

## **Investment by FIIs in IPO / pre-IPO issues of companies engaged in real estate development**

The Foreign Exchange Department, Reserve Bank of India has been receiving references from Authorised Dealer banks/ companies engaged in real estate development seeking clarification regarding proposed investments in the Initial Public Offering (IPO) / pre-IPO issues by Foreign Institutional Investors (FIIs).

2. In this regard it is clarified as under:

(i) Foreign Institutional Investors (FIIs) are permitted to purchase shares or convertible debentures of an Indian company under the Portfolio Investment Scheme, subject to the terms and conditions of [Schedule 2 to the Notification No. FEMA 20/2000-RB dated May 3, 2000](#), viz. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000, as amended from time to time.

(ii) In terms of [FEMA Notification No. 1/2000-RB dated May 3, 2000](#), viz. Foreign Exchange Management (Permissible Capital Account Transactions) Regulation, 2000, foreign investment in India, in any form, is prohibited in "real estate business". For the purpose of this regulation, 'real estate business' shall not include development of townships, construction of residential /commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

(iii) However, it is clarified that investment by FIIs in pre-IPO offering would be treated on par with Foreign direct Investment (FDI) in terms of lock-in period as applicable to FDI in construction development projects including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships. This would be without prejudice to any other law.

The corresponding provisions of (ii) and (iii) above, find place in para 5.23 – Development of Townships, Housing, Built-up infrastructure and Construction development activities, of Chapter 5 of the Consolidated FDI Policy Circular No. 1 dated March 31, 2010 notified by the Department of Industrial Policy and Promotion, Government of India.

(iv) Therefore, SEBI registered FIIs can invest in IPO / pre-IPO issues of companies in construction and development projects other than real estate (as defined

in [FEMA Notification No. 1/2000-RB dated May 3, 2000](#)) subject to the terms and conditions stipulated in [Schedule 2 to FEMA Notification No. 20/2000-RB dated May 3, 2000](#), as amended from time to time, provided that the FII investment in pre-IPO offerings are treated at par with the FDI in terms of the lock-in period as applicable to FDI in construction development projects including housing, commercial premises, resorts, educational institutions, recreational facilities, city and regional level infrastructure, townships.

### **RBI revises Internal Control Guidelines for Forex Business**

The Reserve Bank of India has today issued the revised [Guidelines for “Internal Control over Foreign Exchange Business”](#).

First framed in 1981, the Internal Control Guidelines (ICG) were revised in December, 1996. The need to revise them once again was felt in the context of rapid pace of evolution of the forex markets in India and abroad as also, developments in information technology and its progressive usage in banks. A Group comprising officials from the Reserve Bank of India, Foreign Exchange Dealers’ Association of India, Fixed Income Money Market and Derivatives Association of India, State Bank of India, ICICI Bank and Standard Chartered Bank looked into the updation of the Internal Control Guidelines to make them contemporary and benchmark document.

The document is designed to provide a scale of standards for the banks in the conduct of their foreign exchange business and is available on our website ([www.rbi.org.in](http://www.rbi.org.in)).

### **Overseas Direct Investments**

**Ques 1:** How can the old transactions of ODI where APRs have not been submitted for previous years be entered in the ODI Package?

**Response :** If old transaction is related to APR, APR may be submitted online by ensuring that the figures are in sync with the previous and ensuing year APRs. If the old transactions are related to **Section C of ODI Part I** it may be reported online irrespective of whether APRs are submitted or not.

**Query 2:** Can an AD submit an APR without receipt of share certificate and/or audited financials of the overseas entity? If the corporate were not willing to share the audited financial statements of their overseas entities how to ensure that the APRs are submitted based on audited financial statements?

**Response:** Submission of APR and receipt of share certificate are two different aspects. IP submitting APRs prior to March 28, 2012 were supposed to be on the basis of audited accounts only. IP desiring to submit the APRs on the basis of unaudited accounts may be guided by the instructions contained in **Regulation 15(v) of [Notification No. FEMA 120/RB-2004 dated July 07, 2004](#)** as amended from time to time.

**Query 3:** How can an AD be responsible for submission of APRs in respect of all overseas entities when an Indian Party has the option to use different ADs for different Overseas ventures?

**Response:** AD is not responsible for submission of APRs for the UINs for which they are not the designated AD. However the AD has to put in place a mechanism to monitor the submission of APR for the UINs for which they are the designated AD. To protect the interest of the ADs a revised Sec E & F has been introduced wherein the IP declares that all the APRs in respect of all other UINs are submitted to RBI.

**Query 4:** Can ODI form to have a declaration regarding submission of share certificate?

**Response:** ODI form is submitted at the time of transaction whereas time period available for submission of share certificate is 180 days hence it would not be proper to take the declaration in the ODI form.

**Query 5:** Whether the amount of credit facility availed by the JV / WOS / SDS shall be reckoned for computation of financial commitment when the JV / WOS creates a charge on assets / pledges the shares of the SDS?

**Response:** A JV/ WOS/ SDS availing credit facility for itself by pledging the shares held by them in favor of overseas lender may not be reckoned for financial commitment.

## **Developments in Foreign Exchange Management 2014-15 Part I**

[Developments in Foreign Exchange Management 2014-15 Part I](#)

## Developments in Foreign Exchange Management 2014-15 Part II

### [Developments in Foreign Exchange Management 2014-15 Part II](#)

#### Export of Goods – Long Term Export Advances

**Q :** Whether entities which have come under adverse notice of Enforcement Directorate or any other regulatory agency are eligible to receive long term export advance pending the outcome of such investigations / adjudications/appeal (Para 2(c) of [AP DIR Series Circular No. 132 dated May 21, 2014](#)).

**A.** Yes, mere receipt of show cause notice by Enforcement Directorate or any of the law enforcing agencies does not disqualify any entity from availing long term export advance, if it is otherwise eligible for the same. AD banks can consider such proposals without prejudice to any action that may be taken by any such law enforcing agency in the matter. However, while approving the proposal, the AD banks should endorse a copy of the approval letter to the concerned agencies, without fail.

#### **A. Discontinuation of Form A4**

We have received a query from Standard Chartered Bank asking whether there is a requirement of form A4 preparation for operations in the Non- resident accounts viz NRO, NRE and FCNR (B).

Reply: We have advised Standard Chartered that the requirement of preparation of form A4 may be discontinued.

The same may be noted by all Authorized Dealers.

#### **B. Transfer between NRO accounts**

Banks may refer to the response to question number 105 to the questionnaire on the AD Conference held on January 10, 2015 stating that transfers are not permitted between NRO accounts.

2. We have been receiving queries from AD Banks stating that the prohibition on transfers between two NRO accounts is giving rise to genuine difficulties as it may

prohibit transfer which are otherwise permissible under Schedule 3 to [Notification No. FEMA 5/2000-RB dated May 3, 2000](#), as amended from time to time.

3. In view of this, it is clarified that such restriction on transfers between NRO accounts will not apply to transfers which are otherwise as per the debits and credits to NRO account as laid down in Para 3 of Schedule 3 to FEMA 5.

4. We have also received queries about transfers between two NRO accounts maintained by the same person. It may be appreciated that the credits to an NRO account are limited to inward remittances and legitimate dues (as per Para 3 of Schedule 3 to FEMA 5). Therefore such transfers cannot be construed as an inward remittance and hence their credit to an NRO account would not be in compliance with the extant instructions as laid down in the Schedule *ibid*.

5. With regard to online transfers between NRO accounts, the AD Banks may put in place necessary safeguards to ensure that transactions in an NRO account are in compliance with the extant instructions.

6. UPDATE: With effect from April 01, 2016, transfers between NRO accounts are permissible in terms of Para 3 of Schedule 3 of [FEMA 5\(R\) dated April 01, 2016](#).

### **Clarification on LRS-remittance by sole proprietor under LRS**

In terms of Schedule III of Foreign Exchange Management (Current Account Transaction) Rules, 2000, dated May 3, 2000, as amended from time to time, a resident individual can remit up to USD 250,000 per financial year for the purposes mentioned therein. In a sole proprietorship business, there is no legal distinction between the individual / owner and as such the owner of the business can remit USD up to the permissible limit under LRS. If a sole proprietorship firm intends to remit the money under LRS by debiting its current account, then the eligibility of the proprietor in his individual capacity has to be reckoned. Hence, if an individual in his own capacity remits USD 250,000 in a financial year under LRS, he cannot remit another USD 250,000 in the capacity of owner of the sole proprietorship business as there is no legal distinction.

### **NRO Account – Joint Holding with Residents**

Joint holder facility with residents in NRO accounts shall be provided on 'former or survivor' basis as stipulated at paragraph 7 of Schedule 3 of [Notification No. FEMA 5\(R\) dated April 1, 2016](#). All fresh NRO accounts should be opened with this mandate only. As regard existing accounts where 'either or survivor' facility was provided, no fresh operations shall be allowed in the account before changing the mandate to 'former or survivor' basis.

### **Special Non-Resident Rupee Account**

Q. Can the Special Non-Resident Rupee Account (SNRR account) be used as an eligible mode of payment for FDI transactions, under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019?

Ans. No, an SNRR account is not an eligible mode of payment for FDI transactions under Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. The permissible modes of payment for FDI transactions are provided in Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt instruments) Regulations, 2019.

### **Sending of currencies by NRIs/OCIs through post to their relatives in India on the advice from the foreign branches of Indian banks**

As per [Foreign Exchange Management \(Export and Import of Currency\) Regulations, 2015 dated December 29, 2015](#), as amended from time to time, a person resident outside India is not permitted to send currency through postal channels. Therefore, banks may issue suitable instructions to their branches outside India not to advise people to send currencies through postal channels

### **Clarification on export through Post/Courier**

For export through post/ courier, the exporter has to submit form EDF with the AD Bank concerned and AD bank has to follow the process given at para B.3 of [Master Direction on Export of Goods and Services](#). Banks may arrange to disseminate this information to all its branches/ officials of relevant work area.

This information is specially circulated as it has come to the notice of RBI that ground level staff of certain banks are not aware of the process.

### **EDPMS – Responsibility of remittance receiving and converting bank**

"As you are aware that in cases of export realisation (including cases of export through market place like Amazon and/or cases where payment is received through Paypal, PayU or similar mechanism), it is the responsibility of remittance receiving and converting bank to, inter alia, provide, while transferring funds to exporters account, full details of overseas remitter (name, address, country), purpose of remittance, currency and amount of remittance, name and account of the beneficiary to the beneficiary's bank, so as to help the latter in closing entries in EDPMS.

2. It has been brought to the notice of RBI, by banks as well as exporter's associations that remittance receiving and converting banks, while transferring funds to beneficiary's account are not providing aforesaid information to the beneficiary bank because of which export entries are lying outstanding in EDPMS. This has also led to caution listing of exporters. RBI has learnt that many a time beneficiary and/or its bank is advised by the remittance receiving and converting bank to get in touch with Amazon/Paypal, etc to get requisite information.

3. Against this background a reference is invited to Question No.4 of FAQs issued vide Circular No16/2016 dated October 17, 2016 by FEDAI on reporting under EDPMS and is clarified in no uncertain terms that remittance receiving and converting bank has to provide aforesaid information to beneficiary's bank in all cases of export realisation (including past transactions)

4. Authorised Dealers Category I (AD Cat. I) banks may please note that their inability to provide information and/or resultant difficulty if any to the exporters would be viewed very seriously by RBI. AD Cat. I banks may please find the letter dated October 13, 2017 issued in this regard [here](#)."



## EDPMS- Clarification on closure of export bills

E.CO.Trade (EXP) No.4334/05.31.042/2017-18

November 16, 2017

All Authorised Dealer Category I Banks

Madam / Dear Sir

EDPMS- Clarification on closure of export bills

While monitoring the progress made by AD banks in clearing pendency in EDPMS, it is observed by RBI that as on November 15, 2017, a total of 1.43 million entries are outstanding in EDPMS with shipping bill date beyond 2 years. This comes to 12.76 per cent of the total shipping bills. Number of shipping bills outstanding beyond 9 months comes to 4.6 million as on date, which is 22.68 per cent of the total number of shipping bills in EDPMS.

2. As the aforesaid position cannot be treated as satisfactory, we advise you to give due attention for clearance of pendency in EDPMS. Further, for the purpose of helping AD banks to clearing outstanding entries in EDPMS, following clarification are issued:-

a) Export payment through credit card: In cases where payment for export has been made through a credit card, certain information like remitter's name, address, country, etc may not be available thus leading non-closure of Shipping Bills/Inward Remittance Message (IRM). In such cases of payment of export transactions through credit cards, AD bank may close the relevant entries by using the following information:

Fields In IRM	Information to be used for settlement / closure of entries in EDPMS
Remitter Name	As per Shipping bill/invoice
Remitter Address	As per Shipping bill/invoice
Remitter Country	As per Shipping bill/invoice
Remitter Bank Name	NA
Remitter Bank Country	XX
Swift Code	SWIFT
Bank Remark	CREDIT CARD PAYMENT

b) Involvement of two different currencies: As extant regulations permit raising of export invoices either in freely convertible currency or Indian rupees with condition that export proceeds have to be realized in freely convertible currency. It is clarified that export proceeds may be realized in any freely convertible currency



which may be different from the currency mentioned in the shipping bill. In the EDPMS, the AD banks may use two fields for reporting the amount – one in realised currency and other in equivalent amount of declared currency in shipping bill (invoiced currency). For example, if the amount is declared in the shipping bill in USD but export realisation is in Euro, then the AD bank should lodge the bill in USD in their internal system based on export documents submitted by exporters and, at the time of realisation, the currency and amount should be reported in EURO while the invoiced amount should be reported in USD. At the same time, if the freight and insurance amount is paid in INR by the exporter itself, the same may be reported in EDPMS under the same logic. The extract of currency and amount of settlement (prn.xml) file as given below may be referred for closing the entries in EDPMS.

Field Name	XML Field Name	Description
Realized Currency Code	realizedCurrencyCode	Currency Code in which invoice amount has been realized by AD.
Realized FOB Amount in Realized Currency	FOBAmt	Actual FOB Amount in Realized Currency Code
Realized FOB Amount in Invoice Currency	FOBAmtIC	Equivalent FOB Amount in Invoice Currency Code
Realized Freight Amount in Realized Currency	freightAmt	Actual Freight Amount in Realized Currency Code
Realized Freight Amount in Invoice Currency	freightAmtIC	Equivalent Freight Amount in Invoice Currency Code
Realized Insurance Amount in Realized Currency	insuranceAmt	Actual Insurance Amount in Realized Currency Code
Realized Insurance Amount in Invoice Currency	insuranceAmtIC	Equivalent Insurance Amount in Invoice Currency Code

c) Tracking of cases referred to Directorate of Enforcement (DoE): AD banks are required to follow up with the exporters for submission of export documents for closing the entries in EDPMS. In case of non-submission of documents /non-cooperation by the errant exporters even after several follow up including sending of letters through registered post by AD, they may refer such cases to DoE. To track the cases reported to DoE, a suitable flag in EDPMS will be added shortly so that AD bank can mark the same in EDPMS.

Yours faithfully

Vivek Kumar  
Assistant General Manager

### **Monthly Statements indicating the details of remittances made by NRIs/PIOs Foreign nationals out of the NRO accounts**

In terms of Part VI of the Master Direction on Reporting dated January 01, 2016 as amended from time to time, with a view to having access to more real time data

3. The instructions shall be applicable with effect **March 1, 2018**. AD Category - I banks may bring the contents of this clarification to the notice of their constituents and customers concerned.”

## EDPMS–Closure of entries

As you are aware that RBI is continuously following up with AD banks for clearance of pendency in Export Data Processing and Monitoring System (EDPMS). During the course of discussion on various issues related to outstanding entries in EDPMS with select bankers and more recently with select exporters, RBI has come across following areas on which instructions / clarifications are required to be issued so as to help AD banks in closure of entries:

- i. Export realisation through entities like Paypal and Amazon;
  - ii. Export through FTWZ units;
  - iii. Export through courier ports.

2. Accordingly, the following instructions/clarifications are issued:

i. Export Payment through Paypal and Amazon: In cases of export realisation through market place like Amazon and/or cases where payment is received through Paypal, PayU or similar mechanism, if certain information regarding actual buyer’s name, address, country, etc. is not available, the AD banks who are maintaining the account of the exporters may use the following information in respect of relevant fields for generation of Inward Remittance Message (IRM )and close the entries in EDPMS provided they are otherwise satisfied with the bonafides of transactions and also they are sure that there is no KYC / AML concern:

Fields In IRM	Information to be used for settlement / closure of entries in EDPMS
Remitter Name	Name of remitter (Paypal / Amazon, etc as the case may be)
Remitter Address	NA
Remitter Country	NA
Remitter Bank Name	NA
Remitter Bank Country	XX
Swift Code	SWIFT
Bank Remark	Export payment realised through Paypal / Amazon, etc (as the case may be)

ii. Exports through FTWZ units: In case of export of goods held on behalf of the DTA unit by a Free Trade Warehouse Zone (FTWZ) unit, if the IE code (IEC) of latter was captured in the SEZ system, (and, accordingly, instead of actual exporter’s, the IEC of FTWZ unit is getting reflected in EDPMS) and where the export proceeds is realised

by the actual exporter, AD banks may close the outstanding entries in EDPMS based on the name of actual exporter declared as a second party in the Shipping bill against the proceeds realised by the latter.

iii. Export through Courier Ports: In cases of export through Courier Port, where courier agency is filing shipping bills in bulk with the Express Cargo Clearance System (ECCS) of Customs through a simplified form called Courier Shipping Bill (CSB) (as the exports are neither captured in the Customs' centralised system (ICEGATE) nor manual bill of entry/EDF forms are generated at Customs level, no corresponding shipping bill entry gets added in the EDPMS but Inward Remittance Message gets added in EDPMS) the AD banks may close open IRM using the IRM adjustment/closure message by selecting indicator as export done through couriers based on submission of CSB by the exporter to AD banks.

AD banks may please find the letter dated December 14, 2017 issued in this regard ['here'](#).

Monthly Statements indicating the details of remittances made by NRIs/PIOs Foreign nationals out of the NRO accounts

### **Daily Reporting of transactions under LRS**

AD Category I banks have been instructed vide [A.P\(DIR\)Cir. No. 23 dated April 12, 2018](#) to upload daily transaction-wise information undertaken by them under LRS at the close of business of the next working day by accessing XBRL site. It is clarified that the AD Category I banks shall also include the details of transactions carried out by the AD Category II banks and other entities in AD Category II as well as FIMCs attached to them/maintaining an account with them while reporting the said transactions. All the LRS remittances allowed by these entities since April 2, 2018 should be uploaded to have a holistic position available for all individual remitters.

In addition to the daily reporting, AD Category I banks shall continue to report the LRS data on a monthly basis in ORFS as prescribed in Part II - Para 1 of [Master Direction on Reporting under Foreign Exchange Management Act, 1999 dated January 1, 2016 \(updated as on April 26, 2018\)](#).

### **Liberalised Remittance Scheme(LRS)-Daily Reporting of Transaction**

In terms of [A.P. \(DIR Series\) Circular No.23 dated April 12, 2018](#), AD Category – I banks are required to upload the data of the transactions undertaken by them under LRS, latest by close of business of the next working day on the XBRL platform.

2. It is observed that though the amount remitted has to be indicated in USD, as specified in the format prescribed, some AD banks continue to report the amount in the actual currency of remittance, which is not in order; e.g. if the currency of remittance is JPY, data under amount remitted should be the USD equivalent of JPY. AD banks are advised to ensure this while uploading the data.

3. We have come across certain cases where the amount remitted is shown to be marginally higher than the prescribed ceiling, which is attributed by the ADs, to the difference between the rate offered and the rate used for MIS. All ADs are advised to report the transactions at the rate offered, to avoid such instances.

4. It is reiterated that in order to ensure compliance with the prescribed LRS limit, AD banks must check the utilization of the limit by the remitter from the system, before allowing further remittances under the Scheme to ensure that the objective of introducing 'daily reporting of transactions' is not defeated.

### **Advance Remittances made by Tour Operators/Travel Agents**

In terms of Para 4.11 of FED [Master Direction No.8/2015-16 dated January 01, 2016](#) (updated as on February 11, 2016) on Other Remittance Facilities, ADs are allowed to effect remittances on behalf of agents in India who have tie-up arrangements with hotels / agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travel from India. It is understood that many times these agents are required to make remittances towards booking of hotels/other travel arrangements much in advance, even before the list of travellers is finalized.

2. It is clarified that, such advance remittances made by tour operators/agents, are regular business transactions which should be reported by the ADs in FETERS as per extant reporting guidelines under FEMA. However, once the ADs obtain the traveller-wise details (including PAN) from the tour operators, these remittances should be reported by them in the daily reporting system under LRS to ensure that the limit utilized by the individual remitter is captured and is available for monitoring.