



**भारतीय रिज़र्व बैंक**

**RESERVE BANK OF INDIA**

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## **RBI proposes Changes in Timeframe for Issue of Shares and Reporting of FDI; Invites Comments from Stakeholders**

The Reserve Bank of India has proposed certain changes in respect of the time frame for issue of shares to align the provisions of Foreign Exchange Management Act, 1999 which requires an investee company receiving Foreign Direct Investments to issue shares within 180 days of receipt of foreign investment with the provisions of the Companies Act, 2013 and in respect of filing of report with the Reserve Bank regarding receipt of foreign investment and issue of shares and to further streamline the compliance process, as below:

<b>S. No.</b>	<b>Paragraph of Schedule 1</b>	<b>Proposed Amendments</b>
1	8	<b>Time frame for issue of shares:</b> At the time of filing FC-GPR the investee company shall be required to submit a certificate from a practising Company Secretary/Chartered Accountant to the effect that provisions of section 42 of Companies Act, 2013 have been complied with.
2	9(1) (A) and 9(1) (B)	<b>Time frame for reporting:</b> Delay in reporting beyond the prescribed period (30 days from receipt of funds in case of report ARF and 30 days from issue of shares in case of report FC-GPR) shall attract a penalty of one percent of the total amount of investment subject to a minimum of Rupees Five thousand and maximum of Rupees Five lakh per month or part thereof for the first six month of delay and twice that rate thereafter, to be paid online into a designated account in Reserve Bank of India.

Any company receiving foreign investment and submitting the required reports with delay but without paying the penalty as mentioned above shall be liable to penal provisions mentioned in FEMA, 1999 and the rules/regulations framed thereunder including compounding.

It is also proposed to introduce similar penalty structure for other mandatory reporting requirements under FEMA, 1999.

Members of public, including the stakeholders and experts in the area, are requested to offer their views and comments on the proposed changes. The comments may be sent latest by February 22, 2016 to [email](mailto:helpdoc@rbi.org.in).

## **Background**

Schedule 1 to Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (FEMA 20), stipulates timelines for an investee company receiving FDI for issue of shares within 180 days of receipt of foreign investment and requires filing of a report with the Reserve Bank regarding receipt of foreign investment and issuance of shares.

As per Section 42 of Companies Act, 2013, an Indian company is required to issue shares within 60 days from the date of receipt of share application money. This provision is applicable to a company receiving share application money from foreign investors as well. In view of the specific and express provisions under Companies Act, 2013 it was felt that there is no need to have a separate and different time frame for these purposes in FEMA provisions.

Further, FEMA 20 also provides for reporting of inflow of funds/issue of shares, the descriptive guidelines for which are stated in paragraphs 9 (1) (A) and 9(1) (B) of Schedule 1 to FEMA 20. It was observed that many companies fail to comply with these provisions and it becomes a contravention of FEMA, 1999 which requires compounding. Since compounding is an elaborate process imposing a burden on the contravener as well as the Reserve Bank, it was felt that with a view to improving the ease of compliance, a summary framework may be put in place for dealing with reporting delays without compromising with the reporting discipline.

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