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RBI INTRODUCES A SINGLE MASTER FORM TO REPORT ALL FOREIGN INVESTMENT RECEIVED BY INDIAN ENTITIES

1. INTRODUCTION

On June 7, 2018, the Reserve Bank of India (the “RBI”) issued a circular (the “Circular”),¹ introducing a single master form (the “SMF”) to integrate the existing reporting norms for various types of foreign investment in India.

In this regard, it may be relevant to mention that ‘foreign investment’ is defined in the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017 (the “TISPRO Regulations”),² as any investment made by a person resident outside India, on a repatriable basis, in the capital instruments of an Indian company or to the capital of a limited liability partnership (an “LLP”).

2. DATA INPUT UNDER THE ENTITY MASTER FORM AND REPORTING UNDER THE SMF

2.1. Interface to input data

Prior to implementing the SMF, the RBI will provide an interface to Indian entities to input data, in a specified format, on the total foreign investment received by them. This interface will be available from June 28, 2018 to July 12, 2018 (the “Interface Window”), on the website of the RBI, www.rbi.org.in.

¹ *Foreign Investment in India - Reporting in Single Master Form* A.P (DIR Series) Circular No.30, available at https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11297.

² This definition was incorporated in Regulation 2(xviii) of the TISPRO Regulations, which were introduced on November 7, 2017. The TISPRO Regulations are available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0>.

Indian entities³ with any existing foreign investment are required to provide such information to the RBI in an entity master form, which is annexed to the Circular as Annex 1 (the “**Entity Master Form**”).⁴

The Entity Master Form will provide a portal for Indian entities to report details of their business activities, and the total direct and indirect foreign investment received by them.

It appears that the Interface Window will be the *only* period within which Indian entities can enter the data required under the Entity Master Form.

2.2. Purpose of the SMF

The purpose of the SMF appears to be the collation of common details of an Indian entity, such as the name of the entity, its corporate identification number, and details of all foreign investment, including the entry route and sectoral cap applicable to it.

The SMF, for which the draft format is provided in the Circular as Annex 2,⁵ will have to be filed online.

The final form, when hosted, will be available as part of the *Master Direction – Reporting under Foreign Exchange Management Act, 1999*.⁶

Along with the draft format of the SMF, formats of the following forms have also been uploaded in Annex 2:

- (a) **Form FC-GPR:** Issue of capital instruments by an Indian company to a person resident outside India;
- (b) **Form FC-TRS:** Transfer of capital instruments between a person resident outside India and a person resident in India;
- (c) **Form LLP-I:** Foreign direct investment in an LLP through capital contribution and profit shares;

³ An ‘Indian entity’ has been defined in Regulation 2(xxv) of the TISPRO Regulations as an Indian company (including a start-up) or an Indian LLP.

⁴ The Entity Master Form is available at https://rbidocs.rbi.org.in/rdocs/content/pdfs/194NT070618_A1.pdf.

⁵ The draft format of the SMF is provided in Annex 2 of the Circular, available at https://rbidocs.rbi.org.in/rdocs/content/pdfs/194NT070618_A2.pdf.

⁶ The Master Direction on Reporting under FEMA is available at https://rbi.org.in/Scripts/BS_ViewMasterDirections.aspx?id=10202.

- (d) **Form LLP-II:** Disinvestment or transfer of capital contribution and profit shares in an LLP;
- (e) **Form ESOP:** Issue of employee stock options, sweat equity shares or shares against the exercise of employee stock options by an Indian company to an employee resident outside India;
- (f) **Form CN:** Issue or transfer of convertible notes;
- (g) **Form DRR:** Issue or transfer of depository receipts;
- (h) **Form DI:** Reporting of downstream investment or indirect foreign investment in a company or an LLP; and
- (i) **Form InVi:** Reporting of investment by a person resident outside India in an investment vehicle.⁷

These forms are currently required to be filed in relation to foreign investment in India, under the Foreign Exchange Management Act, 1999 (“**FEMA**”) and the regulations made thereunder. However, the format of these forms appears to have been simplified in the SMF.

The directions under the Circular have been issued under Section 10(4)⁸ and Section 11(1)⁹ of FEMA, and do not seek to overrule any permissions or approvals required under any other law. The Circular also states that authorized dealer category-I banks (“**AD Banks**”) *may* bring the contents of the circular to the notice of their customers or constituents.

⁷ An ‘investment vehicle’ has been defined in Regulation 2(xxix) of the TISPRO Regulations as an entity registered and regulated under the relevant regulations framed by Securities and Exchange Board of India or any other authority designated for the purpose, and includes (i) Real Estate Investment Trusts (REITs) governed by the Securities and Exchange Board of India (REITs) Regulations, 2014; (ii) Infrastructure Investment Trusts (InvIts) governed by the Securities and Exchange Board of India (InvIts) Regulations, 2014; and (iii) Alternative Investment Funds (AIFs) governed by the Securities and Exchange Board of India (AIFs) Regulations, 2012.

⁸ Section 10(4) of FEMA, available at https://chemexcil.in/uploads/FEMA_1999.pdf: “An authorised person shall, in all his dealings in foreign exchange or foreign security, comply with such general or special directions or orders as the Reserve Bank may, from time to time, think fit to give, and, except with the previous permission of the Reserve Bank, an authorised person shall not engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation under this section.”

⁹ Section 11(1) of FEMA, available at https://chemexcil.in/uploads/FEMA_1999.pdf: “The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorised persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.”

2.3. Attachments to the SMF

Apart from the common details to be provided in the SMF, the draft format of the SMF also includes formats of the following documents, which are required to be attached to the simplified forms mentioned in paragraph 2.2 above:¹⁰

(a) **Shareholding pattern of the relevant Indian entity**

All Indian entities filing the SMF are required to provide their shareholding pattern along with the relevant details under the applicable forms.

(b) **Declaration to be filed by the authorized representative of the Indian entity**

This declaration is in relation to the Indian entity's compliance with laws such as FEMA, the Prevention of Money Laundering Act, 2002 and the Unlawful Activities (Prevention) Act, 1967.

(c) **Certificate from the company secretary of the Indian entity**

The format of this certificate has been annexed to the SMF, and requires the company secretary of the relevant Indian entity to certify that the entity has complied with FEMA and the regulations made thereunder, and with the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.

(d) **Certificate indicating the manner of arriving at the price**

This certificate must be obtained from: (i) a merchant banker or chartered accountant registered with the Securities and Exchange Board of India, indicating the manner of arriving at the price of the shares issued to the persons resident outside India; or (ii) a chartered accountant, cost accountant or approved valuer from the panel maintained by the Central Government, indicating the manner of arriving at the fair price of the capital contribution or profit shares issued to the persons resident outside India.

¹⁰ The relevant attachments are available on pages 24, 25 and 26 of the Circular.

(e) **All other necessary documents as applicable to the issue**

Although the Circular states that ‘*all other necessary documents applicable to the issue*’ are to be attached to the SMF, it does not provide any details on which documents are deemed *necessary*.

(f) **Declaration by the non-resident transferor or transferee**

This declaration is in relation to the accuracy of the details provided in the SMF, and compliance with FEMA and the regulations made thereunder.

2.4. Other relevant details to be provided

Other key details required to be reported in the SMF are highlighted below.

- (a) When reporting any fresh issuance of shares, details such as the nature and particulars of the issue and the foreign investors, the amount received in tranches for the issuance of partly paid shares or share warrants, the fair value of shares, and the pre-determined conversion formula for compulsorily convertible shares or debentures, or for share warrants, are to be provided.
- (b) When reporting a transfer of shares in an Indian entity, details such as the nature of the transfer, particulars of the buyer and seller, mode of payment, indemnity arrangement and pricing are to be provided, and the relevant extracts of the transfer agreement are to be enclosed in the SMF.
- (c) For an LLP receiving foreign investment through capital contribution or profit shares, details of the foreign investor and remittance are to be provided.
- (d) For any issuance of employee stock options, sweat equity shares or shares against the exercise of employee stock options by an Indian company to an employee resident outside India, the relevant scheme of the employee stock options is to be attached, and particulars of the issue are to be provided.
- (e) When reporting a transfer of shares with payment by way of deferred consideration, details of the tranches, escrow arrangement and indemnity arrangement are to be inserted.
- (f) When reporting convertible notes, details of the repayment, conversion, remittance and transfer of the convertible notes are required to be inserted.

- (g) When reporting a transfer of capital instruments or convertible notes from a non-resident to a resident, the acknowledgement letter for the initial investment by the non-resident is required to be enclosed.
- (h) When reporting any issuance or transfer of depository receipts, particulars of the custodian, issuance, securities, conversion ratio, sponsor and listing are to be provided.
- (i) When reporting any indirect foreign investment or downstream investment in an Indian entity, particulars of the investor, investment and securities are to be provided.
- (j) When reporting foreign investment in an investment vehicle, details of the investment vehicle, investor, remittance and issue are to be provided.

2.5. Implication of non-compliance

The Circular is especially crucial, given that Indian entities not complying with the prerequisite of entering data within the Interface Window will not be able to receive foreign investment, including indirect foreign investment, and will be considered non-compliant with FEMA and regulations made thereunder.

3. **INDUSLAW VIEW**

The intention of the RBI's Circular, introducing the Entity Master Form along with abridged and relatively simple forms required for reporting under the TISPRO Regulations, appears to be to *simplify* the process of reporting for Indian entities, but also to crack down on historic *round-tripping* transactions, potential money laundering and other historic violations of FEMA.

While the formats of the various forms and their attachments provided with the SMF appear to be simpler than the currently subsisting formats of the reporting forms, the Circular clearly has *retrospective* effect and provides a narrow window of opportunity for compliance. The Interface Window, from June 28, 2018 to July 12, 2018, is just 15 (fifteen) days long.

Not only has the RBI given short notice to all Indian entities to be ready with the requisite information, it has provided an exceptionally short period of time for thousands of Indian entities to file this information.

Further, Indian entities that may have defaulted in filing any of the forms that the SMF intends to replace, will likely face the herculean task of making all relevant filings before the end of the Interface Window.

Further, the likelihood of Indian entities being unaware of the requirements of the Circular, is fairly high. The RBI has only given AD Banks the *option* to inform entities of this crucial change.

Given that any non-compliance with the directions of the Entity Master Form and the Circular will lead to an Indian entity being disqualified from receiving foreign investment in the future, the narrow Interface Window is likely to trigger objections.

Although an extension of the Interface Window is certainly necessary, it is unclear whether the RBI will permit or issue such an extension. It is also unclear if the AD Banks will be penalized for *not* informing their customers, constituents and stakeholders of this change in time, though it is unlikely, given that they are not mandatorily required to notify their customers.

Further, although the Circular is fairly clear on the implication of non-compliance with the directions, disqualification of *all* defaulting Indian entities from receiving any foreign investment whatsoever is a disproportionate penalty for minor violations. This is especially confounding, given the Indian government's hitherto liberal stance on foreign investment.

Whether the RBI decides to widen the Interface Window, or provide other relaxations, remains to be seen. Until then, it is advisable for all Indian entities and other stakeholders to prepare to make the necessary disclosures within the existing Interface Window.

Authors: Pavani Nath, Anantha Krishnan Iyer and Anindya Ghosh

Practice Areas: Corporate and Commercial | Government & Regulatory | Fund Investment, Venture Capital and Private Equity

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