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RBI proposes fresh Regulations under Foreign Exchange Management Act, 1999 for Cross Border Mergers: Invites comments from stakeholders

The Reserve Bank today has placed on its website the [draft guidelines](#) proposed to be issued on cross border merger transactions pursuant to the Rules notified by Ministry of Corporate Affairs through Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017.

Section 234 of the Companies Act, 2013 provides for mergers and amalgamations between Indian companies and foreign companies. Accordingly, Ministry of Corporate Affairs has issued Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017 to operationalize this section.

The Reserve Bank of India has proposed these Regulations under the Foreign Exchange Management Act, 1999 (FEMA) in order to address the issues that may arise when an Indian company and a foreign company enter into Scheme of merger, demerger, amalgamation, or rearrangement. These Regulations stipulate conditions that should be adhered to by the companies involved in the Scheme. The Regulations shall be named Foreign Exchange Management (Cross Border Merger) Regulations.

Members of public, including the stakeholders and experts in the area, are requested to offer their views and comments on the proposed Regulations. The comments may be sent latest by May 9, 2017 to [email](#) with the subject "Cross Border Mergers – Comments/Suggestions".

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(22 kb)

Foreign Exchange Management (Cross Border Merger) Regulations, 2017**Draft Regulations****Notification No. FEMA. ____/2017-RB****Dated: April __, 2017****Foreign Exchange Management (Cross Border Merger) Regulations, 2017**

In exercise of the powers conferred by section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank makes the following regulations relating to merger, demerger, amalgamation and arrangement between Indian companies and foreign companies:

1. Short title and commencement

- i. These regulations may be called the Foreign Exchange Management (Cross border Merger) Regulations, 2017.
- ii. They shall come into force from the date of their publication in the Official Gazette.

2. Definitions

In these Regulations unless the context otherwise requires, -

- i. 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);
- ii. 'Companies Act' means The Companies Act, 2013;
- iii. 'Indian company' means a company incorporated under the Companies Act, 2013 or under any previous company law;
- iv. 'Cross border merger' means any merger, demerger, amalgamation or arrangement between Indian company(ies) and foreign company(ies) in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013;
- v. 'Foreign company' means any company or body corporate incorporated outside India whether having a place of business in India or not.
Explanation: the foreign company should be incorporated in a jurisdiction specified in Annexure B to Companies (Compromises, Arrangements and Amalgamation) Rules, 2016;
- vi. 'Resultant company' means an Indian company or a foreign company which is established or formed or is proposed to be established or formed on sanction of the Scheme of cross border merger;
- vii. The words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act

3. Save as otherwise provided in these regulations or with the general or special permission of Reserve Bank, no person resident in India shall acquire or transfer any security or debt or asset outside India and no person resident outside India shall acquire or transfer any security or debt or asset in India on account of cross border mergers.

4. Inbound merger: A merger or amalgamation of foreign company with an Indian company

In case of cross border mergers where the resultant company is an Indian company,

- a. Any issue or transfer of security by the resultant company to a person resident outside India shall be in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.
- b. Any borrowing or impending borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company arising shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable.
- c. The resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder
- d. Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated to India immediately through banking channels

5. Outbound merger: A merger or amalgamation of Indian company with a foreign company

In case of cross border mergers where the resultant company is a foreign company,

- a. A person resident in India may acquire or hold securities of the resultant company in accordance with the Foreign Exchange Management (Transfer or issue of Foreign Security) Regulations, 2000 or the provisions of the Liberalized Remittance Scheme, as applicable.
- b. The resultant company shall be liable to repay outstanding borrowings or impending borrowings as per the Scheme sanctioned by the National Company Law Tribunal in terms of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.
- c. The resultant company may acquire and hold any asset in India which a foreign company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.
- d. Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated outside India immediately through banking channels.

6. Valuation of companies involved in cross border merger

The valuation of the Indian company and the foreign company for the purpose of cross border merger shall be done as per internationally accepted pricing methodology for valuation of shares on arm's length basis which should be duly certified by a Chartered Accountant/public accountant/merchant banker authorized to do so in either jurisdiction.

7. Reporting

1. Any transaction arising due to cross border merger shall be reported to the Reserve Bank in the same manner in which it is otherwise required to be reported under the Act or rules or regulations framed thereunder.
2. The Indian company and the foreign company involved in the cross border merger shall be required to furnish reports as may be prescribed by the Reserve Bank.

8. Any transactions undertaken in accordance with these Regulations shall be deemed to be approved by the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

(Shekhar Bhatnagar)
Chief General Manager-in-charge

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