

Analytical Speaking

FDI in leasing – RBI clarifies or confuses

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RBI, vide a recent circular dated 8th May, 2012, “*Foreign investment in Commodity Exchanges and NBFC Sector - Amendment to the FDI Scheme*”¹ had made amendment to the FDI scheme, post which as is apparent, RBI has been receiving requests for clarifications on whether operating lease would be a permissible activity in terms of the extant FDI policy under the head “leasing and finance.” To this RBI has reacted with another clarification on 15th May, 2012,² “*Foreign Investment in NBFC Sector under the Foreign Direct Investment (FDI) Scheme – Clarification*”, and the circular has resulted in creating more confusion than resolving it.

The clarification provided in the 15th May, 2012 circular says that–

3. It is clarified that the activity ‘leasing and finance’, which is one among the eighteen NBFC activities wherein FDI up to 100 per cent is permitted under the automatic route, subject to minimum capitalisation norms, covers only ‘financial leases’ and not ‘operating leases’, in so far as the NBFC sector is concerned.

The circular is nothing more than a reproduction of the lines from the FDI policy. Where it is clear that the industry had doubt on the permissibility of operating lease under the FDI policy; instead of making the position clear RBI has left the confusion unattended. The purpose of any clarification is to remove the ambiguity on the subject, but by merely reproducing the existing statement, RBI has aggravated the problems and defeated the very purpose of providing clarity.

The general tone of regulators is more prohibitive and restrictive than permissive. If you ask the regulators whether you could breathe or not, the general response of the regulator would demand not to breathe, where not required. The tone of the recent clarification, it seems, is that under the FDI policy, operating lease is not permitted, that is to say that companies with FDI cannot do operating leases at all.

As per the FDI policy, FDI is permissible in all sectors other than those where sectoral caps or minimum capital requirements have been provided for. Foreign investment in NBFCs has been allowed to an extent of 100% under the automatic route conforming to the minimum capital requirement, for undertaking leasing and finance activity among other activities indicated and that leasing and finance activity includes only financial lease and not operating leases. While the intent of the policy may have been to say that leasing activity undertaken by NBFCs includes finance lease and not operating lease, however the current clarification, has left confusion, that ought not have been there (See our earlier note on the issue [here](#)).

The clarification is without any thought and is simply absurd.

¹ RBI circular dated 8th May, 2012, <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7191&Mode=0>

² Foreign investment in NBFC Sector under the FDI Scheme – Clarification, <http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7216&Mode=0>