

# SAMVĀD: PARTNERS

February 17, 2016

## **STOP PRESS!**

### **STARTUP INDIA ACTION PLAN — RESERVE BANK OF INDIA ROLLS OUT FIRST SET OF RULES**

In our UPDATE of February 08, 2016 (<http://www.samvadpartners.com/wp-content/uploads/2016/02/Samvad-Partners-Startup-India-Action-Government-Plan-2016-and-Related-Announcements-Letss-Start-Up.pdf>) we had reviewed and summarised both the Government of India's 'Action Plan 2016' on Startups issued on January 16, 2016; and the stated intention of the Reserve Bank of India (the "**RBI**") to follow-up in terms of the implementation of such action plan, as captured in its Press Release of February 2, 2016 (after the RBI Governor's bi-monthly monetary policy statement of the same date).

As it said it would do, the RBI has on February 11, 2016 issued certain regulatory relaxations for Startups relating to: (I) acceptance of payments (*A.P. (DIR Series) Circular No. 51 and related regulations*); and (ii) issuance of shares (*A.P. (DIR Series) Circular No. 52 and related regulations*).

A summary of the key relaxations or clarifications for Startups as contained in these circulars are as follows:

1. **Indian Startups Having Overseas Subsidiaries**: Such Indian Startups are now permitted to open foreign-currency accounts abroad to pool the foreign exchange earnings out of exports or sales made by the concerned Startup. The overseas subsidiary can also now contribute its receivables — both from transactions with Indian residents or non-residents — into such an overseas foreign currency account opened in the name of its Startup parent entity.

All balances in any such overseas foreign currency account need to be repatriated to India, as earnings or dues of the Indian Startup, within a period of nine (9) months, which is the current permitted period for realisation of export or sales proceeds overseas. This period may vary depending on the decisions of the RBI in the future.

An Indian Start-up can avail of the facility for realising its receivables of its overseas subsidiary, or making the above repatriation, through the "Online Payment Gateway Service Providers" (OPGSPs) for values not exceeding the limit permitted by RBI, which is currently US\$ 10,000/- (United States Dollars Ten Thousand).

The above arrangements must be captured in an appropriate contract amongst the Startup, its overseas subsidiary concerned, and its customers in question.

2. Issue of Shares Without Cash Payment Through Sweat Equity: The RBI has permitted Indian companies to issue "sweat equity", subject to the condition (amongst others) that the scheme for such "sweat equity" should have been drawn either in terms of the the regulations issued by the Securities and Exchange Board of India ("**SEBI**"), in respect of listed companies; or, the relevant rules notified under the Companies Act, 2013, in respect of other companies.
  
3. Issue of Shares Against Legitimate Payment Owed: The RBI has permitted Indian companies to issue equity shares against any other funds payable by the concerned investee company – such as, for instance, payments for use or acquisition of intellectual property rights, for import of goods, payment of dividends, interest payments, consultancy fees etc., where: (i) the remittance does not require the prior permission of the Government of India or RBI under the foreign exchange regime; and (ii) there is adherence to the foreign direct investment policy in terms of sectoral caps, pricing guidelines, and applicable tax laws.

The above clarifications issued by the RBI are an important first step in the operationalisation of the Government of India's avowed pro-startup objective. Each of us and industry, in general, now await further amendments and clarifications to the appropriate laws, rules and regulations in order to truly give effect to the policy prescriptions delineated in the Government of India's action plan for startups.

This "STOP PRESS" Update should be read with our earlier Update of February 08, 2016 (<http://www.samvadpartners.com/wp-content/uploads/2016/02/Samvad-Partners-Startup-India-Action-Government-Plan-2016-and-Related-Announcements-Letss-Start-Up.pdf>) both on the subject of Startups. We are happy to further discuss these developments, including how they impact your organization further. We are reachable at the contact details provided below.

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