

FEMA and RBI

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The Foreign Exchange Management Act, 1999 (FEMA)

Amendment in Foreign Exchange Management (Non-debt Instruments) Rules, 2019

[Gazette Notification dated 24th January 2024](#)

The Ministry of Finance, Department of Economic Affairs, has vide the above notification dated 24th January 2024, amended Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**'NDI Rules'**), with the object of enhancing the existing regulatory framework by introducing new terminologies.

The brief synopsis of the new Chapter, Schedule and definitions, are analyzed hereunder:

A. Definitions

- a. **Listed Indian Company** means an Indian company having any of its debt or equity instruments listed on both recognized stock exchange in India as well as **International Exchange**.
- b. **International Exchange** means permitted stock exchange in **permitted jurisdictions** which are listed as per Schedule XI of the NDI rules. Presently, as per Schedule XI, India International Exchange and NSE International Exchange are specified as International Exchanges.
- c. The term **'Permissible jurisdiction'** is defined as per Rule 9(3)(f) of the PML Rules, 2005, as an entity listed on an Indian stock exchange, or entities listed on stock exchanges that is resident in the jurisdictions notified by the Central Government (**CG**), or it is a subsidiary of such listed entities.

B. Chapter X under Rule 34 allows permissible holders to purchase or sell equity shares of Indian public companies listed or to be listed on International Exchanges under Direct Listing of equity shares of companies incorporated in India and listed on International Exchange as mentioned in Schedule XI.

C. Schedule XI - Direct Listing of Equity shares of companies incorporated in India on International Exchanges Scheme

- **Issue and Listing on International Exchanges:** A public company may issue equity shares or offer equity shares of the existing shareholders subject to (i) the issue/offer should be permitted and listed on any of the specified International Exchange; (ii) the entity should not be carrying on prohibited activities and comply with the sectoral caps as per the NDI rules; (iii) the issue should be in dematerialized form and rank pari-passu with equity shares listed on a recognized stock exchange in India.
- **Permissible holder:** The term 'permissible holder' means a holder of equity shares listed on an International Exchange. Provided that if the holder who is the citizen of the country which shares land border with India, shall hold equity shares only with the approval of CG. Further, a holder may purchase or sell equity shares of an Indian company listed on international exchange subject to limit specified for Foreign Portfolio Investment.
- **Eligibility Criteria:** The Schedule has prescribed various eligibility conditions that should be complied for issuing shares under the said rule.
- **Obligation of companies:** The public Indian company shall ensure compliance with the Securities Contracts (Regulation) Act, 1956; the SEBI Act, 1992; the Depositories Act, 1996; the FEMA, 1999; the PML Act, 2002 or the Companies Act, 2013 and rules and regulation made thereunder, including arrangements with Indian Depository and Foreign Depository.
- **Voting Rights:** Public Indian companies listed on international stock exchanges must ensure that the voting rights of the equity shares are exercised directly by the permissible holder or through their custodian as per the voting instructions provided by the permissible holder.

- **Pricing:** Equity shares issued by listed companies or offered by the existing shareholders on the Recognized Stock Exchange in India shall be issued at a price not less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors. In case of initial listing by the public unlisted Indian company, the price of issue or transfer of such equity shares shall be determined via the book building process as permitted by the International Exchange.

Government notifies New Financial Services in International Financial Centres (IFSC)

[Gazette Notification dated 18th January 2024](#)

The Ministry of Finance, through the department of Economic Affairs, vide the above Gazette notification dated 18th January 2024, has notified following additional services to be covered under 'Financial services' rendered to **non-residents** (Any person who is not resident in India as per section 2(w) of the FEMA Act, 1999 and also includes the units of IFSC) under IFSC Act, 2019.

- Book-keeping services
- Accounting services
- Taxation services
- Financial crime compliance services (services rendered in relation to compliances of Anti-Money Laundering (AML) / Countering the Financing of Terrorism (CFT) measures and Financial Action Task Force (FATF) recommendations, and other related activities)

The entity providing these services should be a newly set up entity in IFSC and **not formed by splitting, restructuring, or reorganization of existing entities**. Further, these units are not permitted to provide services through transfer or receipt of existing contracts or work arrangements from their group entities in India.

The main intend of the ministry is to make Gujarat International Finance Tec-City (GIFT) IFSC into Global Finance and Accounting Hub that allows seamless and easy flow of global capital into India

and to prevent misuse by providing regulatory framework.

Risk Management and Inter-Bank Dealings – Hedging of foreign exchange risk.

[A.P. \(DIR Series\) Circular No. 13 dated 5th January 2024](#)

RBI has through this circular assimilated various representations made by the market participants, with the object of streamlining the reporting and regulatory framework. Accordingly, this circular has consolidated the Exchange Traded Currency Options (Reserve Bank) Directions, 2010 and the Currency Futures (Reserve Bank) Directions, 2008 into the Master Direction - Risk Management and Inter- Bank Dealings, with this the effective date of implementing this circular has now been shifted to **3rd May 2024**.

The circular has introduced new as well as amended existing terminologies which we have briefly enumerated herein below:

- **Currency Risk** are the potential for loss on account of movement in exchange rates of INR against a foreign currency.
- **Anticipated exposure** is currency risk on account of current or capital account transactions permissible under the FEMA, 1999, that are proposed to be enter in future.
- **Contracted exposure** refers to currency risk on account of current or capital account transactions permissible under the FEMA, 1999, that are already entered.
- **Non-deliverable foreign exchange derivative contract (NDDC)** means an OTC derivative contract where there is no delivery of the notional amount of the underlying currencies, and which is cash-settled.
- **Over the counter (OTC) derivative** is a derivative traded outside Recognized Stock Exchanges. This includes derivative traded on ETP (Electronic Trading platforms).

Guidelines on Appointment / Re-appointment of Statutory Auditors of State Co-operative Banks and Central Co-operative Banks

[RBI/2023-24/113 dated 15th January 2024](#)

This Circular will be applicable to all State Co-operative Banks (**StCBs**) and all Central Co-operative Banks (**CCBs**) for seeking prior approval of RBI for appointment, re-appointment or removal of Statutory Auditor (**SA**), and other related matters.

These guidelines came into effect from 1st April 2024. Accordingly, for all accounting periods commencing on or after 1st April 2024, all StCBs and CCBs should submit an application for prior approval of RBI before 31st July of the reference accounting year, in accordance with the guidelines.

Other key features, *inter alia*, include the following:

- **Applicability**
These guidelines will be applicable to StCBs and CCBs with effect from 1st April 2024
- **Prior Approval of RBI for Appointment / Re-appointment of SAs**
The bank should obtain prior approval of RBI before appointment, re-appointment or removal of SA. The bank should also seek prior approval for re-appointment of SA annually.
- **Eligibility Criteria of SAs**
In case of appointment of fresh SA, the bank should select from the list of audit firms provided by National Bank for Agriculture and Rural Development (**NABARD**) and forward the name of the shortlisted audit firms to RBI as per the prescribed procedure.
- **Independence of Auditors**
▲ Concurrent auditors of the bank will not be considered for appointment as SA of the same bank. There should be a minimum gap of 1 year between completion of one assignment and commencement of the other assignment.

- **Foreign exchange derivative contract** is a financial agreement that values the change in exchange rates of two currencies of which at least one is not Indian Rupee and is settled at a future date, except the currencies of Nepal and Bhutan.
- **Deliverable foreign exchange derivative contract** means an OTC contract other than a non-deliverable foreign exchange derivative contract.
- **Leveraged Derivative** refers to OTC derivative whose potential pay-out during the tenure of the derivative can be more than the notional amount of the contract.
- **Foreign currency interest rate derivative contract** is akin to foreign exchange derivative contract except in the case of change in interest rate of foreign currency instead of change in exchange rates of two currencies.
- **Hedging** is the activity of undertaking a foreign exchange derivative / foreign currency interest rate derivative transaction to offset the impact of an anticipated or a contracted exposure.
- **Mid-market mark** means the price of the derivative that is free from various costs or adjustments.

Further, meaning of terminologies such as **Electronic Trading Platforms, Exchange Traded Currency Derivative, User Network, Turnover, Recognised Clearing Corporation, Recognised Stock Exchange** etc. has been given the meaning as assigned to them under the Electronic Trading Platforms (Reserve Bank) Directions, 2018, Foreign Exchange Management Regulations, 2000, FEMA 1999, Companies Act, 2013, Securities Contracts Regulations, 2018, respectively.

The implementation of this Circular will demonstrate the regulator's commitment to amend the existing direction in line with changing dynamics of the financial markets on basis of feedback received from market participants, so that market participants align their practices with the amended regulatory framework.

- ▲ The time gap between any non-audit work (services mentioned in Section 144 of the Companies Act, 2013, internal assignments, special assignments, etc.) undertaken by the SA for the appointing bank should be at least 1 year, both before appointment and after completion of tenure as SA. However, during the tenure as SA, an audit firm may provide such services to the appointing bank which may not normally result in conflict of interest.
 - ▲ The restrictions, as mentioned above will also apply to an audit firm under the same network of audit firms or any other audit firm having common partner(s), as defined in Rule 6(3) of the Companies (Audit & Auditors) Rules, 2014.
- **Tenure and Rotation of Statutory Auditors (SAs)**
- ▲ SAs should be appointed at a time for a period of 1 year only and should be reappointed annually for the succeeding 2 years. Premature removal of the SA will require prior approval of RBI.
 - ▲ An auditor / audit firm will not be eligible for appointment / re-appointment in the same bank for 6 years (2 tenures) immediately after completion of a full or part tenure.
- **Number of StCBs / CCBs an Audit firm can Audit**
- ▲ An audit firm can concurrently take up statutory audit of a maximum of 5 banks (including not more than 1 StCB) in a year.
 - ▲ In a year, an audit firm cannot simultaneously take up statutory audit of both StCB and CCBs operating in the same State. An audit firm can concurrently take up statutory audit of a maximum of 4 Commercial Banks [including not more than 1 PSB or 1 All India Financial Institution (NABARD, SIDBI, NaBFID, NHB, EXIM Bank) or RBI], 8 Urban Co-operative Banks (UCBs), 8 Non-Banking Financial Companies (NBFCs), and 5 StCBs / CCBs (including not more than 1 StCB) in a year.

Review of Fixed Remuneration granted to Non-Executive Directors (NEDs)

[RBI/2023-24/121 dated 9th February 2024](#)

Circular on [Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board dated 26th April 2021](#) specified a ceiling of Rs.20 lakh per annum on remuneration of NEDs, other than the Chair of the Board. The RBI has revised the aforementioned ceiling to Rs. 30 lakh per annum.

The banks are required to have suitable criteria for granting fixed remuneration to its NEDs, with the approval of its Board before any review of the extant remuneration. The Board of the bank may fix a lower amount within the ceiling limit of Rs.30 lakh per annum depending upon the size of the bank, experience of the NED and other relevant factors.

Banks are required to make a disclosure on the remuneration paid to the directors on an annual basis at a minimum, in their Annual Financial Statements.

The instructions would be applicable to all the Private Sector Banks including Small Finance Banks (SFBs) and Payment Banks (PBs), as also the wholly owned subsidiaries of Foreign Banks. The instructions would come into force with immediate effect.

Appointment/re-appointment of Director, Managing Director or Chief Executive Officer in Asset Reconstruction Companies

[RBI/2023-24/127 dated 27th February 2024](#)

As per Circular on [Review of Regulatory Framework for Asset Reconstruction Companies \(ARCs\) dated 11th October 2022](#), ARCs are required to obtain prior approval of the RBI for appointment/re-appointment of any Director, Managing Director or Chief Executive Officer.

Vide the aforementioned Circular, the ARCs are advised to submit applications along with prescribed documents/information mentioned at least 90 days before the vacancy arises / the proposed date of appointment or re-appointment.

These instructions would come into force with immediate effect.

Draft Disclosure framework on Climate-related Financial Risks, 2024

[Press Release dated 28th February 2024](#)

The RBI has issued [Draft Disclosure framework on Climate-related Financial Risks, 2024](#). As per the guidelines, the regulated entities (**REs**) are required to disclose information about their climate-related financial risks and opportunities for the users of financial statements. The disclosures by the REs will cover the following 4 thematic areas (Pillars):

- Governance
- Strategy
- Risk Management
- Metrics and Targets

Applicability

The guidelines will be applicable to the following entities:

- All Scheduled Commercial Banks (excluding Local Area Banks, Payments Banks and Regional Rural Banks)
- All Tier-IV Primary (Urban) Co-operative Banks (**UCBs**)
- All All-India Financial Institutions (viz. EXIM Bank, NABARD, NaBFID, NHB and SIDBI)
- All Top and Upper Layer Non-Banking Financial Companies (NBFCs)

Commencement

The glide path for detailed disclosures by the REs on the areas of “Governance”, “Strategy”, “Risk Management” and “Metrics and Targets” are as under:

	Governance, Strategy, and Risk Management	Metrics and Targets
Schedule Commercial Banks (SCBs), All India Financial Institutions (AIFIs), Top and Upper layer Non-	FY 2025-26 onwards	FY 2027-28 onwards

	Governance, Strategy, and Risk Management	Metrics and Targets
Banking Financial Companies (NBFCs)		
Tier IV UCBs	FY 2026-27 onwards	FY 2028-29 onwards
Other REs	Will be announced in due course	

The REs should also disclose assumptions/ proxies and external assurance taken, if any, for the disclosed metrics.

Validation /scrutiny of the disclosures

- The disclosures should be subject to appropriate internal control assessments and should be reviewed by the Board of Directors or a Committee of the Board.
- The disclosures must be included and disclosed as a part of the RE’s financial results/ statements on its website.



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