



Foreign Direct Investment FDI

Sunday, 19 March 2017

FDI IN LIMITED LIABILITY PARTNERSHIP (LLP) –RECENT AMENDMENTS IN THE REGULATION, 2017¹

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India notified *Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2017*. Regulation 5(9) and Schedule 9 were amended.

A) Regulation 5(9)

In Regulation 5, for the existing sub-regulation (9), the following has been substituted, namely:

“A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a

Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital

Investor registered in accordance with SEBI guidelines, may contribute foreign capital either

by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP under Foreign Direct Investment, subject to the terms and conditions as specified in Schedule 9.”

B) Schedule 9 [See Regulation 5 (9)]

The Scheme shall be called Foreign Direct Investment (FDI-LLP) in Limited Liability Partnerships (LLP) formed and registered under the Limited Liability Partnership Act, 2008.

1. Eligible Investors:

A person resident outside India (other than a citizen of Pakistan or Bangladesh) or an entity incorporated outside India (other than an entity in Pakistan or Bangladesh), not being a Foreign Portfolio Investor or Foreign Institutional Investor or Foreign Venture Capital Investor registered in accordance with SEBI guidelines, may contribute foreign capital either by way of capital contribution or by way of acquisition / transfer of profit shares in the capital structure of an LLP.

2. Eligible Investment

Contribution to the capital of an LLP would be an eligible investment under the scheme.

Note: Investment by way of 'profit share' will fall under the category of reinvestment of earnings

3. Eligibility of a LLP

FDI in LLPs is permitted, subject to the following conditions:

¹ Available at <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10876&Mode=0>



Sunday, 19 March 2017

- FDI is permitted under the **automatic route** in LLPs operating in sectors / activities **where 100% FDI is allowed through the automatic route** and there are no FDI linked performance conditions. *For ascertaining such sectors, reference shall be made to Annex B to Schedule I of these Regulations*
- An Indian company or an LLP, having foreign investment, will be permitted to make downstream investment in another company or LLP engaged in sectors in which 100% FDI is allowed under the automatic route and there are no FDI linked performance conditions. Onus shall be on the Indian company / LLP accepting downstream investment to ensure compliance with the above conditions.
- FDI in LLP is subject to the compliance of the conditions of Limited Liability Partnership Act, 2008.
- A company having foreign investment can be converted into an LLP under the automatic route only if it is engaged in a sector where foreign investment up to 100 percent is permitted under automatic route and there are no FDI linked performance conditions.

4. Pricing

FDI in a LLP either by way of capital contribution or by way of acquisition / transfer of profit shares, would have to be more than or equal to the fair price as worked out with any valuation norm which is internationally accepted / adopted as per market practice (hereinafter referred to as "fair price of capital contribution / profit share of an LLP") and a valuation certificate to that effect shall be issued by the Chartered Accountant or by a practicing Cost Accountant or by an approved valuer from the panel maintained by the Central Government.

In case of transfer of capital contribution / profit share from a resident to a non-resident, the transfer shall be for a consideration equal to or more than

the fair price of capital contribution / profit share of an LLP. Further, in case of transfer of capital contribution / profit share from a non-resident to resident, the transfer shall be for a consideration which is less than or equal to the fair price of the capital contribution / profit share of an LLP.

5. Mode of payment

Payment by an investor towards capital contribution in LLPs shall be made:

- by way of inward remittance through banking channels; or
- By debit to NRE / FCNR (B) account of the person concerned, maintained with an AD Category - I bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2016, as amended from time to time.

6. Reporting

- Reporting of foreign investment in LLPs and disinvestment/transfer of capital contribution or profit shares between a resident and a non-resident may be made in a manner as prescribed by Reserve Bank of India from time to time.
- All LLPs which have received Foreign Direct Investment in the previous year(s) including the current year shall submit to the Reserve Bank of India, on or before the 15th day of July of each year, a report titled 'Annual Return on Foreign Liabilities and Assets' as specified by the Reserve Bank from time to time."

COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2016²- TIME PERIOD FOR SUBMISSION OF INFORMATION TO THE TRIBUNAL INCREASED

In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-



Sunday, 19 March 2017

section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government makes further amendments to the Companies (Transfer of Pending Proceedings) Rules, 2016, namely:—

Rule 5 (1):

The petitioner shall now be allowed a time period of **SIX MONTHS INSTEAD OF PREVIOUSLY STATED SIXTY DAYS** for submission of all information, in case of transfer of pending proceedings of winding up on the ground of inability to pay debts, required for admission of petition under sections 7, 8, or 9 of the Insolvency and Bankruptcy Code, including details of the proposed insolvency professional to the tribunal.

TRADEMARK RULES, 2017³- AN INITIATIVE TO BOOST INTELLECTUAL PROPERTY REGIME IN INDIA

The Trade Mark Rules, 2017 have been notified and have come into effect from 06th March, 2017. These Rules, which replace the erstwhile Trade Mark Rules 2002, will streamline and simplify the processing of Trade Mark applications.

Some salient features of the revamped Rules are as follows:

- ❖ Number of Trade Mark (TM) Forms have been reduced from 74 to 8.
- ❖ To promote e-filing of TM applications, the fee for online filing has been kept at 10% lower than that for physical filing.
- ❖ Based on stakeholders' feedback, the fees for Individuals, Start-ups and Small Enterprises have been reduced from that proposed in the draft Rules – i.e. only Rs 4,500 as against Rs 8,000 for e-filing of TM applications proposed at the draft stage.

- ❖ Modalities for determination of well-known trademarks have been laid out for the first time.
- ❖ The provisions relating to expedited processing of an application for registration of a trade mark have been extended right upto registration stage (hitherto, it was only upto examination stage).
- ❖ Over all fees have been rationalized by reducing the number of entries in Schedule I from 88 to just 23.
- ❖ Modalities for service of documents from applicants to the Registry and vice-versa through electronic means have been introduced to expedite the process; e-mail has been made an essential part of address for service to be provided by the applicant or any party to the proceedings so that the office communication may be sent through email.
- ❖ Hearing through video conferencing has been introduced.
- ❖ Number of adjournments in opposition proceedings has been restricted to a maximum of two by each party, which will help dispose of matters in time.
- ❖ Procedures relating to registration as Registered User of trademarks have also been simplified.

It may be recalled that the examination time for a TM application has already been brought down from 13 months to just 1 month in January 2017; this is despite a stupendous 35% jump in TM filings in 2015-16 vis a vis the previous year. The new Rules should give a boost to the Intellectual Property Regime in India.

PAYMENT OF WAGES (AMENDMENT) ACT, 2017- PAYMENT CAN BE MADE THROUGH CHEQUE OR ONLINE TRANSFER

³ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=158879>



Sunday, 19 March 2017

- ❖ Payment of wages (Amendment) Bill, 2017 received President's assent on 15th February, 2017 and replaced the Payment of Wages Ordinance, 2016 which was promulgated on December 28, 2016.
- ❖ **Section 6⁴** has been amended to permit the employer to pay an employee's wages:
 - in coin or currency notes; or
 - by cheque; or
 - By crediting them into his bank account.
- ❖ It also enables the appropriate Government to specify the industrial or other establishment, by notification in official gazette, which shall pay to every employed person the wages only by cheque or by crediting the wages in his bank account."

Section 6 of Payment of wages (Amendment) Act, 2017 reads as under:-

Section 6: Wages to be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account

"All wages shall be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee:

Provided that the appropriate Government may, by notification in the Official

Gazette, specify the industrial or other establishment, the employer of which shall pay to every person employed in such industrial or other establishment, the wages only by cheque or by crediting the wages in his bank account."

Astrea Legal is a full service Law firm. It offers a comprehensive range of legal services in the areas of Civil, Constitutional, Corporate, and Criminal law. The firm extensively focuses on to address industry wise Legal & Consultancy services. The firm always keeps in mind to address every legal service requirements of the business transactions under one roof service strategy.

Website: www.astrealegal.com Email: contact@astrealegal.com

Contact: +91 9822720483, +91 020 – 6510878

Disclaimer - This publication is provided for general information and does not constitute any legal opinion. This publication is protected by copyright. © 2017 Astrea Legal Associates LLP.