

Practical issues in FEMA Compliance and Auditor's Role

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FEMA - BASIC STRUCTURE

CLASIFICATION OF FOREX TRANSACTION

- *Current A/c Transaction – all those which are not Capital a/c*
- *Capital A/c Transaction – alteration of assets / liabilities (including contingent liabilities) – FDI, ODI, opening of place of business, ECB, guarantees are some of the common corporate Capital A/c Transactions*

ADJUDICATION & PENALTIES

- *THRUST ON DIGITAL COMPLIANCE and ease of business*
- *Penalties reduced (strict penalty Rule by SC)*
- *Compounding of contravention with LSF made possible*
- *Adjudication on contravention*
- **AUDITOR'S ROLE**
- *Current Account transactions*
- *Basic compliance (income / expenditure)*

CAPITAL A/C TRANSACTIONS

- *FDI*
 - *Down-stream investment & other compliances*
 - *Pre-investment and post annual compliances –*
 - *Valuation on investment & Transfer of Shares*
 - *Advance reporting, FC GPR, annual Assets & Liabilities filing*

ODI

- *UIN, Form ODI*
- *Net-worth Certificate*
- *Total financial commitment (TFC = Equity + Loan + Guarantee – August 2022 notification)*
- *Share certificate as proof of investment*
- *Repatriation of all dues within 60 days of becoming due*
- *Annual Performance Report – reconciling with annual reports of foreign firm's balance sheet & reports*

GUARANTEES

- *ODI & non-ODI guarantees*
- *Beneficiary, time and amount of guarantee*

ECB



- *Interest rate*
- *All in cost*
- *Moratorium period*
- *Form 83*
- *ECB 2 returns*
- *End use restrictions*

PLACE OF BUSINESS

- *Branch office*
- *Liaison office*
- *Project / site office*
- *Use of funds, terms and conditions, filing Annual Activity Report (AAC) – closure norms by CA*

TRADE

EXPORT

- *Reconciling annual debt realization in Annual Reports with EDPMS with AD – Bank*
- *Outstanding export-debts tally*
- *Extension and write off compliances*

IMPORT

- *Proof of imports – CA requirements for service exports*
- *Settlement beyond 6 months, extension with AD bankers & settlement beyond three years*

References:

- *Act (FEMA, 1999)*
- *Notifications www.rbi.org.in*
- *Master Direction – Reporting under Foreign Exchange Management Act, 1999*