

What's New

News Flash



January 2017

Issue of Convertible Notes by Startup Companies

The Reserve Bank of India (RBI) has issued a Notification No. 377 dated 10 January, 2017 wherein it has introduced a new instrument in case of startups. The notification has amended Foreign Exchange Management (Transfer of Issue of Security by a Person Resident Outside India) Regulations, 2000 (FEMA 20) to provide for the following key aspects:

1. The definition of 'Convertible Note' (CNs) has been inserted in FEMA 20 to mean –
 - an instrument issued by a startup company evidencing receipt of money initially as debt,
 - which is repayable at the option of the holder, or which is convertible into such number of equity shares of such startup company,
 - within a period not exceeding five years from the date of issue of the CN,
 - upon occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.
2. A new Regulation 6D on Issue of CNs by startup companies has been inserted to state the following:
 - A person resident outside India may purchase CNs issued by an Indian startup company for an amount of twenty five lakh rupees or more in a single tranche.
 - A 'startup company' means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification¹ issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.
 - Government approval to be obtained in cases where the startup company is engaged in a sector where foreign investment requires Government approval.
 - Consideration on issue of CNs to be received by inward remittance through banking channels or by debit to the NRE/ FCNR (B)/ Escrow account.
 - Escrow account to be closed immediately after the requirements are completed or within six months, whichever is earlier.
 - NRIs are permitted to invest in CNs on non-repatriation basis in compliance with Schedule 4 of FEMA 20.
 - Acquisition or transfer of CNs to be in accordance with the pricing guidelines prescribed by RBI.
 - Prior approval from the Government to be obtained for such transfers in case the startup company is engaged in a sector where foreign investment requires Government approval.
 - Reportings to be done by the startup company as prescribed by RBI.

¹ Notification number G.S.R. 180(E) dated 17 February, 2016

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