

Foreign Exchange Management (Borroweing and lending in rupees) Regulations, 2000

Notification No.FEMA 4 /2000-RB dated 3rd May 2000

RESERVE BANK OF INDIA (EXCHANGE CONTROL DEPARTMENT) CENTRAL OFFICE Mumbai 400 001

In exercise of the powers conferred by clause (e) of sub-section (3) of Section 6, subsection (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the regulations relating to borrowing and lending in rupees between a person resident in India and a person resident outside India as under, namely:

1. Short title and commencement:-

- (1) These Regulations may be called the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000.
- (2) They shall come into force on 1st day of June, 2000.

2. Definitions:-

In these Regulations, unless the context requires otherwise, -

- a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- b) 'authorised dealer', 'authorised bank', 'Non-resident Indian (NRI)', 'Person of Indian origin', 'Overseas Corporate Body (OCB)', 'NRE account', 'NRO account', 'NRNR account', 'NRSR account', and 'FCNR account' shall have the same meanings as assigned to them respectively in Foreign Exchange Management (Deposits) Regulations, 2000 made by Reserve Bank under clause (f) of sub-section (3) of section 6 of the Act;
- c) 'housing finance institution' and 'National Housing Bank' shall have the meaning assigned to them in the National Housing Bank Act, 1987 (53 of 1987);
- d) 'Transferable Development Rights (TDR)' shall have the meaning as assigned to it in the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.
- e) The words and expressions not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Prohibition on borrowing and lending in rupees:-

Save as otherwise provided in the Act, rules or regulations made thereunder, no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India.

Provided that the Reserve Bank may, for sufficient reasons, permit a person resident in India to borrow in rupees from, or lend in rupees to, a person resident outside India.

Explanation:

For the removal of doubt, it is clarified that use of Credit Card in India by a person resident outside India shall not be deemed as borrowing or lending in rupees.

4. Borrowing in rupees by persons other than companies in India:-

A person resident in India, not being a company incorporated in India, may borrow in rupees on non-repatriation basis from a non-resident Indian or a person of Indian origin resident outside India, subject to the following conditions:

- (i) the amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account of the lender maintained with an authorised dealer or an authorised bank in India,
- (ii) the period of loan shall not exceed three years;
- (iii) the rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of avilment of loan;
- (iv) where the loan is made out of funds held in Non-resident Special Rupee (NRSR) account of the lender, payment of interest and repayment of loan shall be made by credit to that account; and in other cases, payment of interest and repayment of loan shall be made by credit to the lender's Non-resident Ordinary (NRO) or Non-resident Special Rupee (NRSR) account as desired by the lender; and
- (v) the amount borrowed shall not be allowed to be repatriated outside India.

5. Borrowing in rupees by Indian companies:-

- (1) Subject to the provisions of sub-regulations (2) and (3), a company incorporated in India may borrow in rupees on repatriation or non- repatriation basis, from a nonresident Indian or a person of Indian origin resident outside India or an overseas corporate body (OCB), by way of investment in Non-convertible Debentures (NCDs) subject to the following conditions;
 - i) the issue of Non-convertible Debentures (NCDs) is made by public offer;
 - ii) the rate of interest on such Non-convertible Debentures (NCDs) does not exceed the prime lending rate of the State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting, plus 300 basis points,
 - iii) the period for redemption of such Non-convertible Debentures (NCDs) is not be less than three years;

- iv) the borrowing company does not and shall not carry on agricultural /plantation /real estate business/Trading in Transferable Development Rights (TDRs) or does not and shall not act as Nidhi or Chit Fund company;
 - v) the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date -
 - (A) of receipt of remittance for investment in Non-convertible Debentures (NCDs), full details of the remittances received, namely; (a) a list containing names and addresses of Nonresident Indians (NRIs)/Overseas Corporate Bodies (OCBs) who have remitted funds for investment in Non-convertible Debentures (NCDs) on repatriation and/or non-repatriation basis, (b) amount and date of receipt of remittance and its rupee equivalent; and (c) names and addresses of authorised dealers through whom the remittance has been received;
 - (B) of issue of Non-convertible Debentures (NCDs), full details of the investment, namely; (a) a list containing names and addresses of Non-resident Indians (NRIs)/Overseas Corporate Bodies (OCBs) and number of Non-convertible Debentures (NCDs) issued to each of them on repatriation and/or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of Non-convertible Debentures (NCDs) have been duly complied with.
- (2) The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely:
- (a) the percentage of Non-convertible Debentures (NCDs) issued to Nonresident Indians (NRIs)/Overseas Corporate Bodies (OCBs) to the total paid-up value of each series of Non-convertible Debentures (NCDs) issued shall not exceed the ceiling prescribed for issue of equity shares/ convertible debentures for foreign direct investment in India as specified by the Reserve Bank from time to time, under the relevant regulations, and
 - (b) the amount of investment is received by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India;
- (3) The borrowing by issue of non-convertible debentures (NCDs) on non-repatriation basis shall be subject to the following additional conditions, namely:
- a) the amount of investment is received either by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR)/Non-resident Special Rupee (NRSR) account maintained with an authorised dealer or an authorised bank in India ,

- b) here the investment is made out of funds held in Non-resident Special Rupee (NRSR) account, the interest on such Non-convertible Debentures (NCDs) shall also not be repatriable outside India; and the maturity proceeds and interest on such debentures are credited only to the Non-resident Special Rupee (NRSR) account of the investor.

6. Restriction on use of borrowed funds:-

No person resident in India who has borrowed in rupees from a person resident outside India,-

- (1) shall use such borrowed funds for any purpose except in his own business other than -
- (i) the business of chit fund, or
 - (ii) as Nidhi Company , or
 - (iii) gricultural or plantation activities or real estate business; or construction of farm houses or
 - (iv) rading in Transferable Development Rights (TDRs).
- (2) shall use such borrowed funds for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.

Explanation:

For the purpose of sub-clause (iii) of clause (1), real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

7. Loans in rupees to non-residents against security of shares or immovable property in India :-

Subject to the directions issued by the Reserve Bank from time to time in this regard, an authorised dealer in India may grant loan to a non-resident Indian,

- A) against the security of shares or other securities held in the name of the borrower, or
- B) against the security of immovable property (other than agricultural or plantation property or farm house), held by him in accordance with the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000:

Provided that

- a) the loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes; and
- b) the loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
 - (i) the business of chit fund, or
 - (ii) Nidhi Company , or
 - (iii) agricultural or plantation activities or in real estate business, or construction of farm houses; or
 - (iv) trading in Transferable Development Rights (TDRs).

Explanation:

For the purpose of item (iii) of proviso, real estate business shall not include development of townships, construction of residential/ commercial premises, roads or bridges.

- c) the Reserve Bank's directives on advances against shares/ securities /immovable property shall be duly complied with;
- d) the loan amount shall not be credited to Non-resident External (NRE)/Nonresident Ordinary (NRO)/Foreign Currency Non-resident (FCNR)/Nonresident Non-repatriable (NRNR) account of the borrower;
- e) the loan amount shall not be remitted outside India;
- f) repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to the Non-resident Ordinary (NRO)/Non-resident Special Rupee (NRSR)/Non-resident Non-repatriable (NRNR)/Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

8. Providing housing loan in rupees to a non-resident :-

An authorised dealer or a housing finance institution in India approved by the National Housing Bank may provide housing loan to a non-resident Indian or a person of Indian origin resident outside India, for acquisition of a residential accommodation in India, subject to the following conditions, namely:

- a) the quantum of loans, margin money and the period of repayment shall be at par with those applicable to housing finance provided to a person resident in India;

- b) the loan amount shall not be credited to Non-resident External (NRE) / Foreign Currency Non-resident (FCNR)/Non-resident Non-repatriable (NRNR) account of the borrower;
- c) the loan shall be fully secured by equitable mortgage of the property proposed to be acquired, and if necessary, also by lien on the borrower's other assets in India;
- d) the instalment of loan, interest and other charges, if any, shall be paid by the borrower by remittances from outside India through normal banking channels or out of funds in his Non-resident External (NRE)/Foreign Currency Non-resident(FCNR)/Non-resident Non-repatriable (NRNR)/ Non-resident Ordinary (NRO)/ Non-resident Special Rupee (NRSR) account in India, or out of rental income derived from renting out the property acquired by utilisation of the loan;
- e) the rate of interest on the loan shall conform to the directives issued by the Reserve Bank or, as the case may be, by the National Housing Bank.

9. Continuance of rupee loan/Overdraft to resident who becomes a person resident outside India :-

An authorised dealer or, as the case may be, an authorised bank, may allow continuance of loan/overdraft granted to a person resident in India who subsequently becomes a person resident outside India, subject to following terms and conditions:

- a) the authorised dealer or the authorised bank is satisfied, according to his/its commercial judgement, about the reasons to continue the loan or overdraft;
- b) the period of loan or overdraft shall not exceed the period originally fixed at the time of granting the loan or overdraft;
- c) so long as the borrower continues to remain a person resident outside India, the repayment shall be made either by inward remittance from outside India through normal banking channels or from the funds held in Non-resident External (NRE)/Foreign Currency Non-resident(FCNR)/Non-resident Non-repatriable (NRNR)/ Non-resident Ordinary (NRO)/ Non-resident Special Rupee (NRSR) account of the borrower.

10. Continuance of rupee loan in the event of change in the residential status of the lender :-

In case a rupee loan was granted by a person resident in India to another person resident in India and the lender subsequently becomes a non-resident, the repayment of the loan by the resident borrower should be made by credit to the Non-resident Ordinary (NRO) or Non-resident Special Rupee (NRSR) account of the lender maintained with a bank in India, at the option of the lender.

11. Overdraft in rupee account maintained with authorised dealer in India by a bank outside India :-

An authorised dealer may permit a temporary overdraft, for value not exceeding Rs five hundred lakhs, in rupee accounts maintained with him by his overseas branch or correspondent or Head Office outside India, subject to such terms and conditions as the Reserve Bank may direct from time to time.

Explanation:

For the purpose of calculating the ceiling of Rupees five hundred lakhs under this Regulation, the aggregate amount of overdrafts permitted by the authorised dealer to all his branches, correspondents and Head Office outside India outstanding in the books of all his branches in India, shall be taken into account.

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