**FAQs issued by RBI on Overseas Investments**

Q.1. What is the significance of overseas direct investments for the country and for the investor?

A. Joint Ventures/Wholly Owned Subsidiaries abroad promote economic co-operation between India and the host countries. They result in transfer of technology and skills, sharing the results of Research & Development, access to the global market, promotion of the brand image, generation of employment and utilization raw materials available in India and the host country, increased exports of plant and machinery and goods and services from India, foreign exchange earnings through dividend earnings, royalty, technical know-how fee, etc. Since globalization of trade is a two-way process, integration of the Indian economy with the rest of the world with all its attendant benefits is achieved through overseas investment. It is the reverse of Foreign Direct Investment (FDI) i.e. Indian direct investment abroad.

Q.2. Where are the guidelines pertaining to overseas direct investments available?

A. The guidelines have been notified by the Reserve Bank of India vide [Notification No. FEMA 120/RB-2004 dated July 7, 2004](http://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=2126), as amended from time to time, which can be accessed at the Reserve Bank’s website <http://www.rbi.org.in/scripts/Fema.aspx>. A Master Circular titled ‘Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad’, which is a compendium of all notifications/circulars incorporating the developments, is also available at the website [http://www.rbi.org.in](http://www.rbi.org.in/).

Q.3. Where can one get clarifications pertaining to the guidelines on overseas investment?

A. Please see answer to Q. 2 above. Any clarifications in respect of cases not covered by the instructions may be obtained, giving full details of the case, from the Central Office of the Reserve Bank at the following address:

The Chief General Manager  
Reserve Bank of India  
Foreign Exchange Department  
Overseas Investment Division  
Central Office  
Amar Building, 5th Floor  
Mumbai 400 001

or

By [e-mail](mailto:oid@rbi.org.in)

Q.4. What are the general permissions available to persons (individual) resident in India for purchase / acquisition of securities abroad?

A. General permission has been granted to persons (individual) resident in India for purchase / acquisition of securities as under:

1. Out of funds held in the RFC account;
2. As bonus shares on existing holding of foreign currency shares;
3. When not permanently resident in India, from the foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.A resident Indian can remit up to USD 200,000/- per financial year under the Liberalised Remittance Scheme (LRS), for permitted current and capital account transactions including purchase of securities.

Q.5. What is direct investment outside India?

A. Direct investment outside India means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity, signifying a long-term interest in the overseas entity (setting up / acquiring a Joint Venture (JV) or a Wholly Owned Subsidiary (WOS).

This is different from portfolio investment which is stated as answers to Qs 39, 40 and 44.

Q.6. Does the definition as given in Q.5 mean that one cannot acquire an existing company either partially or wholly?

A. An eligible Indian entity is free to acquire either a partial stake (JV) or the entire stake (WOS) in an already existing entity overseas, provided the valuation is as per the laid down norms. Please also see Q No. 16.

Q.7. Can overseas direct investment be made in any activity?

A. An Indian Party can make overseas direct investment in any bonafide activity (except those that are specifically prohibited as stated in answer to Q. 9). However, for undertaking activities in the financial services sector, certain additional conditions as specified in Regulation 7 of the Notification should be adhered to. Please refer answer to Q.25.

Q.8. Who are eligible to make overseas direct investment under the Automatic Route? Who is an “Indian Party”?

A. An Indian Party is eligible to make overseas direct investment under the Automatic Route. An Indian Party is a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act 1932 and any other entity in India as may be notified by the Reserve Bank. When more than one such company, body or entity makes investment in the foreign entity, such combination will also form an “Indian Party”.

Q.9. What are the prohibited activities for overseas direct investment?

A. Real estate as defined in Regulation 2(p) of the Notification and banking business are the prohibited sectors for overseas direct investment.

However, Indian banks operating in India can set up JVs/WOSs abroad provided they obtain clearance under the Banking Regulation Act, 1949, from the Department of Banking Operations and Development (DBOD), CO, RBI.

Q.10. What exactly is covered under the term real estate business?

A. Real estate business means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges.

Q.11. What is the Automatic Route?

A. Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investments in a JV/WOS abroad. The Indian Party should approach an Authorized Dealer Category – I bank with an application in Form ODI and the prescribed enclosures / documents for effecting the remittances towards such investments. However, in case of investment in the financial services sector, prior approval is required from the regulatory authority concerned, both in India and abroad.

Q.12. What are the limits and requirements for direct investment to be made under the Automatic Route?

A. The criteria for direct investment under the Automatic Route are as under:

1. The Indian Party can invest up to 400% of its net worth (as per the last audited Balance Sheet) in JV / WOS for any bonafide activity permitted as per the law of the host country. The ceiling of 400% of net worth will not be applicable where the investment is made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs;
2. The Indian Party is not on the Reserve Bank’s exporters' caution list / list of defaulters to the banking system published/ circulated by the Credit Information Bureau of India Ltd. (CIBIL) /RBI or any other credit information company as approved by the Reserve Bank or under investigation by the Directorate of Enforcement or any investigative agency or regulatory authority; and
3. The Indian Party routes all the transactions relating to the investment in a JV/WOS through only one branch of an authorised dealer to be designated by the Indian Party.

Q.13. What is the procedure to be followed by an Indian party to make direct investment in a JV/WOS under the Automatic Route?

A. The Indian Party intending to make a direct investment under the automatic route is required to fill up form ODI duly supported by the documents listed therein, i.e., certified copy of the Board Resolution, Statutory Auditors certificate and Valuation report (in case of acquisition of an existing company) as per the valuation norms listed in answer to Q.16 and approach an Authorized Dealer (designated Authorized Dealer) for making the investment/remittance.

Q.14. Where does one find the Form ODI?

A. Form ODI is available as an Annex to the ‘Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad’ dated July 1, 2011’ available on the RBI website.

With effect from March 2, 2010, Authorized Dealers Category – I banks have to file Part I (Sections A to D), II and III of form ODI on-line in the Overseas Investment Application with the Reserve Bank for allotment of UIN, reporting of subsequent remittances, filing of APRs, etc. AD Category –I banks would continue to receive the ODI forms in physical form from the Indian Party.

Q.15. What is ‘financial commitment’?

A. Financial commitment means the amount of direct investments outside India by an Indian Party -

1. by way of contribution to equity shares of the JV / WOS abroad
2. as loans to its the JV / WOS abroad
3. 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS and
4. 50% of the amount of performance guarantee issued on behalf of its overseas JV/WOS.
5. bank guarantee/standby letter of credit issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party
6. Creation of charge (pledge / mortgage / hypothecation) on the movable / immovable property or other financial assets of the Indian party / its group companies

(Note: The amount and period of the guarantee should be specified upfront).

Q.16. What are the valuation norms referred to in Q. 6 and Q. 13?

A. In case of partial / full acquisition of an existing foreign company where the investment is more than USD five million, share valuation of the company has to be done by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country and in all other cases by a Chartered Accountant/ Certified Public Accountant.

However, in the case of investment by acquisition of shares where the consideration is to be paid fully or partly by issue of the Indian Party’s shares (swap of shares), irrespective of the amount, the valuation will have to be done by a Category I Merchant Banker registered with SEBI or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country.

In case of additional overseas direct investments by the Indian promoter to it’s WOS which is made at premium or discount, the concept of valuation as indicated above shall be applicable.

Q.17. Can one freely creates a pledge/mortgage/hypothecation/charge on immovable/moveable property or other financial assets of Indian party/group companies in favour of a non- resident entity?

A. Prior permission of the Reserve Bank is required for creating such a charge on immovable/moveable property or other financial assets of the Indian parent / group companies.

Q.18. Are overseas investments freely allowed in all the countries and are there any restrictions regarding the currency of investment?

A. Investment in Pakistan is prohibited. Investments in Nepal can be only in Indian Rupees. Investments in Bhutan are allowed in Indian Rupees and in freely convertible currencies.

Q.19. What is the concept of a ‘designated Authorised Dealer’? Can there be more than one ‘designated Authorised Dealer’ for the same JV/WOS in case the JV/WOS has more than one Indian promoter?

A. The Indian party is to route all transactions in respect of a particular overseas JV/WOS only through one branch of an Authorized Dealer. This branch would be the ‘designated Authorised Dealer’ in respect of that JV/WOS and all transactions and communications relating to the investment in that particular JV/WOS are to be reported only through this ‘designated’ branch of an Authorized Dealer. In case the JV/WOS is being set up abroad by two or more Indian promoters, then all Indian promoters collectively called the Indian party, would be required to route all transactions in respect of that JV/WOS only through one ‘designated Authorised Dealer’.In case the Indian Party wants to switch over to another AD, an application by way of a letter may be made to the Reserve Bank after obtaining an NOC from the existing Authorized Dealer.

Q.20. What if one Indian promoter has more than one JV in either the same country or in different countries?

A. The Indian promoters are free to designate different branches of the same Authorised Dealer or branches of other Authorised Dealers for their separate JVs/WOSs. The only requirement is that regardless of the number of promoters, one JV/WOS will have only one ‘designated Authorised Dealer’ to route all its transactions.

Q.21. Is prior registration with the Reserve Bank necessary for direct investments under the Automatic Route?

A. No prior registration with the Reserve Bank is necessary for making direct investments under the automatic route. After the report of the first remittance / investment in Form ODI is received by the Reserve Bank, a Unique Identification Number (UIN) for that particular JV/WOS will be issued for the purpose of taking on record the overseas direct investment with the objective of maintaining a database for monitoring the outflows/inflows in respect of the overseas entities. Subsequent investments in the same project can be made only after allotment of the UIN.

Q.22. Does the allotment of UIN by the Reserve Bank for direct investments under the automatic route constitute an approval from the Reserve Bank?

A. No. The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the JV/WOS. The issue of UIN only signifies taking on record of the investment for maintaining the database. The onus of complying with the provisions of FEMA regulations rests with the AD bank and / or the Indian party.

Further, with effect from June 01, 2012 an auto generated e-mail, giving the details of UIN allotted to the JV / WOS under the automatic route, shall be treated as confirmation of allotment of UIN, and no separate letter shall be issued by the Reserve Bank to the Indian party and AD Category - I bank confirming the allotment of UIN.

Q.23. What is the Approval route? What is the procedure to be followed for investment proposed to be made under the Approval Route?

A. Proposals not covered by the conditions under the automatic route require the prior approval of the Reserve Bank for which a specific application in form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I banks. Some of the proposals which require prior approval are:

i) Overseas Investments in the energy and natural resources sector exceeding 400% of the net worth of the Indian companies as on the date of the last audited balance sheet;

ii) Investments in Overseas Unincorporated entities in the oil sector by resident corporates exceeding 400% of their net worth as on the date of the last audited balance sheet, provided the proposal has been approved by the competent authority and is duly supported by a certified copy of the Board Resolution approving such investment. However, Navaratna Public Sector Undertakings, ONGC Videsh Ltd and Oil India Ltd are allowed to invest in overseas unincorporated entities in oil sector (i.e. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits, under the automatic route;

iii) Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;

iv) Investments by Registered Trusts / Societies (satisfying certain eligibility criteria) engaged in the manufacturing / educational / hospital sector in the same sector in a JV / WOS outside India;

Applications in Form ODI- Part I may be forwarded through the designated Authorized Dealer Category – I bank to:

The Chief General Manager  
Reserve Bank of India  
Foreign Exchange Department  
Overseas Investment Division  
Central Office  
Amar Building, 5th Floor  
Mumbai 400 001.

Q.24. What are the parameters for considering proposals under the approval route?

A. Requests under the approval route are considered by taking into account, inter alia, the prima facie viability of the JV / WOS outside India, likely contribution to external trade and other benefits that may accrue to India through such investment, financial position and business track record of the Indian party and the foreign entity, experience and expertise of the Indian party in the same or related line of activity of the JV / WOS outside India, etc.

Q.25. a) Can any Indian company make investment in a JV/WOS abroad in the financial services sector?

A. Only an Indian company engaged in financial services sector activities can make investment in a JV/WOS abroad in the financial services sector, provided it fulfills the following additional conditions:

1. has earned net profit during the preceding three financial years from the financial services activities;
2. is registered with the appropriate regulatory authority in India for conducting financial services activities;
3. has obtained approval for undertaking such activities from the regulatory authorities concerned both in India and abroad before venturing into such financial activity;
4. has fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India; and

Any additional investment by an existing JV / WOS or its step down subsidiary in the financial services sector is also required to comply with the above conditions.

b) Can an Indian company in the financial services sector make investment in a JV/WOS abroad in the non-financial services sector?

A. Regulated entities engaged in financial services sector activities in India making investment in non-financial services activities overseas are also required to comply with the additional conditions mentioned in Q. 25 (a) above.

c) Can an Indian company set up JV / WOS for trading in Overseas Commodities Exchanges?

A. Trading in Commodities Exchanges overseas and setting up of JV / WOS for trading in Overseas Commodities Exchanges will be reckoned as financial services activity and will require clearance from the Forward Markets Commission (FMC). The FMC has put in place guidelines for allowing FMC registered members of Commodity Exchanges to undertake commodity related activities abroad. Indian entities desirous of setting up of JV / WOS overseas for trading in overseas commodities exchanges may, therefore, approach the FMC for regulatory clearance.

Q.26. What are the permissible sources for funding overseas direct investment?

A. Funding for overseas direct investment can be made by one or more of the following sources:

1. Drawal of foreign exchange from an AD bank in India.
2. Swap of shares (refers to the acquisition of the shares of an overseas entity by way of exchange of the shares of the Indian entity).
3. Capitalization of exports and other dues and entitlements.
4. Proceeds of External Commercial Borrowings / Foreign Currency Convertible Bonds.
5. In exchange of ADRs / GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.
6. Balances held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer.
7. Proceeds of foreign currency funds raised through ADR / GDR issues.

In respect of (6) and (7) above, the ceiling of 400 per cent of the net worth does not apply.

Q.27. Can an Indian Party utilise the net worth of its Indian subsidiary / holding company for investing in a JV/WOS abroad?

A. For the purpose of reckoning net worth of an Indian party, the net worth of it’s holding company (which holds at least 51% direct stake in the Indian Party) or its subsidiary company (in which the Indian party holds at least 51% direct stake) may be taken into account to the extent not availed of by the holding company or the subsidiary independently and has furnished a letter of disclaimer in favour of the Indian Party. However, this facility is not available to partnership firms. Also the partnership firm’s net worth cannot be taken into account by an incorporated entity.

Q.28. Can an Indian Party capitalise the proceeds of the exports to its overseas JV / WOS?

A. Yes, an Indian Party is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable.

Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realisation will require the prior approval of the Reserve Bank.

Indian software exporters are permitted to receive 25 % of the value of their exports to an overseas software start-up company in the form of shares without entering into Joint venture Agreements, with the prior approval of the Reserve Bank.

Q.29. Can an Indian Party extend loan or guarantee to an overseas entity without any equity participation in that entity?

A. i) No. Loan and guarantee can be extended to an overseas entity only if there is already existing equity participation by way of direct investment, within the overall ceiling of 400% of the Indian party's net worth as on the date of the last audited balance sheet.

HoweverHowever, based on the business requirement of the Indian Party and legal requirement of the host country in which JV/WOS is located, proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route

In case, however, the overseas entity is a first level step down operating subsidiary of the Indian party, guarantee may be issued by the Indian party on behalf of such step down operating subsidiary provided such guarantee is reckoned for the purpose of computing the financial commitment of the Indian party.

In case, the overseas entity is a second or subsequent level step down operating subsidiary of the Indian party, guarantee may be issued by the Indian party on behalf of such step down operating subsidiary with prior approval of the Reserve Bank provided such Indian party holds direct or indirect stake of not less 51% in the step down operating subsidiary and guarantee is reckoned for the purpose of computing the financial commitment of the Indian party.

ii) Eligible Indian entities are allowed to invest in overseas unincorporated entities in oil sector (i.e. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits, under the automatic route.

iii) Eligible Indian companies are allowed to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route.

Q.30. How are Compulsorily Convertible Preference Shares (CCPS) to be treated for the purpose of Overseas Direct Investment?

A. With effect from March 28, 2012, Compulsorily Convertible Preference Shares (CCPS) are treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

Q.31. What is the requirement for direct investment in an overseas concern by way of share swap?

A. Direct investment outside India in a JV/WOS by way of share swap arrangement can be made under the automatic route provided the valuation norms prescribed i.e. valuation of the shares is done by a Category I Merchant Banker registered with the SEBI or an Investment Banker outside India registered with the appropriate Regulatory Authority in the host country are satisfied, and the shares are duly issued / transferred in the name of the Indian investing company. Investors may also please note that all share swap transactions require the prior approval of the Foreign Investment Promotion Board (FIPB) for the inward leg of the investment.

Q.32. What are the permitted activities that partnership firms can undertake through overseas direct investment route?

A. Partnership firms registered under the Indian Partnership Act, 1932 can make overseas direct investments subject to the same terms and conditions as applicable to corporate entities.

Q.33. Can the partners hold shares of the overseas concerns for and on behalf of the firm?

A. Individual partners can hold shares for and on behalf of the firm in an overseas JV/WOS, where the entire funding for the investments has been done by the firm provided the host country regulations or operational requirements warrant such holding.

Q.34. Are there any restrictions for setting up of a second generation company? Can such step down subsidiaries be set up under the Automatic Route?

A. There are no restrictions on entities having JVs/WOSs abroad setting up second generation operating companies (step-down subsidiaries) within the overall limits applicable for investments under the Automatic Route. However, companies wishing to set up step-down operating subsidiaries to undertake financial sector activities will have to comply with the additional requirements for direct investment in the financial services sector as indicated in Q 25 (a).

Q.35. Can an Indian Party have a JV/WOS through a Special Purpose Vehicle (SPV) under the Automatic Route?

A. Yes. Direct investment through the medium of a SPV is permitted under the Automatic Route, for the sole purpose of investment in JV/WOS overseas.

Q.36. Can an Indian Party directly fund such step- down subsidiaries?

A. Where the JV/WOS has been established through a SPV, all funding to the operating subsidiary should be routed through the SPV only. However, in the case of guarantees to be given to the first level step down operating subsidiary of the SPV, these can be given directly by the Indian Party provided such exposures are within the permissible financial commitment of the Indian Party.

Q.37. Can the shares of a JV/WOS abroad be pledged for the purpose of financial assistance?

A. The shares of a JV/WOS can be pledged by an Indian Party as a security for availing fund based or non-fund based facility for itself or for the JV/WOS, from an authorised dealer/ public financial institution in India or from an overseas lender, provided the overseas lender is regulated and supervised as a bank and the total financial commitments of the Indian entity remain within the limit stipulated by the Reserve Bank for overseas investment from time to time.

Q.38. What are the obligations of the Indian party, which has made direct investment outside India?

A. An Indian Party will have to comply with the following: -

1. receive share certificates or any other documentary evidence of investment in the foreign entity as an evidence of investment and submit the same to the designated AD within 6 months;
2. repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc.;
3. submit to the Reserve Bank through the designated Authorized Dealer, every year, an Annual Performance Report in Part III of Form ODI in respect of each JV or WOS outside India set up or acquired by the Indian party;
4. report the details of the decisions taken by a JV/WOS regarding diversification of its activities /setting up of step down subsidiaries/alteration in its share holding pattern within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of the local laws of the host country. These are also to be included in the relevant Annual Performance Report; and
5. in case of disinvestment, sale proceeds of shares/securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares /securities and documentary evidence to this effect shall be submitted to the Reserve Bank through the designated Authorised Dealer.

Q.39. Is it mandatory to furnish Annual Performance Reports (APR) of the overseas JV/WOS based on its audited financial statements?

A.Where the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS, the Annual Performance Report (APR) may be submitted by the Indian party based on the un-audited annual accounts of the JV / WOS provided:

1. The Statutory Auditors of the Indian party certifies that ‘The un-audited annual accounts of the JV / WOS reflect the true and fair picture of the affairs of the JV / WOS’ and
2. That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party.

Q.40. What are the penalties for non-submission of Annual Performance Reports (APRs)?

A. Delayed submission/ non-submission of APRs entail penal measures, as prescribed under FEMA 1999, against the defaulting Indian Party.

Q.41. Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?

A. Please see answer to Q.4 also.

Resident individuals can acquire/sell foreign securities without prior approval in the following cases: -

1. as a gift from a person resident outside India;
2. by way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;
3. by way of ESOPs issued to an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company irrespective of the percentage of the direct or indirect equity stake in the Indian company;
4. as inheritance from a person whether resident in or outside India;
5. by purchase of foreign securities out of funds held in the Resident Foreign Currency Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Account) Regulations, 2000; and
6. by way of bonus/rights shares on the foreign securities already held by them.

Q.42. Can Indian corporates invest overseas other than by way of direct investment?

A. Yes. Listed Indian companies can invest up to 50 % of their net worth as on the date of the last audited Balance Sheet in overseas companies, listed on a recognized stock exchange, or in the rated debt securities issued by such companies.

Q.43. Can a resident individual acquire shares of a foreign company in his capacity as Director?

A. Yes, Reserve Bank has given General Permission to a resident individual to acquire foreign securities to the extent of the minimum number of qualification shares required to be held for holding the post of Director. Accordingly, resident individuals are permitted to remit funds under general permission for acquiring qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located and the limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

Q.44. Can resident individuals acquire shares from a foreign entity in lieu of the professional services rendered by them or in lieu of Director’s remuneration under General Permission?

A. Resident individuals are allowed under General Permission to acquire shares of a foreign entity in part / full consideration of professional services rendered to the foreign company or in lieu of Director’s remuneration. The limit of acquiring such shares in terms of value shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

Q.45. Can a resident individual subscribe to the rights issue of shares held by him?

A. Yes, a resident individual may acquire foreign securities by way of rights shares issued by a company incorporated outside India provided the existing shares were held in accordance with the provisions of FEMA.

Q.46. Are there any relaxations for individual employees/Directors of an Indian company engaged in the field of software for acquisition of shares in their JV/WOS abroad?

A. General permission is available for the individual employees/Directors of an Indian promoter company engaged in the field of software for acquisition of shares of a JV/WOS abroad provided:

1. the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time. the shares acquired by all the employees/directors do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India; and
2. after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment.

Resident employees of Indian companies in the knowledge based sectors including working directors may purchase foreign securities under the ADR/GDR linked stock option scheme provided that the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time.

Q.47. What are the avenues available to Indian Mutual Funds for investment abroad?

A. Indian Mutual Funds registered with SEBI are permitted to invest within the overall cap of USD 7 billion in:

a) ADRs / GDRs of the Indian and foreign companies;

b) equity of overseas companies listed on recognized overseas stock exchanges; initial and follow on public offerings for listing at recognized overseas stock exchanges;

c) foreign debt securities- short term as well as long term with rating not below investment grade - in the countries with fully convertible currencies;

d) money market investments not below investment grade; repos where the counter party is not below investment grade;

e) government securities where countries are not rated below investment grade;

f) derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;

g) short term deposits with banks overseas where the issuer is rated not below investment grade; and

h) units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators

Q.48. What are the investment opportunities for Domestic Venture Capital Funds?

A. Domestic Venture Capital Funds registered with SEBI may invest in equity and equity linked instruments of off-shore VCFs subject to an overall limit of USD 500 million.

Q.49. Is investment in agriculture permitted?

A. Resident corporates and partnership firms registered under the Indian Partnership Act, 1932 may undertake agricultural operations including purchase of land incidental to such activity either directly or through their overseas offices, provided:

1. the Indian party is otherwise eligible to invest under Regulation 6 of the Notification ibid and such investment is within the overall specified limits, and
2. for the purpose of such investment by acquisition of land overseas the valuation of land is certified by a certified valuer registered with the appropriate valuation authority in the host country.

Q.50. Can an Indian party issue performance guarantee in favour of overseas JV/WOS?

A. Yes. Indian party is permitted to issue performance guarantee and only 50 per cent of the amount of the performance guarantees will be reckoned for the purpose of computing financial commitment to its JV/WOS overseas which should be within 400 per cent of the net worth of the Indian Party. Further, the time specified for the completion of the contract will be the validity period of the related performance guarantee. In cases where invocation of the performance guarantee breach the ceiling for the financial exposure of 400 per cent of the net worth of the Indian Party, the Indian Party is required to seek prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.

Q.51. Can an Indian party issue corporate guarantee on behalf of its second generation subsidiary abroad?

A. Indian party is permitted to issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries and such requests are considered under the Approval Route, provided the Indian Party directly or indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

Q.52. Can individual indirect promoters of the Indian Party issue personal guarantee to an overseas lender on behalf of the JV/WOS under general permission?

A. With effect from March 28, 2012, issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission has also been extended to the indirect resident individual promoters of the Indian Party with same stipulations as in the case of personal guarantee by the direct promoters

Q.53. (a) What are the different modes of disinvestments from the JV / WOS abroad

A. Disinvestment by the Indian party from its JV / WOS abroad may be by way of transfer / sale of equity shares to a non-resident / resident or by way of liquidation / merger / amalgamation of the JV / WOS abroad.

(b) Can an Indian Party disinvest in case where write off is not involved?

A. Yes. The Indian Party can disinvest in cases where write off is not involved without prior approval from Reserve Bank subject to the following:

1. the sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
2. if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
3. the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
4. the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank; and
5. the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

(c) In case of disinvestment of stake in overseas JV/WOS, can an Indian party disinvest with write off of part of investment?

A. Indian Party may disinvest without prior approval of the Reserve Bank, in the under noted cases, where the amount repatriated on disinvestment is less than the amount of the original investment:

i) in cases where the JV / WOS is listed in the overseas stock exchange;

ii) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;

iii) where the Indian Party is an unlisted company and the investment in the overseas JV / WOS does not exceed USD 10 million and

iv) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

(d) Are there any pre-conditions/compliances subject to which such write off at the time of disinvestment is permitted ?

A. Yes. Please refer to part B of Q 49.

Q.54. Whether restructuring of the balance sheet of the JV / WOS abroad involving write-off of capital and receivables is allowed

A. Indian company which has set up WOS abroad or has at least 51% stake in an overseas JV may write off capital (equity / preference shares) or other receivables (such as loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS) even while such JV / WOS continue to function subject to the following:

(i) Listed Indian companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS under the Automatic Route; and

(ii) Unlisted companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS with prior approval of the Reserve Bank.

The write-off / restructuring have to be reported to the Reserve Bank through the designated AD bank within 30 days of write-off / restructuring. The write-off / restructuring is subject to the condition that the Indian Party should submit the following documents for scrutiny along with the applications to the designated AD Category – I bank under the Automatic as well as the Approval Routes:

a) A certified copy of the balance sheet showing the loss in the overseas WOS/JV set up by the Indian Party; and

b) Projections for the next five years indicating benefit accruing to the Indian company consequent to such write off / restructuring.

Q.55. Can an Indian Party open/maintain an account in Foreign currency abroad?

A. With effect from April 2, 2012, an Indian party is allowed to open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments wherever the host country regulation stipulate the same subject to certain terms and conditions