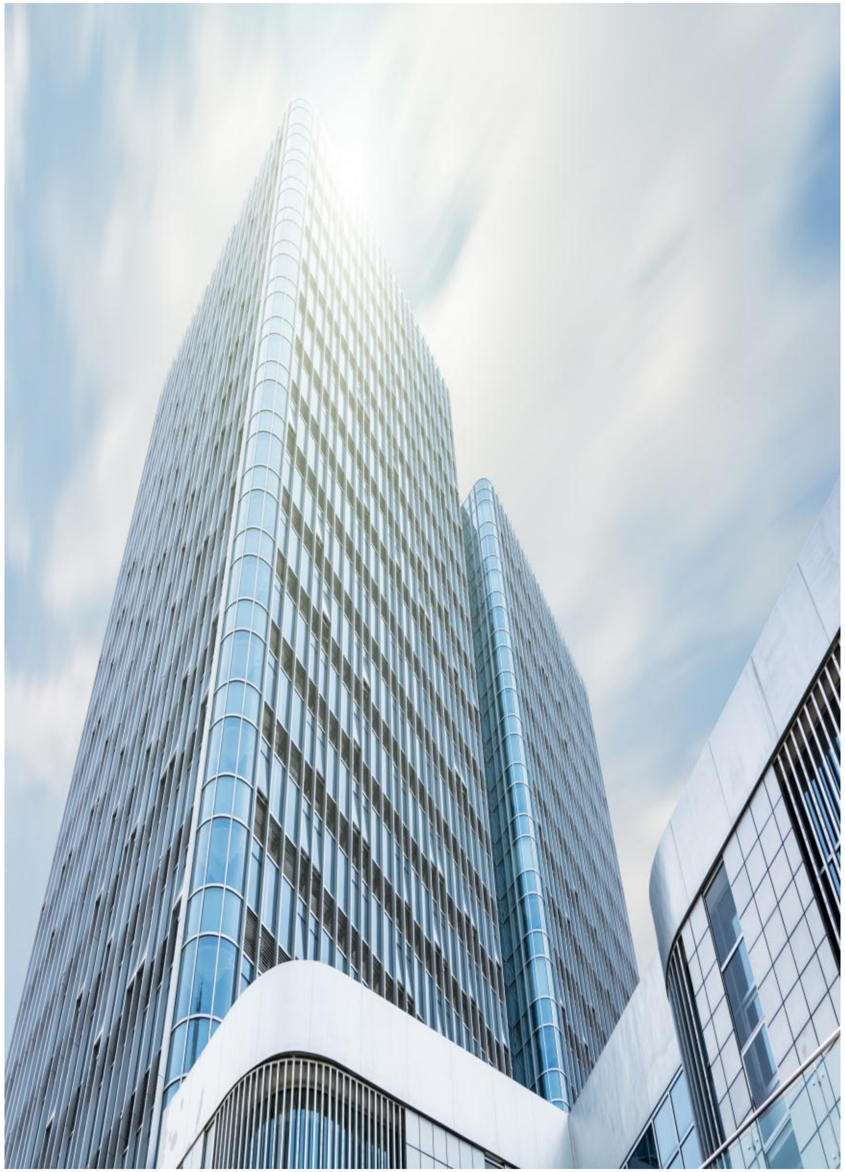
KrayMan

Demystifying Complexities



Regulatory Bulletin:

Relaxation of Foreign Investment rules in India

November 2017

Relaxation of Foreign Investment rules in India

As another step towards ease of doing business in India, the Reserve Bank of India ('RBI') has relaxed certain conditions relating to Foreign Investments in India, with effect from 7 November 2017.

The RBI has issued consolidated Regulations for Foreign Investments in India vide Notification No. FEMA.20(R) dated 7 November 2017, in supersession of earlier Notification No.FEMA.20 dated 3 May 2000 (Foreign Investments in Indian companies & LLPs) and Notification No.FEMA.24 dated 3 May 2000 (Investments in firm or proprietary concerns in India). It appears to be a welcome step towards simplification and consolidation of foreign investment regulations in India.

Please refer below for key comparisons between the new regulations and earlier regulations:

S. No	Particular	Old regulations	New regulations	Implication
1.	**Widened definition of 'Capital' for the purposes of FDI**	'**Capital**' was earlier defined as *equity shares, preference shares, convertible preference shares, and convertible debentures*	*Equity instruments, i.e., equity shares (including partly paid up shares), debentures, preference shares and share warrants* have now been clubbed under one definition of '**Capital Instruments**'. All capital instruments can contain an **optionality clause** without any option or right to exit at an assured price.	Definition of 'Capital' for the purposes of FDI has been widened. Share warrants and party-paid up shares were earlier not considered as 'Capital'. Now, these instruments form part of Capital 'Instruments'

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2.	**FDI now defined under RBI regulations**	FDI was earlier defined in '**FDI Policy**' and not under RBI regulations.	Now, FDI has been defined under the **RBI regulations** as well, as below. *'Foreign Direct Investment (FDI), has been defined to mean investment through capital instruments by a person resident outside India in an unlisted Indian company, or in 10% or more in a listed Indian company*	FDI Policy is issued by Ministry of Commerce and Industry (through DIPP), whereas RBI guidelines are issued by Ministry of Finance. Defining FDI under RBI regulations brings more clarity for foreign investors.
3.	**Clarity over FDI and FPI in Listed Companies**	Earlier, a non-resident could acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme, complying with SEBI guidelines and other prescribed conditions.	RBI has clarified that a non-resident can invest either under the FDI or the FPI route. Henceforth, all foreign investments by FII, QFI and non- residents in listed companies < 10% will be considered as FPI. However, any past FDI which reduces below 10% limit in future will continue to be considered as FDI and not FPI.	Alignment of RBI regulations with SEBI regulations.

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4.	**Transfer of capital instrument of Indian company, pursuant to lliquidation, merger, de-merger and amalgamation of foreign companies, now covered under general permission**	Earlier, only transfer by Way of sale or gift of capital instrument of an Indian company by one non- resident to another non resident, was covered under general permission.	Going forward, RBI has permitted transfer of capital Instruments to a non-resident, pursuant to liquidation, merger, de-merger and amalgamation of foreign companies under general permission.	Relaxation of rules regarding transfer of capital instruments in Indian company, in case of corporate restructuring of foreign companies, general permission granted.
5.	**Synchronization with Companies Act, of timeline for issue of capital Instruments and refund of application money**	Capital instruments were required to be issued to non-resident investor within **180 days** from the date of receipt of the inward remittance. Any refund would also be required to be made within **180 days**.	Time-limit of 180 days for issue of capital instruments has been reduced to **60 days**. Limit for refund of application money has been reduced from 180 days to **75 days**.	Timeline for issue of Capital Instruments and refund of application money has been aligned with the Companies Act, 2013.

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6.	**Reporting requirements**	In case of transfer of shares between resident and non-resident, the resident transferor/transferee is required to submit form FC-TRS within 60 days **from the date of receipt of payment**.	In case of transfer of shares on **deferred payment or installment** basis, the resident transferor/transferee is required to submit form FC-TRS within 60 days **from the date of receipt of each tranche of payment**.	RBI has clarified that the time limit of 60 days for submitting Form FC-TRS is applicable from **date of receipt of each installment** (such clarity was missing in erstwhile regulations).
7.	**Transfer/ Gift by Non-resident India (NRI) or Overseas Citizen of India (OCI)**	Earlier, NRI / OCI could transfer capital instrument only to another NRI / OCI and Indian Residents under automatic route.	Going forward, NRIs / OCIs are permitted to transfer, by way of sale or gift, capital instruments even to non-residents under automatic route, subject to sectoral restrictions.	Transfer of capital instruments by NRIs / OCIs to non-residents is now allowed
8.	**Penal consequences in case of delay in reporting of foreign investment**	Earlier, case of serious delays in reporting of foreign investment, might attract penal provisions	Provision for **late submission fee** has been inserted in case of delay in reporting	Likely to eliminate the hassles of undergoing time-consuming and costly compounding process for delay in reporting of foreign investments.

S. No	Particular	Old regulations	New regulations	Implication
9.	**Cost Accountants allowed to certify Valuation Report**	Earlier, in case of an unlisted entities, valuation reports determining fair value of capital instruments could be certified by a **Chartered Accountant** or a **SEBI registered Merchant Banker**	Going forward, valuation reports can also be certified by practicing **Cost Accountant**	Cost Accountants allowed to certify Valuation Report
10.	**Definition of 'Downstream investment' widened to include LLPs**	Earlier, 'Downstream investment' was defined as indirect foreign investment, by one Indian **company** into another Indian **company**, by way of subscription or acquisition	Definition of 'Downstream Investment' widened to include investment by an **Indian company or LLP or Investment Vehicle** in another downstream **Indian company or LLP.**	Limited Liability Partnerships covered within the scope of indirect foreign (Downstream) investment

Glossary:

FDI: Foreign Direct Investment
FPI: Foreign Portfolio Investment
SEBI: Securities Exchange Board of India
FII: Foreign Institutional Investor
QFI: Qualified Foreign Investor
DIPP: Department of Industrial Policy and Promotion