JANUARY 2021

NEWSLETTER REGULATORY





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RBI

Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

Notification No. FEMA 23(R)/(4)/2021-RB

Dated: 8th January 2021

RBI has amended Foreign Exchange Management (Export of Goods & Services) Regulations, 2015.

As per the amendment, re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition repossessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s may be made without furnishing the required declaration.

Notification

Introduction of Legal Entity Identifier for Large Value Transactions in Centralised Payment Systems

RBI/2020-21/82 DPSS.CO.OD No.901/06.24.001/2020-21

Dated: 5th January 2021

Effective Date – 1 April, 2021

Legal Entity Identifier (LEI) system was earlier introduced by the Reserve Bank vide circular RBI/2016-17/314 FMRD.FMID No.14/11.01.007/2-16-17 dated June 01, 2017 for phased implementation for participants in the over the counter (OTC) derivative and non-derivative markets as also for large corporate borrowers. LEI is a 20-digit number used to uniquely identify parties to financial transactions worldwide.

It has now been decided to introduce the LEI system for all payment transactions exceeding Rs. 50 crores undertaken by entities (non-individuals) using Reserve Bank-run Centralised Payment Systems viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).

Further, Banks are required to follow the prescribed guidelines which include advising the entities who undertake large value transactions (Rs. 50 crores and above) to

- obtain LEI in time if they do not already have one;
- Include remitter and beneficiary LEI information in RTGS and NEFT payment messages and
- Maintain records of all transactions of Rs. 50 crores and above through RTGS and/or NEFT.

Notification

SEBI

1. Refund of Security Deposit

Circular No.: SEBI/HO/MIRSD/FCR/CIR/P/2021/01 Dated 6th January, 2021

Vide this circular, SEBI has issued the following advisory to the stock exchanges regarding refund of security deposit on surrender of membership by Trading Members (TM).

Type of TM	Period within which Security Deposit of TM is to be
	released (whichever is earlier)
TM (engaged in trading on behalf of clients)	a. Three years from the date of receipt of surrender
	application by Exchange from the TM
	b. Five years from the date of disablement of TM's trading
	terminals by Exchange
TM (engaged only in proprietary trading in last	a. One year from the date of receipt of surrender application
three years prior to the date of application)	by Exchange from the TM
	b. Three years from the date of disablement of TM's trading
	terminals by Exchange

Circular

2. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2021

No. SEBI/LAD-NRO/GN/2021/03 Dated 8th January, 2021

SEBI has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Following is the gist of the amendments:

- 1. Regulation 112 pertaining to the requirement of minimum promoters' contribution not applicable in certain cases: Clause (b) along with proviso has been substituted. The same deals with the requirement of minimum promoters' contribution not applicable in certain cases where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least three years immediately preceding the reference date.
- 2. Regulation 115 pertaining to the Lock-in of specified securities held by the promoters: the existing proviso after clause (c) has been omitted. The excess promoters' contribution as provided under clause (b) of Regulation 112 stated above shall now be subject to lock in.
- **3. Regulation 167 pertaining to the Lock-in:** A new proviso has been inserted after sub-regulation (4) to provide that lock-in provision of 1 year for equity shares issued on a preferential basis pursuant to any resolution of stressed assets under a framework specified by the RBI or a resolution plan approved by the NCLT under the Insolvency and Bankruptcy Code 2016 shall not be applicable to the specified securities to the extent to achieve 10% public shareholding.

Regulation

3. Monthly Reporting of Portfolio Managers

Circular No.: SEBI/HO/IMD/DF1/CIR/P/2021/02

Dated 8th January, 2021

In terms of SEBI circular dated February 13, 2020, Portfolio Managers are required to submit a monthly report regarding their portfolio management activity on SEBI Intermediaries Portal within 7 working days of the end of each month in the prescribed format.

Vide this circular, SEBI has modified the format as enclosed in Annexure A of this circular in order to broaden the information obtained under monthly reports.

The provisions of this circular shall be applicable for monthly reports submitted for January 2021 onwards.

Circular

4. Securities and Exchange Board of India (Alternative Investment Funds) (Amendment) Regulations, 2021

No. SEBI/LAD-NRO/GN/2021/01 Dated 8th January, 2021

SEBI has amended the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

A proviso to the Regulation 20 pertaining to the general obligations of Alternative Investment Funds has been inserted as stated below:

"Provided further that clauses (i) and (ii) shall not apply to an Alternative Investment Fund in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager has committed to invest not less than seventy crore rupees (or an equivalent amount in currency other than Indian rupee) and has furnished a waiver to the Alternative Investment Fund in respect of compliance with the said clauses, in the manner specified by the Board."

Regulation

5. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2021

No. SEBI/LAD-NRO/GN/2021/02 Dated 8th January, 2021

SEBI has amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Following is the gist of the amendments:

Part A of Schedule III pertaining to the disclosures of events or information of specified securities:

- 1. In clause 16, sub clause (1) has been substituted to include the specific features and details of the resolution plan as approved by the Adjudicating Authority under the Insolvency Code, not involving commercial secrets.
- 2. In clause 16, after the existing sub-clause (m), the following new sub-clauses (n), (o) and (p) have been inserted:
- n) Proposed steps to be taken by the incoming investor/acquirer for achieving the Minimum Public Shareholding (MPS);
- o) Quarterly disclosure of the status of achieving the MPS;
- p) Details as to the delisting plans, if any approved in the resolution plan.

Regulation

6. Circular on Amendment to Regulation 20(6) of SEBI (AIF) Regulations, 2012

Circular No. SEBI/HO/IMD/DF6/CIR/P/2021/004 Dated 8th January, 2021

SEBI vide notification dated 8th January, 2021 (Point no. 4 above) had granted exemption to the Alternative Investment Funds from applicability of clause (i) and (ii) of the first proviso to Regulation 20(6), subject to certain conditions including each investor furnishing a waiver to the AIF in respect of compliance with these clauses.

Vide this circular, SEBI has prescribed a format for waiver to be furnished by the investors in this regard furnished at Annexure I to this circular.

Circular

7. Review of Volatility Scan Range (VSR) for Option contracts in Commodity Derivatives Segment

Circular No. SEBI/HO/CDMRD/DRMP/CIR/P/2021/08 Dated 11th January, 2021

Effective date - First trading day of month of April 01, 2021

SEBI vide circular dated June 13, 2017 regarding "Options on Futures" had advised Stock Exchanges to fix and determine the volatility scan range (VSR) values. Further, SEBI vide circular dated January 16, 2020 on "Options on Goods" had advised Clearing Corporations (CCs) to fix prudent VSR.

In light of increased market volatility, SEBI vide this circular, has decided to prescribe minimum VSR values for underlying commodities based on their volatility viz, high, medium and low as categorized in SEBI circular dated January 27, 2020. The VSR in respect of various categories of commodities shall be subject to following minimum values:

Volatility Category	Minimum VSR % Non Agri commodities	Minimum VSR % Agri commodities
Low	4	5
Medium	5	6
High	6	7

CCs (providing clearing and settlement for options) are required to review the value of VSR by back testing on a monthly basis using last 3 years' data by 15th of every month and any change in VSR shall be implemented from 1st trading day of the following month.

Circular

8. Securities and Exchange Board of India (Investment Advisers) (Amendment) Regulations, 2021

No. SEBI/LAD-NRO/GN/2021/04 Dated 11th January, 2021

SEBI has amended the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013.

Following is the gist of amendments:

- a. **Insertion of clause (n) in Regulation 6 pertaining to application and eligibility criteria**. For the purpose of the grant of certificate the Board shall take into account whether the applicant is a member of a recognized body or body corporate as specified under regulation 14.
- b. Reduction in application fees as under:

For individual and firms: from Rs. 5,000 to Rs. 2,000

For Body Corporate including LLPs: from Rs. 25,000 to Rs. 10,000

c. Reduction in registration fees as under:

For individual and firms: from Rs. 10,000 to Rs. 3,000

For Body Corporate including LLPs: from Rs. 500,000 to Rs. 15,000

d. Reduction in registration fees payable every five years for keeping registration in force as under:

For individual and firms: from Rs. 10,000 to Rs. 1,000

For Body Corporate including LLPs: from Rs. 500,000 to Rs. 5,000

Circular

9. Norms for investment and disclosure by Mutual Funds in Exchange Traded Commodity Derivatives

("ETCDs")

Circular No.: SEBI/HO/IMD/DF2/CIR/P/2021/10

Dated 15th January, 2021

SEBI vide circulars dated May 21, 2019 and June 05, 2020 had permitted mutual funds to participate in ETCDs.

Vide this circular, SEBI has clarified that the following exposures shall not be considered in the cumulative gross exposure as specified in paragraph 4(v) of SEBI Circular No. SEBI/HO/IMD/DF2/CIR/P/2019/65 dated May 21, 2019:

- e. Short position in Exchange Traded Commodity Derivatives (ETCDs) not exceeding the holding of the underlying goods received in physical settlement of ETCD contracts.
- f. Short position in ETCDs not exceeding the long position in ETCDs on the same goods.

Further, it is clarified that mutual funds shall not write options or purchase instruments with embedded written options in goods or on commodity futures.

Circular

10. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID -19 pandemic

Circular No.: SEBI/HO/CFD/CMD2/CIR/P/2021/11 Dated 15th January, 2021

SEBI vide Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020 had relaxed certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") related to general meetings, pursuant to relaxations by the Ministry of Corporate Affairs (MCA).

Subsequently, MCA vide Circular dated December 31, 2020 had further extended relaxations to companies to conduct their Extraordinary General Meeting (EGM) through Video Conferencing (VC) or through other audio-visual means (OAVM) up to June 30, 2021.

Further, vide Circular dated January 13, 2021, MCA had also extended these relaxations to Annual General Meeting (AGMs) of companies due in the year 2021 (i.e. till December 31, 2021).

Accordingly, SEBI, vide this circular has further extended the relaxations in Paras 3 to 6 of the aforementioned SEBI Circular dated May 12, 2020 in respect of sending physical copies of annual report to shareholders and requirement of proxy for general meetings held through electronic mode for listed entities, till December 31, 2021.

Circular

11. Relaxations relating to procedural matters – Issues and Listing

Circular No.: SEBI/HO/CFD/DIL1/CIR/P/2021/13 Dated 19th January, 2021

SEBI vide Circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020 had granted one time relaxations from enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening upto July 31, 2020. This was further extended for Rights Issues opening upto December 31, 2020.

SEBI vide this circular, has further extended the relaxation mentioned in point no. (iv) of the above circular and has made it applicable for Rights Issues opening upto March 31, 2021 provided the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the above circular.

Point iv and v deals with acceptance of applications of eligible shareholders for right issues through optional mechanism (non-cash mode) in addition through ASBA facility. The mechanism(s) shall only be an additional option and not a replacement of the existing process.

Circular

12. Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021

No. SEBI/LAD-NRO/GN/2021/07 Dated 21st January, 2021

SEBI has amended the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Vide this amendment, the procedure for holding enquiry, recommendation of action and order as specified under regulations 25, 26 and 27 have been modified.

Further, Regulation 28 pursuant to the procedure for action on receipt of the recommendation has been omitted.

Regulation

MCA

1. Clarification on spending of CSR funds for Awareness and public outreach on COVID-19 vaccination programme

General Circular No. 01/2021 Dated 13th January, 2021

MCA vide General Circular No. 10/2020 dated 23^{rd} March, 2020 had clarified that spending of CSR funds for COVID-19 is an eligible CSR activity.

Vide this circular, MCA has further clarified that spending of CSR funds for carrying out awareness campaign / programmes or public outreach campaign on COVID-19 vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education and disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR.

Circular

2. Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)

General Circular No. 02/2021 Dated 13th January, 2021

Vide this circular, MCA has permitted the companies whose AGMs were due to be held in the year 2020 or falling due in 2021 to conduct their AGMs on or before 31st December, 2021 in accordance with the requirements provided in paragraph 3 and 4 of the General Circular No. 20/2020 dated 5th May, 2020.

Further, it is clarified that this Circular shall not be construed as conferring any extension of time for holding of AGMs which were due to be held in the year 2020 or falling due in 2021 by the companies under the Companies Act, 2013 and the companies which have not adhered to the relevant timelines shall remain subject to legal action under the Companies Act, 2013.

Circular

3. Scheme for condonation of delay for companies restored on the Register of Companies between 01 December, 2020 and 31 December, 2020 under section 252 of the Companies Act, 2013

General Circular No. 03/2021 Dated 15th January, 2021

MCA had introduced the Companies Fresh Start Scheme, 2020 (CFSS-2020) vide General Circular No. 12/2020 dated 30th March, 2020 which was extended till 31st December, 2020 vide General Circular No. 30/2020 dated 28th September, 2020. The CFSS-2020 is no longer applicable for various filings under the provisions of the Companies Act, 2013.

Some companies had preferred appeals under Section 252 of the Companies Act, 2013 against the striking off the names of the companies before the respective Benches of the National Company Law Tribunal (NCLT) and orders by the NCLT were issued during the month of December, 2020.

Due to this, such companies could not avail the benefit of filing under the Companies Fresh Start Scheme, 2020 (CFSS-2020) by 31st December, 2020 and were liable to be levied additional fees upon filing overdue e-forms.

In view of above, MCA vide this circular has introduced the "Scheme for condonation for delay for companies restored on the Register of Companies between 1st December, 2020 and 31st December, 2020 under Section 252 of the Companies Act, 2013" for the purpose of condoning the delay in filing e-forms with the Registrar, insofar as it related to charging of additional fees on account of delay in such filing.

The details of the scheme are as under:

- (i) Effective Date: The scheme shall come into effect from 1st February, 2021.
- (ii) **Applicability:** The Scheme shall be applicable to the Companies which have received the NCLT order for restoration of the name u/s 252 of the Companies Act, 2013 between 1st December, 2020 to 31st December 2020.
- (iii) **Duration of the Scheme:** The last date for filing any overdue e-forms by such companies shall be 31st March, 2021.
- (iv) Forms for which the Scheme shall be applicable: The Scheme shall be applicable in respect of filing of all eforms which are required to be filed with the Registrar except E-form SH-7 for Increase in authorized capital and all charge related documents (E-forms CHG-1, CHG-4, CHG-8 and CHG-9).
- (v) Applicable Fee: Every company shall be required to pay normal filing fees under the Companies (Registration Offices and Fees) Rules, 2014 on the date of filing and no additional fee is payable for the forms for which the scheme is applicable.

Circular

4. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

Notification No. G.S.R. 40(E) Dated 22nd January, 2021

Vide this notification, MCA has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014.

Following is the gist of the relevant amendments:

1. Definitions:

- **A.** Change in definition of CSR Previously, the definition was inclusive but as per amendment, the definition is exclusive. The following are excluded from the definition of CSR:
- i) Activities undertaken in pursuance of normal course of business of the company.
- ii) Any activity undertaken by the company outside India.
- iii) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- iv) activities benefitting the employees of the company and their families.
- v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
- vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India
- **B.** Change in definition of CSR Policy "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

C. Inclusion of following definitions:

- "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.
- "Ongoing Project" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.
- "Public Authority" means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005).

2. Rule 4 pertaining to CSR implementation:

- 1. The Board shall ensure that the CSR activities are undertaken by the company itself or through –
- (a) Section 8 Company; Registered Public Trust; Registered Society registered u/s 12A & 80G of Income Tax Act, 1961 established by the company, either singly or along with any other company; or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government;
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- 2. Every eligible intermediaries as specified above will be required to register itself with the Central Government by filing the Form CSR-1 electronically with effect from April 01, 2021. However, provisions will not affect the CSR projects or programmes approved prior to the 01st day of April 2021.
- 3. On filing the Form CSR-1 with the Central Government, a unique CSR Registration Number will be generated by the system automatically.
- 4. International Organizations can also be engaged for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- **3. Rule 5 pertaining to CSR Committees:** The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:
- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of Rule 4;
- (c) the modalities of utilization of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes;
- (e) details of need and impact assessment, if any, for the projects undertaken by the company
- **4. Rule 7 pertaining to CSR Expenditure:** The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year. Any surplus arising out of CSR activities shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

Excess amount spent in any financial year may be set off against the amount required to be spent under sub-section (5) of section 135 up to immediate succeeding three financial years by passing a board resolution to this effect.

- **5. Rule 8 pertaining to CSR Reporting:** Companies with average CSR obligation of 10 Crore or more in the three immediately preceding financial years shall undertake impact assessment through an independent agency for projects of 1 crore or more which have been completed not less than 1 year before undertaking the impact study. The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- **6. Rule 9 pertaining to display of CSR activities on its website:** The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.
- **7. Rule 10 pertaining to transfer of unspent CSR amount:** Until a fund is specified in Schedule VII for the purposes of sub-section (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

Notification

Vide this notifications, MCA has notified the provision of Section 21 of the Companies (Amendment) Act, 2019 (Section 135 of Companies Act, 2013) pertaining to Corporate Social Responsibility with immediate effect from 22nd January, 2021

Notification

6. Applicability of the Provisions of the Companies (Amendment) Act, 2020

Notification No. S.O. 325(E) Dated 22nd January, 2021

Vide this notifications, MCA has notified the following provisions of the Companies (Amendment) Act, 2020 with immediate effect:

S. No.	Sections of Companies (Amendment) Act, 2020	Corresponding Sections of Companies Act, 2013
1.	Section 2	Section 18 - Conversion of Companies Already Registered
2.	Section 11	Section 62 - Further Issue of Share Capital
3.	Clause (c) of Section 18	Section 89 - Declaration in respect of Beneficial Interest in any Share
4.	Clause (ii) of Section 22	Section 117 - Resolutions and Agreements to be Filed
5.	Section 25	Section 129A - Financial Statement
6.	Section 27	Section 135 – Corporate Social Responsibility
7.	Section 53	Section 379 - Application of Act to Foreign Companies
8.	Section 55	Section 393A - Company's Failure to Comply with Provisions of Chapter XXII Not to Affect Validity of Contracts, etc.
9.	Section 58 to section 60 (both	Section 410 - Constitution of Appellate Tribunal
	Inclusive)	Section 418A - Benches of Appellate Tribunal
	·	Section 435 - Establishment of Special Courts
10.	Section 62	Section 446B - Lesser penalties for One Person Companies or small
		companies
11.	Section 64 and Section 65	Section 452 - Punishment for Wrongful Withholding of Property
		Section 454 - Adjudication of Penalties

Notification

7. Relaxation of additional fee in filing all AOC-4 e-forms

General Circular No. 04/2021 Dated 28th January, 2021

MCA, vide this circular, has provided relaxation on levy of additional fees for annual financial statement for the financial year ended 31.03.2020.

Accordingly, no additional fees will be levied upto 15.02.2021 for filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL and AOC-4 Non-XBRL in respect of the financial year ended on 31.03.2020 and only normal fees shall be payable.

Circular

Disclaimer:

This is not a complete listing of all circulars/notifications issued during the month. Instead it is only a listing of some of the circulars/notifications that we considered important.



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