Corporate Bytes

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Ministry of Finance amends the FEMA (Non-debt Instrument) Rules, 2019

Mohana Roy, Associate

The Ministry of Finance vide its notification dated December 5, 2019, has amended the newly enforced FEMA (Non-debt Instrument) Rules, 2019 ("**NDI Rules**"). The revisions, brought in the form of an amendment, were much needed and expected. The amendments shall have retrospective effect and are enforceable since October 17, 2019, i.e. the date of enforcement of the NDI Rules. Below are the revisions and clarity brought in by the amendment:

a. Definitions: The term "Sectoral Cap" has been amended to remove debt from the definition. Sectoral Cap now means "the maximum investment including both foreign investment on a repatriation basis by person's resident outside India in equity instruments of a company or the capital of an LLP, as the case may be." Further, the definition of Investment Vehicle has also been amended to exclude Mutual Funds that invest 50% in equity.

b. Conversion price: Clarification with regards to the conversion price of convertible equity instruments has been provided. Now, the price of conversion shall be required to be determined upfront while issuing such instruments just like it was earlier under FEMA 20 (R).

c. Gift of Shares: A person resident in India is now permitted to gift shares to a person resident outside India on both repatriation and non-repatriation basis with prior approval of Reserve Bank of India.

d. Press Note 4 of 2019: The amendment brings in force the changes as were introduced by the Press note 4 of 2019 as issued by the Department for Promotion of Industry and Internal Trade on September 18, 2019, with regards to coal mining, single-brand retail, contract manufacturing and digital media.

Software Technology Parks to mandatorily submit service export reporting form for capturing services exports data for the specified services

Mohana Roy, Associate

The Ministry of Commerce has issued notification dated November 26, 2019, wherein, Software Technology Parks (STPs) are required to mandatorily submit a monthly report of services exported in respect of services mentioned in the annexure attached to the notification. The notification also provides for the format of filing in its annexures.

SEBI issues updated norms for debt ETFs and index funds

Pawan Khatri, Associate

The Securities Exchange Board of India (**SEBI**) has released norms for Debt Exchange Traded Funds (ETFs)/Index Funds. The major highlight of the norms is that no single issuer of a fund will hold more than 15% of the index weight. These norms are to be adopted and adhered to by all mutual fund houses and existing debt ETFs need to ensure compliance with said norms within a period of three months. The replication method has also been revised by the SEBI in a way that the index funds or ETFs will need to ensure replication of the new index completely as per new norms.

As per the new norms, a minimum of eight issuers are required in the index, the ratings of index constituents need to be investment grade, maturity specified as per the methodology of the index and clearly defined credit rating. When an issuance's credit rating witnesses a fall below the rating as specified in the index, rebalancing by either index funds or debt ETFs needs to be ensured within five working days.

With regard to the replication method, the fund managers are required to replicate the closest possible company's weight to form part of the index. When such replication is not possible because of non-availability other issuances of the same index, index funds or debt ETFs can invest in other issuances with a 10% deviation (positive or negative) from the average weighted duration of the issuance of said index subject to the condition of single issuer limit.

With regard to an aggregate portfolio level, not more than a 5% deviation (plus/minus) from index duration shall be allowed. The rationale behind such deviation also needs to be recorded as part of a quarterly compliance procedure. The availability of details as per updated norms should be on their website. ETFs with government securities, treasury bills and tri-party repo are excluded from the said norms.

- **MCA Compliance Monitoring System (MCA-CMS)**

Sindhuja Kashyap, Senior Associate

Ministry of Corporate Affairs has recently introduced an online compliance tracing mechanism known as Compliance Monitoring System with an intention to streamline the compliance procedures to ensure transparency and accountability. The system works on Artificial Intelligence which detects any defaults in compliance and digitally sends show-cause notice to the defaulter company and its directors. Each notice shall have a unique CMS reference number for the purpose of reference and identification. The defaulters are required to file a defence reply to the notice within 15 days from the date of the notice. Registrar of Company shall have the right to take penal actions against the defaulter in case no reply to the show-cause notice is submitted within the stipulated time.