

# Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

UNION OF INDIA

India

## Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019

### Rule

### FOREIGN-EXCHANGE-MANAGEMENT-MODE-OF-PAYMENT-AND-REPORTING-OF-NON-DEBT-INSTRUMENTS-REGULATIONS, 2019

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Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 Published vide Notification No. G.S.R. 795(E), dated 17.10.2019 Last Updated 19th October, 2019 Reserve Bank of India (Foreign Exchange Department) (Central Office) No. FEMA. 395/2019-RBG.S.R. 795(E). - In exercise of the powers conferred by section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and consequent to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019, the Reserve Bank makes the following regulations relating to mode of payment and reporting requirements for investment in India by a person resident outside India, namely:

#### 1. Short title & commencement.

(a) These regulations may be called the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019. (b) They shall come into force from the date of their publication in the Official Gazette.

#### 2. Definitions.

- In these regulations, unless the context requires otherwise, -(a) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999); (b) 'Rules' means Foreign Exchange Management (Non-Debt Instrument) Rules, 2019; (c) The words and expressions used but not defined in these regulations

shall have the same meanings respectively assigned to them in the Act or the Rules.

### 3. Mode of Payment and Remittance of sale proceeds.

- 3.1

Schedule of the Rules	<p>Instructions on Mode of payment and Remittance of sale proceeds</p> <p>A. Mode of payment (1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/Escrow account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Explanation : The amount of consideration shall include: (i) Issue of equity shares by an Indian company against any funds payable by it to the investor (ii) Swap of equity instruments. (2) Equity instruments shall be issued to the person resident outside India making such investment within sixty days from the date of receipt of the</p>
I. Schedule I (Purchase or sale of equity instruments of an Indian company by a person resident outside India)	<p>consideration. Explanation: In case of partly paid equity shares, the period of 60 days shall be reckoned from the date of receipt of each call payment (3) Where such equity instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance through banking channels or by credit to his NRE/ FCNR (B) accounts, as the case may be within fifteen days from the date of completion of sixty days. (4) An Indian company issuing equity instruments under this Schedule may open a foreign currency account with an Authorised Dealer in India in accordance with Foreign Exchange Management (Foreign currency accounts by a person resident in India) Regulations, 2016. B. Remittance of sale proceeds The sale proceeds (net of taxes) of the equity instruments may be remitted outside India or may be credited to the NRE/ FCNR (B) of the person concerned.</p>
II. Schedule II (Investments by Foreign Portfolio Investors)	<p>A. Mode of payment (1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/ or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Provided balances in SNRR account shall not be used for making investment in units of Investment Vehicles other than the units of domestic mutual fund. (2) The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule. B. Remittance of sale proceeds The sale proceeds (net of taxes) of equity instruments and units of domestic mutual fund may be remitted outside India or credited to the foreign currency account or a SNRR account of the FPI. The sale proceeds (net of taxes) of units of investment vehicles other than domestic mutual</p>

fund may be remitted outside India.

### III. Schedule

III (Investments by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis)

A. Mode of payment (1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a Non-Resident External (NRE) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. (2) The NRE account will be designated as an NRE (PIS) Account and the designated account shall be used exclusively for putting through transactions permitted under this Schedule. (3) Investment in units of domestic mutual fund shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B) account. (4) Subscription to National Pension System shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account. B. Remittance of sale proceeds The sale proceeds (net of taxes) of equity instruments may be remitted outside India or may be credited to NRE (PIS) account of the person concerned. The sale proceeds (net of taxes) of units of mutual funds and subscription to National Pension System may be remitted outside India or may be credited to NRE(PIS)/FCNR(B)/NRO account of the person concerned at the option of the NRI/OCI investor.

### IV. Schedule

IV (Investment by NRI or OCI on non-repatriation basis)

1. Purchase or sale of equity instruments of an Indian company or units or contribution to the capital of a LLP by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Non-repatriation basis. A. Mode of Payment The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. B. Sale/maturity proceeds (1) The sale/maturity proceeds (net of applicable taxes) of equity instruments or units or disinvestment proceeds of a LLP shall be credited only to the NRO account of the investor, irrespective of the type of account from which the consideration was paid; (2) The amount invested in equity instruments of an Indian company or the consideration for contribution to the capital of a LLP and the capital appreciation thereon shall not be allowed to be repatriated abroad. 2. Investment in a firm or a proprietary concern. A. Mode of payment The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. B. Sale/maturity proceeds (1) The disinvestment proceeds shall be credited only to the NRO account of the person concerned, irrespective of the type of account from which the consideration was paid; (2) The amount invested for contribution to the capital of a firm or a proprietary concern and the capital appreciation thereon shall not be allowed to be

	repatriated abroad.
V. Schedule V (Investment by other nonresident investors)	<p>A. Mode of Payment The amount of consideration shall be paid out of inward remittances from abroad through banking channels.</p> <p>B. Remittance/credit of sale/ maturity proceeds The sale/ maturity proceeds (net of taxes) may be remitted abroad.</p>
VI. Schedule VI (Investment in a Limited Liability Partnership)	<p>A. Mode of payment Payment by an investor towards capital contribution of an LLP shall be made by way of an inward remittance through banking channels or out of funds held in NRE or FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.</p> <p>B. Remittance of disinvestment proceeds The disinvestment proceeds may be remitted outside India or may be credited to NRE or FCNR(B) account of the person concerned.</p>
VII. Schedule VII (Investment by a Foreign Venture Capital Investor)	<p>A. Mode of payment (1) The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a foreign currency account and/or a Special Non-Resident Rupee (SNRR) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. (2) The foreign currency account and SNRR account shall be used only and exclusively for transactions under this Schedule.</p> <p>B. Remittance of sale/ maturity proceeds The sale/ maturity proceeds (net of taxes) of these securities may be remitted outside India or may be credited to the foreign currency account or a Special Non-resident Rupee Account of the FVCI.</p>
VIII. Schedule VIII (Investment by a person resident outside India in an Investment Vehicle)	<p>A. Mode of payment The amount of consideration shall be paid as inward remittance from abroad through banking channels or by way of swap of shares of a Special Purpose Vehicle or out of funds held in NRE or FCNR(B) account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.</p> <p>B. Remittance of sale/ maturity proceeds The sale/ maturity proceeds (net of taxes) of the units may be remitted outside India or may be credited to the NRE or FCNR(B) account of the person concerned.</p>
IX. Schedule X (Issue of Indian Depository Receipts)	<p>A. Mode of Payment NRIs or OCIs may invest in the IDRs out of funds held in their NRE/FCNR(B) account, maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.</p> <p>B. Remittance of sale/ maturity proceeds Redemption/ conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.</p>

3.2 Issue of Convertible Notes by an Indian start-up company. - A start-up company issuing convertible notes to a person resident outside India shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE/FCNR(B)/Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Repayment or sale proceeds may be remitted outside India or credited

to NRE/FCNR(B) account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

#### 4. Reporting Requirements.

- The reporting requirement for any Investment in India by a person resident outside India shall be as follows: (1) Form Foreign Currency-Gross Provisional Return (FC-GPR): An Indian company issuing equity instruments to a person resident outside India and where such issue is reckoned as Foreign Direct Investment, defined under the rules, shall report such issue in Form FC-GPR, not later than thirty days from the date of issue of equity instruments. Issue of 'participating interest/rights' in oil fields shall be reported in Form FC-GPR. (2) Annual Return on Foreign Liabilities and Assets (FLA): An Indian Company which has received FDI or an LLP which has received investment by way of capital contribution in the previous year including the current year, shall submit form FLA to the Reserve Bank on or before the 15th day of July of each year. Explanation. - Year for this purpose shall be reckoned as April to March. (3) Form Foreign Currency-Transfer of Shares (FC-TRS): (a) Form FCTRS shall be filed for transfer of equity instruments in accordance with the rules, between: i. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and person resident outside India holding equity instruments on a non-repatriable basis; and ii. a person resident outside India holding equity instruments in an Indian company on a repatriable basis and a person resident in India, The onus of reporting shall be on the resident transferor/transferee or the person resident outside India holding equity instruments on a non-repatriable basis, as the case may be. Note. - Transfer of equity instruments in accordance with the rules by way of sale between a person resident outside India holding equity instruments on a non-repatriable basis and person resident in India is not required to be reported in Form FC-TRS. (b) Transfer of equity instruments on a recognised stock exchange by a person resident outside India shall be reported by such person in Form FC-TRS. (c) Transfer of equity instruments prescribed in Rule 9(6) of the Rules, shall be reported in Form FC-TRS on receipt of every tranche of payment. The onus of reporting shall be on the resident transferor/transferee. (d) Transfer of 'participating interest/rights' in oil fields shall be reported in Form FC-TRS. The form FCTRS shall be filed within sixty days of transfer of equity instruments or receipt/remittance of funds whichever is earlier. (4) Form Employees' Stock Option (ESOP): An Indian company issuing employees' stock option to persons resident outside India who are its employees/directors or employees/directors of its holding company/joint venture / wholly owned overseas subsidiary/subsidiaries shall file Form-ESOP, within 30 days from the date of issue of employees' stock option. (5) Form Depository Receipt Return (DRR): The Domestic Custodian shall report in Form DRR, the issue / transfer of depository receipts issued in accordance with the Depository Receipt Scheme, 2014 within 30 days of close of the issue. (6) Form LLP (I): A Limited Liability Partnerships (LLP) receiving amount of consideration for capital contribution and acquisition of profit shares shall file Form LLP (I), within 30 days from the date of receipt of the amount of consideration. (7) Form LLP (II): The disinvestment/transfer of capital contribution or profit share between a resident and a nonresident (or vice versa) shall be filed in Form LLP (II) within 60 days from the date of receipt of funds. The onus of reporting shall be on the resident transferor/transferee. (8) LEC (FII): The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (FII) the purchase/transfer of equity instruments by FPIs on the stock

exchanges in India.(9)LEC(NRI): The Authorised Dealer Category I banks shall report to the Reserve Bank in Form LEC (NRI) the purchase/transfer of equity instruments by Non-Resident Indians or Overseas Citizens of India on stock exchanges in India.(10)Form InVI: An Investment vehicle which has issued its units to a person resident outside India shall file Form InVI within 30 days from the date of issue of units.(11)Downstream Investment. An Indian entity or an investment vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of the Rules, shall notify the Secretariat for Industrial Assistance, DPIIT within 30 days of such investment, even if equity instruments have not been allotted, along with the modality of investment in new/existing ventures (with/without expansion programme).b. Form DI: An Indian entity or an investment Vehicle making downstream investment in another Indian entity which is considered as indirect foreign investment for the investee Indian entity in terms of Rule 22 of the Rules shall file Form DI with the Reserve Bank within 30 days from the date of allotment of equity instruments.(12)Form Convertible Notes (CN):a. The Indian start-up company issuing Convertible Notes to a person resident outside India shall file Form CN within 30 days of such issue.b. A person resident in India, who may be a transferor or transferee of Convertible Notes issued by an Indian start-up company shall report such transfers to or from a person resident outside India, as the case may be, in Form CN within 30 days of such transfer.Provided, the format, periodicity and manner of submission of such reporting shall be as prescribed by Reserve Bank in this regard.Provided further that unless otherwise specifically stated in these regulations all reporting shall be made through or by an Authorised Dealer bank, as the case may be.

## **5. Delays in reporting.**

- The person/entity responsible for filing the reports provided in Regulation 4 above shall be liable for payment of late submission fee, as may be decided by the Reserve Bank, in consultation with the Central Government, for any delays in reporting.