

Foreign Exchange Management (Guarantees) Regulations, 2000

Notification No.FEMA 8/2000-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 (j) 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 makes the following regulations, namely:

1. Short title & commencement :-

- i) These regulations may be called the Foreign Exchange Management (Guarantees) Regulations, 2000.
- ii) They shall come into force on 1st day of June, 2000.

2. Definitions :-

In these regulations, unless the context requires otherwise, -

- (i) 'Act' means the Foreign Exchange Management Act,1999 (42 of 1999);
- (ii) 'authorised dealer' means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act;
- (iii) the words and expressions used but not defined in these regulations shall have the same meanings respectively assigned to them in the Act.

3. Prohibition :-

Save as otherwise provided in these regulations, or with the general or special permission of the Reserve Bank, no person resident in India shall give a guarantee or surety in respect of, or undertake a transaction, by whatever name called, which has the effect of guaranteeing, a debt, obligation or other liability owed by a person resident in India to, or incurred by, a person resident outside India.

4. Guarantees which may be given by an authorised dealer :-

- (1) An authorised dealer may give a guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India, in the following cases, namely:-

where the debt, obligation or other liability is incurred by the person resident in India, -

- i) as an exporter, on account of exports from India;

- ii) as an importer, in respect of import on deferred payment terms in accordance with the approval granted by the Reserve Bank for import on such terms.
- (2) An authorised dealer may give a guarantee in respect of any debt, obligation or other liability incurred by a person resident outside India, in the following cases, namely:-
- i) where such debt, obligation or liability is owed to a person resident in India in connection with a bonafide trade transaction :

Provided that the guarantee given under this clause is covered by a counter-guarantee of a bank of international repute resident abroad;
 - ii) as a counter-guarantee to cover guarantee issued by his branch or correspondent outside India, on behalf of Indian exporter in cases where guarantees of only resident banks are acceptable to overseas buyers.
- (3) An authorised dealer may, in the ordinary course of his business, give a guarantee in the following other cases, namely:
- i) on behalf of his customer or branch or correspondent outside India in respect of missing or defective documents, or authenticity of signatures;
 - ii) in favour of organizations outside India issuing travellers cheques stocked for sale in India by the authorised dealer or by his constituents who are authorised persons.

5. Guarantees which may be given by persons other than an authorised dealer :-

A person other than an authorised dealer may give a guarantee in the following cases, namely:

- (a) a person resident in India being an exporting company may give a guarantee for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project :

Provided that the previous approval for undertaking the project has been duly obtained from the approving authority in India;

Explanation :

For the purpose of this regulation, the “approving authority” means the authority referred to in Regulation 18 of Foreign Exchange Management (Export of goods and services) Regulations, 2000.

- b) a company in India promoting or setting up outside India, a joint venture company or a wholly-owned subsidiary, may give a guarantee to or on behalf of the latter in connection with its business :

Provided that the terms and conditions stipulated in Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000 for promoting or setting up such company or subsidiary are continued to be complied with;

Provided further that the guarantee under this clause may also be given by an authorised dealer in India;

- c) an agent in India of a shipping or airline company incorporated outside India may give a guarantee on behalf of such company in connection with its obligation or liability owed to any statutory or Government authority in India.

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