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Analysing developments impacting business

Changes to Foreign Investment Reporting: Immediate Action Needed!

2 July 2018

On 7 June 2018, the Reserve Bank of India (RBI) notified changes to the existing reporting requirements in respect of foreign investments in India with the objective to consolidate and integrate all existing reporting for, *inter alia*, issue of shares and transfer of shares in a Single Master Form (SMF) online.

Key Highlights

- One Time creation of Entity Master: Every Indian entity (including both listed and unlisted companies, LLPs, start-ups, etc) (Indian Entity) which has received any foreign investment (both direct and indirect) is now required to make a one-time reporting of all its existing foreign investments to the RBI. This reporting has to be done by the Indian Entity itself on the RBI website. The interface is now available on the website of the RBI from 28 June 2018 till 12 July 2018. As a part of this one-time reporting, Indian Entities are also required to provide additional information like the amount of indirect foreign investment received, which was earlier not required to be disclosed to the RBI. Broadly, the information requested includes details of the Indian Entity, details of all business activities and NIC code, details of foreign investments in the Indian Entity (like direct investments, portfolio investments, indirect foreign investment, etc). Interestingly, all listed Indian Entities with foreign portfolio investments will also need to submit this information.

All Indian Entities with foreign investment will need to collate and submit the information requested to the RBI within a short timeframe. While this may be easier for entities with direct foreign investment, entities will also have to assess and collate information on indirect foreign investment. It is unclear whether this one-time reporting will result in RBI regularising any past reporting lapses by Indian Entities.

- Process to furnish information in Entity Master form: The user of every Indian Entity (ie a person authorised to furnish details on behalf of such Indian Entity) is required to register at <https://firms.rbi.org.in>. The user needs to be a sole person authorized to update the foreign investment details and would be entirely responsible for the data entered.

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- Consequence on failure to provide details in Entity Master form: Every Indian Entity which fails to provide details in the Entity Master form within the prescribed timeline will not be able to receive foreign investment (including indirect foreign investment) going forward and may be subject to further penalties under the applicable foreign investment regulations.

The consequences of not making the above one-time filing appear to be serious. To avoid any regulatory action on account of unforeseen delays, entities must collate and submit the information requested for on or before 12 July 2018.

- SMF: The draft SMF released by RBI purports to consolidate existing forms on reporting for (i) issue of capital instruments (Form FC-GPR); (ii) transfer of capital instruments (Form FC-TRS); (iii) capital infusion in LLP (Form LLP-I); (iv) Divestment/transfer of capital contribution and profits in LLPs (Form LL-II); (v) downstream intimation on investment by any eligible entity (Form DI); (vi) issue of sweat equity shares/ employees stock option plans/ shares on exercise of employees stock option (Form ESOP); (vii) issue or transfer of convertible notes (Form CN); (viii) issue or transfer of depository receipts (Form DRR); and (xi) investment in an Investment Vehicle (Form InVI). The SMF will be available on the ebiz portal (<http://ebiz.gov.in/app/login>).
- Broadening scope of reporting: In relation to Form FC-GPR and Form FC-TRS, certain key additional disclosures have been included such as disclosure of conversion ratio on issue of convertibles, total indemnity amount to be disclosed and inflow/outflow in case indemnity is invoked, details of escrow, etc. Additionally, the new form also requires the constituents to attach the extract of the contractual agreements in relation to the above.

Way forward

As an immediate next step, all Indian entities with foreign investment – both, direct and indirect have to take steps for meeting the regulatory expectations. The extent of RBI's oversight in view of the additional disclosures remains to be seen.

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