Highlights

- RBI announces proposed regulatory relaxations for Startups
- RBI clarifies on issues relating to Startups accepting payment on behalf of overseas subsidiaries
- RBI clarifies on issues of shares by Startups
- RBI amends the definition of 'Ownership and Control' and 'Control'
- FEM (Acquisition and Transfer of Immovable Property outside India) Regulations repealed and replaced by new regulations
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Corporate Brief

RBI announces proposed regulatory relaxations for Startups

RBI has proposed certain regulatory changes for easing the cross border transactions, particularly relating to the operations of the start-up enterprises, in consultation with the Government of India. Highlights of the proposed regulatory changes are: (a) To enable start-up enterprises, irrespective of the sector in which they are engaged, to receive foreign venture capital investment and also explicitly transfer of shares from foreign venture capital investors to other residents or non-residents. (b) To permit, in case of transfer of ownership of a startup enterprises, receipt of the consideration amount on a deferred basis as also enabling escrow arrangement or indemnity arrangement up to a period of 18 months. (c) To enable online submission of A2 forms for outward remittances on the basis of the form alone or with documents(s) upload/submission, depending in the nature of remittance. (d) To simplify the process for dealing with delayed reporting for foreign direct investment related transaction by building a penalty structure into regulations itself.

In addition to the above, RBI is considering the following proposals, in consultation with the Government of India: (a) To permit start-up enterprises to access rupee loans under ECB framework with relaxations in respect of eligible lenders etc. (b) To permit issuance of innovative FDI instruments like convertibles notes by start-up enterprises, (c) To streamline overseas investment operations for the start-up enterprises. *[See RBI Press Release: 2015-2016/1809 dated February 02, 2016]*

RBI clarifies on issues relating to Startups accepting payment on behalf of overseas subsidiaries

RBI has made the following clarification with respect to issues relating to start-up enterprise accepting payment on behalf of overseas subsidiaries: (a) A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up. (b) The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transaction with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up. (c) The balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within a period as applicable to start-up should be repatriated to India within a period as applicable to realization of export proceeds (currently nine months). (d) A start-up is also permitted to avail of the facility for realizing the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Provide for a value not exceeding USD 10,000. (e) To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place. *[A.P.(DIR Series) Circular No. 51 dated February 11, 2016]*

RBI clarifies on issues of shares by Startups

RBI has made the following clarification with respect to start-ups issuing shares through sweat equity or against any legitimate payment owed by the company: (a) <u>Issue of shares without cash payment through sweat equity</u>: Indian companies are permitted to issue sweat equity shares, subject to conditions, *inter-alia* that the scheme has been drawn either in terms of regulations issued under SEBI Act or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act, 2013 in respect of other companies. (b) <u>Issue of shares against legitimate payment owed</u>: RBI has permitted Indian Companies to issue equity shares against any other funds payable by the investee company (eg. payment for import of goods, payment of dividends, consultancy fees etc.), remittance of which does not require prior permission of the Government of India or RBI under FEMA, subject to adherence of FDI Policy. *[See A.P. (DIR Series) Circular No. 52 dated February 11, 2016]*

RBI amends the definition of 'Ownership and Control', 'Control', 'Non-Resident Indian' etc vis-à-vis LLP

RBI has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident in India) Regulations, 2016. Highlights of the amendment are: (a) Definition of 'ownership and control' has been amended to include that a limited liability partnership (LLP) will be considered as owned by resident Indian citizens if more than 50% of the investment in such an LLP is contributed by resident Indian citizens and/or entities which are ultimately 'owned and controlled by resident Indian citizens' and such resident Indian citizens and entities have majority of the profit share. (b) An explanation has been added in the definition of 'control' that for the purpose of LLP, 'control' shall mean right to appoint majority of the designated partners, where such designated partners, with specific exclusions to others, have control over the policies of LLP.

RBI has also amended the definition of NRI to mean an individual resident outside India who is a citizen of India or is an 'Overseas Citizen of India' cardholder within the meaning of section 7(A) of the Citizenship Act, 1955. *[See Notification No. FEMA.362/2016-RB dated March 15, 2016 and Notification No. FEMA.361/2016-RB dated February 15, 2016]*

FEM (Acquisition and Transfer of Immovable Property outside India) Regulations repealed and replaced by new regulations

RBI has repealed and replaced the Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015. In accordance with the new regulations, acquisition or transfer of immovable property outside India by a person resident in India would require prior approval of RBI except in the following cases: (a) Property held outside India by a foreign citizen resident in India; (b) Property acquired by a person on or before 8th July, 1947 and held with the permission of RBI; (c) Property acquired by way of gift or inheritance from the person referred in (b) above or persons referred in section 6(4) of FEMA; or property purchased out of funds held in Resident Foreign Currency account held in accordance with the relevant FEMA regulations; (d) Property purchased out of funds held in Resident Foreign Currency account held in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2015; (e) Property acquired jointly with a relative who is a person resident outside India provided there is no outflow of funds from India; (f) Property acquired by way of inheritance or gift from a person resident in India who acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition. *[A.P. (DIR Series) Circular No. 43/2015-16 [(1)/7(R)] dated February 04, 2016]*

SEBI notifies exit route for dissenting shareholders at listed companies

SEBI has inserted Chapter VI-A to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('SEBI ICDR Regulations'). Highlights of the Chapter are: (a) Dissenting shareholders of the issuer who are holding shares as on the relevant date shall be eligible to avail the exit offer made in this Chapter; (b) Promoters or shareholders in control shall make the exit offer to the dissenting shareholders if the proposal for change in objects or variation on terms of a contract is dissented by atleast 10% of the shareholders who voted in the general meeting and the amount to be utilized for the objects for which the prospectus was issued is less than 75% of the amount raised; (c) For the purpose of this Chapter, the term 'dissenting shareholders' means those shareholders who have voted against the resolution for change in objects or variation in terms of a contract, referred to in the prospectus of the issuer.

SEBI has also amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SEBI SAST Regulations) to exempt acquisition of shares or voting rights of a company by promoters or shareholders in terms of Chapter VI-A of the SEBI ICDR Regulations from applicability of Regulation 3 of the SEBI SAST Regulations. Therefore mandatory requirement of open offer stipulated under SEBI SAST Regulations shall not be applicable in case of acquisition of shares or voting rights under Chapter VI-A of the SEBI ICDR Regulations. *[See SEBI Notification No. SEBI/LAD-NRO/GN/2015-16/036 dated February 17, 2016 and SEBI Notification No. SEBI/LAD-NRO/GN/2015-16/035 dated February 17, 2016]*

SEBI permits investment of unclaimed redemption and dividend amount in Liquid Funds

SEBI has permitted companies having unclaimed redemption and dividend amount to invest such amount in a separate plan of Liquid scheme/ Money Market Mutual Fund scheme floated by Mutual Funds specifically for deployment of the unclaimed amounts. Asset Management Companies shall not be permitted to charge any exit load in this plan and Total Expense Ratio of such plan shall be capped at 50 bps. Mutual Funds shall be required to provide on their website, the list of names and addresses of investors in whose folios there are unclaimed amounts and also the process of claiming the unclaimed amount. Investors who claim the unclaimed amounts during the period of three years from the due date shall be paid initial unclaimed amount along with income earned on its deployment. Investors, who claim these amounts after 3 years shall be paid initial unclaimed amount along with the income earned on its deployment till the end of the third year. After the third year, the income earned on such unclaimed amounts shall be used for the purpose of investor education. *[See SEBI circular No. SEBI/HO/IMD/DF2/CIR/P/2016/37 dated February 25, 2016]*

MNRE issues new Guidelines for development of Solar Parks

Ministry of New and Renewable Energy, Government of India, has notified new Guidelines for Development of Solar Parks to promote ecologically sustainable growth while addressing India's energy security challenge. Highlights of the guidelines are: (a) 'Solar Park' is defined in the guidelines as a concentrated zone of development of solar power generation projects which provides developers an area that is well characterized, with proper infrastructure and access to amenities and where the risk of the projects can be minimized. (b) Land for setting up of the Solar Park will be identified by the State Government unless implementing agency has its own land. The price of land is to be kept as low as possible in order to attract the developers and therefore, the site should be selected in a manner so that inexpensive land can be made available. (c) All infrastructural requirement outside the park such as connecting road, provision of water supply, construction electricity etc. to make park functional will be the sole responsibility of the concerned State Government. The State Government will propose solar parks under the Scheme including private solar parks and decide the Solar Power Park Developer (SPPD). (d) Essential responsibilities of SPPD will include acquisition of land, getting land clearance, developing approach road to each plot, developing internal transmission system, providing water supply etc. (e) SPPD will be responsible for development of the solar park and its facilities and operation and maintenance of the solar park for a period of 25 years. *[See MNRE, Government of India, Guidelines for Development of Solar Parks dated February, 2016]*

Highlights of Union Budget 2016-2017

Union Budget 2016 has been presented for the year 2016-2017. Highlights of the Union Budget 2016 are: (a) Distribution made out of income of SPV to Real Estate Investment Trusts and Infrastructure Investment Trusts having specified shareholding will not be subjected to Dividend Distribution Tax. (b) Service Tax on construction of affordable houses up to 60 square meters under any scheme of the Central and State Government including PPP scheme is proposed to be exempted. (c) To remove the difficulties and impediments to ease of doing business, a bill to amend the Companies Act, 2013 will be introduced. The bill will also improve the enabling environment for start-ups. (d) 100% deduction of profits for 3 out of 5 years for startups set up during April 2016 to March 2019 is proposed, (e) A complete pass through of income-tax to securitization trusts including trusts of Asset Reconstruction Companies is proposed. The income will be taxed in the hands of investors instead of the trust.

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