

**RESERVE BANK OF INDIA**

**Notification dated 14<sup>th</sup> November, 2017**

**Foreign Exchange Management (Transfer or Issue of any foreign security) Amendment Regulations, 2017**

The Reserve Bank of India (RBI) vide its notification No. FEMA. 369/ 2017-RB dated 14.11.2017 has made following amendments through Foreign Exchange Management (Transfer or Issue of any foreign security) Amendment Regulations, 2017 (the Regulation), pertaining to the submission of Annual Performance Report by Indian Companies which has set up / acquired a Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) overseas in terms of the RBI Regulations:-

**I. Amendment in clause (a) of sub- regulation (v) of Regulation 15:-**

**Existing Clause** : *“Where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS, the Annual performance report as referred to under sub- regulation (iii) above, may be submitted by the Indian party based on the un-audited annual accounts of the JV/ WOS provided:-*

- (a) The statutory Auditors of the Indian party certify that “The un-audited annual accounts of the JV/ WOS reflect the true and fair picture of the affairs of the JV/ WOS’ and*
- (b) That the un-audited annual accounts of the JV/ WOS has been adopted and ratified by the Board of the Indian party.....”*

**Amendment:-** RBI vide its notification has substituted the aforementioned clause (a) as follows:-

*“The Statutory Auditors of the Indian Party certify that law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS and the figures in the APR are as per the un-audited accounts of the overseas JV/WOS”.*

**Implication:-** As per the aforesaid amendment, RBI has dispensed with the requirement for statutory auditors of the Indian party to **certify that the unaudited annual accounts of JV/ WOS reflect true and fair picture of the affairs of the JV/ WOS**, as it was not possible for the statutory auditor to certify the same. Now, the statutory auditors need to certify that the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS and the figures in the APR are as per the un-audited accounts of the overseas JV/WOS.

**2. Insertion of clause (c) after the existing clause (b) under sub- regulation (v) of Regulation 15 :-**

*“(c) The above exemption from filing the APR based on unaudited balance sheet will not be available in respect of JV/WOS in a country/jurisdiction which is either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or any other country/jurisdiction as prescribed by Reserve Bank of India.”*

**Implication:-** As per the aforesaid amendment, a restriction has been imposed for the JV/ WOS established in the countries/ jurisdiction which are either under the observation of the Financial Action Task Force (FATF) or in respect of which enhanced due diligence is recommended by FATF or any other country/jurisdiction as prescribed by Reserve Bank of India, stating that such JV/ WOS has to mandatorily submit the Annual performance report with the RBI on the basis of Audited annual accounts only and not on the basis of un-audited annual accounts.