

LEX NEWSLETTER ZONE

Corporate Bytes

- ~ Discontinuation of Letter of Undertakings and Letter of Credits for Trade Credits.
- ~ Acceptance of Bank Guarantees by Clearing Corporations in International Financial Services Centre (IFSC).
- ~ Easing of access norms for investments by certain categories of Foreign Portfolio investors.
- ~ MCA notification of the Companies (XBRL) Amendment Rules, 2018.

Reserve Bank of India

Discontinuation of Letter of Undertakings and Letter of Credits for Trade Credits

- Sindhuja Kashyap, Associate.

The Reserve Bank of India ("RBI"), vide circular dated March 13, 2018, has discontinued Letter of Undertakings and Letter of Credits for Trade Credits. This step by RBI is taken in consonance with its Master Direction on "External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers" dated January 1, 2016 ("Master Direction"). This Master Direction dealt with issuance of Letter of Credits ("LOC"), Letter of Understandings ("LOU") and Guarantees for Trade Credits for imports in India.

The discontinuance of LOC and LOU has been brought around with immediate effect.

However it is pertinent to note that such discontinuance has not been extended to LOC and Bank Guarantees for Trade Credits for imports in India that are subject to compliance as per the Master Circular on "Guarantees and Co-acceptances" as amended from time to time, as issued by Department of Banking Regulation dated July 1, 2015.

Securities and Exchange Board of India

Acceptance of Bank Guarantees by Clearing Corporations in International Financial Services Centre (IFSC)

- Sindhuja Kashyap, Associate.

The Securities and Exchange Board of India ("SEBI"), vide its circular dated February 21, 2018 allowing acceptance of cash and cash equivalents which shall include term deposit receipts and bank guarantees issued by bank branches located in IFSC for Clearing Corporations. However, there is a mandatory requirement of the cash and cash equivalents to form at least 50% of the total liquid assets at all times.

Clearing Corporations have been directed to take the necessary steps to implement the circular including its necessary amendments to the relevant byelaws, rules and regulations.

Clearing Corporations have been further directed to bring the provisions of this circular

to the notice of their members and disseminate the same on their website. Additionally they are also required to provide a monthly report to SEBI on the status of implementation of the provisions of the circular.

Easing of access norms for investment by certain Foreign Portfolio Investors.

-Shruti Saraogi, Associate.

The Securities and Exchange Board of India (SEBI) had issued a circular¹ with regard to "Easing of access norms for investment by Foreign Portfolio Investors (FPIs)". In view of queries from stakeholders, the regulator has now issued clarifications in respect of investment by certain category II FPIs:²

- 1) The collective investment vehicle of private banks/ merchant banks investing on behalf of clients need to ensure the following:-
 - a) The client/ investor should have fulfilled know your client norms. The beneficial owners (BO) of client/ investor of bank should be identified in accordance with Rule 9 of Prevention of Money Laundering (Maintenance of Records) Rules, 2005.
 - b) The client/ investor or their BO should not be Resident Indian/ NRI/ Overseas Citizen of India.
 - c) The client/ investor is not resident in a country identified in the public statement of Financial Action Task Force as:-
 - i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

- d) The client/ investor should not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014³ or Bearer share structure.
- e) The collective investment vehicle of the Bank (other than for ODIs) should be broad based (more than 20 investors and no investor having more than 49% stake) and there should be common portfolio for all clients/ investors.
- f) The conditions already specified at point (g) of SEBI circular dated February 15, 2018 shall continue to be applicable⁴.

- 2) Presently, appropriately regulated broad based insurance/ reinsurance companies are investing proprietary funds and for unit linked/ investment products. In this regard, the SEBI has clarified that investment in India by insurance/ reinsurance companies must be maintained as an undivided common portfolio. Segregated portfolio or investor/ policy-holder level investment structure shall not be permitted.

³ "Opaque Structure" shall mean any structure such as protected cell company, segregated cell company or equivalent, where the details of the ultimate beneficial owners are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement: Provided that the foreign portfolio investor satisfying the following criteria shall not be treated as having opaque structure:

- (i) the applicant is regulated in its home jurisdiction
- (ii) each fund or sub fund in the applicant satisfies broad based criteria, and
- (iii) The applicant gives an undertaking to provide information regarding its beneficial owners as and when Board seeks this information.

⁴Private bank/ merchant bank may invest on behalf of their clients provided that the banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated. Further, details of beneficial owners of investors are available and would be provided as and when required by Regulators. In addition, such entities shall also be allowed to undertake proprietary investment by taking separate registration with SEBI.

¹ Circular No. CIR/IMD/FPIC/26/2018, dated February 15, 2018.

² Circular No. CIR/IMD/FPIC/47/2018 on March 13, 2018.

Copyright © King Stubb & Kasiva, Advocates & Attorneys
March 18 Series 10.1

- 3) In respect of other appropriately regulated persons permitted as Category II FPIs namely asset management companies, investment managers/ advisers, Portfolio managers, Broker-dealer and Swap-dealer, it is clarified that:
- a) They are permitted to invest their proprietary funds; and
 - b) These appropriately regulated persons by taking separate registration can also invest with client funds as an ODI Issuing FPI or after fulfilling the condition of being broad based and having a common portfolio. However, asset management companies having thematic portfolios can also have segregated structure if each theme is broad based.
- 4) All other investment restrictions and due diligence requirements as applicable to FPIs shall continue to be applicable on entities referred above.

Ministry of Corporate Affairs

Companies (XBRL) Amendment Rules, 2018.

-Shruti Saraogi, Associate.

The MCA has notified the "Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Amendment Rules, 2018" to specify that companies once having filed their financial statements under XBRL Rules shall continue to do so though they may not fall under the class of companies specified therein in succeeding years.

Disclaimer

King Stubb & Kasiva ("KSK") Newsletters are meant for informational purpose only and does not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. KSK does not intend to advertise its services or solicit work through this update. KSK or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. Unsolicited mails or information sent to KSK will not be treated as confidential and do not create attorney-client relationship with KSK.

© 2017-18 King Stubb & Kasiva, India. All rights reserved.