

Amendment to the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulation, 2000 (FEMA 2000)

RBI through its recent amendment in FEMA 2000, by issuing the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Third Amendment Regulation) Regulation 2016, has taken a step forward in strengthening its flagship campaign Start-Up India, as the new amendment allows the Foreign Venture Capital Investors (FVCIs) to invest in the 'infrastructure sector' and 'startups' in any sector. The present amendment is done in sub regulation 5(5) of FEMA 2000, allowing FVCI's registered with SEBI to make investments in the manner and conditions mentioned under Schedule VI of FEMA 2000.

Further Schedule VI of FEMA has now been substituted with the New Schedule 6, which now allows the registered FVCI's to invest in:

- Equity or equity linked instrument or debt instruments, issued by an Indian company engaged in any of the 10 sectors annexed to the New Schedule 6 and whose shares are not listed on a recognized stock exchange at the time of issue of the said securities or instruments;
- Units of a scheme or Funds setup by Venture Capital Fund (a VCF) or of a Category I Alternative Investment Fund, subject to RBI's terms and conditions.
- Equity or debt instrument issued by a startup irrespective of the sector in which it operates.

“Startup” in the Amended Regulation has been defined as “an entity, incorporation or registered in India not prior to five years, with an annual turnover not exceeding INR 25 Crores in any preceding financial year, working towards innovation, development, deployment, or commercialization of new products, processes or services driven by technological or intellectual property, Provided that such entity is not formed by setting up, or reconstruction of a business already in existence.

For this purpose:

- i. ‘entity’ shall mean a private limited company or a registered partnership firm or a limited liability.*
- ii. The expression ‘turnover’ shall have the same meaning as assigned to it under the Companies Act 2013.*
- iii. An entity is considered to be working towards innovation, development or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize*
 - a. A new product or service or process;*
 - b. A significantly improved existing product or service or process that will create or add value for customer and workflow.*

Provided that it will not include the mere act of developing

- a. Product or service or process which do not have potential for commercialization; or*
- b. Undifferentiated products or services or process; or*
- c. Product or services or processes with no or limited incremental value for customers or workflow.*