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Reporting of FDI in India through FC-GPR

Dear Professional Colleagues,

Some time back I had shared an article titled "Indirect Foreign Investment or Downstream Investment in India" where we had discussed the meaning and procedure for Indirect Foreign Investment or Downstream Investment keeping in view the guidelines of RBI.

Under the Foreign Direct Investments (FDI) Scheme, investments can be made in shares, mandatorily and fully convertible debentures and mandatorily and fully convertible preference shares of an Indian company by non-residents. As we are aware about the fact that there are basically 2 entry routes for investment in India; first is Automatic route and second is Government approval route.

- 1. Automatic Route:** Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.
- 2. Government Route:** Under the Government Route, the foreign investor or the Indian company should obtain prior approval of the Government of India (Foreign Investment Promotion Board (FIPB), Department of Economic Affairs (DEA), Ministry of Finance or Department of Industrial Policy & Promotion, as the case may be) for the investment.

Simple meaning of Foreign Direct Investment (FDI)

In simple words Foreign Direct Investment (FDI) means monetary investment made by non-residents or by foreign entity or enterprise into an Indian entity or enterprise. A non-resident or foreign entity or enterprise may purchase equity shares in Indian companies, Indian entity or enterprise to invest their funds. In other words any non-resident investment in an Indian company is foreign direct investment.

Meaning of Indirect Foreign Direct Investment (Indirect FDI)

Investment in Indian companies can be made both by non-resident (Foreign Entities) as well as resident Indian entities. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. For more details regarding Indirect Foreign Investment kindly refer my Article available at the link below:

[Indirect Foreign Investment or Downstream Investment in India](#)

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Regulatory framework for Reporting of Foreign Direct Investment (FDI)

Foreign investment in India is governed by sub-section (3) of Section 6 of the Foreign Exchange Management Act, 1999 read with Notification No. **FEMA 20/2000-RB dated May 3, 2000**, as amended from time to time.

Foreign Direct Investment (FDI) in India is undertaken in accordance with the FDI Policy which is formulated and announced by the Government of India. The Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India issues a "Consolidated FDI Policy Circular " on an yearly basis on March 31 of each year (since 2010) elaborating the policy and the process in respect of FDI in India.

The latest "Consolidated FDI Policy Circular" dated April 17, 2014 is available in the public domain and can be downloaded from the website of Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. You may also download this circular from the link given below:

Please find below the link:

[Download Consolidated FDI Policy Circular by RBI--2014](#)

FDI Reporting requirements under RBI Guidelines

As per RBI regulations, an Indian company is required to report the details of monetary investment received from foreign source to RBI whenever such Indian company issued shares / convertible debentures / preference shares/ warrants under the FDI Scheme and raised foreign direct investment.

In other words, company receiving investment from outside India for issuing shares / convertible debentures / preference shares, should report the details of the amount of consideration (including each upfront/call payment) to the Regional Office concerned of the Reserve Bank through its AD Category I bank. This reporting to RBI is to be done, not later than 30 days from the date of receipt of money, in the Advance Reporting Form enclosed in Annex - 6. The Form for reporting can be downloaded from the Reserve Bank's website link as given below:

<http://www.rbi.org.in/Scripts/BSViewFemaForms.aspx>

Please find below relevant points in this regard:

1. **Submission of FIRC evidencing receipt of Money:** Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures/ warrants, through an AD Category - I bank, together with a copy of Foreign

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Inward remittance certificate (FIRC) evidencing the receipt of the money. KYC report about the non-resident investor from the overseas bank remitting the amount is also required to be attached with FIRC. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.

Note: It is relevant to note that document FIRC defines the purpose of receipt of foreign money in India. Hence purpose of FIRC should be in sync with the transaction.

2. **Time frame within which shares have to be issued:** After receipt of money and reporting of the same through filing of FIRC, it is duty of the Indian Company to issue equity shares / convertible debentures / preference shares, as the case may be, within 180 days from the date of receipt of the inward remittance or by debit to the NRE/FCNR (B) /Escrow account of the non-resident investor.
3. **Refund of Investment amount:** In case, the equity instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor. This amount may be refunded either:
 - a. by outward remittance through normal banking channels; or
 - b. by credit to the NRE/FCNR (B)/Escrow account, as the case may be.
4. **Provisions related to non-compliance:** Non-compliance with the above mentioned FDI provision would be considered as a serious contravention of FEMA rules and regulations and could attract penal provisions under FEMA rules. However in exceptional cases, refund / allotment of shares for the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered and condoned by the Reserve Bank, on the merits of the case.

Reporting of issue of shares (Filing of form FC-GPR with RBI)

After the discussion on timelines in case of Foreign Direct Investment, now it is time to discuss the form through the filing of which process of reporting of FDI to RBI is performed.

- (a) **Filing of form FC-GPR:** After issue of shares / convertible debentures / convertible preference shares/warrants, the Indian company has to file Form FC-GPR, through its AD Category I bank, not later than 30 days from the date of issue of shares. The Form can also be downloaded from the Reserve Bank's website. Please find below the relevant link:

<http://rbidocs.rbi.org.in/rdocs/Forms/PDFs/AP110214 ANN.pdf>

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Non-compliance with the above provision would be reckoned as a contravention under FEMA and could attract penal provisions.

- (b) **Annexures to be filed along with Form FC-GPR**: Form FC-GPR has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorised Dealer of the company, who will forward it to the concerned Regional Office of the Reserve Bank. The following documents have to be submitted along with Form FC-GPR as annexures:
- (i) A certificate from the Company Secretary of the company certifying that :
 - a) All the requirements of the Companies Act, 2013 (along with erstwhile Companies Act, 1956) have been complied with;
 - b) terms and conditions of the Government's approval, if any, have been complied with;
 - c) the company is eligible to issue shares under these Regulations; and
 - d) the company has all original certificates issued by AD banks in India evidencing receipt of amount of consideration.
 - (ii) A certificate from SEBI registered Merchant Banker or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.
- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated.

Annual Return on Foreign Liabilities and Assets

At the time of allotment of shares form FC-GPR is filed. However there is a provision for annual reporting as detailed below. Accordingly all Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year, should file the **annual return on Foreign Liabilities and Assets (FLA)** in the soft form to the Reserve Bank, Department of Statistics and Information Management, Mumbai by **July 15 every year**.

Earlier this annual return was filed through Part B of form FC-GPR which has now been discontinued and replaced by an Annual return for Foreign Assets and Liabilities. You may download the same from the link below:
http://rbidocs.rbi.org.in/rdocs/content/pdfs/APFL200612_F.pdf

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Disclaimer:

This write up is intended to start academic discussion on few significant interpretations. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

Thanks

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