

The new era of Cross-Border Guarantees:

Decoding Foreign Exchange Management (Guarantees) Regulations, 2026

10 February 2026

Introduction

The Reserve Bank of India (RBI) has overhauled the regulatory regime for cross border guarantees wherein one or more of the parties involved is a person resident outside India (PROI) *vide* issuance of a new set of regulations, being the Foreign Exchange Management (Guarantees) Regulations, 2026 dated 6 January 2026 (New Guarantee Regulations). The New Guarantee Regulations are in supersession of the Foreign Exchange Management (Guarantees) Regulations, 2000 dated 3 May 2000 (Erstwhile Guarantee Regulations), guarantee related provisions contained in the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations dated 26 March 2019; the Master Direction – Export of Goods and Services dated 1 January 2016; the Master Direction – Import of Goods and Services dated 1 January 2016; the Master Direction – Other Remittance Facilities dated 1 January 2016; and the Master Direction – Reporting under Foreign Exchange Management Act, 1999 dated 1 January 2016 and other circulars specified in the Annex to the RBI's directions as contained in A.P. (DIR Series) Circular No. 19.

The RBI has finalised the New Guarantee Regulations in response to the feedback received from stakeholders on the Draft - Foreign Exchange Management (Guarantees) Regulations, 2025 (Draft Guarantee Regulations) published by the RBI on 14 August 2025.

General Prohibitions and Exemptions

As per regulation 3 (*Prohibition*) of the New Guarantee Regulations, no person resident in India (PRI) can be a party, as a principal debtor, surety or creditor, to a guarantee where any of the other parties to the guarantee is a PROI except as provided:

- (a) in the Foreign Exchange Management Act, 1999 (FEMA) or rules or regulations or directions issued under FEMA; or
- (b) with the permission of the RBI.

However, the New Guarantee Regulations (including the aforesaid general prohibition) provides that the same shall not be applicable to the following:

- (a) a guarantee issued by a branch of an authorised dealer bank situated overseas or in an International Financial Services Centre (IFSC), if no other party is a PRI;
- (b) an irrevocable payment commitment by a custodian bank where a foreign portfolio investor is the principal debtor and the creditor is an authorised central counterparty in India;
- (c) guarantees allowed under the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

Conditions when PRI act as surety or principal debtor

The Draft Guarantee Regulations proposed the following principles basis which a PRI can act as a surety or a principal debtor for a guarantee:

- (a) the underlying transaction and the resultant transaction in case of invocation of the guarantee are not in contravention, directly or indirectly, of FEMA or its rules or regulations or directions; and
- (b) where the surety is a PRI and the principal debtor is a PROI, the resultant transaction upon invocation of guarantee, that is, the lending by a PRI to a PROI, shall be in compliance with Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 (FEMA Borrowing and Lending Regulations).

The RBI received feedback from stakeholders seeking clarity on the aforementioned requirement of the 'resultant transaction' being compliant with FEMA. The RBI has accepted this feedback and clarified that it is intended that at the time of issuance of guarantee itself, the surety and the principal debtor shall ensure that they are eligible to lend and borrow to each other as per the FEMA Borrowing and Lending Regulations. Compliance with other attendant conditions, such as cost, maturity, etc. for borrowing and lending is not envisaged. Accordingly, the New Guarantee Regulations permit PRIs to act as a surety or a principal debtor for a guarantee under automatic route provided the following conditions are met:

- (a) the underlying transaction for which the guarantee is being given or arranged is not prohibited under FEMA or rules or regulations or directions issued pursuant thereto; and
- (b) the surety and the principal debtor are eligible to lend to and borrow from each other, respectively, under the FEMA Borrowing and Lending Regulations, except in the following cases:
 - (i) a guarantee issued by an authorised dealer bank which is fully backed by a counter-guarantee or by 100% collateral in the form of a deposit from PROI;
 - (ii) a guarantee issued in India by an agent of a foreign shipping or airline company which is given on behalf of that company to meet obligations owed to any Indian statutory or government authority;
 - (iii) a guarantee where both the surety and the principal debtor are PRIs.

Conditions when PRI can act as a creditor in case of cross border guarantee

The New Guarantee Regulations further stipulates that a PRI (being a creditor) may arrange or obtain a guarantee in its favour, subject to the condition that where the principal debtor and surety both are PROIs, the creditor shall ensure that the underlying transaction is not prohibited under FEMA or related rules or regulations or directions.

Reporting Requirements

In a sharp contrast with the Erstwhile FEMA Guarantee Regulations, as the New Guarantee Regulations expand the universe of guarantees enabled under the automatic route, a comprehensive reporting of all guarantees, issued and invoked, has been prescribed basis residency of the parties involved. The responsibility to report a guarantee under the New Guarantee Regulations lies with the following:

- (a) the surety who is a PRI;
- (b) if the surety is a PROI, the principal debtor who arranged the guarantee must report; and
- (c) if both surety and principal debtor are PROIs, or if the creditor arranged the guarantee, the creditor must report.

The person having the obligation to report the guarantee shall report the following:

- (a) issuance of guarantee;

- (b) any changes to the guarantee which includes any amount change, extension or early closure of facility/guarantee; and
- (c) invocation of guarantee, if any, in the format provided in the New Guarantee Regulations.

The aforesaid reporting by the responsible person must be done quarterly, i.e., within 15 calendar days after end of a calendar quarter, to an authorised dealer bank, which must then forward all returns to the RBI within a period of 30 calendar days from the end of the quarter. In case of any delay in reporting by the responsible PRI as mentioned above, it may do such reporting along with payment of late submission fee as specified under the New Guarantee Regulations.

Conclusion

The New Guarantee Regulations mark a decisive shift in RBI's approach to cross-border guarantees by moving away from a fragmented, direction-led framework to a single, consolidated regulation with clear organising principles. By allocating reporting responsibility to the party best placed to report (depending on the residency status of the surety, principal debtor and creditor) and requiring quarterly reporting of issuance, modifications and invocation, the New Guarantee Regulations signal a clear regulatory expectation of disclosure, transparency and traceability over the life cycle of a guarantee as against controlling the guarantee transactions in substance. Therefore, by widening the universe of guarantees available under the automatic route, the New Guarantee Regulations are also likely to create additional avenues for offshore support in transactions, including more efficient credit enhancement, broader sponsor support structures, and improved bankability of cross-border financings and commercial arrangements where a PROI presence is central to the deal.

- *Rajeev Vidhani (Partner); Manas Pandey (Principal Associate) and Sarika Jhanwar (Senior Associate)*



About Khaitan & Co

Khaitan & Co is a top tier and full-service law firm with over 1300+ legal professionals, including 300+ leaders and presence in India and Singapore. With more than a century of experience in practicing law, we offer end-to-end legal solutions in diverse practice areas to our clients across the world. We have a team of highly motivated and dynamic professionals delivering outstanding client service and expert legal advice across a wide gamut of sectors and industries.

To know more, visit www.khaitanco.com



This document has been created for informational purposes only. Neither Khaitan & Co nor any of its partners, associates or allied professionals shall be liable for any interpretation or accuracy of the information contained herein, including any errors or incompleteness. This document is intended for non-commercial use and for the general consumption of the reader, and should not be considered as legal advice or legal opinion of any form and may not be relied upon by any person for such purpose. It may not be quoted or referred to in any public document, or shown to, or filed with any government authority, agency or other official body.

www.khaitanco.com | © Khaitan & Co 2026 | All Rights Reserved.

Ahmedabad · Bengaluru · Chennai · Delhi-NCR · Kolkata · Mumbai · Pune · Singapore