUTION



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PROJECTS, ENERGY & INFRASTRUCTURE



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