

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024

The Reserve Bank of India (“**RBI**”) had notified the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2024 (“**NDI Amendment Rules**”) on January 24, 2024, amending the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2019. The NDI Amendment Rules enable the eligible holders to invest in the equity shares of a public Indian company that is or is to be listed on an International Exchange. The India International Exchange and NSE International Exchange at the International Financial Services Centre in India - are recognised as permitted stock exchanges as per the Annexure to Schedule XI (Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme). Further, Rule 34(2) of the NDI Amendment Rules specifies that the RBI will determine the mode of payment and other attendant conditions for remittance of proceeds from the issue. For a detailed analysis on the NDI Amendment Rules, please refer to the [JSA Prism of February 13, 2024](#).

On April 19, 2024, the RBI in furtherance of Rule 34(2) of the NDI Amendment Rules has notified amendments to the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 (“**Principal Regulations**”), *vide* the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024 (“**Amendment Regulations**”). These amendments come into effect immediately.

The Principal Regulations, *inter-alia*, deal with the instructions regarding the mode of payment and remittance of sale proceeds for investments such as purchase or sale of equity instruments of an Indian company by a person resident outside India, investments by foreign portfolio investors (“**FPIs**”), investments by a non-resident Indian or overseas citizen of India on repatriation as well as non-repatriation basis etc. The Principal Regulations also deal with the reporting requirements for investment in India by a person resident outside India.

Salient Features of the Amendment Regulations

1. Regulation 3.1 of the Principal Regulations has been amended to insert Schedule XI which has the following 2 (two) aspects:
 - a) **Mode of Payment**: The amount of consideration for purchase / subscription of equity shares of an Indian company listed on an International Exchange will be paid either through banking channels to a foreign currency account of the Indian company (“**FC Account**”) held as per Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2015, or as inward remittance from abroad through banking channels. Further, the proceeds of the purchase/subscription of such equity shares will either be remitted to a bank account in India or deposited in the FC Account.

- b) Remittance of Sale Proceeds: The sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder maintained as per the Foreign Exchange Management (Deposit) Regulations, 2016.
2. Regulation 4 of the Principal Regulations which deals with the reporting requirements for any investment in India by a person resident outside India has been amended to include the following conditions:
- a) the authorised dealer category I banks (“**AD Bank**”) will report to the RBI in Form LEC (FII) the purchase / transfer of equity instruments by FPIs on the stock exchanges in India; and
- b) the Investee Indian company through an AD Bank is required to report to the RBI in Form LEC (FII) the purchase/subscription of equity shares (where such purchase/ subscription is classified as FPI under the rules) by permissible holder, other than transfers between permissible holders, on an International Exchange.

Conclusion

The Amendment Regulations has brought some clarity on the aspects of mode of payment, remittance of sale proceeds as well as reporting requirements regarding the investment in the equity shares of the public Indian company listed on an international exchange. This is an important step towards providing the companies an avenue to access international capital markets.

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