

**Name:**

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# **Background Material**

**In Frequently Asked Questions (Q&A) Format  
updated as on 05.04.2014**

**Seminar on**

**FDI & FEMA**

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## CHAPTER A - OVERVIEW OF FEMA

### **Important Definitions, Change of residential status, Rules & Regulations, Master Circulars, and Frequently Asked Questions (FAQs) under FEMA**

#### **A.1. What is the legal framework for administration of foreign exchange transactions in India?**

**Ans.** The legal framework for administration of foreign exchange transactions in India is provided by the Foreign Exchange Management Act, 1999 (FEMA), which came into force with effect from June 1, 2000. FEMA consists of 49 sections:

Chapter I Sections 1-2 Short title, definitions

Chapter II Sections 3-9: Regulation and management of foreign exchange:

- 3 Dealing in foreign exchange
- 4 Holding of foreign exchange
- 5 Current account transactions
- 6 Capital account transactions
- 7 Export of goods and services
- 8 Realisation and repatriation of foreign exchange
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Central Government makes Rules; & RBI makes Regulations.

#### **A.2. What are the main functions of RBI under FEMA?**

**Ans.** FEMA mandates main functions of RBI as:

- (a) Control over dealings in foreign exchange by giving general or special permission for dealing in foreign exchange, excluding those cases where specific provision have been made in the Act, Rules or Regulations;
- (b) Prior approval of RBI is required for certain current account transactions as provided in Foreign Exchange Management (Current Account Transactions) Rules, 2000. Restrictions on current account transactions be imposed by Central Government in consultation with RBI by making Rules;
- (c) Prescribing conditions for capital account transactions;
- (d) Make regulations for (i) Transfer or issue of foreign security to resident, and Indian security to non-resident, (ii) Borrowing and lending in foreign exchange or to a foreign person, (iii) Export/ import of currency or currency notes, (iv) Transfer of immovable property outside India, and (v) Giving guarantee or surety where foreign exchange transaction is involved;
- (e) Make regulations for realisation of foreign exchange due from export of goods and services;
- (f) Make regulations for realisation, possession and repatriation of foreign currency or foreign coins, foreign currency accounts, foreign exchange acquired from employment, business, trade, services etc.;

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- (g) Granting authorisation to 'Authorised Person' to deal in foreign exchange, and give directions; and
  - (h) To make any other Regulations.

**A.3. What broadly are the contraventions under FEMA, and is compounding facility available under FEMA?**

**Ans.** As per section 13 of FEMA, if any person contravenes any provision of FEMA, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

If any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

As per section 15 of FEMA, 15, any contravention under section 13 except the contraventions under section 3 (a) of FEMA may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application subject to Foreign Exchange (Compounding Proceedings) Rules, 2000 read with A.P. (DIR Series) Circular No. 56 dated June 28, 2010, Circular No. 57 dated December 13, 2011, 28, 2010, Circular No. 11 dated July 31, 2012 and FAQ dated July 02, 2012. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. CEFA (Cell for Effective Implementation of FEMA) is a Cell in the Foreign Exchange Department of the Reserve Bank of India, Central Office, Mumbai, attending to all matters relating to compounding. Regional Offices of RBI have also been authorised for compounding under specified circumstances.

**A.4. Under FEMA, what transactions involving foreign exchange have been classified either as capital or current account transactions?**

**Ans.** Under FEMA, all transactions involving foreign exchange have been classified either as capital or current account transactions. Foreign exchange means foreign currency and includes, (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, and (iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

As per Section 2(j) of FEMA, Current account transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

- (i) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- (ii) Payments due as interest on loans and as net income from investments,
- (iii) Remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

As per Section 2(e) of FEMA, Capital account transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India i.e.

- (a) Transfer or issue of any foreign security by a person resident in India;

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- (b) Transfer or issue of any security by a person resident outside India;
  - (c) Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;
  - (d) Any borrowing or lending in foreign exchange in whatever form or by whatever name called;
  - (e) Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;
  - (f) Deposits between persons resident in India and persons resident outside India;
  - (g) Export, import or holding of currency or currency notes;
  - (h) Transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;
  - (i) Acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;
  - (j) Giving of a guarantee or surety in respect of any debt, obligation or other liability incurred
    - (i) by a person resident in India and owed to a person resident outside India; or
    - (ii) by a person resident outside India.

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**A.5. What constitutes Transfer? Does it include mortgage, pledge, gift, loan?**

**Ans.** As per Section 2(ze) of FEMA, Transfer includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. Thus, the definition is very wide. It covers not only transfers of ownership but also simple transfer of possession or even lien.

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**A.6. What is meant by Person resident in India?**

**Ans.** As per section 2(v) of FEMA, Person resident in India means

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include
  - (A) a person who has gone out of India or who stays outside India, in either case
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
  - (B) a person who has come to or stays in India, in either case, otherwise than
    - (a) for or on taking up employment in India, or
    - (b) for carrying on in India a business or vocation in India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the preceding financial year) but has to also comply with the condition of the purpose/intention of stay.

**Illustrations:**

If a person stayed in India in the preceding year for 182 days or less, he can never be 'person resident in India' in next following year, irrespective of his stay in India and irrespective of his purpose to come to India for employment, carrying on business or vocation or stay in India indefinitely.

If a person stayed in India during 2010-11 for less than 182 days, he will not be 'resident' during 2011-12 even if he resides in India for more than 182 days in 2011-12. However, if he resides in India for over 182 days in 2010-11, he will be 'resident' in 2011-12 provided he complies with any of the conditions of employment, business or vocation or indefinite stay in India. But, if he leaves India for the purpose of taking up employment outside India during 2011-12, or for carrying on business/vocation



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outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure.

This provision equally applies to foreign citizen as well.

- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

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**A.7. What is meant by Person resident outside India?**

**Ans.** As per section 2(w) of FEMA, Person resident outside India means a person who is not resident in India.

**A.8. How are the following defined under FEMA: Currency, Currency Notes, Foreign Currency, Foreign Exchange, Foreign Security, Person, Security, Service, and Transfer?**

- Ans.**
- **"Currency"** includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank
  - **"Currency Notes"** means and includes cash in the form of coins and bank notes.
  - **"Foreign Currency"** means any currency other than Indian currency.
  - **"Foreign Exchange"** means foreign currency and includes,-
    - deposits, credits and balances payable in any foreign currency,
    - drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
    - drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.
  - **"Foreign Security"** means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.
  - **"Person"** includes-
    - individual,
    - a Hindu undivided family,
    - a company,
    - a firm,
    - an association of persons or a body of individuals, whether incorporated or not,
    - every artificial juridical person, not falling within any of the preceding sub-clauses, and
    - any agency, office or branch owned or controlled by such person.
  - **"Security"** means shares, stocks, bonds and debentures, Government securities as defined in the Public Debt Act, 1944 (18 of 1944), savings certificates to which the Government Savings Certificates Act, 1959 (46 of 1959) applies, deposit receipts in respect of deposits of securities and units of the Unit Trust of India established under sub-section (1) of section 3 of the Unit Trust of India Act, 1963 (52 of 1963) or of any mutual fund and includes certificates of title to

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securities, but does not include bills of exchange or promissory notes other than Government promissory notes or any other instruments which may be notified by the Reserve Bank as security for the purposes of this Act.

- **"Service"** means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, medical assistance, legal assistance, chit fund, real estate, transport, processing, supply of electrical or other energy, boarding or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

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**A.9. What are the provisions regarding dealing in foreign exchange, etc. under section 3 of FEMA?**

**Ans.** Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, **no person shall-**

- a. **Deal in or transfer any foreign exchange or foreign security** to any person **not being an authorized person;**
- b. **Make any payment to or for the credit of any person resident outside India in any manner;**
- c. **Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner;**

*Explanation-* For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorized person) without a corresponding inward remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorized person;

- d. **enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.**

*Explanation -* For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

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**A.10. What is the status of a student going abroad for studies?**

**Ans.** Student going abroad for studies is treated as Non-Resident Indian (NRI) and is eligible for all the facilities available to NRI under FEMA, 1999.

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**A.11. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT OUTSIDE INDIA TO RESIDENT IN INDIA: Can a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?**

**Ans.** As per section 6(4) of FEMA, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or** inherited from a person who was resident outside India.

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**A.12. What kinds of transactions are covered under Section 6(4)?**

**Ans.** Section 6(4) of FEMA, 1999 covers the following transactions:

- 
- (i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;
  - (ii) Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
  - (iii) Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
  - (iv) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received there for are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

**A.13. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT IN INDIA TO RESIDENT OUTSIDE INDIA: Can a person resident outside India hold, own, transfer or invest in Indian currency, security or any immovable property situated in India?**

**Ans.** As per section 6(5) of FEMA, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Any fresh investments in shares or expansion of the activities of the companies in which investment is made would be subject to the prevailing sectoral FDI cap and conditionalities. Further, sale proceeds of the assets would have to be deposited in the NRO Account and disposal thereof would be as per the applicable guidelines.

**A.14. What are the prohibited sectors where Foreign investment in any form is not allowed?**

**Ans.** **Foreign investment in any form** is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities<sup>6</sup>:

- (a) Business of chit fund, or
- (b) Nidhi company, or
- (c) Agricultural or plantation activities, or
- (d) Real estate business, or construction of farm houses, or
- (e) Trading in Transferable Development Rights (TDRs).

“Real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships.

Partnership firms / proprietorship concerns having investments as per FEMA regulations are not allowed to engage in print media sector.

**A.15. On which subject matters Reserve bank has issued Rules & regulations, and under whose authority these are issued?**

**Ans.** Central Government, by notification, makes Rules. Reserve Bank, by notification, makes Regulations. Reserve Bank has made following Rules & Regulations under FEMA:

- FEM (Adjudication Proceedings and Appeals) Rules, 2000,

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- FEM (Compounding proceedings) Rules, 2000,
  - FEM (Current Account Transactions) Rules, 2000,
  - FEM (Authentication of Documents) Rules, 2000,
  - FEM (Encashment of Draft, Cheque, Instrument and Payment of Interest) Rules, 2000,
  - Appellate Tribunal for Foreign Exchange (Recruitment, Salary & Allowances & Other Conditions of Service of Chairperson & Members) Rules, 2000
  - FEM (Permissible Capital Account Transactions) Regulations, 2000 (FEMA 01),
  - FEM (Transfer or Issue of Security by a Person resident Outside India) Regulations, 2000 (FEMA 20),
  - FEM (Export of Goods and Services) Regulations, 2000 (FEMA 23),
  - FEM (Transfer or Issue of any Foreign Security) Regulations, 2004 (FEMA 120),
  - FEM (Establishment in India of Branch or Office or Other Place of Business) Regulations, 2000 (FEMA 22),
  - FEM (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (FEMA 03),
  - FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 (FEMA 21),
  - FEM (Issue of Security in India by a branch, office or a person resident outside India) Regulations, 2000 (FEMA 02),
  - FEM (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2000 (FEMA 07),
  - FEM (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 (FEMA 09),
  - FEM (Foreign currency accounts by a person resident in India) Regulations, 2000 (FEMA 10),
  - FEM (Possession and retention of foreign currency) Regulation, 2000 (FEMA 11),
  - FEM (Insurance) Regulations, 2000 (FEMA 12),
  - FEM (Investment in Firm or Proprietary Concern in India) Regulations, 2000 (FEMA 24),
  - FEM (Borrowing and Lending in Rupees) Regulations, 2000 (FEMA 04),
  - FEM (Guarantees) Regulations, 2000 (FEMA 08),
  - FEM (Foreign Exchange Derivative Contracts) Regulations, 2000 (FEMA 25),
  - FEM (Deposit) Regulations, 2000 (FEMA 05),
  - FEM (Export & Import of Currency) Regulations, 2000 (FEMA 06),
  - FEM (Manner of Receipt & Payment) Regulations, 2000 (FEMA 14),
  - FEM (Offshore Banking Unit) Regulations, 2002 [FEMA 71]
  - FEM (Remittance of Assets) Regulations, 2000 (FEMA 13), and
  - FEM (Withdrawal of General Permission to OCBs) Regulations, 2000 (FEMA 101).

As per section 48 of FEMA, 'every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation'.

The Hon'ble Supreme Court in the matter of 'Manohar Lal Sharma Versus Union of India and Another' on 01 May 2013 held as follows:

'Notably, the Department of Industrial Policy and Promotion (DIPP) as per the Allocation of Business Rules, 1961 is allocated the subject of 'Direct foreign and non-resident investment in industrial and service projects, excluding functions entrusted to the Ministry of Overseas Indian Affairs'. Seen thus, the **DIPP is empowered to make policy pronouncements on FDI**. There is no merit in the submission of the

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petitioner that Central Government has no authority or competence to formulate FDI Policy. The competence of the Central Government to formulate a policy relating to investment by a non-resident entity/person resident outside India, in the capital of an Indian company is beyond doubt. The Reserve Bank of India (RBI) is empowered to prohibit, restrict or regulate various types of foreign exchange transactions, including FDI, in India by means of necessary regulations. **RBI Regulates foreign investment in India in accordance with Government of India's policy**'.

**A.16. On which subject matters Reserve bank has issued Master Circulars, and how often these are issued?**

**Ans.** The regulatory framework and instructions issued by the Reserve Bank are compiled in the Master Circular. Master Circulars are consolidated instructions covering Act, Regulations, Rules, Circulars and Notifications, and are issued on July 01 every year with sunset clause of one year. The list of underlying circulars/notifications is furnished in Appendix to the Master Circular. Any changes affected during the year are consolidated in next Master Circular.  
As at present, Reserve bank has issued following Master Circulars dated 01 July 2013:

- Foreign Investment in India (updated as on 17.02.2014),
- Direct Investment by Residents in Joint Venture (JV)/Wholly Owned Subsidiary (WOS)Abroad (updated as on 07.02.2014),
- External Commercial Borrowings and Trade Credits (updated as on 20.09.2013),
- Acquisition and Transfer of Immovable Property in India by NRIs-PIOs-Foreign Nationals of Non- Indian Origin,
- Establishment of Liaison - Branch - Project Offices in India by Foreign Entities (updated as on 18.03.2013),
- Opening of Branch-Subsidiary-Joint Venture-Representative office or Undertaking Investment Abroad by NBFCs,
- Regulatory Framework for Core Investment Companies(CICs)
- Miscellaneous Remittances from India - Facilities for Residents (updated as on 05.09.2013),
- Remittance Facilities for Non-Resident Indians - Persons of Indian Origin - Foreign Nationals (updated as on 12.10.2012),
- Export of Goods and Services (updated as on 30.11.2013),
- Import of Goods and Services (updated as on 05.10.2012),
- Non-Resident Ordinary Rupee (NRO) Account,
- Compounding of Contraventions under FEMA, 1999 (updated as on 22.10.2013),
- Guarantees & Co-acceptances, and
- Foreign Contribution Regulation Act.

**A.17. On which subject matters Reserve bank has issued Frequently Asked Questions (FAQs), and how often these are issued?**

**Ans.** Frequently Asked Questions (FAQs) are issued by Reserve Bank, from time to time, as and when felt necessary. These FAQs are to be read along with and in relation to FEMA, respective Rules & Regulations made and Master circulars so issued.

As at present, Reserve bank has issued following FAQs:

- Foreign Investments in India dated 07.03.2014
- Direct Investment by Residents in Joint Venture (JV)-Wholly Owned Subsidiaries (WOS) abroad dated 22.10.2013
- Liberalised Remittance Scheme dated 13.11.2013
- Liaison/ Branch/ Project Offices of foreign entities in India dated 17.01.2014
- Acquisition and Transfer of Immovable Property in India by a person resident outside India dated 11.07.2012
- Facilities for NRIs and PIOs Features of various Deposit Schemes available to Non-Resident Indians (NRIs) dated 13.09.2013
- Facilities for NRIs and PIOs dated 17.01.2012
- Account Opened by Foreign Nationals and Foreign Tourists dated 22.06.2012
- Forex Facilities for Residents (Individuals) dated 30.09.2013

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- Compounding of Contraventions under FEMA, 1999 dated 02.07.2012
  - Exchange Earner's Foreign Currency (EEFC) Account dated 09.10.2012
  - Foreign Contribution Regulation Act 2012 at MHA website
  - Annual Return on Foreign Liabilities & Assets dated 03.07.2013
  - Core Investment Companies dated 08.03.2013

**A.18. Where to get information on web on RBI, DIPP & FIPB?**

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**Ans.** Website of RBI: <http://www.rbi.org.in> for  
Master Circulars: [http://www.rbi.org.in/scripts/BS\\_ViewMasterCirculardetails.aspx](http://www.rbi.org.in/scripts/BS_ViewMasterCirculardetails.aspx)  
FAQs: <http://www.rbi.org.in/scripts/FAQDisplay.aspx?did=47>  
Circulars: [http://www.rbi.org.in/scripts/bs\\_circularindexdisplay.aspx](http://www.rbi.org.in/scripts/bs_circularindexdisplay.aspx)  
Notification: [http://www.rbi.org.in/Scripts/BS\\_viewfemanewnotification.aspx](http://www.rbi.org.in/Scripts/BS_viewfemanewnotification.aspx)  
Press Release: [http://www.rbi.org.in/scripts/BS\\_PressreleaseDisplay.aspx](http://www.rbi.org.in/scripts/BS_PressreleaseDisplay.aspx)  
Bulletin: [http://www.rbi.org.in/scripts/BS\\_ViewBulletin.aspx](http://www.rbi.org.in/scripts/BS_ViewBulletin.aspx)  
FEM Act: <http://www.rbi.org.in/scripts/Fema.aspx>

ODI outflows: Monthly Press Release by RBI

ECB/FCCB data under Automatic/Approval Routes: Monthly Press Release by RBI

Website of DIPP: [dipp.nic.in](http://dipp.nic.in) for Consolidated FDI Policy, Industrial Policy, policy, Circular, Press Notes/releases/Clarifications on FDI.

FDI inflows - FIPB/SIA; Acquisition of Existing Shares; & Automatic Route of RBI: Website of DIPP

Website of FIPB: [finmin.nic.in/fipbweb](http://finmin.nic.in/fipbweb) for FIPB related matters.

Read RBI Circulars, latest/updated Master Circulars, latest FAQs as Regulations may not be amended simultaneously by Notification.

**Index of Questions**  
**CHAPTER B - FOREIGN DIRECT INVESTMENT (FDI) POLICY**

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7	Broadcasting
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- (vii) Asset Management
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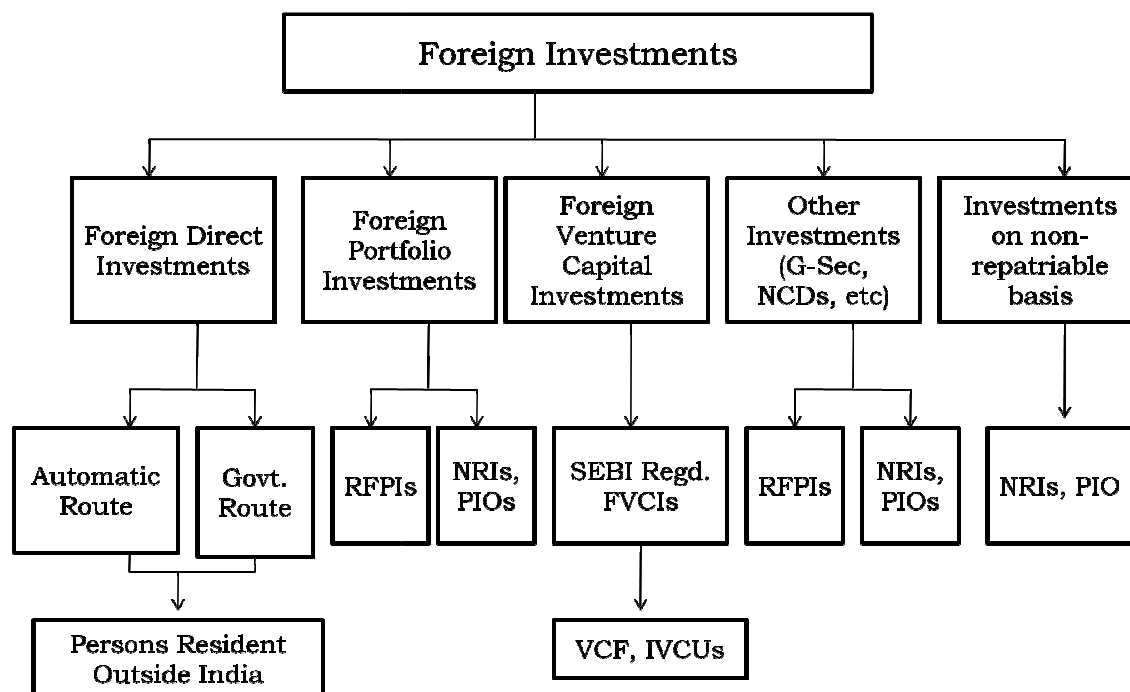
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**Foreign Investments in India-Schematic Representation**



**B.1. What does an 'FDI' mean?**

**Ans.** 'FDI' means investment by non-resident entity/person resident outside India in the capital of the Indian company under Schedule 1 of FEM (Transfer or Issue of Security by a Person resident Outside India) Regulations, 2000 ('FEMA 20').

**B.2. Who frames the FDI Policy?**

**Ans.** The Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India (DIPP) issues annually a Circular on Consolidated FDI Policy ('FDI Circular'), which was last updated on April 05, 2013.

**B.3. Who makes the policy pronouncements on FDI?**

**Ans.** DIPP makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by the Reserve Bank of India as amendment to FEMA 20. These notifications take effect from the date of issue of Press Notes/ Press Releases, unless specified otherwise therein. In case of any conflict, the relevant FEMA Notification will prevail. The procedural instructions are issued by the Reserve Bank of India vide A.P. Dir. (Series) circulars.

The Hon'ble Supreme Court in the matter of 'Manohar Lal Sharma Versus Union of India and Another' on 01 May 2013 held as follows:

Notably, the Department of Industrial Policy and Promotion (DIPP) as per the Allocation of Business Rules, 1961 is allocated the subject of 'Direct foreign and non-resident investment in industrial and service projects, excluding functions entrusted to the Ministry of Overseas Indian Affairs'. Seen thus, the **DIPP is empowered to make policy pronouncements on FDI**. There is no merit in the submission of the petitioner that Central Government has no authority or competence to formulate FDI Policy. The competence of the Central Government to formulate a policy relating to investment by a non-resident entity/person resident outside India, in the capital of

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an Indian company is beyond doubt. The Reserve Bank of India (RBI) is empowered to prohibit, restrict or regulate various types of foreign exchange transactions, including FDI, in India by means of necessary regulations. **RBI Regulates foreign investment in India in accordance with Government of India's policy**.

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**B.4. What are the Entry Routes for Investment?**

**Ans.** An Indian company may receive Foreign Direct Investment under the two routes as given under.

**i. Automatic Route**

FDI is allowed under the automatic route without prior approval either of the Government or the Reserve Bank of India in all activities/sectors as specified in the consolidated FDI Policy, issued by the Government of India from time to time.

**ii. Government Route**

FDI in activities not covered under the automatic route requires prior approval of the Government which are considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs, Ministry of Finance. Application can be made in Form FC-IL, which can be downloaded from <http://www.dipp.gov.in>. Plain paper applications carrying all relevant details are also accepted. No fee is payable.

The Indian company having received FDI either under the Automatic route or the Government route is required to comply with provisions of the FDI policy including reporting the FDI to the Reserve Bank.

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**B.5. What are the prohibited sectors where FDI is not allowed?**

**Ans. Prohibited Sectors**

**FDI** is prohibited in:

- (a) Lottery Business, including Government/private lottery, online lotteries, etc.
- (b) Gambling and Betting, including casinos etc.
- (c) Chit funds
- (d) Nidhi company
- (e) Trading in Transferable Development Rights (TDRs)
- (f) Real Estate Business or Construction of Farm Houses
- (g) Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- (h) Activities/sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Mass Rapid Transport Systems).

**Foreign technology collaboration in any form, including licensing for franchise, trademark, brand name, management contract, is also prohibited for Lottery Business and Gambling and Betting activities.**

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**B.6. What are the prohibited sectors where Foreign investment in any form is not allowed?**

**Ans. Foreign investment in any form** is prohibited in a company or a partnership firm or a proprietary concern or any entity, whether incorporated or not (such as, Trusts) which is engaged or proposes to engage in the following activities:

- (a) Business of chit fund, or
- (b) Nidhi company, or
- (c) Agricultural or plantation activities, or
- (d) Real estate business, or construction of farm houses, or
- (e) Trading in Transferable Development Rights (TDRs).

“Real estate business” means dealing in land and immovable property with a view to earning profit or earning income therefrom and does not include development of townships, construction of residential / commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure,

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townships.

Partnership firms / proprietorship concerns having investments as per FEMA regulations are not allowed to engage in print media sector.

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**B.7. What is the meaning of 'Capital'?**

**Ans.** 'Capital' means equity shares; fully, compulsorily & mandatorily convertible preference shares; and fully, compulsorily & mandatorily convertible debentures.

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**B.8. Can Warrants and partly paid shares be issued?**

**Ans.** Warrants, and Partly Paid Shares can be issued to person/(s) resident outside India only after approval through the Government route.

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**B.9. What are the different types of instruments issued by Indian companies and pricing/conversion formula?**

**Ans.** Indian companies can issue equity shares, fully, compulsorily and mandatorily convertible debentures and fully, compulsorily and mandatorily convertible preference shares subject to pricing guidelines/valuation norms prescribed under FEMA Regulations.

As far as debentures are concerned, only those which are fully and mandatorily convertible into equity, within a specified time, would be reckoned as part of equity under the FDI Policy.

Prior to December 30, 2013, issue of other types of preference shares such as nonconvertible, optionally convertible or partially convertible, were to be in accordance with the guidelines applicable for External Commercial Borrowings (ECBs). **On and from December 30, 2013** it has now been decided that optionality clauses may henceforth be allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the Foreign Direct Investment (FDI) Scheme. The optionality clause will oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return. The provision of optionality clause shall be subject to the following conditions:

- (a) There is a minimum lock-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher (e.g. defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period shall be effective from the date of allotment of such shares or convertible debentures or as prescribed for defence and construction development sectors, etc. in Annex B to Schedule 1 of Notification No. FEMA. 20 as amended from time to time;
- (b) After the lock-in period, as applicable above, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as under:
  - (i) In case of a listed company, the non-resident investor shall be eligible to exit at the market price prevailing at the recognised stock exchanges;
  - (ii) In case of unlisted company, the non-resident investor shall be eligible to exit from the investment in equity shares of the investee company at a price not exceeding that arrived at on the basis of Return on Equity (RoE) as per the latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy/FEMA Regulations.

Note: For the above purpose, RoE shall mean Profit After Tax / Net Worth; Net Worth would include all free reserves and paid up capital.

- (iii) Investments in Compulsorily Convertible Debentures (CCDs) and

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Compulsorily Convertible Preference Shares (CCPS) of an investee company may be transferred at a price worked out as per any internationally accepted pricing methodology at the time of exit duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement, as applicable.

The pricing of shares / convertible debentures / preference shares should be decided / determined upfront at the time of issue of the instruments. The price for the convertible instruments can also be determined based on the conversion formula which has to be determined / fixed upfront, however the price at the time of conversion should not be less than the fair value worked out, at the time of issuance of these instruments, in accordance with the extant FEMA regulations.

**B.10. What are the guidelines for issue of Bonus non-convertible/redeemable preference shares or debentures to non-resident shareholders?**

**Ans.** Reserve Bank of India has been receiving references from some Indian companies regarding issue of nonconvertible/ redeemable bonus preference shares or debentures to non-resident shareholders from the general reserve under a Scheme of Arrangement by a Court, under the provisions of the Companies Act, as applicable. So far, Reserve Bank has been granting permission for such issuances on a case-to-case basis.

On a review and with a view to rationalizing and simplifying the procedures, **it has been decided that an Indian company may issue non-convertible/redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus** from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income Tax Authorities.

The above general permission to Indian companies is **only** for issue of non-convertible/redeemable preference shares or debentures to non-resident shareholders **by way of distribution as bonus** from the general reserves. The issue of preference shares (excluding non-convertible/redeemable preference shares) and convertible debentures (excluding optionally convertible/partially convertible debentures) under the FDI scheme would continue to be subject to extant provisions under FDI.

The Indian company or transferee company or a new company has a 'No objection certificate' from Income Tax authority.

**B.11. How is the price of shares issued to persons resident outside India under the FDI Policy fixed?**

**Ans. Fresh issue of shares:** Price of fresh shares issued to persons resident outside India under the FDI Scheme, shall be:

- On the basis of SEBI guidelines in case of listed companies.
- Not less than fair value of shares determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow Method (DCF) in case of unlisted companies.

The above pricing guidelines are also applicable for issue of shares against payment of lump sum technical knowhow fee / royalty or conversion of ECB into equity or capitalization of pre incorporation expenses/import payables (with prior approval of Government).

**Preferential allotment:** In case of issue of shares on preferential allotment, the issue

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price shall not be less than the price as applicable to transfer of shares from resident to non-resident.

**Issue of shares by SEZs against import of capital goods:** In this case, the share valuation has to be done by a Committee consisting of Development Commissioner and the appropriate Customs officials.

**Right Shares:** The price of shares offered on rights basis by the Indian company to non-resident shareholders shall be;

- i) In the case of shares of a company **listed** on a recognised stock exchange in India, at a price as determined by the company.
- ii) In the case of shares of a company **not listed** on a recognised stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to the resident shareholders.

**Acquisition / transfer of existing shares (private arrangement).** The acquisition of existing shares from Resident to Non-resident (i.e. to incorporated non-resident entity other than erstwhile OCB, foreign national, NRI, FII) would be at a;

- (a) negotiated price for shares of companies listed on a recognized stock exchange in India which shall not be less than the price at which the preferential allotment of shares can be made under the SEBI guidelines, as applicable, provided the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares. The price per share arrived at should be certified by a SEBI registered Merchant Banker or a Chartered Accountant.
- (b) negotiated price for shares of companies which are not listed on a recognized stock exchange in India which shall not be less than the fair value to be determined by a SEBI registered Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow(DCF) method.

Further, transfer of existing shares by Non-resident (i.e. by incorporated non-resident entity, erstwhile OCB, foreign national, NRI, FII) to Resident shall not be more than the minimum price at which the transfer of shares can be made from a resident to a non-resident as given above.

**RBI to withdraw pricing norms for FDI transactions:** RBI in part B of the First Bi-Monthly Monetary Policy Statement for the year 2014-15 (viz. Developmental and Regulatory Policies) has stated as under:

**“As regards foreign direct investment (FDI), it has been decided to withdraw all the existing guidelines relating to valuation in case of any acquisition/sale of shares and accordingly, such transactions will henceforth be based on acceptable market practices. Operating guidelines will be notified separately”.**

**B.12. What are the pricing norms in cases where non-residents (including NRIs) make investment in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to Memorandum of Association?**

**Ans.** In cases where non-residents (including NRIs) make investment in an Indian company in compliance with the provisions of the Companies Act, 1956, by way of subscription to Memorandum of Association, such investments may be made at face value subject to their eligibility to invest under the FDI scheme.

**B.13. Who can invest in India?**

**Ans.** A person resident outside India (a **non-resident entity including NRIs/PIOs** and Foreign Citizens Resident outside India) can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited.

A citizen of Bangladesh or an entity incorporated in Bangladesh can invest only under

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the Government route.

It has now been decided that notwithstanding anything contained in sub-regulation (1) of Regulation 5 of the Notification No. FEMA 20, a person who is a citizen of Pakistan or an entity incorporated in Pakistan may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 of the Notification, *ibid*, provided further that notwithstanding anything contained in Schedule 1 of the Notification, *ibid*, the Indian company, receiving such foreign direct investment, is not engaged or shall not engage in sectors / activities pertaining to defence, space and atomic energy and sectors/ activities prohibited for foreign investment.

A “**Person resident in India**” means—[As per FEMA Sec 2( v)]

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—
  - (A) a person who has gone out of India or who stays outside India, in either case—
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
  - (B) a person who has come to or stays in India, in either case, otherwise than—
    - (a) for or on taking up employment in India, or
    - (b) for carrying on in India a business or vocation in India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

A “**Person resident outside India**” means a person who is not resident in India; [As per FEMA Sec 2(w)].

**An FII** may invest in the capital of an Indian Company under the Portfolio Investment Scheme which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit for FII investment to 24% of the capital of the company. This aggregate limit of 24% can be increased to the sectoral cap/statutory ceiling, as applicable, by the Indian Company concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII investment, in the FDI and Portfolio Investment Scheme, should be within the above caps.

**NRIs** under the Portfolio Investment Scheme

- (a) NRIs are allowed to invest in shares of listed Indian companies in recognised Stock Exchanges under the Portfolio Investment Scheme (‘PIS’).
- (b) NRIs can invest through designated ADs, on repatriation and non-repatriation basis under PIS route up to 5 per cent of the paid- up capital / paid-up value of each series of debentures of listed Indian companies.
- (c) The aggregate paid-up value of shares / convertible debentures purchased by all NRIs cannot exceed 10 per cent of the paid-up capital of the company / paid-up value of each series of debentures of the company. The aggregate ceiling of 10 per cent can be raised to 24 per cent by passing a resolution of its Board of Directors followed by a special resolution to that effect by its General Body and subject to prior intimation to the Reserve Bank.



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**Private placement with FIIs**

SEBI registered FIIs have been permitted to purchase shares / convertible debentures of an Indian company through offer/private placement, subject to total FII investment viz. PIS & FDI (private placement / offer) being within the individual FII/sub account investment limit 10 per cent and all FIIs/sub-accounts put together - 24 per cent of the paid-up capital of the Indian company or to the sectoral limits, as applicable. Indian company is permitted to issue such shares provided that:

- a) in the case of public offer, the price of shares to be issued is not less than the price at which shares are issued to residents; and
- b) in the case of issue by private placement, the issue price should be determined as per the pricing guidelines stipulated under the FDI scheme.

A **SEBI registered Foreign Venture Capital Investor (FVCI)** may contribute up to 100% of the capital of an Indian Venture Capital Undertaking (IVCU) and may also set up a domestic asset management company to manage the fund. All such investments can be made under the automatic route in terms of Schedule 6 to FEMA 20. A SEBI registered FVCI can invest in a domestic venture capital fund registered under the SEBI (Venture Capital Fund) Regulations, 1996/ SEBI (Alternative Investment Funds) Regulations, 2012. Such investments would also be subject to the extant FEMA regulations and extant FDI policy including sectoral caps, etc. SEBI registered FVCIs are also allowed to invest under the FDI Scheme, as non-resident entities, in other companies, subject to FDI Policy and FEMA regulations.

Further, **FVCIs** are allowed to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF, units of schemes / funds set up by a VCF) by way of private arrangement / purchase from a third party also, subject to terms and conditions as stipulated in Schedule 6 of FEMA 20. SEBI registered FVCIs would also be allowed to invest in securities on a recognized stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000/ SEBI (Alternative Investment Funds) Regulations, 2012, as well as the terms and conditions stipulated therein.

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**B.14. What are the forms in which business can be conducted by a foreign company in India?**

- Ans.** A foreign company planning to set up business operations in India may:
- i. Incorporate a company under the Companies Act, 1956, as a Joint Venture or a Wholly Owned Subsidiary.
  - ii. Limited Liability Partnership under the LLP Act, 2008.
  - iii. Set up a Liaison Office / Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

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**B.15. Is there any condition with regard to mode of payment?**

- Ans.** An Indian company issuing shares /convertible debentures under FDI Scheme to a person resident outside India shall receive the amount of consideration required to be paid for such shares /convertible debentures by:
- Para 6

- (i) Inward remittance through normal banking channels.
- (ii) Debit to NRE / FCNR account of a person concerned maintained with an AD category I bank.
- (iii) Conversion of royalty / lump sum / technical knowhow fee due for payment or conversion of ECB, shall be treated as consideration for issue of shares.
- (iv) Conversion of import payables / pre incorporation expenses / share swap can be treated as consideration for issue of shares with the approval of FIPB.
- (v) debit to non-interest bearing Escrow account in Indian Rupees in India which is opened with the approval from AD Category – I bank and is maintained with the AD Category I bank on behalf of residents and non-residents towards

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payment of share purchase consideration.

If the shares or convertible debentures are not issued within 180 days from the date of receipt of the inward remittance or date of debit to NRE / FCNR(B) / Escrow account the amount of consideration shall be refunded. Further, the Reserve Bank may on an application made to it and for sufficient reasons permit an Indian Company to refund / allot shares for the amount of consideration received towards issue of security if such amount is outstanding beyond the period of 180 days from the date of receipt.

**B.16. Is there any condition with regard to mode of payment in cases where investment in the capital of Indian companies is made by resident in Nepal and Bhutan or citizens of Nepal and Bhutan?**

**Ans.** Residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

**B.17. Are the investments and profits earned in India repatriable?**

**Ans.** All foreign investments are freely repatriable (net of applicable taxes) except in cases where.

- i) the foreign investment is in a sector like Construction and Development Projects and Defence wherein the foreign investment is subject to a lock-in-period; and
- ii) NRIs choose to invest specifically under non-repatriable schemes.

Further, dividends (net of applicable taxes) declared on foreign investments can be remitted freely through an Authorised Dealer bank.

**B.18. Who can invest/trade through a registered broker in the capital of Indian Companies on recognized Indian Stock Exchanges?**

**Ans.** Only SEBI registered FIIs and NRI as per Schedule 2 and 3 respectively of FEMA 20 can invest/trade through a registered broker in the capital of Indian Companies on recognized Indian Stock Exchanges.

It has been decided that **a non resident including a Non Resident Indian may acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme provided that:**

- i. The non-resident investor has **already** acquired and continues to **hold the control in accordance with SEBI** (Substantial Acquisition of Shares and Takeover) **Regulations;**
- ii. The **amount of consideration** for transfer of shares to non-resident consequent to purchase on the stock exchange may be paid as below:
  - a. by way of inward remittance through normal banking channels,
  - b. by way of debit to the NRE/FCNR account of the person concerned maintained with an authorized dealer/bank;
  - c. by debit to non-interest bearing Escrow account (in Indian Rupees) maintained in India with the AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000; or
  - d. the consideration amount may also be paid **out of the dividend payable by Indian investee company**, in which the said non-resident holds control as (i) above, provided the right to receive dividend is established and the dividend amount has been credited to specially designated non -interest bearing rupee account for acquisition of shares on the floor of stock exchange.
- iii. The pricing for subsequent transfer of shares to non-resident shareholder shall be in accordance with the **pricing guidelines under FEMA;**
- iv. The original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, reporting requirement, documentation, etc.

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**B.19. Define 'Group Company' for the purpose of FDI in Wholesale Trading.**

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**Ans.** 'Group company' means two or more enterprises which, directly or indirectly, are in position to:

- (i) exercise twenty-six per cent, or more of voting rights in other enterprise; or
- (ii) appoint more than fifty per cent, of members of board of directors in the other enterprise.

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**B.20. What is the meaning of 'Owned' and 'Controlled' by resident Indian citizens under FDI Policy?**

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**Ans.** **Vide RBI Circular No. 44 dated September 13, 2013, it has been decided to revise the definition of the term 'control' as under:**  
**'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.**

Earlier, a company was considered as **'Controlled' by resident Indian citizens** if the resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens, have the power to appoint a majority of its directors in that company.

A company is considered as **'Owned' by resident Indian citizens** if more than 50% of the capital in it is beneficially owned by resident Indian citizens and / or Indian companies, which are ultimately owned and controlled by resident Indian citizens.

'Indian Company' means a company incorporated in India under the Companies Act, 1956. 'Resident Indian Citizen' shall be interpreted in line with the definition of 'person resident in India' as per FEMA, 1999, read in conjunction with the Indian Citizenship Act, 1955.

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**B.21. What are the different types of Entities into which FDI can be made?**

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**Ans.** **1. FDI in an Indian Company** - Indian companies can issue capital against FDI.

**2. FDI in Partnership Firm / Proprietary Concern:**

- (i) A **Non-Resident Indian (NRI) or a Person of Indian Origin (PIO)** resident outside India can invest in the capital of a firm or a proprietary concern in India **on non-repatriation basis** provided;
  - (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
  - (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
  - (c) Amount invested shall not be eligible for repatriation outside India.
- (ii) **NRIs/PIO** may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms **with repatriation option**. The application will be decided in consultation with the Government of India.
- (iii) Investment by **non-residents other than NRIs/PIO**: A person resident outside India other than NRIs/PIO may make an application and seek prior approval of Reserve Bank for making investment in the capital of a firm or a proprietorship concern or any association of persons in India. The application will be decided in consultation with the Government of India.
- (iv) **Restrictions**: An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or Print Media.

- 3. If a domestic Venture Capital Fund** is set up as a trust, a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF subject to approval of the Foreign Investment Promotion Board

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(FIPB). However, if a domestic VCF is set-up as an incorporated company under the Companies Act, 1956, then a person resident outside India (non-resident entity/individual including an NRI) can invest in such domestic VCF under the automatic route of FDI Scheme, subject to the pricing guidelines, reporting requirements, mode of payment, minimum capitalization norms, etc.

**4. FDI in Trusts:** FDI in Trusts other than VCF is not permitted.

**5. FDI in Limited Liability Partnerships (LLPs):** FDI in LLPs is permitted, subject to the following conditions:

- (a) FDI will be allowed, through the Government approval route, only for LLPs operating in sectors/activities where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance related conditions (such as 'Non Banking Finance Companies' or 'Development of Townships, Housing, Built-up infrastructure and Construction-development projects' etc.).
- (b) LLPs with FDI will not be allowed to operate in agricultural/plantation activity, print media or real estate business.
- (c) An Indian company, having FDI, will be permitted to make downstream investment in an LLP only if both-the company, as well as the LLP- are operating in sectors where 100% FDI is allowed, through the automatic route and there are no FDI-linked performance conditions.
- (d) LLPs with FDI will not be eligible to make any downstream investment.
- (e) Foreign Capital participation in LLPs will be allowed only by way of cash consideration, received by inward remittance, through normal banking channels or by debit to NRE/FCNR account of the person concerned, maintained with an authorized dealer/authorized bank.
- (f) Investment in LLPs by Foreign Institutional Investors (FIIs) and Foreign Venture Capital Investors (FVCIs) will not be permitted. LLPs will also not be permitted to avail External Commercial Borrowings (ECBs).
- (g) In case the LLP with FDI has a body corporate that is a designated partner or nominates an individual to act as a designated partner in accordance with the provisions of Section 7 of the LLP Act, 2008, such a body corporate should only be a company registered in India under the Companies Act, 1956 and not any other body, such as an LLP or a trust.
- (h) For such LLPs, the designated partner "resident in India", as defined under the 'Explanation' to Section 7(1) of the LLP Act, 2008, would also have to satisfy the definition of "person resident in India", as prescribed under Section 2(v)(i) of the Foreign Exchange Management Act, 1999.
- (i) The designated partners will be responsible for compliance with all the above conditions and also liable for all penalties imposed on the LLP for their contravention, if any.
- (j) Conversion of a company with FDI, into an LLP, will be allowed only if the above stipulations (except clause 3.2.5(e) which would be optional in case of a company) are met and with the prior approval of FIPB/Government.

**Also Refer RBI Notification No.FEMA.298/2014-RB dated 13 March 2014 (published in Gazette of India on 19 March 2014): Regulation 5(9) read with Schedule 9 of FEMA 20.**

**6. FDI in other Entities:** FDI in resident entities other than those mentioned above is not permitted.

**B.22. What is the policy regarding foreign investment into an Indian company engaged only in the activity of investing in the capital of other Indian company/ies (regardless of its ownership or control) i.e. an 'Investing Company'?**

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**Ans.** 'Investing Company' means an Indian Company holding only investments in other Indian company/ (ies), directly or indirectly, other than for trading of such holdings/securities.

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Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company/ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment.

Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified for that sector.

Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.

**B.23. What is the policy regarding foreign investment into an Indian company which does not have any operations and also does not have any downstream investments?**

**Ans.** For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

**B.24. What are the provisions regarding period within which capital instruments should be issued? What actions can be taken in case of Non-compliance with these provisions?**

**Ans.** The capital instruments should be issued within 180 days from the date of receipt of the inward remittance received through normal banking channels including escrow account opened and maintained for the purpose or by debit to the NRE/FCNR (B) account of the non-resident investor. In case, the capital instruments are not issued within 180 days from the date of receipt of the inward remittance or date of debit to the NRE/FCNR (B) account, the amount of consideration so received should be refunded immediately to the non-resident investor by outward remittance through normal banking channels or by credit to the NRE/FCNR (B) account, as the case may be. Non-compliance with the above provision would be reckoned as a contravention under FEMA and would attract penal provisions. In exceptional cases, refund of the amount of consideration outstanding beyond a period of 180 days from the date of receipt may be considered by the RBI, on the merits of the case.

**B.25. How is the valuation of shares done in case of investment by way of swap of shares?**

**Ans.** In case of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.

**B.26. What are the provisions regarding transfer of shares and convertible debentures under FDI Policy? What are the provisions regarding Foreign Currency Account and Escrow Account?**

**Ans.** (i) Subject to FDI sectoral policy (relating to sectoral caps and entry routes), applicable laws and other conditionalities including security conditions, non-resident investors can also invest in Indian companies by purchasing/acquiring existing shares from Indian shareholders or from other non-resident shareholders. General permission has been granted to non-residents/NRIs for acquisition of shares by way of transfer subject to the following:

(a) A person resident outside India (other than NRI and erstwhile OCB) may transfer by way of sale or gift, the shares or convertible debentures to any person resident outside India (including NRIs).

(b) NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

**Transfer of shares from NRI to NR requires the prior approval of the**

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**Reserve Bank of India.**

- (c) A person resident outside India can transfer any security to a person resident in India by way of gift.
  - (d) A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.
  - (e) General permission is also available for transfer of shares/convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India, subject to the RBI guidelines.
  - (f) The above General Permission also covers transfer by a resident to a non-resident of shares/convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route, as well as transfer of shares by a non-resident to an Indian company under buyback and/or capital reduction scheme of the company. However, this General Permission is not available in case of transfer of shares / debentures, from a Resident to a Non-Resident/Non-Resident Indian, of an entity engaged in any activity in the financial services sector (i.e. Banks, NBFCs, Asset Reconstruction Companies (ARCs), Credit Information Companies (CICs), Insurance, infrastructure companies in the securities market such as Stock Exchanges, Clearing Corporations, and Depositories, Commodity Exchanges, etc.).
  - (g) The Form FC-TRS should be submitted to the AD Category-I Bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor/transferee, resident in India.
- (ii) The sale consideration in respect of equity instruments purchased by a person resident outside India, remitted into India through normal banking channels, shall be subjected to a Know Your Customer (KYC) check by the remittance receiving AD Category – I bank at the time of receipt of funds. In case, the remittance receiving AD Category – I bank is different from the AD Category – I bank handling the transfer transaction, the KYC check should be carried out by the remittance receiving bank and the KYC report be submitted by the customer to the AD Category – I bank carrying out the transaction along with the Form FC-TRS.
- (iii) **Escrow:** AD Category – I banks have been given general permission to open Escrow account and Special account of **non-resident corporate for open offers / exit offers and delisting of shares**. The relevant SEBI (SAST) Regulations or any other applicable SEBI Regulations/ provisions of the Companies Act, 1956 will be applicable. AD Category-I banks have also been permitted to open and maintain, without prior approval of RBI **non-interest bearing** Escrow accounts in Indian Rupees in India on behalf of residents and/or non-residents, towards payment of share purchase consideration and/or provide Escrow facilities for keeping securities to facilitate FDI transactions subject to the terms and conditions specified by RBI. SEBI authorised Depository Participants have also been permitted to open and maintain, without prior approval of RBI. In both cases, the Escrow agent shall necessarily be an AD Category-I bank or SEBI authorized Depository Participant (in case of securities' accounts). **These facilities will be applicable for both issue of fresh shares to the non-residents as well as transfer of shares from /to the non-residents.**

In order to provide operational flexibility and ease the procedures, it has been decided to **permit AD Category –I bank to issue bank guarantee, without prior approval of the Reserve Bank, on behalf of a non-resident acquiring shares or convertible debentures of an Indian company through open offers/ delisting/exit offers,** provided :

- a) the transaction is in compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) [SEBI(SAST)] Regulations;

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- b) the guarantee given by the AD Category –I bank is covered by a counter guarantee of a bank of international repute.

It may be noted that the guarantee shall be valid for a tenure co-terminus with the offer period as required under the SEBI (SAST) Regulations.

**Foreign Currency Account:** Indian companies which are eligible to issue shares to persons resident outside India under the FDI Scheme will be allowed to retain the share subscription amount in a Foreign Currency Account for bonafide business purpose only with the prior approval of the Reserve Bank.

**B.27. What are the provisions for transfer of shares by a Person resident outside India?**

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**Ans.** a. **Non Resident to Non-Resident (Sale / Gift):** A person resident outside India (other than NRI and OCB) may transfer by way of sale or gift, shares or convertible debentures to any person resident outside India (including NRIs but excluding OCBs).

**Note:** Transfer of shares from or by erstwhile OCBs would require prior approval of the Reserve Bank of India.

- b. **NRI to NRI (Sale / Gift):** NRIs may transfer by way of sale or gift the shares or convertible debentures held by them to another NRI.

c. **Non Resident to Resident(Sale / Gift):**

- (i) **Gift:** A person resident outside India can transfer any security to a person resident in India by way of gift.
- (ii) **Sale under private arrangement:** General permission is also available for transfer of shares / convertible debentures, by way of sale under private arrangement by a person resident outside India to a person resident in India **in case where transfer of shares are under SEBI regulations and where the FEMA pricing guidelines are not met**, subject to the following
- (a) The original and resultant investment comply with the extant FDI policy/ FEMA regulations;
  - (b) The pricing complies with the relevant SEBI regulations (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI (SAST) and buy back); and
  - (c) CA certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
  - (d) Compliance with reporting and other guidelines as given in Annex 3.

Note: Transfer of shares from a Non Resident to Resident other than under SEBI regulations and where the FEMA pricing guidelines are not met would require the prior approval of the Reserve Bank of India.

- (iii) **Sale of shares/ convertible debentures on the Stock Exchange by person resident outside India:** A person resident outside India can sell the shares and convertible debentures of an Indian company on a recognized Stock Exchange in India through a stock broker registered with stock exchange or a merchant banker registered with SEBI.

AD Category –I bank may issue bank guarantee, without prior approval of the Reserve Bank, on behalf of a non-resident acquiring shares or convertible debentures of an Indian company through open offers/ delisting/exit offers, provided 6:

- a) the transaction is in compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) [SEBI(SAST)] Regulations;

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- b) the guarantee given by the AD Category –I bank is covered by a counter guarantee of a bank of international repute.

It may be noted that the guarantee shall be valid for a tenure co-terminus with the offer period as required under the SEBI (SAST) Regulations. In case of invocation of the guarantee, the AD Category-I bank is required to submit to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, a report on the circumstances leading to the invocation of the guarantee.

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**B.28.. Transfer of shares/convertible debentures from Resident to Person Resident outside India**

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**Ans.** A person resident in India can transfer by way of sale, shares / convertible debentures (including transfer of subscriber's shares), of an Indian company under private arrangement to a person resident outside India, subject to the following along with pricing, reporting and other prescribed guidelines.

- a) where the transfer of shares requires the prior approval of the FIPB as per extant FDI policy provided that;
  - i) the requisite FIPB approval has been obtained; and
  - ii) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
- b) where SEBI (SAST) guidelines are attracted, subject to adherence with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
- c) where the pricing guidelines under FEMA, 1999 are not met provided that:
  - i) the resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
  - ii) The pricing for the transaction is compliant with specific/explicit, extant and relevant SEBI regulations (such as IPO, book building, block deals, delisting, open/ exit offer, substantial acquisition/SEBI(SAST)); and
  - iii) CA Certificate to the effect that compliance with relevant SEBI regulations as indicated above is attached to the Form FC-TRS to be filed with the AD bank.
- d) where the investee company is in the financial services sector provided that:
  - i). With effect from October 11, 2013, the requirement of NoC(s) from the respective regulators/regulators of the investee company as well as the transferor and transferee entities and filing of such NOCs along with the Form FC-TRS with the AD bank has been waived from the perspective of Foreign Exchange Management Act, 1999 and no such NoC(s) need to be filed along with form FC-TRS. However, any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with. Any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with and
  - ii) The FDI policy and FEMA Regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

Note: The above general permission also covers transfer by a resident to a non resident of shares / convertible debentures of an Indian company, engaged in an activity earlier covered under the Government Route but now falling under Automatic Route of the Reserve Bank, as well as transfer of shares by a non-resident to an



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Indian company under buyback and / or capital reduction scheme of the company. However, this general permission would not be available for the above transactions if they are not meeting the pricing guidelines or in case of transfer of shares / debentures by way of gift from a Resident to a Non-Resident / Non-Resident Indian.

**B.29. What are the provisions for transfer of shares by resident which requires Government approval?**

- Ans.** The following instances of transfer of shares from residents to non-residents by way of sale or otherwise requires Government approval :
- (i) Transfer of shares of companies engaged in sector falling under the Government Route.
  - (ii) Transfer of shares resulting in foreign investments in the Indian company, breaching the sectoral cap applicable.

**B.30. What are the terms and conditions for transfer of Shares /Convertible Debentures, by way of Sale, from a Person Resident in India to a Person Resident Outside India and from a Person Resident Outside India to a Person Resident in India?**

- Ans.** In order to address the concerns relating to pricing, documentation, payment/ receipt and remittance in respect of the shares/ convertible debentures of an Indian company, in all sectors, transferred by way of sale, the parties involved in the transaction shall comply with the guidelines set out below:

**Parties involved in the transaction are** (a) seller (resident/non-resident), (b) buyer (resident/non-resident), (c) duly authorized agent/s of the seller and/or buyer, (d) Authorised Dealer bank (AD) branch and (e) Indian company, for recording the transfer of ownership in its books.

**Responsibilities / Obligations of the parties**

All the parties involved in the transaction would have the responsibility to ensure that the relevant regulations under FEMA are complied with and consequent on transfer of shares, the relevant individual limit/sectoral caps/foreign equity participation ceilings as fixed by Government are not breached. Settlement of transactions will be subject to payment of applicable taxes, if any.

**Method of payment and remittance/credit of sale proceeds**

1. The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B)/Escrow accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO/Escrow accounts.
2. The sale proceeds of shares (net of taxes) sold by a person resident outside India may be remitted outside India. In case of FII, the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE /FCNR(B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes.
3. The sale proceeds of shares (net of taxes) sold by an OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to payment of taxes, except in the case of OCBs whose accounts have been blocked by Reserve Bank.

**Documentation**

Besides obtaining a declaration in the enclosed Form FC-TRS (in quadruplicate), the AD branch should arrange to obtain and keep on record the following documents:

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**1 For sale of shares by a person resident in India**

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- ii. Where Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document executed by the seller/buyer authorizing the agent to purchase/sell shares.
- iii. The shareholding pattern of the investee company after the acquisition of shares by a person resident outside India showing equity participation of residents and non-residents category-wise (i.e. NRIs/OCBs/foreign nationals/incorporated non-resident entities/FIIs) and its percentage of paid up capital obtained by the seller/buyer or their duly appointed agent from the company, where the sectoral cap/limits have been prescribed.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. Copy of Broker's note if sale is made on Stock Exchange
- vi. Undertaking from the buyer to the effect that he is eligible to acquire shares/convertible debentures under FDI policy and the existing sectoral limits and Pricing Guidelines have been complied with.
- vii. Undertaking from the FII/sub account to the effect that the individual FII/ Sub account ceiling as prescribed by SEBI has not been breached.

**2 For sale of shares by a person resident outside India**

- i. Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.
- ii. Where the Consent Letter has been signed by their duly appointed agent the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- iii. If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/non-repatriation basis. The sale proceeds shall be credited to NRE/NRO account, as applicable.
- iv. Certificate indicating fair value of shares from a Chartered Accountant.
- v. No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Accountant.
- vi. Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to Shares/convertible debentures of Indian companies purchased under Portfolio Investment Scheme by NRIs, OCBs cannot be transferred, by way of sale under private arrangement.

Compliance is also to be ensured of the pricing and the reporting guidelines

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**B.31. What are the provisions regarding Transfer of shares acquired under Portfolio Investment Scheme ('PIS') under private arrangement?**

**Ans.** Shares purchased by NRIs and FIIs on the stock exchange under PIS cannot be transferred by way of sale under private arrangement or by way of gift to a person resident in India or outside India without prior approval of the Reserve Bank.

However, NRIs can transfer shares acquired under PIS to their relatives as defined in Section 6 of Companies Act, 1956 or to a charitable trust duly registered under the laws in India.

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**B.32. Under what circumstances, prior approval of RBI is required for transfer of capital instruments?**

**Ans.** The following instances of transfer of capital instruments from resident to non-

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residents by way of sale require prior approval of RBI:

- (a) The transfer is to take place at a price which falls outside the pricing guidelines specified by the Reserve Bank from time to time.
- (b) Transfer of capital instruments where the non-resident acquirer proposes deferment of payment of the amount of consideration, prior approval of the Reserve Bank would be required, as hitherto. Further, in case approval is granted for a transaction, the same should be reported in Form FC-TRS, to an AD Category – I bank for necessary due diligence, within 60 days from the date of receipt of the full and final amount of consideration.

**B.33. Under what circumstances, prior approval of RBI is not required anymore for transfer of capital instruments?**

**Ans.** The following are now permitted **without the prior approval of the Reserve Bank of India:**

**A. Transfer of shares from a Non Resident to Resident under the FDI scheme where the pricing guidelines under FEMA, 1999 are not met provided that :-**

- i. The original and resultant investment are in line with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation, etc.;
- ii. The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations / guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI SAST, buy back); and
- iii. Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations / guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.

**B. Transfer of shares from Resident to Non Resident:**

- i) **where the transfer of shares requires the prior approval of the FIPB** as per the extant FDI policy provided that :
  - a) the requisite approval of the FIPB has been obtained; and
  - b) the transfer of share adheres with the pricing guidelines and documentation requirements as specified by the Reserve Bank of India from time to time.
- ii) **where SEBI (SAST) guidelines are attracted** subject to the adherence with the pricing guidelines and documentation requirements as specified by Reserve Bank of India from time to time.
- iii) **where the pricing guidelines under the Foreign Exchange Management Act (FEMA), 1999 are not met provided that:-**
  - a) The resultant FDI is in compliance with the extant FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc.;
  - b) The pricing for the transaction is compliant with the specific/explicit, extant and relevant SEBI regulations / guidelines (such as IPO, Book building, block deals, delisting, exit, open offer/ substantial acquisition / SEBI SAST); and
  - c) Chartered Accountants Certificate to the effect that compliance with the relevant SEBI regulations / guidelines as indicated above is attached to the form FC-TRS to be filed with the AD bank.
- iv) **where the investee company is in the financial sector provided that :**
  - a) NOCs are obtained from the respective financial sector regulators/ regulators of the investee company as well as transferor and transferee entities and such NOCs are filed along with the form FC-

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- TRS with the AD bank; and
- b) The FDI policy and FEMA regulations in terms of sectoral caps, conditionalities (such as minimum capitalization, etc.), reporting requirements, documentation etc., are complied with.

On a review, it has now been decided that the **requirement of NoC(s) will be waived** from the perspective of Foreign Exchange Management Act, 1999 and no such NoC(s) need to be filed along with form FC-TRS. However, any 'fit and proper/ due diligence' requirement as regards the non-resident investor as stipulated by the respective financial sector regulator shall have to be complied with.

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**B.34. Whether Government Approval also required in some cases?**

**Ans.** The transfer of capital instruments of companies engaged in sectors falling under the Government Route from (i) non-residents to non-residents, and (ii) residents to non-residents by way of sale or otherwise requires Government approval.

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**B.35. What is the procedure followed by resident in India so as to transfer any capital instrument by way of gift to a person resident outside India?**

**Ans.** A person resident in India, who intends to transfer any capital instrument, by way of gift to a person resident outside India, has to obtain prior approval from Reserve Bank. While forwarding applications to Reserve Bank for approval for transfer of capital instruments by way of gift, the prescribed documents should be enclosed.

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**B.36. What factors are considered by RBI while processing applications for approval for transfer of capital instruments by way of gift?**

**Ans.** Reserve Bank considers the following factors while processing such applications:

- (a) The proposed transferee (donee) is eligible to hold such capital instruments under Schedules 1, 4 and 5 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
- (b) The gift does not exceed 5 per cent of the paid-up capital of the Indian company/each series of debentures/each mutual fund scheme.
- (c) The applicable sectoral cap limit in the Indian company is not breached.
- (d) The transferor (donor) and the proposed transferee (donee) are close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time.
- (e) The value of capital instruments to be transferred together with any capital instruments already transferred by the transferor, as gift, to any person residing outside India does not exceed the rupee equivalent of US\$ 50,000 per the financial year.
- (f) Such other conditions as stipulated by Reserve Bank in public interest from time to time.

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**B.37. Under what conditions, general permission to Indian companies for conversion of External Commercial Borrowings (ECB) in convertible foreign currency into equity shares/ fully compulsorily and mandatorily convertible preference shares been granted?**

**Ans.** Indian companies have been granted general permission for conversion of External Commercial Borrowings (ECB) (excluding those deemed as ECB) in convertible foreign currency into **equity shares/ fully compulsorily and mandatorily convertible preference shares**, subject to the following conditions and reporting requirements.

- (a) The activity of the company is covered under the Automatic Route for FDI or the company has obtained Government approval for foreign equity in the company;
- (b) The foreign equity after conversion of ECB into equity is within the sectoral cap, if any;
- (c) Pricing of shares is as per the provision of para 3.4.2 above;
- (d) Compliance with the requirements prescribed under any other statute and regulation in force; and
- (e) The conversion facility is available for ECBs availed under the Automatic or Government Route and is applicable to **ECBs, due for payment or not**, as well

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as secured/unsecured loans availed from non-resident collaborators.

It is clarified that where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. Reserve Bank will have no objection if the borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

**B.38. Is General permission also available for issue of shares/preference shares against lump sum technical know-how fee, royalty?**

**Ans.** General permission is also available for **issue of shares/preference shares** against lump sum technical know-how fee, royalty, subject to entry route, sectoral cap and pricing guidelines and compliance with applicable tax laws.

It is further clarified that the principle of calculation of INR equivalent for a liability denominated in foreign currency as applicable for ECB shall apply, mutatis mutandis, to all cases where any payables/liability by an Indian company such as, lump sum fees/royalties, etc. are permitted to be converted to equity shares or other securities to be issued to a non-resident subject to the conditions stipulated under the respective Regulations.

**B.39. Under what circumstances, issue of equity shares is allowed against import of capital goods/machinery/equipment (excluding second-hand machinery), and pre-operative/pre-incorporation expenses (including payments of rent etc.)?**

**Ans.** **Issue of equity shares** under the FDI Policy is allowed under the Government route for the following:

- (I) Import of capital goods/machinery/equipment (**excluding second-hand machinery**), subject to compliance with the following conditions:
  - (a) Any import of capital goods/ machinery etc., made by a resident in India, has to be in accordance with the Export/Import Policy issued by Government of India/as defined by DGFT/FEMA provisions relating to imports.
  - (b) The application clearly indicating the beneficial ownership and identity of the Importer Company as well as overseas entity.
  - (c) Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
- (II) Pre-operative/pre-incorporation expenses (including payments of rent etc.), subject to compliance with the following conditions:
  - (a) Submission of FIRC for remittance of funds by the overseas promoters for the expenditure incurred.
  - (b) Verification and certification of the pre-incorporation/pre-operative expenses by the statutory auditor.
  - (c) Payments should be made by the foreign investor to the company directly or through the bank account opened by the foreign investor as provided under FEMA Regulations.
  - (d) The applications, complete in all respects, for capitalization being made within the period of 180 days from the date of incorporation of the company  
General conditions:
    - (i) All requests for conversion should be accompanied by a special resolution of the company.
    - (ii) Government's approval would be subject to pricing guidelines of RBI and appropriate tax clearance.

**B.40. What are the provisions regarding issue of Rights/Bonus Shares?**

**Ans.** FEMA provisions allow Indian companies to freely issue Rights/Bonus shares to

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existing non-resident shareholders, subject to adherence to sectoral cap, if any. However, such issue of bonus / rights shares has to be in accordance with other laws/statutes like the Companies Act, 1956, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (in case of listed companies), etc. The offer on right basis to the persons resident outside India shall be:

- (a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company;
- (b) in the case of shares of a company not listed on a recognized stock exchange in India, at a price which is not less than the price at which the offer on right basis is made to resident shareholders.

**B.41. What are the provisions for additional allocation of rights share by residents to non-residents?**

**Ans.** Existing non-resident shareholders are allowed to apply for issue of additional shares/ fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares over and above their rights share entitlements. The investee company can allot the additional rights share out of unsubscribed portion, subject to the condition that the overall issue of shares to non-residents in the total paid-up capital of the company does not exceed the sectoral cap.

**B.42. What is the procedure for acquisition of shares under Scheme of Merger/ Demerger/Amalgamation?**

**Ans.** Mergers/demergers/ amalgamations of companies in India are usually governed by an order issued by a competent Court on the basis of the Scheme submitted by the companies undergoing merger/demerger/ amalgamation. Once the scheme of merger or demerger or amalgamation of two or more Indian companies has been approved by a Court in India, the transferee company or new company is allowed to issue shares to the shareholders of the transferor company resident outside India, subject to the conditions that:

- (i) the percentage of shareholding of persons resident outside India in the transferee or new company does not exceed the sectoral cap, and
- (ii) the transferor company or the transferee or the new company is not engaged in activities which are prohibited under the FDI policy.

**B.43. What are the provisions for issue of shares under ESOP?**

**Ans.**

- (i) Listed Indian companies are allowed to issue shares under the Employees Stock Option Scheme (ESOPs), to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to citizens of Bangladesh with the prior approval of FIPB. Shares under ESOPs can be issued directly or through a Trust subject to the condition that:
  - (a) The scheme has been drawn in terms of relevant regulations issued by the SEBI, and
  - (b) The face value of the shares to be allotted under the scheme to the non-resident employees does not exceed 5 per cent of the paid-up capital of the issuing company.
- (ii) Unlisted companies have to follow the provisions of the Companies Act, 1956. The Indian company can issue ESOPs to employees who are resident outside India, other than to the citizens of Pakistan. ESOPs can be issued to the citizens of Bangladesh with the prior approval of the FIPB.
- (iii) The issuing company is required to report (plain paper reporting) the details of granting of stock options under the scheme to non-resident employees to the Regional Office concerned of the Reserve Bank, and thereafter the details of issue of shares subsequent to the exercise of such stock options within 30 days from the date of issue of shares in Form FC-GPR.

**B.44. Can a person resident in India invests in the Indian Depository Receipts (IDRs)? What is the procedure for redemption of IDRs held by persons resident in India?**

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**Ans.** A person resident in India may purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market. The FEMA Regulations shall not be applicable to persons resident in India as defined under section 2(v) of FEMA, 1999, for investing in IDRs and subsequent transfer arising out of a transaction on a recognized Stock Exchange in India. However, at the time of redemption / conversion of IDRs into underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120 / RB-2004 dated July 7 2004, as amended from time to time. The following guidelines shall be followed on redemption of IDRs by persons resident in India.

- i. Listed Indian companies may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulations 6B and 7 of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.
- ii. Indian Mutual Funds, registered with SEBI may either sell or continue to hold the underlying shares subject to the terms and conditions as per Regulation 6C of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.
- iii. Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.

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**B.45. What are the provisions regarding Pledge of shares?**

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**Ans.** (A) A person being a **promoter of a company registered in India (borrowing company), which has raised external commercial borrowings**, may pledge the shares of the borrowing company or that of its associate resident companies for the purpose of securing the ECB raised by the borrowing company, provided that a no objection for the same is obtained from a bank which is an authorised dealer. The authorized dealer, shall issue the no objection for such a pledge after having satisfied itself that the external commercial borrowing is in line with the extant FEMA regulations for ECBs and that:

- i) the loan agreement has been signed by both the lender and the borrower,
- ii) there exists a security clause in the Loan Agreement requiring the borrower to create charge on financial securities, and
- iii) the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank: and the said pledge would be subject to the following conditions:
  - a) the period of such pledge shall be co-terminus with the maturity of the underlying ECB;
  - b) in case of invocation of pledge, transfer shall be in accordance with the extant FDI Policy and directions issued by the Reserve Bank;
  - c) the Statutory Auditor has certified that the borrowing company will utilized / has utilized the proceeds of the ECB for the permitted end use/s only.

B) **Non-resident holding shares of an Indian company can pledge these shares in favour of the AD bank in India to secure credit facilities being extended to the resident investee company for bonafide business purpose**, subject to the following conditions:

- (i) in case of invocation of pledge, transfer of shares should be in accordance with the FDI policy in vogue at the time of creation of pledge;
- (ii) submission of a declaration/ annual certificate from the statutory auditor of the investee company that the loan proceeds will be / have been utilized for the declared purpose;
- (iii) the Indian company has to follow the relevant SEBI disclosure norms; and
- (iv) pledge of shares in favour of the lender (bank) would be subject to Section 19 of the Banking Regulation Act, 1949.

(C) **Non-resident holding shares of an Indian company can pledge these shares**

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**in favour of an overseas bank to secure the credit facilities being extended to the non-resident investor / non-resident promoter of the Indian company or its overseas group company, subject to the following:**

- (i) loan is availed of only from an overseas bank;
- (ii) loan is utilized for genuine business purposes overseas and not for any investments either directly or indirectly in India;
- (iii) overseas investment should not result in any capital inflow into India;
- (iv) in case of invocation of pledge, transfer should be in accordance with the FDI policy in vogue at the time of creation of pledge; and
- (v) submission of a declaration/annual certificate from a Chartered Accountant/Certified Public Accountant of the non-resident borrower that the loan proceeds will be/have been utilized for the declared purpose.

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**B.46. What are 'Direct' and 'Indirect' Foreign Investment in Indian Companies?**

**Ans.** Investment in Indian companies can be made both by non-resident as well as resident Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities could again comprise of both resident and non-resident investment. Thus, such an Indian company would have indirect foreign investment if the Indian investing company has foreign investment in it. The indirect investment can also be a cascading investment i.e. through multi-layered structure.

For the purpose of computation of indirect Foreign investment, Foreign Investment in Indian company shall include all types of foreign investments i.e. FDI; investment by FIIs(holding as on March 31); NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible Debentures regardless of whether the said investments have been made under Schedule 1, 2, 3 and 6 of FEM (Transfer or Issue of Security by Persons Resident Outside India) Regulations, 2000.

**Investment made by an NRI on non-repatriable basis will be counted towards calculation of FDI. However, for calculation of indirect foreign investment, such non-repatriable NRI investment will not be taken into account.**

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**B.47. What are the Guidelines for calculation of direct and indirect foreign investment in an Indian company?**

- Ans.**
- (i) **Counting of Direct foreign investment:** All investments made directly by non-resident entities into the Indian company would be counted towards 'Direct foreign investment'.
  - (ii) **Counting of indirect foreign Investment:** The entire indirect foreign investment by the investing company into the other Indian Company would be considered for the purpose of computation of indirect foreign investment. However, as an exception, the indirect foreign investment in the 100% owned subsidiaries of operating-cum-investing/investing companies will be limited to the foreign investment in the operating-cum-investing/ investing company. This exception has been made since the downstream investment of a 100% owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding company.
  - (iii) The methodology for calculation of total foreign investment would apply at every stage of investment in Indian companies and thus in each and every Indian company.
  - (iv) **Additional requirements**
    - (A) The full details about the foreign investment including ownership details etc. in Indian company /ies and information about the control of the company /ies would be furnished by the Company /ies to the Government of India at the time of seeking approval.



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- (B) In any sector/activity, where Government approval is required for foreign investment and in cases where there are any inter-se agreements between/amongst share-holders which have an effect on the appointment of the Board of Directors or on the exercise of voting rights or of creating voting rights disproportionate to shareholding or any incidental matter thereof, such agreements will have to be informed to the approving authority. The approving authority will consider such inter-se agreements for determining ownership and control when considering the case for approval of foreign investment.
  - (C) In all sectors attracting sectoral caps, the balance equity i.e. beyond the sectoral foreign investment cap, would specifically be beneficially owned by/held with/in the hands of resident Indian citizens and Indian companies, owned and controlled by resident Indian citizens.
  - (D) In the **I&B and Defence sectors** where the sectoral cap is less than 49%, the company would need to be “owned **and** controlled” by resident Indian citizens and Indian companies, which are owned and controlled by resident Indian citizens.
    - (a) For this purpose, the equity held by the largest Indian shareholder would have to be at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions, as defined in Section 4A of the Companies Act, 1956. The term “largest Indian shareholder”, used in this clause, will include any or a combination of the following:
      - (aa) In the case of an individual shareholder,
        - (aai) The individual shareholder,
        - (aaii) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
        - (aaiii) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.
      - (ab) In the case of an Indian company,
        - (abi) The Indian company
        - (abii) A group of Indian companies under the same management and ownership control.
    - (b) For the purpose of this Clause, “Indian company” shall be a company which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.
    - (c) Provided that, in case of a combination of all or any of the entities mentioned in sub-clauses (aa) and (ab) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.
  - (E) If a declaration is made by persons as per section 187C of the Indian Companies Act about a beneficial interest being held by a non resident entity, then even though the investment may be made by a resident Indian citizen, the same shall be counted as foreign investment.

The above mentioned policy and methodology would be applicable for determining the total foreign investment in all sectors, except in sectors where it is specified in a statute or a rule there under. The above methodology of determining direct and indirect foreign investment therefore does not apply to the **insurance sector** which will continue to be governed by the relevant Regulation.

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**B.48. What are the Guidelines for establishment of Indian companies/ transfer of ownership or control of Indian companies, from resident Indian citizens to non-resident entities, in sectors with caps?**

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**Ans.** In sectors/activities with caps, including, inter-alia, defence production, air transport services, ground handling services, asset reconstruction companies, private sector banking, broadcasting, commodity exchanges, credit information companies, insurance, print media, telecommunications and satellites, Government approval/FIPB approval would be required in all cases where:

- (i) An Indian company is being established with foreign investment and is not owned by a resident entity or
- (ii) An Indian company is being established with foreign investment and is not controlled by a resident entity or
- (iii) The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/ demerger, acquisition, etc. or
- (iv) The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non-resident entities through amalgamation, merger/demerger, acquisition, etc. or
- (v) It is clarified that these guidelines will not apply to sectors/activities where there are no foreign investment caps, that is, where 100% foreign investment is permitted under the automatic route.
- (vi) For the purpose of **computation of indirect foreign investment, foreign investment shall include all types of direct foreign investments in the Indian company making downstream investment.** For this purpose, portfolio investments either by FIIs, NRIs or QFIs holding as on March 31 of the previous year would be taken into account. e.g. for monitoring foreign investment for the financial year 2011-12, investment as on March 31, 2011 would be taken into account. Besides, investments in the form of Foreign Direct Investment, Foreign Venture Capital investment, investments in ADRs/GDRs, Foreign Currency Convertible Bonds (FCCB) will also be taken in account. Thus, regardless of the investments having been made **under Schedule 1, 2, 3, 6 and 8** of the Notification No.FEMA. 20/2000-RB dated May 3, 2000, as amended from time to time will be taken into account.

**B.49. What are sectoral conditions on entry route, conditionalities and caps for downstream investment by an Indian company which is owned and/or controlled by non resident entity/ies?**

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**Ans.** (i) Downstream investment by an Indian company, which is not owned and/ or controlled by resident entity/ies, into another Indian company, would be in accordance/compliance with the relevant sectoral conditions on entry route, conditionalities and caps, with regard to the sectors in which the latter Indian company is operating.

**Note: with effect from 31st day of July 2012 Downstream investment/s made by a banking company,** as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, incorporated in India, which is owned and/or controlled by non-residents/ a non-resident entity/non-resident entities, under **Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment.**

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**However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.**

- (ii) Downstream investments by Indian companies will be subject to the following conditions:
- (a) Such a company has to **notify Secretariat for Industrial Assistance, DIPP and FIPB** of its downstream investment in the form available at <http://www.fipbindia.com> **within 30 days of such investment**, even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);
  - (b) downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of its Board of Directors as also a Shareholders' Agreement, if any;
  - (c) issue/transfer/pricing/valuation of shares shall continue to be in accordance with extant SEBI/RBI guidelines;
  - (d) For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not use funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market. Downstream investments through internal accruals are permissible by an Indian company ~~engaged only in activity of investing in the capital of another Indian company/ies,~~ subject to the provisions of clause (i) above and as also elaborated below:
    - Foreign investment into an Indian company, engaged only in the activity of investing in the capital of other Indian company /ies, will require prior Government/FIPB approval, regardless of the amount or extent of foreign investment. Foreign investment into Non-Banking Finance Companies (NBFCs), carrying on activities approved for FDI, will be subject to the conditions specified in Annex-B of Schedule 1 of FEMA Notification No. 20 dated May 3, 2000 as amended from time to time;
    - Those companies, which are Core Investment Companies (CICs), will have to additionally follow RBI's Regulatory Framework for CICs.
    - For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment. Further, as and when such a company commences business(s) or makes downstream investment, it will have to comply with the relevant sectoral conditions on entry route, conditionalities and caps.

**Note:** Foreign investment into other Indian companies would be in accordance/ compliance with the relevant sectoral conditions on entry route, conditionalities and caps.

**B.50. Whether FDI recipient Indian company at the first level is required to obtain a certificate from the Statutory Auditor for ensuring compliance with the FDI conditionalities?**

**Ans.** The **FDI recipient Indian company at the first level which is responsible for ensuring compliance with the FDI conditionalities** like no indirect foreign investment in prohibited sector, entry route, sectoral cap/conditionalities, etc. **for the downstream investment made by in the subsidiary companies at second level and so on and so forth would obtain a certificate to this effect from its statutory auditor on an annual basis as regards status of compliance with the instructions**

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**on downstream investment and compliance with FEMA provisions.** The fact that statutory auditor has certified that the company is in compliance with the regulations as regards downstream investment and other FEMA prescriptions will be duly **mentioned in the Director's report** in the Annual Report of the Indian company. In case statutory auditor has given a qualified report, the same shall be immediately brought to the notice of the Reserve Bank of India, Foreign Exchange Department (FED), Regional Office (RO) of the Reserve Bank in whose jurisdiction the Registered Office of the company is located and shall also **obtain acknowledgement from the RO of having intimated it of the qualified auditor report.** RO shall file the action taken report to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Central Office Building, Shahid Bhagat Singh Road, Mumbai 400001.

**B.51. What are conditions on downstream investment by a banking company incorporated in India?**

**Ans.** Downstream investment/s made by a banking company, as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, incorporated in India, which is owned and/or controlled by non-residents/ a non-resident entity/non-resident entities, under Corporate Debt Restructuring (CDR), or other loan restructuring mechanism, or in trading books, or for acquisition of shares due to defaults in loans, shall not count towards indirect foreign investment. However, their 'strategic downstream investment' shall count towards indirect foreign investment. For this purpose, 'strategic downstream investments' would mean investment by these banking companies in their subsidiaries, joint ventures and associates.

**B.52. Are there any caps on investments made under FDI Policy?**

**Ans.** Investments can be made by non-residents in the capital of a resident entity only to the extent of the percentage of the total capital as specified in the FDI policy.

**B.53. Are there any Entry Conditions on Investments made under FDI Policy?**

**Ans.** Investments by non-residents can be permitted in the capital of a resident entity in certain sectors/activity with entry conditions. Such conditions may include norms for minimum capitalization, lock-in period, etc. The entry conditions in various sectors/activities are detailed in **Annexure**. In sectors/activities not listed therein, FDI is permitted up to 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

**Permitted Sectors;**

**Agriculture**

- 1 Agriculture & Animal Husbandry
- 2 Tea plantation

**Mining And Petroleum & Natural Gas**

- 3 Mining
- 4 Petroleum & Natural Gas

**Manufacturing**

- 5 Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)
- 6 Defence

**Services Sector**

- 7 Broadcasting
- 8 Print Media
- 9 Civil Aviation
  - 9.1 Civil Aviation
  - 9.2 Airports
  - 9.3 **Air Transport Services**
  - 9.4 **Other services under Civil Aviation sector**
- 10 Courier Services
- 11 Construction Development: Townships, Housing, Built-up infrastructure
- 12 Industrial Parks new and existing
- 13 Satellites – Establishment and operation

- 14 Private Security Agencies
- 15 Telecom Sector
  - 15.1 **Telecom services**
  - 15.2 ISP Services
  - 15.3 Infrastructure Services
- 16 Trading
  - 16.1 **Cash & Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)**
  - 16.2 **E-commerce activities**
  - 16.3 **Test marketing**
  - 16.4 **Single Brand product retail trading**
  - 16.5 **Multi Brand Retail Trading**
- Financial Services**
  17. FINANCIAL SERVICES
    - 17.1 Asset Reconstruction Companies
    - 17.2 Banking –Private sector
    - 17.3 Banking- Public Sector
    - 17.4 Commodity Exchanges
    - 17.5 Credit Information Companies (CIC)
    - 17.6 Infrastructure Company in the Securities Market
    - 17.7 Insurance
    - 17.8 Non-Banking Finance Companies (NBFC)
  2. Merchant Banking
    - (ii) Under Writing
    - (iii) Portfolio Management Services
    - (iv) Investment Advisory Services
    - (v) Financial Consultancy
    - (vi) Stock Broking
    - (vii) Asset Management
    - (viii) Venture Capital
    - (ix) Custodian Services
    - (x) Factoring
    - (xi) Credit Rating Agencies
    - (xii) Leasing & Finance
    - (xiii) Housing Finance
    - (xiv) Forex Broking
    - (xv) Credit Card Business
    - (xvi) Money Changing Business
    - (xvii) Micro Credit
    - (xviii) Rural Credit
- Others**
  - 18 Pharmaceuticals
  - 19 Power Exchanges

**B.54. What are the salient features of the new 'Foreign Portfolio Investment' Scheme?**

**Ans. The extant guidelines for Portfolio Investment Scheme for Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) have since been reviewed and it has been decided to put in place a framework for investments under a new scheme called 'Foreign Portfolio Investment' scheme.**

The salient features of the new scheme are:

- The portfolio investor registered in accordance with SEBI guidelines shall be called 'Registered Foreign Portfolio Investor (RFPI)'. The existing portfolio investor class, namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be subsumed under RFPI;
- RFPI may purchase and sell shares and convertible debentures of Indian company through registered broker on 41ecognized stock exchanges in India as well as purchases shares and convertible debentures which are offered to public in terms of relevant SEBI guidelines/regulations.
- RFPI may sell shares or convertible debentures so acquired

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- a) in open offer in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; or
  - b) in an open offer in accordance with the SEBI (Delisting of Equity shares) Regulations, 2009; or
  - c) through buyback of shares by a listed Indian company in accordance with the SEBI (Buyback of securities) Regulations, 1998.
  - RFPI may also acquire shares or convertible debentures
    - a) in any bid for, or acquisition of, securities in response to an offer for disinvestment of shares made by the Central Government or any State Government; or
    - b) in any transaction in securities pursuant to an agreement entered into with merchant banker in the process of market making or subscribing to unsubscribed portion of the issue in accordance with Chapter XB of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
  - The individual and aggregate investment limits for the RFPIs shall be below 10% (per cent) or 24% (per cent) respectively of the total paid-up equity capital or 10% (per cent) or 24% (per cent) respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps;
  - RFPI shall be eligible to open a Special Non-Resident Rupee (SNRR) account and a foreign currency account with Authorised Dealer bank and to transfer sums from foreign currency account to SNRR account at the prevailing market rate for making genuine investments in securities. The Authorised Dealer bank may transfer repatriable proceeds (after payment of applicable taxes) from SNRR account to foreign currency account;
  - RFPI shall be eligible to invest in government securities and corporate debt subject to limits specified by the RBI and SEBI from time to time;
  - The investment by RFPI will be made subject to the SEBI (FPI) Regulations 2014, modified by SEBI/Government of India from time to time;
  - RFPI shall be permitted to trade in all exchange traded derivative contracts on the stock exchanges in India subject to the position limits as specified by SEBI from time to time;
  - RFPI may offer cash or foreign sovereign securities with AAA rating or corporate bonds or domestic Government Securities, as collateral to the recognized Stock Exchanges for their transactions in the cash as well as derivative segment of the market.

Any foreign institutional investor who holds a valid certificate of registration from SEBI shall be deemed to be a registered foreign portfolio investor (RFPI) till the expiry of the block of three years for which fees have been paid as per the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995. A QFI may continue to buy, sell or otherwise deal in securities subject to the SEBI (FPI) Regulations, 2014 for a period of one year from the date of commencement of these regulations, or until he obtains a certificate of registration as foreign portfolio investor, whichever is earlier.

However, all investments made by that FII/QFI in accordance with the regulations prior to registration as RFPI shall continue to be valid and taken into account for computation of aggregate limit.

RFPI shall report the transaction to RBI as being reported by FII in LEC Form as per extant practice.

Also, please refer the following:

- (i) SEBI circular CIR/IMD/FIIC/02/2014 dated 08.01.2014 - Operational Guidelines for Depository
- (i) The SEBI (Foreign Portfolio Investors) Regulations, 2014 notified on January 07, 2014

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- (ii) SEBI circular CIR/IMD/FIIC/6/2014 dated 28.03.2014 -Commencement of FPI regime
  - (iii) CBDT Notification No. 9/2014/ F. No. 173/10/2014 on Foreign portfolio investors notified as FIIs for purposes of sec 115AD dated 22.01.2014

**B.55. What are the provisions for purchase/sale of shares/convertible debentures of an Indian Company by Registered Foreign Portfolio Investor (RFPI) under Foreign Portfolio Investment (FPI) Scheme?**

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**Ans. Purchase/sale of shares and/or convertible debentures**

A Registered Foreign Portfolio Investor (RFPI) registered in accordance with Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, as amended from time to time, may purchase shares and convertible debentures of an Indian company under FPI Scheme.

**Maintenance of account by a RFPI for routing transactions of purchase and sale of shares/convertible debentures**

- (i) A RFPI may open a Foreign Currency Account and/or a Special Non-Resident Rupee Account with a designated branch of an Authorized Dealer for routing the receipt and payment for transaction relating to purchase and sale of shares/convertible debentures under this Scheme, subject to the following conditions:
  - a) The Account shall be funded by inward remittance through normal banking channels or by credit of sale proceeds (net of taxes) of the shares/convertible debentures sold on stock exchange.
  - b) The funds in the account shall be utilized for purchase of shares/convertible debentures in accordance with the provisions of paragraph 1 of this Scheme or for remittance outside India.
  - c) The funds from Foreign Currency Account of the RFPI may be transferred to Special Non-Resident Rupee account of the same RFPI and vice versa.
  - d) The Foreign Currency Account and the Special Non-Resident Rupee account of the RFPI shall be non-interest bearing account/s.
- (ii) The amount of consideration for purchase of shares/convertible debentures shall be paid out of inward remittance from abroad through normal banking channels or out of funds held in an account maintained with the designated branch of an authorised dealer in India, in accordance with these Regulations.
- (iii) The total holding by each RFPI shall be below 10% (ten per cent) of the total paid-up equity capital or 10% (ten per cent) of the paid-up value of each series of convertible debentures issued by an Indian company and the total holdings of all RFPI put together shall not exceed 24 per cent of paid-up equity capital or paid up value of each series of convertible debentures. The said limit of 24 per cent will be called aggregate limit:

**Provided** that the aggregate limit of 24% referred to in this paragraph may be increased up to the sectoral cap/statutory ceiling, as applicable, by the Indian company concerned by passing a resolution by its Board of Directors followed by passing of a special resolution to that effect by its General Body.

**Explanation :**

- 3. For arriving at the ceiling on holdings of RFPI, shares/ convertible debentures acquired both through primary as well as secondary market will be included. However, the ceiling will not include investment made by RFPI through off-shore Funds, Global Depository Receipts and Euro-Convertible Bonds.
- 4. For computation of 24% or enhanced limit as the case may be, holding of RFPI and deemed RFPI in the investee company shall be included.

(iv) A RFPI is permitted to purchase shares/convertible debentures of an Indian company through offer/private placement, subject to the ceiling specified in sub-paragraph (iii) of this paragraph and the Indian company is permitted to issue such shares:

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**Provided** that—

- a) in case of Public Offer, the price of the shares to be issued is not less than the price at which shares are issued to residents, and
- b) in case of issue by private placement, the price is not less than the price arrived in terms of SEBI guidelines or not less than the fair price worked out as per the Discounted free Cash Flow method duly certified by a SEBI registered Merchant Banker or Chartered Accountant, as applicable.

Explanation:

Where a registered foreign institutional investor or a sub-account, prior to commencement of Securities Exchange Board of India (SEBI) (Foreign Portfolio Investors) Regulations, 2014, holds equity shares in a company whose shares are not listed on any recognized stock exchange, and continues to hold such shares after initial public offering and listing thereof, such shares shall be subject to lock-in for the same period, if any, as is applicable to shares held by a foreign direct investor placed in similar position, under the policy of the Government of India relating to foreign direct investment for the time being in force.

- (v) RFPI may, undertake short selling as well as lending and borrowing of securities subject to such conditions as may be stipulated by the Reserve Bank of India and the SEBI from time to time.

**Remittance of sale proceeds of shares/convertible debentures**

The designated branch of an authorised dealer may allow remittance of net sale proceeds (after payment of taxes) or credit the net amount of sale proceeds of shares / convertible debentures to the foreign currency account or a Special Non-resident Rupee Account of the registered Foreign Portfolio Investor concerned.

The existing class of investors namely, Foreign Institutional Investor (FII) and Qualified Foreign Investor (QFI) registered with SEBI shall be eligible to continue their investment in accordance with SEBI guidelines.

**B.56. What is the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) ) entered into between two persons resident in India?**

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**Ans.** Borrowing and lending of Indian Rupees between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the guarantee provided by a person resident outside India, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The Reserve Bank vide Notification No. FEMA 29/2000-RB dated September 26, 2000 has granted general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.

It has now been decided to **extend the facility of non-resident guarantee under the general permission for non-fund based facilities (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) ) entered into between two persons resident in India.** The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor would continue, as hitherto, as detailed in A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

It has also been decided to introduce a **reporting format to capture such guarantees issued and invoked.** Authorized Dealer Category-I banks are required to furnish such details by all its branches, in a consolidated statement, during the quarter, as per the format in Annex to the Chief General Manager, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11th floor,



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Fort, Mumbai – 400 001 (and in MS-Excel file through email) so as to reach the Department not later than 10th day of the following month.

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**B.57.. Are there any other conditions besides Entry Conditions on Investments made under FDI Policy?**

**Ans.** Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.

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**B.58. What are the provisions regarding investments in Micro and Small Enterprise (MSE)?**

A company which is reckoned as Micro and Small Enterprise (MSE) (earlier Small Scale Industrial Unit) in terms of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, including an Export Oriented Unit or a Unit in Free Trade Zone or in Export Processing Zone or in a Software Technology Park or in an Electronic Hardware Technology Park, and which is not engaged in any activity/sector mentioned in Annex 2 may issue shares or convertible debentures to a person resident outside India (other than a resident of Pakistan and to a resident of Bangladesh under approval route), subject to the prescribed limits as per FDI Policy, in accordance with the Entry Routes and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.

Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for the MSE sector may issue shares to persons resident outside India (other than a resident/entity of Pakistan and to a resident/entity of Bangladesh with prior approval FIPB), to the extent of 24 per cent of its paid-up capital or sectoral cap whichever is lower. Issue of shares in excess of 24 per cent of paid-up capital shall require prior approval of the FIPB of the Government of India and shall be in compliance with the terms and conditions of such approval.

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**B.59. What are the provisions for Remittance of sale proceeds/Remittance on winding up/Liquidation of Companies?**

**Ans. Remittance of sale proceeds/Remittance on Winding up/Liquidation of Companies:**

- (i) Sale proceeds of shares and securities and their remittance is 'Remittance of asset' governed by The Foreign Exchange Management (Remittance of Assets) Regulations 2000 under FEMA.
- (ii) AD Category – I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

**(iii) Remittance on winding up/liquidation of Companies**

AD Category – I banks have been allowed to remit winding up proceeds of companies in India, which are under liquidation, subject to payment of applicable taxes. Liquidation may be subject to any order issued by the court winding up the company or the official liquidator in case of voluntary winding up under the provisions of the Companies Act, 1956. AD Category – I banks shall allow the remittance provided the applicant submits:

- a. No objection or Tax clearance certificate from Income Tax Department for the remittance.
- b. Auditor's certificate confirming that all liabilities in India have been either fully paid or adequately provided for.
- c. Auditor's certificate to the effect that the winding up is in accordance with

	the provisions of the Companies Act, 1956.
d.	In case of winding up otherwise than by a court, an auditor's certificate to the effect that there are no legal proceedings pending in any court in India against the applicant or the company under liquidation and there is no legal impediment in permitting the remittance.
<b>B.60.</b>	<b>Can the sale proceeds of FDI investments is permitted to be credited to NRE/ FCNR accounts of NRIs/ PIOs?</b>
<b>Ans.</b>	Yes.
<b>B.61.</b>	<b>What are the provisions for Repatriation of Dividend?</b>
<b>Ans.</b>	Dividends are freely repatriable without any restrictions (net after Tax deduction at source or Dividend Distribution Tax, if any, as the case may be). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.
<b>B.62.</b>	<b>What are the provisions for Repatriation of Interest?</b>
<b>Ans.</b>	Interest on fully, mandatorily & compulsorily convertible debentures is also freely repatriable without any restrictions (net of applicable taxes). The repatriation is governed by the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.
<b>B.63.</b>	<b>What are the provisions for reporting of FDI?</b>
<b>Ans.</b>	<p><b>Reporting of Inflow</b></p> <p>(i) An Indian company receiving investment from outside India for issuing shares / convertible debentures / preference shares under the FDI Scheme, should report the details of the amount of consideration to the Regional Office concerned of the Reserve Bank not later than 30 days from the date of receipt in the Advance Reporting Form.</p> <p>(ii) Indian companies are required to report the details of the receipt of the amount of consideration for issue of shares / convertible debentures, through an AD Category – I bank, together with a copy/ies of the FIRC/s evidencing the receipt of the remittance along with the KYC report on the non-resident investor from the overseas bank remitting the amount. The report would be acknowledged by the Regional Office concerned, which will allot a Unique Identification Number (UIN) for the amount reported.</p> <p><b>Reporting of issue of shares</b></p> <p>(i) After issue of shares (including bonus and shares issued on rights basis and shares issued under ESOP)/fully, mandatorily &amp; compulsorily convertible debentures / fully, mandatorily &amp; compulsorily convertible preference shares, the Indian company has to file <b>Form FC-GPR</b>, not later than 30 days from the date of issue of shares.</p> <p>(ii) <b>Form FC-GPR</b> has to be duly filled up and signed by Managing Director/Director/Secretary of the Company and submitted to the Authorized Dealer of the company, who will forward it to the Reserve Bank. The following documents have to be submitted along with the form:</p> <p>(a) A certificate from the Company Secretary of the company certifying that:</p> <p>(A) all the requirements of the Companies Act, 1956 have been complied with;</p> <p>(B) terms and conditions of the Government's approval, if any, have been complied with;</p> <p>(C) the company is eligible to issue shares under these Regulations; and</p> <p>(D) the company has all original certificates issued by authorized dealers in India evidencing receipt of amount of consideration.</p> <p>Note: For companies with paid up capital with less than Rs.5 crore, the above mentioned certificate can be given by a practicing company secretary.</p> <p>(b) A certificate from Statutory Auditor or Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.</p>

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- (c) The report of receipt of consideration as well as Form FC-GPR have to be submitted by the AD Category-I bank to the Regional Office concerned of the Reserve Bank under whose jurisdiction the registered office of the company is situated
  - (c) Issue of bonus/rights shares or stock options to persons resident outside India directly or on amalgamation / merger/demerger with an existing Indian company, as well as issue of shares on conversion of ECB / royalty / lumpsum technical know-how fee / import of capital goods by units in SEZs has to be reported in Form FC-GPR.

#### **Reporting of transfer of shares**

Reporting of transfer of shares between residents and non-residents and vice- versa is to be done in **Form FC-TRS**. The Form FC-TRS should be submitted to the AD Category – I bank, within 60 days from the date of receipt of the amount of consideration. The onus of submission of the Form FC-TRS within the given timeframe would be on the transferor / transferee, resident in India. The AD Category – I bank, would forward the same to its link office. The link office would consolidate the Form FC-TRS and submit a monthly report to the Reserve Bank.

#### **Reporting of Non-Cash**

Details of issue of shares against conversion of ECB has to be reported to the Regional Office concerned of the RBI, as indicated below:

- (i) In case of full conversion of ECB into equity, the company shall report the conversion in Form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in Form ECB-2 to the Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051, within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" shall be clearly indicated on top of the Form ECB-2. Once reported, filing of Form ECB-2 in the subsequent months is not necessary.
- (ii) In case of partial conversion of ECB, the company shall report the converted portion in Form FC-GPR to the Regional Office concerned as well as in Form ECB-2 clearly differentiating the converted portion from the non-converted portion. The words "ECB partially converted to equity" shall be indicated on top of the Form ECB-2. In the subsequent months, the outstanding balance of ECB shall be reported in Form ECB-2 to DSIM.

#### **Annual return of Foreign Liabilities and Assets**

In order to capture the statistics **relating to Foreign Direct Investment (FDI), both inward and outward** in a more comprehensive manner as also to align it with international best practices, RBI has been decided to replace Part B of the Form FCGPR by a separate 'Annual Return on Foreign Liabilities and Assets' given as Annex-I to A.P. (DIR Series) Circular No. 45 & 133 dated 15 March, 2011, & 20 June 2012. The return should be submitted by July 15 of every year to the Director, Balance of Payment Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, C-9, 8th floor, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051. Further, **the return should be submitted by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment)** in the previous year(s) including the current year. The Annex to Circular gives the concepts and definitions useful in filling the Annual Return on Foreign Liabilities and Assets.

For details, please refer 'FAQs on Annual Return on Foreign Liabilities and Assets (FLA return)' under Chapter I.

When a person resident outside India, who has established in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, **a branch, office or other place of business, excluding a liaison office, acquires any immovable property in India in accordance with the provision of said regulation, the said person has to file with the Reserve Bank a declaration in the form IPI , not later than ninety days from the date of such acquisition.** As the form is required to be submitted by such persons only, the form is suitably amended to reflect the position.

It is clarified that the extant regulations do not prescribe any reporting requirements

	for transactions where a person resident outside India who is a citizen of India or a Person of Indian Origin (PIO) as defined in Regulation 2(c) of Notification No. FEMA 21/2000-RB, <i>ibid</i> , acquire/s immovable property in India in accordance with the said provisions of the aforesaid Notification. Form IPI has been, accordingly, amended for greater clarity.
<b>B.64.</b>	<b>Is first level Indian investee company making downstream investment required to file FC-GPR?</b>
<b>Ans.</b>	No, it is not required. FC-GPR is not to be filed by the first level Indian investee company at the time of making downstream investment in second level Indian investee company.
<b>B.65.</b>	<b>Whether the payment in terms of foreign technology collaboration agreement' can be made by an Authorised Dealer (AD) bank?</b>
<b>Ans.</b>	Yes, RBI has delegated the powers, to make payments for royalty, lumpsum fee for transfer of technology and payment for use of trademark/brand name in terms of the foreign technology collaboration agreement entered by the Indian company with its foreign partners, to the AD banks subject to compliance with the provisions of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Further, the requirement of registration of the agreement with the Regional Office of Reserve Bank of India has also been done away with.
<b>B.66.</b>	<b>What is the Format for seeking clarifications from DIPP on the FDI policy issues?</b>
<b>Ans.</b>	DIPP will process only the requests, which provide complete details of the issues, in the format annexed to DIPP Notice dated the May 10, 2013.

**ANNEXURE**  
**‘Circular 1 of 2013’- Consolidated FDI Policy &**  
**Master Circular on Foreign Investment in India**  
(Refer Q. B.53)

**Sector-specific Policy for FDI**, subject to applicable laws/ regulations; security and other conditionalities

In the following sectors/activities, FDI up to the limit indicated against each sector/activity is allowed, subject to applicable laws/regulations; security and other conditionalities. In sectors/activities not listed below, FDI is permitted upto 100% on the automatic route, subject to applicable laws/regulations; security and other conditionalities.

Wherever there is a requirement of minimum capitalization, it shall include share premium received along with the face value of the share, only when it is received by the company upon issue of the shares to the non-resident investor. Amount paid by the transferee during post-issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalization requirement;

Sl. No.	Sector/Activity	% of FDI Cap/Equity	Entry Route
<b>AGRICULTURE</b>			
6.2.1	<b>Agriculture &amp; Animal Husbandry</b>		
	(a) Floriculture, Horticulture, Apiculture and Cultivation of Vegetables & Mushrooms under controlled conditions; (b) Development and production of Seeds and planting material; (c) Animal Husbandry (including breeding of dogs), Pisciculture, Aquaculture, under controlled conditions; and (d) services related to agro and allied sectors <b>Note: Besides the above, FDI is not allowed in any other agricultural sector/activity</b>	100%	Automatic
6.2.1.1	<b>Other conditions:</b>		
	I. For companies dealing with development of transgenic seeds/vegetables, the following conditions apply: (i) When dealing with genetically modified seeds or planting material the company shall comply with safety requirements in accordance with laws enacted under the Environment (Protection) Act on the genetically modified organisms. (ii) Any import of genetically modified materials if required shall be subject to the conditions laid down vide Notifications issued under Foreign Trade (Development and Regulation) Act, 1992. (iii) The company shall comply with any other Law, Regulation or Policy governing genetically modified material in force from time to time. (iv) Undertaking of business activities involving the use of genetically engineered cells and material shall be subject to the receipt of approvals from Genetic Engineering Approval Committee (GEAC) and Review Committee on Genetic Manipulation (RCGM). (v) Import of materials shall be in accordance with National Seeds Policy. II. The term “under controlled conditions” covers the following: ♦ ‘Cultivation under controlled conditions’ for the categories of Floriculture, Horticulture, Cultivation of vegetables and Mushrooms is the practice of cultivation wherein rainfall, temperature, solar radiation, air humidity and culture medium are controlled artificially. Control in these parameters may be effected through protected cultivation under green houses, net houses, poly houses or any other improved infrastructure facilities where micro-climatic conditions are regulated anthropogenically. ♦ In case of Animal Husbandry, scope of the term ‘under controlled conditions’ covers –		

	<ul style="list-style-type: none"> <li>♦ Rearing of animals under intensive farming systems with stall-feeding. Intensive farming system will require climate systems (ventilation, temperature/humidity management), health care and nutrition, herd registering/pedigree recording, use of machinery, waste management systems.</li> <li>♦ Poultry breeding farms and hatcheries where micro-climate is controlled through advanced technologies like incubators, ventilation systems etc.</li> <li>♦ In the case of pisciculture and aquaculture, scope of the term 'under controlled conditions' covers - <ul style="list-style-type: none"> <li>■ Aquariums</li> <li>■ Hatcheries where eggs are artificially fertilized and fry are hatched and incubated in an enclosed environment with artificial climate control.</li> <li>■ In the case of apiculture, scope of the term 'under controlled conditions' covers - <ul style="list-style-type: none"> <li>• Production of honey by bee-keeping, except in forest/wild, in designated spaces with control of temperatures and climatic factors like humidity and artificial feeding during lean seasons.</li> </ul> </li> </ul> </li> </ul>		
6.2.2	<b>Tea Plantation</b>		
6.2.2.1	Tea sector including tea plantations <b>Note: Besides the above, FDI is not allowed in any other plantation sector/activity</b>	100%	Government
6.2.2.2	<b>Other conditions:</b>		
	(i) Prior approval of the State Government concerned in case of any future land use change.		
6.2.3	<b>MINING</b>		
6.2.3.1	<b>Mining and Exploration of metal and non-metal ores</b> including diamond, gold, silver and precious ores but excluding titanium bearing minerals and its ores; <b>subject to</b> the Mines and Minerals (Development & Regulation) Act, 1957.	100%	Automatic
6.2.3.2	<b>Coal and Lignite</b>		
	(1) Coal & Lignite mining for captive consumption by power projects, iron & steel and cement units and other eligible activities permitted under and <b>subject to</b> the provisions of Coal Mines (Nationalization) Act, 1973	100%	Automatic
	(2) Setting up coal processing plants like washeries <b>subject to</b> the condition that the company shall not do coal mining and shall not sell washed coal or sized coal from its coal processing plants in the open market and shall supply the washed or sized coal to those parties who are supplying raw coal to coal processing plants for washing or sizing.	100%	Automatic
6.2.3.3	<b>Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities</b>		
6.2.3.3.1	Mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities <b>subject to</b> sectoral regulations and the Mines and Minerals (Development and Regulation Act, 1957)	100%	Government
6.2.3.3.2	<b>Other conditions:</b>		
	<p>India has large reserves of beach sand minerals in the coastal stretches around the country. Titanium bearing minerals viz. Ilmenite, rutile and leucoxene, and Zirconium bearing minerals including zircon are some of the beach sand minerals which have been classified as "prescribed substances" under the Atomic Energy Act, 1962. Under the Industrial Policy Statement 1991, mining and production of minerals classified as "prescribed substances" and specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953 were included in the list of industries reserved for the public sector. Vide Resolution No. 8/1(1)/97-PSU/1422 dated 6th October 1998 issued by the Department of Atomic Energy laying down the policy for exploitation of beach sand minerals, private participation including Foreign Direct Investment (FDI), was permitted in mining and production of Titanium ores (Ilmenite, Rutile and Leucoxene) and Zirconium minerals (Zircon).</p> <p>Vide Notification No. S.O.61(E) dated 18.1.2006, the Department of Atomic Energy re-notified the list of "prescribed substances" under the Atomic Energy Act 1962. Titanium bearing ores and concentrates (Ilmenite, Rutile and Leucoxene) and Zirconium, its alloys and compounds</p>		

	<p>and minerals/concentrates including Zircon, were removed from the list of “prescribed substances”.</p> <p>(i) FDI for separation of titanium bearing minerals &amp; ores will be subject to the following additional conditions viz.:</p> <p>(A) value addition facilities are set up within India along with transfer of technology;</p> <p>(B) disposal of tailings during the mineral separation shall be carried out in accordance with regulations framed by the Atomic Energy Regulatory Board such as Atomic Energy (Radiation Protection) Rules, 2004 and the Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987.</p> <p>(ii) FDI will not be allowed in mining of “prescribed substances” listed in the Notification No. S.O. 61(E) dated 18.1.2006 issued by the Department of Atomic Energy.</p> <p>Clarification:</p> <p>(1) For titanium bearing ores such as Ilmenite, Leucoxene and Rutile, manufacture of titanium dioxide pigment and titanium sponge constitutes value addition. Ilmenite can be processed to produce ‘Synthetic Rutile or Titanium Slag as an intermediate value added product.</p> <p>(2) The objective is to ensure that the raw material available in the country is utilized for setting up downstream industries and the technology available internationally is also made available for setting up such industries within the country. Thus, if with the technology transfer, the objective of the FDI Policy can be achieved, the conditions prescribed at (i) (A) above shall be deemed to be fulfilled.</p>		
<b>6.2.4</b>	<b>Petroleum &amp; Natural Gas</b>		
6.2.4.1	Exploration activities of oil and natural gas fields, infrastructure related to marketing of petroleum products and natural gas, marketing of natural gas and petroleum products, petroleum product pipelines, natural gas/pipelines, LNG Regasification infrastructure, market study and formulation and Petroleum refining in the private sector, <b>subject to</b> the existing sectoral policy and regulatory framework in the oil marketing sector and the policy of the Government on private participation in exploration of oil and the discovered fields of national oil companies	100%	Automatic
6.2.4.2	Petroleum refining by the Public Sector Undertakings (PSU), without any disinvestment or dilution of domestic equity in the existing PSUs.	49%	Automatic
	<b>MANUFACTURING</b>		
<b>6.2.5</b>	<b>Manufacture of items reserved for production in Micro and Small Enterprises (MSEs)</b>		
6.2.5.1	FDI in MSEs (as defined under Micro, Small And Medium Enterprises Development Act, 2006 (MSMED, Act 2006)) will be subject to the sectoral caps, entry routes and other relevant sectoral regulations. Any industrial undertaking which is not a Micro or Small Scale Enterprise, but manufactures items reserved for the MSE sector would require Government route where foreign investment is more than 24% in the capital. Such an undertaking would also require an Industrial License under the Industries (Development & Regulation) Act 1951, for such manufacture. The issue of Industrial License is subject to a few general conditions and the specific condition that the Industrial Undertaking shall undertake to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years. The export obligation would be applicable from the date of commencement of commercial production and in accordance with the provisions of section 11 of the Industries (Development & Regulation) Act 1951.		
<b>6.2.6</b>	<b>DEFENCE</b>		
6.2.6.1	Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951	26%	Up to 26% Government. Above 26% to Cabinet Committee on Security (CCS) on case to case basis, which ensure access to modern and ‘state-of-art’ technology in the country.
6.2.6.2	<b>Other conditions:</b>		
	<p>(i) Licence applications will be considered and licences given by the Department of Industrial Policy &amp; Promotion, Ministry of Commerce &amp; Industry, in consultation with Ministry of Defence.</p> <p>(ii) The applicant should be an Indian company/partnership firm.</p> <p>(iii) The management of the applicant company/partnership should be in Indian hands with majority representation on the Board as well as the Chief Executives of the company/partnership firm being resident Indians.</p>		

	(iv)	Full particulars of the Directors and the Chief Executives should be furnished along with the applications.
	(v)	The Government reserves the right to verify the antecedents of the foreign collaborators and domestic promoters including their financial standing and credentials in the world market. Preference would be given to original equipment manufacturers or design establishments, and companies having a good track record of past supplies to Armed Forces, Space and Atomic energy sections and having an established R & D base.
	(vi)	There would be no minimum capitalization for the FDI. A proper assessment, however, needs to be done by the management of the applicant company depending upon the product and the technology. The licensing authority would satisfy itself about the adequacy of the net worth of the non-resident investor taking into account the category of weapons and equipment that are proposed to be manufactured.
	(vii)	There would be a three-year lock-in period for transfer of equity from one non-resident investor to another non-resident investor (including NRIs & erstwhile OCBs with 60% or more NRI stake) and such transfer would be subject to prior approval of the Government.
	(viii)	The Ministry of Defence is not in a position to give purchase guarantee for products to be manufactured. However, the planned acquisition programme for such equipment and overall requirements would be made available to the extent possible.
	(ix)	The capacity norms for production will be provided in the licence based on the application as well as the recommendations of the Ministry of Defence, which will look into existing capacities of similar and allied products.
	(x)	Import of equipment for pre-production activity including development of prototype by the applicant company would be permitted.
	(xi)	Adequate safety and security procedures would need to be put in place by the licensee once the licence is granted and production commences. These would be subject to verification by authorized Government agencies.
	(xii)	The standards and testing procedures for equipment to be produced under licence from foreign collaborators or from indigenous R & D will have to be provided by the licensee to the Government nominated quality assurance agency under appropriate confidentiality clause. The nominated quality assurance agency would inspect the finished product and would conduct surveillance and audit of the Quality Assurance Procedures of the licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the licensee. Such permission would be for a fixed period and subject to renewals.
	(xiii)	Purchase preference and price preference may be given to the Public Sector organizations as per guidelines of the Department of Public Enterprises.
	(xiv)	Arms and ammunition produced by the private manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other Government entities under the control of the Ministry of Home Affairs and State Governments with the prior approval of the Ministry of Defence. No such item should be sold within the country to any other person or entity. The export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and Defence Public Sector Undertakings. Non-lethal items would be permitted for sale to persons/entities other than the Central of State Governments with the prior approval of the Ministry of Defence. Licensee would also need to institute a verifiable system of removal of all goods out of their factories. Violation of these provisions may lead to cancellation of the licence.
	(xv)	Investment by Foreign Institutional Investors (FIIs) through portfolio investment is not permitted.
	(xvi)	All applications seeking permission of the Government for FDI in defence would be made to the Secretariat of the Foreign Investment Promotion Board (FIPB) in the Department of Economic Affairs.
	(xvii)	Applications for FDI up to 26% will follow the existing procedure with proposals involving inflows in excess of Rs. 1200 crore being approved by Cabinet Committee on Economic Affairs (CCEA). Applications seeking permission of the Government for FDI beyond 26%, will in all cases be examined additionally by the Department of Defence Production (DoDP) from the point of view particularly of access to modern and 'state-of-art' technology.
	(xviii)	Based on the recommendation of the DoDP and FIPB, approval of the Cabinet Committee on Security (CCS) will be sought by the DoDP in respect of cases which are likely to result in access to modern and 'state-of-art' technology in the country.
	(xix)	Proposals for FDI beyond 26% with proposed inflow in excess of Rs. 1200 crores, which are to be approved by CCS will not require further approval of the Cabinet Committee of Economic Affairs (CCEA).
	(xx)	Government decision on applications to FIPB for FDI in defence industry sector will be normally communicated within a time frame of 10 weeks from the date of acknowledgement.
<b>SERVICES SECTOR</b>		
<b>INFORMATION SERVICES</b>		
6.2.7	<b>Broadcasting</b>	
6.2.7.1	<b>Broadcasting Carriage Services</b>	
6.2.7.1.1	(1)	Teleports (setting up of up-linking HUBs/Teleports);
	(2)	Direct to Home (DTH);
		74%
		Automatic up to 49%



	(3) Cable Networks (Multi System Operators (MSOs) operating at National or State or District level and undertaking upgradation of networks towards digitalization and addressability); (4) Mobile TV; (5) Headend-in-the Sky Broadcasting Service (HITS)		Government route beyond 49% and up to 74%
6.2.7.1.2	Cable Networks [Other MSOs not undertaking upgradation of networks towards digitalization and addressability and Local Cable Operators (LCOs)]	49%	Automatic
6.2.7.2	<b>Broadcasting Content Services</b>		
6.2.7.2.1	Terrestrial Broadcasting FM (FM Radio), subject to such terms and conditions, as specified from time to time, by Ministry of Information & Broadcasting, for grant of permission for setting up of FM Radio stations	26%	Government
6.2.7.2.2	<b>Up-linking of 'News &amp; Current Affairs' TV Channels</b>	26%	Government
6.2.7.2.3	<b>Up-linking of Non-'News &amp; Current Affairs' TV Channels/Down-linking of TV Channels</b>	100%	Government
6.2.7.3	FDI for Up-linking/Down-linking TV Channels will be subject to compliance with the relevant Up-linking/Down-linking Policy notified by the Ministry of Information & Broadcasting from time to time.		
6.2.7.4	Foreign Investment (FI) in companies engaged in all the aforesaid services will be subject to relevant regulations and such terms and conditions, as may be specified from time to time, by the Ministry of Information and Broadcasting.		
6.2.7.5	The Foreign Investment (FI) limit in companies engaged in the aforesaid activities shall include, in addition to FDI, investment by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depositary Receipts (ADRs), Global Depositary Receipts (GDRs) and convertible preference shares held by foreign entities.		
6.2.7.6	<p>Foreign investment in the aforesaid broadcasting carriage services will be subject to the following security conditions/terms:</p> <p><b>Mandatory Requirement for Key Executives of the Company</b></p> <p>(i) The majority of Directors on the Board of the Company shall be Indian Citizens.</p> <p>(ii) The Chief Executive Officer (CEO), Chief Officer In-charge of technical network operations and Chief Security Officer should be resident Indian Citizens.</p> <p><b>Security Clearance of Personnel</b></p> <p>(iii) The Company, all Directors on the Board of Directors and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), shareholders who individually hold 10% or more paid-up capital in the company and any other category, as may be specified by the Ministry of Information and Broadcasting from time to time, shall require to be security cleared.</p> <p>In case of the appointment of Directors on the Board of the Company and such key executives like Managing Director/Chief Executive Officer, Chief Financial Officer (CFO), Chief Security Officer (CSO), Chief Technical Officer (CTO), Chief Operating Officer (COO), etc., as may be specified by the Ministry of Information and Broadcasting from time to time, prior permission of the Ministry of Information and Broadcasting shall have to be obtained.</p> <p>It shall be obligatory on the part of the company to also take prior permission from the Ministry of Information and Broadcasting before effecting any change in the Board of Directors.</p> <p>(iv) The Company shall be required to obtain security clearance of all foreign personnel likely to be deployed for more than 60 days in a year by way of appointment, contract, and consultancy or in any other capacity for installation, maintenance, operation or any other services prior to their deployment. The security clearance shall be required to be obtained every two years.</p> <p><b>Permission vis-a-vis Security Clearance</b></p> <p>(v) The permission shall be subject to permission holder/licensee remaining security cleared throughout the currency of permission. In case the security clearance is withdrawn the permission granted is liable to be terminated forthwith.</p> <p>(vi) In the event of security clearance of any of the persons associated with the permission holder/licensee or foreign personnel is denied or withdrawn for any reasons whatsoever, the permission holder/licensee will ensure that the concerned person resigns or his services terminated forthwith after receiving such directives from the Government, failing which the permission/license granted shall be revoked and the company shall be disqualified to hold any such Permission/license in future for a period of five years.</p> <p><b>Infrastructure/Network/Software related requirement</b></p> <p>(vii) The officers/officials of the licensee companies dealing with the lawful interception of Services will be resident India citizens.</p> <p>(viii) Details of infrastructure/network diagram (technical details of the network) could be provided, on a need basis only, to equipment suppliers/manufactures and the affiliate of the licensee company. Clearance from the licensor would be required if such information is to be provided to anybody else.</p>		

	<p>(ix) The Company shall not transfer the subscribers' databases to any person/place outside India unless permitted by relevant Law.</p> <p>(x) The Company must provide traceable identity of their subscribers.</p> <p><b>Monitoring, Inspection and Submission of Information</b></p> <p>(xi) The Company should ensure that necessary provision (hardware/software is available in their equipment for doing the Lawful interception and monitoring from a centralized location as an when required by Government.</p> <p>(xii) The company, at its own costs, shall, on demand by the government or its authorized representative, provide the necessary equipment, services and facilities at designated place(s) for continuous monitoring or the broadcasting service by or under supervision of the Government or its authorized representative.</p> <p>(xiii) The Government of India, Ministry of Information &amp; Broadcasting or its authorized representative shall have the right to inspect the broadcasting facilities. No prior permission/intimation shall be required to exercise the right of Government or its authorized representative to carry out the inspection. The company will, if required by the Government its authorized representative provide necessary facilities for continuous monitoring for any particular aspect of the company's activities and operations. Continuous monitoring, however, will be confined only to security related aspects, including screening of objectionable content.</p> <p>(xiv) The inspection will ordinarily be carried out by the Government of India Ministry of Information &amp; Broadcasting or its authorized representative after reasonable notice, except in circumstances where giving such a notice will defeat the very purpose of the inspection.</p> <p>(xv) The company shall submit such information with respect to its services as may be required by the Government or its authorized representative, in the format as may be required, from time to time.</p> <p>(xvi) The permission holder/licensee shall be liable to furnish the Government of India or its authorized representative or TRAI or its authorized representative, such reports, accounts, estimates, returns or such other relevant information and at such periodic intervals or such times as may be required.</p> <p>(xvii) The service providers should familiarize/train designated officials or the Government or officials of TRAI or its authorized representative(s) in respect of relevant operations/features of their systems.</p> <p><b>National Security Conditions</b></p> <p>(xviii) It shall be open to the licensor to restrict the Licensee Company from operating in any sensitive area from the National Security angle. The Government of India, Ministry of Information and Broadcasting shall have the right to temporally suspend the permission of the permission holder/Licensee in public interest or for national security for such period or periods as it may direct. The company shall immediately comply with any directives issued in this regard failing which the permission issued shall be revoked and the company disqualified to hold any such permission in further for a period of five years.</p> <p>(xix) The company shall not import or utilize any equipment, which are identified as unlawful and/or render network security vulnerable.</p> <p><b>Other conditions</b></p> <p>(xx) Licensor reserves the right to modify these conditions or incorporate new conditions considered necessary in the interest of national security and public interest or for proper provision of broadcasting services.</p> <p>(xxi) Licensee will ensure that broadcasting service installation carried out by it should not become a safety hazard and is not in contravention of any statute, rule or regulation and public policy.]</p>		
<b>6.2.8</b>	<b>Print Media</b>		
6.2.8.1	Publishing of Newspaper and periodicals dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
6.2.8.2	Publication of Indian editions of foreign magazines dealing with news and current affairs	26% (FDI and investment by NRIs/PIOs/FII)	Government
6.2.8.2.1	<b>Other Conditions:</b>		
	<p>(i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non-daily basis, containing public news or comments on public news.</p> <p>(ii) Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information &amp; Broadcasting on 4.12.2008.</p>		
6.2.8.3	Publishing/printing of Scientific and Technical Magazines/specialty journals/periodicals, <b>subject to</b> compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting.	100%	Government

6.2.8.4	Publication of facsimile edition of foreign newspapers	100%	Government
6.2.8.4.1	<b>Other Conditions:</b>		
	(i) FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India. (ii) Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, 1956. (iii) Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.		
<b>6.2.9</b>	<b>Civil Aviation</b>		
6.2.9.1	The Civil Aviation sector includes Airports, Scheduled and Non-Scheduled domestic passenger airlines, Helicopter services/Seaplane services, Ground Handling Services, Maintenance and Repair organizations; Flying training institutes; and Technical training institutions. For the purposes of the Civil Aviation sector: (i) "Airport" means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) of section 2 of the Aircraft Act, 1934; (ii) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or pertaining thereto; (iii) "Air transport service" means a service for the transport by air of persons, mails or any other thing, animate or inanimate, for any kind of remuneration whatsoever, whether such service consists of a single flight or series of flights; (iv) "Air Transport Undertaking" means an undertaking whose business includes the carriage by air of passengers or cargo for hire or reward; (v) "Aircraft component" means any part, the soundness and correct functioning of which, when fitted to an aircraft, is essential to the continued airworthiness or safety of the aircraft and includes any item of equipment; (vi) "Helicopter" means a heavier-than-air aircraft supported in flight by the reactions of the air on one or more power driven rotors on substantially vertical axis; (vii) "Scheduled air transport service" means an air transport service undertaken between the same two or more places and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public; (viii) "Non-Scheduled Air Transport service" means any service which is not a scheduled air transport service and will include Cargo airlines; (ix) "Cargo airlines" would mean such airlines which meet the conditions as given in the Civil Aviation Requirements issued by the Ministry of Civil Aviation; (x) "Seaplane" means an aeroplane capable normally of taking off from and alighting solely on water; (xi) "Ground Handling" means (i) ramp handling, (ii) traffic handling both of which shall include the activities as specified by the Ministry of Civil Aviation through the Aeronautical Information Circulars from time to time, and (iii) any other activity specified by the Central Government to be a part of either ramp handling or traffic handling.		
6.2.9.2	<b>Airports</b>		
	(a) Greenfield projects	100%	Automatic
	(b) Existing projects	100%	Automatic up to 74% Government route beyond 74%
6.2.9.3	<b>Air Transport Services</b>		
	(1) Scheduled Air Transport Service/Domestic Scheduled Passenger Airline	49% FDI (100% for NRIs)	Automatic
	(2) Non-Scheduled Air Transport Service	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(3) Helicopter services/seaplane services requiring DGCA approval	100%	Automatic
6.2.9.3.1	<b>Other conditions:</b>		

	<p>(a) Air Transport Services would include Domestic Scheduled Passenger Airlines; Non-Scheduled Air Transport Services, helicopter and seaplane services.</p> <p>(b) Foreign airlines are allowed to participate in the equity of companies operating Cargo airlines, helicopter and seaplane services, as per the limits and entry routes mentioned above.</p> <p>(c) Foreign airlines are also, henceforth, allowed to invest, in the capital of Indian companies, operating scheduled and non-scheduled air transport services, up to the limit of 49% of their paid-up capital. Such investment would be subject to the following conditions:</p> <p>(i) It would be made under the Government approval route.</p> <p>(ii) The 49% limit will subsume FDI and FII investment.</p> <p>(iii) The investments so made would need to comply with the relevant regulations of SEBI, such as the Issue of Capital and Disclosure Requirements (ICDR) Regulations/Substantial Acquisition of Shares and Takeovers (SAST) Regulations, as well as other applicable rules and regulations.</p> <p>(iv) A Scheduled Operator's Permit can be granted only to a company:</p> <p>(a) that is registered and has its principal place of business within India;</p> <p>(b) the Chairman and at least two-thirds of the Directors of which are citizens of India; and</p> <p>(c) the substantial ownership and effective control of which is vested in Indian nationals.</p> <p>(v) All foreign nationals likely to be associated with Indian scheduled and non-scheduled air transport services, as a result of such investment shall be cleared from security view point before deployment; and</p> <p>(vi) All technical equipment that might be imported into India as a result of such investment shall require clearance from the relevant authority in the Ministry of Civil Aviation.</p> <p>Note: The FDI limits/entry routes, mentioned at paragraphs 6.2.9.3 (1) and 6.2.9.3 (2) above, are applicable in the situation where there is no investment by foreign airlines.</p> <p>(d) The policy mentioned at (c) above is not applicable to M/s Air India Limited.]</p>		
6.2.9.4	<b>Other services under Civil Aviation sector</b>		
	(1) Ground Handling Services subject to sectoral regulations and security clearance	74% FDI (100% for NRIs)	Automatic up to 49% Government route beyond 49% and up to 74%
	(2) Maintenance and Repair organizations; flying training institutes; and technical training institutions	100%	Automatic
<b>6.2.10</b>	<b>Courier services for carrying packages, parcels and other items which do not come within the ambit of the Indian Post Office Act, 1898 and excluding the activity relating to the distribution of letters.</b>	100%	Automatic
<b>6.2.11</b>	<b>Construction Development: Townships, Housing, Built-up infrastructure</b>		
6.2.11.1	Townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure)	100%	Automatic
6.2.11.2	<p>Investment will be subject to the following conditions:</p> <p>(1) Minimum area to be developed under each project would be as under :</p> <p>(i) In case of development of serviced housing plots, a minimum land area of 10 hectares</p> <p>(ii) In case of construction-development projects, a minimum built-up area of 50,000 sq.mts</p> <p>(iii) In case of a combination project, any one of the above two conditions would suffice</p> <p>(2) Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds would have to be brought in within six months of commencement of business of the Company.</p> <p>(3) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. Original investment means the entire amount brought in as FDI. The lock-in period of three years will be applied from the date of receipt of each installment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.</p> <p>(4) At least 50% of each such project must be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. For the purpose of these guidelines, "undeveloped plots" will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available. It will be necessary that the investor provides this infrastructure and obtains the completion certificate from the concerned local body/service agency before he would be</p>		

	<p>allowed to dispose of serviced housing plots.</p> <p>(5) The project shall conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.</p> <p>(6) The investor/investee company shall be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/Municipal/Local Body concerned.</p> <p>(7) The State Government/Municipal/Local Body concerned, which approves the building/development plans, would monitor compliance of the above conditions by the developer.</p> <p>Note:</p> <p>(i) The conditions at (1) to (4) above would not apply to Hotels &amp; Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs.</p> <p>(ii) FDI is not allowed in Real Estate Business.</p>		
<b>6.2.12</b>	<b>Industrial Parks – new and existing</b>	<b>100%</b>	<b>Automatic</b>
6.2.12.1	<p>(i) “Industrial Park” is a project in which quality infrastructure in the form of plots of developed land or built up space or a combination with common facilities, is developed and made available to all the allottee units for the purposes of industrial activity.</p> <p>(ii) “Infrastructure” refers to facilities required for functioning of units located in the Industrial Park and includes roads (including approach roads), water supply and sewerage, common effluent treatment facility, telecom network, generation and distribution of power, air conditioning.</p> <p>(iii) “Common Facilities” refer to the facilities available for all the units located in the industrial park, and include facilities of power, roads (including approach roads), water supply and sewerage, common effluent treatment, common testing, telecom services, air conditioning, common facility buildings, industrial canteens, convention/conference halls, parking, travel desks, security service, first aid center, ambulance and other safety services, training facilities and such other facilities meant for common use of the units located in the Industrial Park.</p> <p>(iv) “Allocable area” in the Industrial Park means-</p> <p>(a) in the case of plots of developed land- the net site area available for allocation to the units, excluding the area for common facilities.</p> <p>(b) in the case of built up space- the floor area and built up space utilized for providing common facilities.</p> <p>(c) in the case of a combination of developed land and built-up space-the net site and floor area available for allocation to the units excluding the site area and built up space utilized for providing common facilities.</p> <p>(v) “Industrial Activity” means manufacturing; electricity; gas and water supply; post and telecommunications; software publishing, consultancy and supply; data processing, database activities and distribution of electronic content; other computer related activities; basic and applied R&amp;D on bio-technology, pharmaceutical sciences/life sciences, natural sciences and engineering; business and management consultancy activities; and architectural, engineering and other technical activities.</p>		
6.2.12.2	<p>FDI in Industrial Parks would not be subject to the conditionalities applicable for construction development projects etc. spelt out in para 6.2.11 above, provided the Industrial Parks meet with the under-mentioned conditions:</p> <p>(i) it would comprise of a minimum of 10 units and no single unit shall occupy more than 50% of the allocable area;</p> <p>(ii) the minimum percentage of the area to be allocated for industrial activity shall not be less than 66% of the total allocable area.</p>		
<b>6.2.13</b>	<b>Satellites – Establishment and operation</b>		
6.2.13.1	Satellites – Establishment and operation, subject to the sectoral guidelines of Department of Space/ISRO	74%	Government
<b>6.2.14</b>	<b>Private Security Agencies</b>	49 %	Government
6.2.15		<b>FDI Cap</b>	<b>Entry Route</b>
	<p><b>Telecom Services (including Telecom Infrastructure Providers Category-I)</b></p> <p>All telecom services including Telecom Infrastructure Providers Category-I, viz. Basic, Cellular, United Access Services, Unified license (Access services), Unified License, National/ International Long Distance, Commercial V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS), All types of ISP licences, Voice Mail/ Audiotex/ UMS, Resale of IPLC, Mobile Number Portability services, Infrastructure Provider Category-I (providing dark fibre, right of way, duct space, tower) except Other Service Providers.</p>	100%	Automatic up to 49% Above 49% Government

6.2.15.1	<b>Other Conditions:</b> FDI upto 100% with 49% under automatic route and beyond 49% through FIPB route subject to observance of licensing and security conditions by licensee as well as investors as notified by the Department of Telecommunications (DoT) from time to time.		
<b>6.2.16</b>	<b>TRADING</b>		
<b>6.2.16.1</b>	<b>(i) Cash &amp; Carry Wholesale Trading/Wholesale Trading (including sourcing from MSEs)</b>	100%	Automatic
6.2.16.1.1	<b>Definition:</b> Cash & Carry Wholesale trading/Wholesale trading, would mean sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Wholesale trading would, accordingly, be sales for the purpose of trade, business and profession, as opposed to sales for the purpose of personal consumption. The yardstick to determine whether the sale is wholesale or not would be the type of customers to whom the sale is made and not the size and volume of sales. Wholesale trading would include resale, processing and thereafter sale, bulk imports with ex-port/ex-bonded warehouse business sales and B2B e-Commerce.		
6.2.16.1.2	<b>Guidelines for Cash &amp; Carry Wholesale Trading/Wholesale Trading (WT):</b> (a) For undertaking WT, requisite licenses/registration/permits, as specified under the relevant Acts/Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained. (b) Except in case of sales to Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when WT are made to the following entities: (I) Entities holding sales tax/VAT registration/service tax/excise duty registration; or (II) Entities holding trade licenses i.e. a license/registration certificate/membership certificate/registration under Shops and Establishment Act, issued by a Government Authority/Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/registration certificate/membership certificate, as the case may be, is itself/himself/herself engaged in a business involving commercial activity; or (III) Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) from Government Authorities/Local Self Government Bodies; or (IV) Institutions having certificate of incorporation or registration as a society or registration as public trust for their self consumption. <b>Note: An Entity, to whom WT is made, may fulfill any one of the 4 conditions.</b> (c) Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/permit etc. number, amount of sale etc. should be maintained on a day to day basis. (d) WT of goods would be permitted among companies of the same group. However, such WT to group companies taken together should not exceed 25% of the total turnover of the wholesale venture (e) WT can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations. (f) A Wholesale/Cash & carry trader cannot open retail shops to sell to the consumer directly.		
<b>6.2.16.2</b>	<b>E-commerce activities</b>	100%	Automatic
6.2.16.2.1	E-commerce activities refer to the activity of buying and selling by a company through the e-commerce platform. Such companies would engage only in Business to Business (B2B) e-commerce and not in retail trading, inter-alia implying that existing restrictions on FDI in domestic trading would be applicable to e-commerce as well.		
<b>6.2.16.4</b>	<b>Single Brand product retail trading</b>	100%	Up to 49% Automatic Above 49% Government
	(1) Foreign Investment in Single Brand product retail trading is aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India, and enhancing competitiveness of Indian enterprises through access to global designs, technologies and management practices.		

	<p>(2) FDI in Single Brand product retail trading would be subject to the following conditions:</p> <p>(a) Products to be sold should be of a 'Single Brand' only. (b) Products should be sold under the same brand internationally i.e. products should be sold under the same brand in one or more countries other than India. (c) 'Single Brand' product-retail trading would cover only products which are branded during manufacturing. (d) A non-resident entity or entities, whether owner of the brand or otherwise, shall be permitted to undertake 'Single Brand' product retail trading in the country for the specific brand, directly or through a legally tenable agreement with the brand owner for undertaking single brand product retail trading. The onus for ensuring compliance with this condition will rest with the Indian entity carrying out single brand product retail trading in India. The investing entity shall provide evidence to this effect at the time of seeking approval, including a copy of the licensing/ franchise/sub-licence agreement, specifically indicating compliance with the above condition. The requisite evidence should be filed with the RBI for the automatic route and SIA/FIPB for cases involving approval. (e) In respect of proposals involving FDI beyond 51%, sourcing of 30% of the value of goods purchased, will be done from India, preferably from MSMEs, village and cottage industries, artisans and craftsmen, in all sectors. The quantum of domestic sourcing will be self-certified by the company, to be subsequently checked, by statutory auditors, from the duly certified accounts which the company will be required to maintain. This procurement requirement would have to be met, in the first instance, as an average of five years' total value of the goods purchased, beginning 1st April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis. For the purpose of ascertaining the sourcing requirement, the relevant entity would be the company, incorporated in India, which is the recipient of FDI for the purpose of carrying out single-brand product retail trading. (f) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of single-brand retail trading.</p> <p>(3) Application seeking permission of the Government for FDI exceeding 49% in a company which proposes to undertake single brand retail trading in India would be made to the Secretariat for Industrial Assistance (SIA) in the Department of Industrial Policy &amp; Promotion. The applications would specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. In case of FDI upto 49% the product/ product categories proposed to be sold except food products would be provided to the RBI.</p> <p>(4) Applications would be processed in the Department of Industrial Policy &amp; Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.</p>		
<b>6.2.16.5</b>	<b>Multi Brand Retail Trading</b>	51%	Government
	<p>(1) FDI in multi brand retail trading, in all products, will be permitted, subject to the following conditions:</p> <p>(i) Fresh agricultural produce, including fruits, vegetables, flowers, grains, pulses, fresh poultry, fishery and meat products, may be unbranded.</p> <p>(ii) Minimum amount to be brought in, as FDI, by the foreign investor, would be US \$ 100 million.</p> <p>(iii) At least 50% of total FDI brought in the first tranche of US \$ 100 million, shall be invested in 'backend infrastructure' within three years, where 'back-end infrastructure' will include capital expenditure on all activities, excluding that on front-end units; for instance, back-end infrastructure will include investment made towards processing, manufacturing, distribution, design improvement, quality control, packaging, logistics, storage, warehouse, agriculture market produce infrastructure etc. Expenditure on land cost and rentals, if any, will not be counted for purposes of back-end infrastructure. Subsequent investment in the backend infrastructure would be made by the MBRT retailer as needed, depending upon its business requirements.</p> <p>(iv) At least 30% of the value of procurement of manufactured/processed products purchased shall be sourced from Indian micro, small and medium industries which have a total investment in plant &amp; machinery not exceeding US \$ 2.00 million. This valuation refers to the value at the time of installation, without providing for depreciation. The 'small industry' status would be reckoned only at the time of first engagement with the retailer and such industry shall continue to qualify as a 'small industry' for this purpose) even if it outgrows the said investment of US\$ 2.00 million, during the course of its relationship with the said retailer. Sourcing from agricultural co-operatives and farmers co-operatives would also be considered in this category. The procurement requirement would have to be met, in the first instance, as an average of five years' total value of the manufactured/processed products purchased, beginning 1<sup>st</sup> April of the year during which the first tranche of FDI is received. Thereafter, it would have to be met on an annual basis.</p>		

	(v) Self-certification by the company, to ensure compliance of the conditions at serial Nos. (ii), (iii) and (iv) above, which could be crosschecked, as and when required. Accordingly, the investors shall maintain accounts, duly certified by statutory auditors.		
	(vi) Retail sales outlets may be set up only in cities with a population of more than 10 lakh as per 2011 Census or any other cities per the decision of the respective State Governments, and may also cover an area of 10 kms around the municipal/urban agglomeration limits of such cities; retail locations will be restricted to conforming areas as per the Master/Zonal Plans of the concerned cities and provision will be made for requisite facilities such as transport connectivity and parking.		
	(vii) Government will have the first right to procurement of agricultural products.		
	(viii) The above policy is an enabling policy only and the State Governments/Union Territories would be free to take their own decisions in regard to implementation of the policy. Therefore, retail sales outlets may be set up in those States/Union Territories which have agreed, or agree in future, to allow FDI in MBRT under this policy. The list of States/Union Territories which have conveyed their agreement is annexed. Such agreement, in future, to permit establishment of retail outlets under this policy, would be conveyed to the Government of India through the Department of Industrial Policy & Promotion and additions would be made to the annexed list accordingly. The establishment of the retail sales outlets will be in compliance of applicable State/Union Territory laws/regulations, such as the Shops and Establishments Act etc.		
	(ix) Retail trading, in any form, by means of e-commerce, would not be permissible, for companies with FDI, engaged in the activity of multi-brand retail trading.		
	(x) Applications would be processed in the Department of Industrial Policy & Promotion, to determine whether the proposed investment satisfies the notified guidelines, before being considered by the FIPB for Government approval.		
	<b>(2) LIST OF STATES/UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1)(viii)</b>		
	1. Andhra Pradesh		
	2. Assam		
	3. Delhi		
	4. Haryana		
	5. Jammu & Kashmir		
	6. Maharashtra		
	7. Manipur		
	8. Rajasthan		
	9. Uttarakhand		
	10. Daman & Diu and Dadra and Nagar Haveli (Union Territories)]		
6.2.17	<b>FINANCIAL SERVICES</b> Foreign investment in other financial services , other than those indicated below, would require prior approval of the Government:		
<b>6.2.17.1</b>	<b>Asset Reconstruction Companies</b>		
6.2.17.1.1	'Asset Reconstruction Company' (ARC) means a company registered with the Reserve Bank of India under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).	100% of paid-up capital of ARC (FDI+FII)	Up to 49% Automatic Above 49% Government
6.2.17.1.2	<b>Other conditions:</b>		
	(i) Persons resident outside India can invest in the capital of Asset Reconstruction Companies (ARCs) registered with Reserve Bank, upto 49% on the automatic route, and beyond 49% on the Government Route..		
	(ii) No sponsor may hold more than 50% of the shareholding in an ARC either by way of FDI or by routing it through an FII controlled by the single sponsor.		
	(iii) The total shareholding of an individual FII shall not exceed 10% of the total paid-up capital.		
	(iv) FIIs registered with SEBI can invest in the Security Receipts (SRs) issued by ARCs registered with Reserve Bank. FIIs can invest up to 74 per cent of each tranche of scheme of SRs. Such investment should be within the FII limit on corporate bonds prescribed from time to time, and sectoral caps under extant FDI Regulations should also be complied with.		
	(v) All investment would be subject to provisions of section 3(3) (f) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.		
<b>6.2.17.2</b>	<b>Banking -Private sector</b>		
6.2.17.2.1	Banking -Private sector	74% including investment by FIIs	Automatic up to 49% Government route beyond 49% and up to 74%
6.2.17.2.2	<b>Other conditions:</b>		
	(1) This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by FIIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ADRs and acquisition of shares from existing shareholders.		



	<p>(2) The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid up capital of the Bank. At all times, at least 26 per cent of the paid up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.</p> <p>(3) The stipulations as above will be applicable to all investments in existing private sector banks also.</p> <p>(4) The permissible limits under portfolio investment schemes through stock exchanges for FIIs and NRIs will be as follows:</p> <p>(i) In the case of FIIs, as hitherto, individual FII holding is restricted to 10 per cent of the total paid-up capital, aggregate limit for all FIIs cannot exceed 24 per cent of the total paid-up capital, which can be raised to 49 per cent of the total paid-up capital by the bank concerned through a resolution by its Board of Directors followed by a special resolution to that effect by its General Body.</p> <p>(a) Thus, the FII investment limit will continue to be within 49 per cent of the total paid-up capital.</p> <p>(b) In the case of NRIs, as hitherto, individual holding is restricted to 5 per cent of the total paid-up capital both on repatriation and non-repatriation basis and aggregate limit cannot exceed 10 per cent of the total paid-up capital both on repatriation and non-repatriation basis. However, NRI holding can be allowed up to 24 per cent of the total paid-up capital both on repatriation and non-repatriation basis provided the banking company passes a special resolution to that effect in the General Body.</p> <p>(c) Applications for foreign direct investment in private banks having joint venture/subsidiary in insurance sector may be addressed to the Reserve Bank of India (RBI) for consideration in consultation with the Insurance Regulatory and Development Authority (IRDA) in order to ensure that the 26 per cent limit of foreign shareholding applicable for the insurance sector is not being breached.</p> <p>(d) Transfer of shares under FDI from residents to non-residents will continue to require approval of RBI and Government as per para 3.6.2 above as applicable.</p> <p>(e) The policies and procedures prescribed from time to time by RBI and other institutions such as SEBI, D/o Company Affairs and IRDA on these matters will continue to apply.</p> <p>(f) RBI guidelines relating to acquisition by purchase or otherwise of shares of a private bank, if such acquisition results in any person owning or controlling 5 per cent or more of the paid up capital of the private bank will apply to non-resident investors as well.</p> <p>(ii) Setting up of a subsidiary by foreign banks</p> <p>(a) Foreign banks will be permitted to either have branches or subsidiaries but not both.</p> <p>(b) Foreign banks regulated by banking supervisory authority in the home country and meeting Reserve Bank's licensing criteria will be allowed to hold 100 per cent paid up capital to enable them to set up a wholly-owned subsidiary in India.</p> <p>(c) A foreign bank may operate in India through only one of the three channels viz., (i) branches (ii) a wholly-owned subsidiary and (iii) a subsidiary with aggregate foreign investment up to a maximum of 74 per cent in a private bank.</p> <p>(d) A foreign bank will be permitted to establish a wholly-owned subsidiary either through conversion of existing branches into a subsidiary or through a fresh banking license. A foreign bank will be permitted to establish a subsidiary through acquisition of shares of an existing private sector bank provided at least 26 per cent of the paid capital of the private sector bank is held by residents at all times consistent with para (i) (b) above.</p> <p>(e) A subsidiary of a foreign bank will be subject to the licensing requirements and conditions broadly consistent with those for new private sector banks.</p> <p>(f) Guidelines for setting up a wholly-owned subsidiary of a foreign bank will be issued separately by RBI</p> <p>(g) All applications by a foreign bank for setting up a subsidiary or for conversion of their existing branches to subsidiary in India will have to be made to the RBI.</p> <p>(iii) At present there is a limit of ten per cent on voting rights in respect of banking companies, and this should be noted by potential investor. Any change in the ceiling can be brought about only after final policy decisions and appropriate Parliamentary approvals.</p>		
<b>6.2.17.3</b>	<b>Banking- Public Sector</b>		
6.2.17.3.1	Banking- Public Sector <b>subject to</b> Banking Companies (Acquisition & Transfer of Undertakings) Acts 1970/80. This ceiling (20%) is also applicable to the State Bank of India and its associate Banks.	20% (FDI and Portfolio Investment)	Government
<b>6.2.17.4</b>	<b>Commodity Exchanges</b>		
6.2.17.4.1	1. Futures trading in commodities are regulated under the Forward Contracts (Regulation)		

	<p>Act, 1952. Commodity Exchanges, like Stock Exchanges, are infrastructure companies in the commodity futures market. With a view to infuse globally acceptable best practices, modern management skills and latest technology, it was decided to allow foreign investment in Commodity Exchanges.</p> <p>2. For the purposes of this chapter,</p> <p>(i) "Commodity Exchange" is a recognized association under the provisions of the Forward Contracts (Regulation) Act, 1952, as amended from time to time, to provide exchange platform for trading in forward contracts in commodities.</p> <p>(ii) "recognized association" means an association to which recognition for the time being has been granted by the Central Government under Section 6 of the Forward Contracts (Regulation) Act, 1952</p> <p>(iii) "Association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative.</p> <p>(iv) "Forward contract" means a contract for the delivery of goods and which is not a ready delivery contract.</p> <p>(v) "Commodity derivative" means-</p> <ul style="list-style-type: none"> <li>♦ a contract for delivery of goods, which is not a ready delivery contract; or</li> <li>♦ a contract for differences which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Forward Markets Commission by the Central Government, but does not include securities.</li> </ul>		
6.2.17.4.2	<b>Policy for FDI in Commodity Exchange</b>	49% (FDI & FII) [Investment by Registered FII under Portfolio Investment Scheme (PIS) will be limited to 23% and Investment under FDI Scheme limited to 26%]	Automatic
6.2.17.4.3	<p><b>Other conditions:</b></p> <p>(i) FII purchases shall be restricted to secondary market only and</p> <p>(ii) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies.</p> <p>(iii) Foreign investment in commodity exchanges will be subject to the guidelines of the Department of Consumer Affairs/ Forward Markets Commission (FMC).</p>		
<b>6.2.17.5</b>	<b>Credit Information Companies (CIC)</b>		
6.2.17.5.1	Credit Information Companies	74% (FDI & FII)	Automatic
6.2.17.5.2	<b>Other Conditions:</b>		
	<p>(1) Foreign investment in Credit Information Companies is subject to the Credit Information Companies (Regulation) Act, 2005.</p> <p>(2) Foreign investment is permitted under the Government route, subject to regulatory clearance from RBI.</p> <p>(3) Investment by a registered FII under the Portfolio Investment Scheme would be permitted up to 24% only in the CICs listed at the Stock Exchanges, within the overall limit of 74% for foreign investment.</p> <p>(4) Such FII investment would be permitted subject to the conditions that:</p> <p>(a) No single entity should directly or indirectly hold more than 10% equity.</p> <p>(b) Any acquisition in excess of 1% will have to be reported to RBI as a mandatory requirement; and</p> <p>(c) FIIs investing in CICs shall not seek a representation on the Board of Directors based upon their shareholding.</p>		
<b>6.2.17.6</b>	<b>Infrastructure Company in the Securities Market</b>		
6.2.17.6.1	Infrastructure companies in Securities Markets, namely, stock exchanges, depositories and clearing corporations, in compliance with SEBI Regulations	49% (FDI & FII) [FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital]	Automatic
<b>6.2.17.6.2</b>	<b>Other Conditions:</b>		
6.2.17.6.2.1	FII can invest only through purchases in the secondary market		
<b>6.2.17.7</b>	<b>Insurance</b>		
6.2.17.7.1	Insurance	26%	Automatic
6.2.17.7.1	<p>(i) Insurance Company</p> <p>(ii) Insurance Brokers</p> <p>(iii) Third party Administrators</p> <p>(iv) Surveyors and Loss Assessors</p>	<b>26% (FDI+FII+NRI)</b>	Automatic
6.2.17.7.2	Other conditions		

	<p>(1) FDI in the Insurance sector, as prescribed in the Insurance Act, 1938, is allowed under the automatic route.</p> <p>(2) This will be subject to the condition that Companies bringing in FDI shall obtain necessary license from the Insurance Regulatory &amp; Development Authority for undertaking insurance activities.</p> <p>(3) The provisions of paragraphs 6.2.17.2.2(4)(i) (c) &amp; (e), relating to 'Banking -Private Sector', shall be applicable in respect of bank promoted insurance companies.</p> <p>(4) Indian <b>Insurance Company</b> is defined as a company:</p> <p>(a) which is formed and registered under the Companies Act, 1956;</p> <p>(b) in which the aggregate holdings of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees, do not exceed 26% paid-up equity capital of such Indian insurance company;</p> <p>(c) whose sole purpose is to carry on life insurance business or re-insurance business.</p> <p>(5) As per IRDA (Insurance Brokers) Regulations, 2002, "<b>insurance broker</b>" means a person for the time-being licensed by the Authority under regulation 11, who for remuneration arranges insurance contracts with insurance companies and/or reinsurance companies on behalf of his clients.</p> <p>(6) As per IRDA (TPA - Health Services) Regulations, 2001, "<b>TPA</b>" means a Third Party Administrator who, for the time being, is licensed by the Authority, and is engaged, for a fee or remuneration, by whatever name called as may be specified in the agreement with an insurance company, for the provision of health services.</p> <p>(7) <b>Surveyors and Loss Assessors</b> will be governed by the IRDA Insurance Surveyors and Loss Assessors (Licencing, Professional Requirements and Code of Conduct) Regulations, 2000.</p>		
<b>6.2.17.8</b>	<b>Non-Banking Finance Companies (NBFC)</b>		
6.2.17.8.1	<p>Foreign investment in NBFC is allowed under the automatic route in only the following activities:</p> <p>(i) Merchant Banking</p> <p>(ii) Under Writing</p> <p>(iii) Portfolio Management Services</p> <p>(iv) Investment Advisory Services</p> <p>(v) Financial Consultancy</p> <p>(vi) Stock Broking</p> <p>(vii) Asset Management</p> <p>(viii) Venture Capital</p> <p>(ix) Custodian Services</p> <p>(x) Factoring</p> <p>(xi) Credit Rating Agencies</p> <p>(xii) Leasing &amp; Finance</p> <p>(xiii) Housing Finance</p> <p>(xiv) Forex Broking</p> <p>(xv) Credit Card Business</p> <p>(xvi) Money Changing Business</p> <p>(xvii) Micro Credit</p> <p>(xviii) Rural Credit</p>	100%	Automatic
<b>6.2.17.8.2</b>	<b>Other Conditions:</b>		
	<p>(1) Investment would be subject to the following minimum capitalization norms:</p> <p>(i) US \$0.5 million for foreign capital up to 51% to be brought upfront</p> <p>(ii) US \$ 5 million for foreign capital more than 51% and up to 75% to be brought upfront</p> <p>(iii) US \$ 50 million for foreign capital more than 75% out of which US\$ 7.5 million to be brought upfront and the balance in 24 months.</p> <p>(iv) NBFCs (i) having foreign investment more than 75% and up to 100%, and (ii) with a minimum capitalisation of US\$ 50 million, can set up step down subsidiaries for specific NBFC activities, without any restriction on the number of operating subsidiaries and without bringing in additional capital. The minimum capitalization condition as mandated by para 3.10.4.1 of the above Circular, therefore, shall not apply to downstream subsidiaries.</p> <p>(v) Joint Venture operating NBFCs that have 75% or less than 75% foreign investment can also set up subsidiaries for undertaking other NBFC activities, subject to the subsidiaries also complying with the applicable minimum capitalisation norm mentioned in (i), (ii) and (iii) above and (vi) below.</p>		

	<p>(vi) Non- Fund based activities : US \$0.5 million to be brought upfront for all permitted non-fund based NBFCs irrespective of the level of foreign investment subject to the following condition: It would not be permissible for such a company to set up any subsidiary for any other activity, nor it can participate in any equity of an NBFC holding/operating company.</p> <p><b>Note:</b> The following activities would be classified as Non-Fund Based activities:</p> <p>(a) Investment Advisory Services (b) Financial Consultancy (c) Forex Broking (d) Money Changing Business (e) Credit Rating Agencies (vii) This will be subject to compliance with the guidelines of RBI.</p> <p><b>Note:</b></p> <p>(i) Credit Card business includes issuance, sales, marketing &amp; design of various payment products such as credit cards, charge cards, debit cards, stored value cards, smart card, value added cards etc. (ii) Leasing &amp; Finance covers only financial leases and not operating leases.</p> <p>(2) The NBFC will have to comply with the guidelines of the relevant regulator/s, as applicable</p>		
<b>6.2.18</b>	<b>Pharmaceuticals</b>		
6.2.18.1	Greenfield	100%	Automatic
6.2.18.2	Brownfield	100%	Government
	<p><b>Note:</b> Government may incorporate appropriate conditions for FDI in brownfield cases, at the time of granting approval. 'Non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.</p>		
<b>6.2.19</b>	<b>Power Exchanges</b>		
6.2.19.1	Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010	49% (26%FDI+ 23%FII)	Automatic
<b>6.2.19.2</b>	<b>Other conditions:</b>		
	<p>(i) Such foreign investment would be subject to an FDI limit of 26 per cent and an FII limit of 23 per cent of the paid-up capital; (iii) FII purchases shall be restricted to secondary market only; (iv) No non-resident investor/entity, including persons acting in concert, will hold more than 5% of the equity in these companies; and (v) The foreign investment would be in compliance with SEBI Regulations; other applicable laws/regulations; security and other conditionalities.</p>		

For detailed conditions etc. on specific sector/activity, please refer latest Consolidated FDI Policy by DIPP released every year in April.

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**CHAPTER C - ESTABLISHMENT OF LIAISON / BRANCH / PROJECT OFFICES IN INDIA  
BY FOREIGN ENTITIES**

**C. 1. What is the meaning of a Foreign Company; Branch; Liaison Office; Project Office and Site Office or any other place of business?**

**Ans.** “**Foreign Company**” means a body corporate incorporated outside India, and includes a firm or other association of individuals.

“**Branch**” shall have the meaning assigned to it in sub-section (9) of section 2 of the Companies Act, 1956 (1 of 1956). **It includes** the following:

- any establishment described as a branch by the company; or
- any establishment carrying on either the same or substantially the same activities as that carried on by the head office of the company; or
- any establishment engaged in any production, processing or manufacture, but does not include any establishment specified in any order made by the Central Government under Section 8 of the Companies Act.

“**Liaison Office**” means a place of business to act as a channel of communication between the principal place of business or head office by whatever name called and entities in India but which does not undertake any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

“**Project Office**” means a place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office.

“**Site Office**” means a sub-office of the Project Office established at the site of a project but does not include a Liaison Office.

**C.2. Whether a body corporate incorporated outside India (including a firm or other association of individuals) and NGOs/NPOs permitted to open a Liaison Office (LO) / Branch Office (BO) in India?**

**Ans.** A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. The applications from such entities in Form FNC will be considered by Reserve Bank under two routes:

- (a) Reserve Bank Route: Where principal business of the foreign entity falls under sectors where 100 per cent Foreign Direct Investment (FDI) is permissible under the automatic route.
- (b) Government Route: Where principal business of the foreign entity falls under the sectors where 100 per cent FDI is not permissible under the automatic route. Applications from entities falling under this category and those from Non - Government Organisations / Non - Profit Organisations / Government Bodies / Departments are considered by the Reserve Bank in consultation with the Ministry of Finance, Government of India.

Permission to establish offices (**Liaison Office / Branch Office / Project Office**), in India by foreign **Non-Government Organisations/Non-Profit Organisations/ Foreign Government Bodies/ Departments**, by whatever name called, are under the **Government Route** - whether Project Office or otherwise.

**C.3. Are firm or other association of individuals / Proprietary concerns set up abroad cannot establish LO/BO in India?**

**Ans.** **Firm or other association of individuals** / Proprietary concerns set up abroad cannot establish LO/BO in India.

**C.4. What are the factors considered (i.e. profit making trade record and Net Worth) by RBI while sanctioning Liaison/Branch Offices of foreign entities?**

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**Ans.** The following additional criteria are considered by the Reserve Bank while sanctioning Liaison/Branch Offices of foreign entities:

- Track Record:

For Branch Office: a profit making track record during the immediately preceding five financial years in the home country.

For Liaison Office: a profit making track record during the immediately preceding three financial years in the home country.

- Net Worth [total of paid-up capital and free reserves, less intangible assets as per the latest Audited Balance Sheet or Account Statement certified by a Certified Public Accountant or any Registered Accounts Practitioner by whatever name]:

For Branch Office: not less than USD 100,000 or its equivalent.

For Liaison Office: not less than USD 50,000 or its equivalent.

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**C.5. What is the procedure to apply for the establishment of BO / LO in India?**

**Ans.** The application for establishing BO / LO in India should be forwarded by the foreign entity through a designated AD Category - I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Fort, Mumbai-400 001, along with the prescribed documents including

- English version of the Certificate of Incorporation / Registration or Memorandum & Articles of Association attested by Indian Embassy / Notary Public in the Country of Registration.
- Latest Audited Balance Sheet of the applicant entity.

Applicants who do not satisfy the eligibility criteria and are subsidiaries of other companies can submit a Letter of Comfort from their parent company as per prescribed Annex -2, subject to the condition that the parent company satisfies the eligibility criteria as prescribed above. The designated AD Category - I bank should exercise due diligence in respect of the applicant's background, antecedents of the promoter, nature and location of activity, sources of funds, etc. and also ensure compliance with the KYC norms before forwarding the application together with their comments/ recommendations to the Reserve Bank.

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**C.6. Whether any identification number allotted to newly established Branch / Liaison offices by RBI?**

**Ans.** Yes. The Branch / Liaison offices established with the Reserve Bank's approval will be allotted a Unique Identification Number (UIN).

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**C.7. Whether BOs / LOs are required to obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India?**

**Ans.** Yes. The BOs / LOs shall obtain PAN from the Income Tax Authorities on setting up the offices in India.

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**C.8. What are the permissible activities for a Liaison Office?**

**Ans.** A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by an AD Category I bank.



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A Liaison Office can undertake the following activities in India:

- i. Representing in India the parent company / group companies.
- ii. Promoting export / import from / to India.
- iii. Promoting technical/financial collaborations between parent/group companies and companies in India.
- iv. Acting as a communication channel between the parent company and Indian companies.

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**C.9. Can Foreign Insurance Companies / Banks establish Liaison Offices in India?**

**Ans.** Foreign Insurance companies can establish Liaison Offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA).

Foreign banks can establish Liaison Offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

Also, the application for extension of the validity period of the LOs of banks and entities engaged in insurance business has to be directly submitted to the Department of Banking Operations and Development, Reserve Bank and Insurance Regulatory and Development Authority (IRDA), respectively as stipulated by them, as hitherto.

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**C.10. Are foreign law firms permitted to open liaison offices in India?**

**Ans.** As held in the latest case law, Supreme Court of India vs. A.K. Balaji, no permission is to be granted by RBI to foreign law firms to open liaison offices in India under section 29 of Foreign Exchange Regulation Act, 1973.

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**C.11. Can designated AD Category - I banks extend the validity period of LOs? If yes, what are the conditions?**

**Ans.** The designated AD Category - I bank may extend the validity period of LOs for a period of 3 years from the date of expiry of the original approval / extension granted by the Reserve Bank, if the applicant has complied with the following conditions and the application is otherwise in order:

- The LO should have submitted the Annual Activity Certificates for the previous years and
- The account of the LO maintained with the designated AD Category – I bank is being operated in accordance with the terms and conditions stipulated in the approval.

Such extension has to be granted, as expeditiously as possible, within a period of one month from the receipt of the request under intimation to the Regional Office concerned of the Reserve Bank and to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai 400 001, quoting the reference number of the original approval letter and the UIN.

At the time of **renewal of permission** of LOs by AD banks, they may note to endorse a **copy of each such renewal to the office of the DGIT** (international Taxation).

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**C.12. Can designated AD Category - I banks extend the validity period for LOs of entities which are NBFCs and those engaged in construction and development sectors? What options are available with such entities upon expiry of the validity period?**

**Ans.** No extension would be considered for LOs of entities which are NBFCs and those engaged in construction and development sectors (excluding infrastructure development companies). Upon expiry of the validity period, these entities have to either close down or be converted into a Joint Venture (JV) / Wholly Owned Subsidiary (WOS), in conformity with the extant Foreign Direct Investment policy.

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**C.13. What are the permissible and non-permissible activities for a Branch Office?**

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- Ans.** a) Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India:
- Export / Import of goods: Procurement of goods for export and sale of goods after import are allowed only on wholesale basis.
  - Rendering professional or consultancy services.
  - Carrying out research work, in areas in which the parent company is engaged.
  - Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
  - Representing the parent company in India and acting as buying / selling agent in India.
  - Rendering services in information technology and development of software in India.
  - Rendering technical support to the products supplied by parent/group companies.
  - Foreign airline / shipping company.

Normally, the Branch Office should be engaged in the activity in which the parent company is engaged.

- Retail trading activities of any nature is not allowed for a Branch Office in India.
- A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.

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**C.14. Are profits earned by the Branch Offices remittable from India?**

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- Ans.** Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

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**C.15. Are foreign companies permitted to establish a Branch Office in Special Economic Zones (SEZs)? If yes, What are the conditions?**

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- Ans.** Reserve Bank has given general permission to foreign companies for establishing branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities. The general permission is subject to the following conditions:
- such units are functioning in those sectors where 100 per cent FDI is permitted;
  - such units comply with part XI of the Companies Act, 1956 (Section 592 to 602); and
  - such units function on a stand-alone basis.

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**C.16. What kind of approval is required by Foreign banks for opening branch office in India?**

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- Ans.** Foreign banks do not require separate approval under FEMA, for opening branch office in India. Such banks are, however, required to obtain necessary approval under the provisions of the Banking Regulation Act, 1949, from Department of Banking Operations & Development, Reserve Bank.

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**C.17. What is the responsibility of a branch office in the event of winding-up of business?**

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- Ans.** In the event of winding-up of business and for remittance of winding-up proceeds, the branch shall approach an AD Category – I bank with the documents as mentioned under "Closure of Liaison / Branch Office".

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**C.18. What is the procedure to submit application for undertaking additional activities or additional branch / liaison offices?**

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- Ans.** Requests for undertaking activities in addition to what has been permitted initially by

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the Reserve Bank may be submitted through the designated AD Category -I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai, justifying the need with comments of the designated AD Category - I bank.

Requests for establishing additional BO / LOs may be submitted through fresh FNC form, duly signed by the authorized signatory of the foreign entity in the home country to the Reserve Bank of India as explained above. However, the documents mentioned in form FNC need not be resubmitted, if there are no changes to the documents already submitted earlier.

- If the number of Offices exceeds 4 (i.e. one BO / LO in each zone viz; East, West, North and South), the applicant has to justify the need for additional office/s.
- The applicant may identify one of its Offices in India as the Nodal Office, which will coordinate the activities of all Offices in India.

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**C.19. Are Branch or Liaison Offices allowed to print or re-print?**

**Ans.** M/HRD has conveyed that under FEMA, Branch or Liaison Offices are neither allowed to print nor re-print.

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**C.20. What are the requirements of filing of Annual Activity Certificate by branch/liaison offices?**

**Ans.** Branch Offices / Liaison Offices have to file Annual Activity Certificate (AAC) from Chartered Accountants, at the end of March 31, along with the audited Balance Sheet on or before September 30 of that year. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet to the designated AD Category I bank, and a copy to the DGIT (International Taxation), New Delhi.

The certificates are to be filed by the following offices as applicable:

- (a) In case of a sole BO/LO, by the BO/LO concerned;
- (b) In case of multiple BO/LO, a combined Annual Activity Certificate in respect of all Offices in India by the Nodal Office of the BO/LOs.

The designated AD Category - I bank shall scrutinize the Annual Activity Certificate and ensure that the activities undertaken by the BO/LO are being carried out in accordance with the terms and conditions of the approval given by the Reserve Bank. In the event of any adverse findings being reported by the Auditor or noticed by the designated AD Category -I bank, the same should be reported immediately by the designated AD Category-I bank to the respective Regional Office of the Reserve Bank in respect of LOs and to the Central Office of the Reserve Bank in the case of BOs, along with the copy of the Annual Activity Certificate and their comments thereon.

Copies of the **AACs submitted to the DGIT** (International Taxation) should be **accompanied by audited financial statements including receipt and payment account.**

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**C.21. What are the documents required to be submitted by the company at the time of closure of branch/liaison offices?**

**Ans.** At the time of winding up of Branch/Liaison offices the company has to approach the designated AD Category - I bank with the following documents:

- a) Copy of the Reserve Bank's permission/ approval from the sectoral regulator(s) for establishing the BO / LO.
- b) Auditor's certificate- i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets; ii) confirming that all liabilities in India including arrears of gratuity and other benefits to

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- employees, etc., of the Office have been either fully met or adequately provided for; and iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.
  - c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.
  - d) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.
  - e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.
  - f) Any other document/s, specified by the Reserve Bank while granting approval.

**C.22. What are the duties of designated AD Category - I banks at the time of intimation of closure of branch/liaison offices?**

**Ans.** The designated AD Category - I banks has to ensure that the BO / LOs had filed their respective Annual Activity Certificates with the Reserve Bank for the previous years, in respect of the existing Branch/Liaison Offices. Confirmation about the same can be obtained from the Central Office of the Reserve Bank in the case of BOs and from the Regional Office concerned in the case of LOs.

Closure of such BO / LO has to be reported by the designated AD Category - I bank to the Reserve Bank (the Regional Office concerned for LOs and Central Office for BOs), along with a declaration stating that all the necessary documents submitted by the BO / LO have been scrutinized and found to be in order. If the documents are not found in order or cases are not covered under delegated powers, the AD Category - I bank may forward the application to the Reserve Bank, with their observations, for necessary action. All the documents relating to the BO / LO operations may be retained by the AD Category - I bank for verification by the internal auditors of the AD / inspecting officers of the Reserve Bank.

**C.23. Whether foreign companies are permitted to establish Project Offices in India? If yes, what are the conditions?**

**Ans.** Reserve Bank has granted general permission to foreign companies to establish Project Offices in India, provided they have secured a contract from an Indian company to execute a project in India, and

- i. the project is funded directly by inward remittance from abroad; or
- ii. the project is funded by a bilateral or multilateral International Financing Agency; or
- iii. the project has been cleared by an appropriate authority; or
- iv. a company or entity in India awarding the contract has been granted Term Loan by a Public Financial Institution or a bank in India for the project.

However, if the above criteria are not met or if the parent entity is established in Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, **Hong Kong or Macau**, such applications have to be forwarded to the Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai for approval.

**C.24. Can AD Category – I banks open non-interest bearing Foreign Currency Account for Project Offices in India?**

**Ans.** AD Category – I banks can open non-interest bearing Foreign Currency Account for Project Offices in India subject to the following:

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority concerned.
- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project Office can open two Foreign Currency Accounts, usually one denominated in USD and other in home currency, provided both are

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- iv. maintained with the same AD category-I bank.
  - iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/group company abroad or bilateral / multilateral international financing agency.
  - v. The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the branch concerned of the AD. Further, the Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.
  - vi. The Foreign Currency accounts have to be closed at the completion of the Project.

**C.25. Can AD Category – I banks permit intermittent remittances by Project Offices pending winding up / completion of the project?**

- Ans.** AD Category – I bank can permit intermittent remittances by Project Offices pending winding up / completion of the project provided they are satisfied with the bonafides of the transaction, subject to the following:
- a) The Project Office submits an Auditors' / Chartered Accountants' Certificate to the effect that sufficient provisions have been made to meet the liabilities in India including Income Tax, etc.
  - b) An undertaking from the Project Office that the remittance will not, in any way, affect the completion of the Project in India and that any shortfall of funds for meeting any liability in India will be met by inward remittance from abroad.

**C.26. Is Inter-Project transfer of funds permitted?**

- Ans.** Inter-Project transfer of funds requires prior permission of the Regional Office concerned of the Reserve Bank under whose jurisdiction the Project Office is situated.

**C.27. What are the Reporting requirements for a foreign company establishing a Project Office in India?**

- Ans.** (i) The foreign company establishing a Project Office in India is to furnish report through the concerned AD branch, to the concerned Regional Office of Reserve Bank of India under whose jurisdiction the Project Office is set up, incorporating the following details.
- a. Name and address of the Foreign Company,
  - b. Reference Number and date of letter awarding the contract referred to in clause (ii) of Regulation 5 of Notification No. FEMA 22/2000-RB dated May 3, 2000,
  - c. Particulars of the authority awarding the projects / contract,
  - d. The total amount of contract,
  - e. Address / e-mail address / telephone number / fax number of the Project Office,
  - f. Tenure of Project Office,
  - g. Brief details of the Project undertaken,
  - h. AD branch with whom the account has been opened and the foreign currency in which the account is opened, and
  - i. An undertaking to the effect that the Project Office is eligible to avail of the General Permission under Regulation 5(ii) to RBI Notification No.22 / 2000 – RB dated May 3, 2000 read with Notification No. FEMA 95 dated July 2, 2003 showing the reason thereof.

This Report shall be forwarded through the AD branch to the Regional Office concerned of the Reserve Bank of India within 2 months of establishment of the Project Office.

- ii. The Project Office shall also submit to the AD branch on an annual basis, a Certificate from a Chartered Accountant showing the Project Status and certifying that the accounts of the Project Office has been audited and the activities undertaken are in conformity with the General / Specific permission

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given by the Reserve Bank.

**C.28. Whether Branch Offices are permitted to remit outside India profit of the branch? What are the documents required to be submitted to facilitate such remittance?**

- Ans.** Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected:
- a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year
  - b. A Chartered Accountant's certificate certifying
    - i. the manner of arriving at the remittable profit
    - ii. that the entire remittable profit has been earned by undertaking the permitted activities
    - iii. that the profit does not include any profit on revaluation of the assets of the branch.

**C.29. Can the branch / liaison office of a foreign company purchase immovable property in India?**

- Ans.** A foreign company which has established a Branch Office or other place of business in India, in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through the proper banking channels. A declaration in form IPI should be filed with the Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for the purpose of borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of the Reserve Bank. Further, acquisition of immovable property by entities incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan and who have set up Branch Offices in India and would require prior approval of the Reserve Bank.

However, if the foreign company has established a Liaison Office in India, it cannot acquire immovable property. In such cases, Liaison Offices can acquire property by way of lease not exceeding 5 years.

**C.30. What are the various conditions applicable to branch / liaison / project offices of foreign entities in India?**

- Ans.**
- (i) Without prior permission of the Reserve Bank, no person being a **citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau** can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.
  - (ii) **Partnership / Proprietary concerns set up abroad are not allowed** to establish Branch / Liaison / Project Offices in India.
  - (iii) Entities from **Nepal are allowed to establish only Liaison Offices** in India.
  - (iv) Branch / Project Offices of a foreign entity, excluding a Liaison Office are permitted to acquire property for their own use and to carry out permitted/incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years.
  - (v) Branch / Liaison / Project Offices are allowed to **open non-interest bearing INR current accounts** in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.
  - (vi) **Transfer of assets of Liaison / Branch Office** to subsidiaries or other

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- Liaison/Branch Offices or any other entity is permitted only with specific approval of the Central Office of the Foreign Exchange Department, RBI.
- (vii) Authorised Dealers can allow **term deposit account for a period not exceeding 6 months** in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.
- (viii) **Regularisation of LO / BO established during pre-FEMA period:** Under the provisions of FEMA 1999 foreign entities are permitted to establish a branch or liaison office in India with permission of the Reserve Bank of India. Liaison / Branch Offices established in pre FEMA period without approval of Reserve Bank of India and those that have not been allotted a Unique Identification Number by the Reserve Bank of India may approach the Reserve Bank through their ADs to regularise the offices under FEMA 1999.
- (xi) It is clarified that permission to establish offices, in India by **foreign Non-Government Organisations/ Non-Profit Organisations/ Foreign Government Bodies/ Departments, by whatever name called, are under the Government Route**. Accordingly, such entities are required to apply to the Reserve Bank for prior permission to establish an office in India, whether Project Office or otherwise.

**C.31. What are the additional reporting requirements for the new entities setting up LO/ BO/ PO?**

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- Ans.** It has now been decided that in addition to the reporting prescribed in terms of earlier circulars, all the new entities setting up LO/BO/PO shall also:
- i) submit a report containing information as per Annex within five working days of the LO/BO/PO becoming functional to the Director General of Police (DGP) of the state concerned in which LO/BO/PO has established its office; if there are more than one office of such a foreign entity, in such cases to each of the DGP concerned of the state where it has established office in India;
  - ii) a copy of the report as per Annex shall also be filed with the DGP concerned on annual basis along with a copy of the Annual Activity Certificate/Annual report required to be submitted by LO/BO/PO concerned, as the case may be.
  - iii) A copy of report thus filed as above shall also be filed with AD by LO/BO/PO concerned.

**C.32. Whether an existing LO/BO/PO also liable to fulfil the above additional reporting requirements?**

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- Ans.** Yes. The existing LO/BO/PO shall henceforth report the information as per Annex along with the copy of Annual Activity Certificate/Annual report to DGP of state concerned and also file a copy of the same with AD bank.

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- D.35.** What is the applicable Rate of interest?
- D.36.** What are the Permissible Debits/Credits to these accounts?
- D.37.** What is the applicable Rate for conversion of rupees into designated currencies and vice versa?
- D.38.** Whether any inland commission charged to facilitate Inland Movement of Funds? Can an AD receiving foreign currency remittances in these accounts pass on the foreign currency to another AD?
- D.39.** What are the provisions regarding payment of interest?
- D.40.** Are there any credit facilities permitted against security of funds held in the account and to whom?
- D.41.** What is the impact of change of resident status of the FCNR(B) account holder?
- D.42.** What are the terms & conditions in respect of Joint account, repatriation of balances, etc.
- D.43.** Can AD permit remittance of the maturity proceeds of FCNR(B) deposits to third parties outside India?
- D.44.** Whether transactions in FCNR accounts need to be reported to RBI?
- D.45.** Whether any kind of exchange rate guarantee provided by RBI to AD?
- D.46.** Is lending of resources under these accounts subject to any interest rate stipulations?

#### **NRO ACCOUNT**

- D.47.** Who is eligible to open an NRO account?
- D.48.** Can an NRO account holder give foreign exchange from such account to a resident in India against reimbursement in Rupees?
- D.49.** Whether any kind of undertaking required to be furnished by NRO A/c holder to AD with regard to investments/disinvestments?
- D.50.** Whether any approval required to open NRO accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?
- D.51.** Can Post offices in India maintain savings bank accounts in the names of persons resident outside India? What are the terms & conditions?
- D.52.** What are the different types of NRO accounts?

<b>D.53.</b>	Is NRO account denominated in Indian Rupees?
<b>D.54.</b>	What are the Permissible Credits/Debits to these accounts?
<b>D.55.</b>	What are the provisions regarding Remittance of funds held in NRO accounts?
<b>D.56.</b>	Are there any credit facilities permitted against security of funds held in the account and to whom?
<b>D.57.</b>	What is the treatment of Loans/Overdrafts in the event of change in the resident status of the borrower?
<b>D.58.</b>	Can NRO accounts be jointly held with residents and/ or with non-residents?
<b>D.59.</b>	What types of operations are allowed on an NRO account by a Resident Power of Attorney holder?
<b>D.60.</b>	What is the impact of change of resident status of the NRO account holder?
<b>D.61.</b>	How is the payment of funds made to Non-Resident Nominee from NRO account of a deceased account holder?
<b>D.62.</b>	What kinds of transactions in NRO accounts need to be reported to RBI?
<b>D.63.</b>	Can foreign nationals of non-Indian origin visiting India open an NRO account?
	<u>Summarised Features of various Deposit Schemes available for Non-Resident Indians (NRIs)</u>

#### **DEPOSIT REGULATIONS UNDER FEMA 5**

<b>D.64.</b>	What is the definition of a 'Non-Resident Indian' for the purpose of Deposit Regulations (FEMA 5)?
<b>D.65.</b>	What is the definition of a 'Person of Indian Origin' for the purpose of Deposit Regulations (FEMA 5)?
<b>D.66.</b>	Can a person resident in India accept/make deposits from/with an NRI?
<b>D.67.</b>	Can a company or body corporate accept deposits from an NRI?
<b>D.68.</b>	On what conditions an Indian company can accept deposits by issue of Commercial Paper to an NRI?
<b>D.69.</b>	What are the conditions under which an Indian company, including an NBFC, can accept deposits on repatriation basis from NRIs/PIO resident outside India?
<b>D.70.</b>	What are the conditions under which an Indian proprietorship concern/firm or company (including non-banking finance company registered with Reserve Bank) can accept deposits on <u>non-repatriation basis</u> from NRIs/PIO resident outside India?
<b>D.71.</b>	Can the amount of deposit be received by debit to NRE/FCNR(B) accounts, out of transfer of funds from NRE/FCNR(B) accounts into NRO account of NRI/PIO?
<b>D.72.</b>	Can AD open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India?

#### **BORROWING AND LENDING IN RUPEES REGULATIONS UNDER FEMA 4**

<b>D.73.</b>	What is the definition of a 'Non-Resident Indian' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?
<b>D.74.</b>	What is the definition of a 'Person of Indian Origin' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?
<b>D.75.</b>	Can resident individuals lend in Rupees to their non-resident NRIs/PIOs close relative (as

defined in Section 6 of the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business?

- D.76.** Whether use of Credit Card in India by a person resident outside India deemed as borrowing or lending in rupees?
- D.77.** Can a person resident in India, not being a company incorporated in India, borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India?
- D.78.** Can a company incorporated in India borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures?
- 
- D.79.** What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on repatriation basis?
- D.80.** What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on non- repatriation basis?
- D.81.** Whether borrowings by way of issue of preference shares and convertible debentures to a person resident outside India are considered as debt?
- D.82.** Are there any restrictions on the usage of borrowed funds?
- D.83.** Can an AD grant loans in rupees to NRIs? What are the conditions?
- 
- D.84.** Can the loans in Rupees to non-residents Indian against the security of shares or other securities and immovable property (other than agricultural or plantation property or farm house) by an authorised dealer in India be repaid by any close relative of the borrower in India?
- D.85.** On what conditions an AD in India can grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme?
- D.86.** Can the Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme be repaid by any close relative of the borrower in India?
- D.87.** On what conditions a housing loan in rupees can be granted to an NRI or PIO resident outside India from an authorised dealer or a housing finance institution?
- D.88.** Can the housing loan so provided for acquisition of a residential accommodation in India be repaid by any close relative of the borrower in India?
- 
- D.89.** On what conditions Rupee loans can be granted to NRI/PIO employees of Indian body corporate?
- D.90.** On what conditions AD can allow continuance of loan/ overdraft granted to a person resident in India who subsequently becomes a person resident outside India?
- D.91.** What is the impact of change in the residential status of the lender?
- D.92.** Can an overdraft in rupee account be maintained with AD in India by a bank outside India?
- D.93.** What are the provisions for Non-resident guarantee for fund based & non-fund based facilities entered between two resident entities?
- 
- D.94.** Can an individual resident in India borrow foreign exchange from his close relatives outside India? If yes, to what extent?

#### **INVESTMENT IN FIRM OR PROPRIETARY CONCERN IN INDIA REGULATIONS UNDER FEMA 24**

- D.95.** What is the definition of a 'Non-Resident Indian' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?
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- D.96.** What is the definition of a 'Person of Indian Origin' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?

- D.97.** Under what conditions an NRI/PIO can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis?
- D.98.** What is the procedure for above Investments with repatriation option?
- D.99.** Are there any exceptions to the investment in a firm or proprietorship concern in India by NRIs/PIO?
- D.100.** Are there any prohibitions on making Investments in India by an NRI?
- 
- D.101.** Is a firm or a proprietary concern permitted to make payment to a non-resident Indian or a person of Indian origin who has made investment by way of profit on such investment?
- D.102.** How can the payment for investment be made?
- D.103.** What are the different classes of capital account transactions of persons resident outside India?

#### **REMITTANCE OF ASSETS REGULATIONS UNDER FEMA 13**

- D.104.** What is the definition of a 'Non-Resident Indian' for purposes of Remittance of Assets Regulations (FEMA 13)?
- 
- D.105.** What is the definition of a 'Person of Indian Origin' for purposes of Remittance of Assets Regulations (FEMA 13)?
- D.106.** What is the meaning of Remittance of assets?
- D.107.** Is Remittance of assets permitted?
- D.108.** Is a Foreign citizen/PIO eligible to get the remittance facility of US\$ 1,000,000 per financial year? What documents need to be furnished to facilitate such remittance? Whether a Certificate from CA also mandatory?
- D.109.** Under what cases remittance abroad can be made with Reserve Bank's prior permission?
- 
- D.110.** Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US\$ 1,000,000?
- D.111.** Is it necessary to make the remittance of all installments through the same AD?
- D.112.** How can an NRI/PIO avail the remittance facility of US\$ 1,000,000?
- D.113.** Is there any lock-in-period for remitting sale proceeds of immovable property purchased by NRI/PIO out of Rupee funds?
- D.114.** What are the provisions regarding remittance of sale proceeds of assets acquired by way of inheritance or legacy or settlement?
- 
- D.115.** What are the restrictions to repatriation of sale proceeds of residential property purchased by NRIs / PIO out of foreign exchange?
- D.116.** What are the different kinds of repatriation permitted by AD? What are the conditions?
- D.117.** Is repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by them by way of loans from the authorized dealer banks / housing finance institutions allowed?
- D.118.** What are the provisions for remittance of current income outside India?
- D.119.** Can NRIs/PIOs credit the current income to their Non-Resident (External) Rupee account?
- 
- D.120.** Are Authorised Dealer banks permitted to issue International Credit Cards to NRIs/PIO?

#### **FACILITIES TO RETURNING NRIs/PIOs**

- D.121.** Can a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?

- D.122.** How can RFC Accounts facilitate returning NRIs/PIOs?
- D.123.** Whether income and sale proceeds of assets held abroad by returning NRIs need to be repatriated?
- D.124.** What is the impact of change of resident status of the NRE account, FCNR(B) account and NRO account holder?

#### FOREIGN NATIONALS

- D.125.** Can a foreign citizen be hired/appointed as technician/ Director/ Managing Director/ Whole-time Director; and payment of salary, remuneration and fee thereof?
- D.126.** How can a foreign citizen resident in India remit his salary payable to him for the services rendered in India?
- D.127.** How can an Indian citizen employed by a foreign company outside India remit salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company?
- D.128.** Can a foreign citizen Resident outside India purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?
- D.129.** Can a citizen of Bangladesh or Pakistan, or an entity incorporated in Bangladesh or Pakistan purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?
- D.130.** Are citizens of Nepal and Bhutan also permitted to invest in the capital of Indian companies, and that too on repatriation basis?
- D.131.** Whether a citizen of foreign state, not being a citizen of Nepal or Bhutan is eligible for remittance facilities of US \$ 1,000,000 per financial year? If yes, then what are those facilities?
- D.132.** Under what cases remittance abroad can be made with Reserve Bank's prior permission?
- D.133.** Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US \$ 1,000,000?
- D.134.** Is it necessary to make the remittance of all installments through the same AD?
- D.135.** Are these remittance facilities also available to citizens of Nepal and Bhutan?
- D.136.** Whether citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China require any prior permission to establish a branch or a liaison office or a project office in India?
- D.137.** Are there any exceptions to the remittance facility in respect of sale proceeds of immovable property?
- D.138.** Are there any exceptions to the remittance facility in respect of sale proceeds of other financial assets?
- D.139.** Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?
- D.140.** Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?
- D.141.** Can a foreign national who is a person resident in India purchase immovable property in India?
- D.142.** Is purpose of stay as well as the type of Indian visa granted important considerations to establish residential status in India?
- D.143.** Can Foreign nationals of non-Indian origin who have acquired immovable property in India

transfer such property?

- D.144.** In which cases Foreign national of non-Indian origin resident outside India would require prior approval of Reserve bank?
- D.145.** Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?
- 
- D.146.** Can foreign tourists open a bank account in India during their short visit?
- D.147.** What are the documents required for opening such accounts?
- D.148.** What credits can be made to such accounts?
- D.149.** Can the NRO account be used for making local payments?
- D.150.** Can foreign tourists repatriate the balance held in their NRO account at the time of departure from India?
- 
- D.151.** What can be done to repatriate the proceeds of an account that has been maintained for more than six months?
- D.152.** Can foreign nationals Resident in India open resident account?
- D.153.** Can AD Category-I banks remit proceeds of such accounts on closure?
- D.154.** What are the different types of Accounts that foreign diplomatic missions and diplomatic personnel can maintain to hold their Deposits? What are the permissible debits and credits to such accounts?
- D.155.** Are non-resident close relative(s) permitted to be a joint holder(s) in resident bank accounts maintained by residents in India?
- 
- D.156.** Can foreign nationals resident outside India invest in rupee denominated units of equity schemes of domestic MFs, and units of domestic MF debt schemes which invest in infrastructure debt of infrastructure companies, on repatriation basis?

#### **ACQUISITION OF IMMOVABLE PROPERTY IN INDIA BY PERSONS RESIDENT OUTSIDE INDIA**

##### **INTRODUCTION**

- D.157.** Which regulation under FEMA regulates Acquisition of immovable property in India by persons resident outside India?
- 
- D.158.** What are the meanings of 'person resident in India' and a 'person resident outside India'?
- D.159.** What are the provision when a person resident in India becomes a person outside India, or any immovable property situated in India inherited from a person who was a resident in India?
- D.160.** What are the provision for acquisition of agricultural land or, plantation property or farm house by NRI/PIO?
- D.161.** What are the provision for acquisition immovable property in India by foreign companies?
- D.162.** What are the provision for acquisition by way of a lease for a period not exceeding 5 years?
- 
- D.163.** What are the provision for acquisition immovable property in India by Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan?
- D.164.** What are the provision for repatriation by NRIs/PIOs against sale proceeds of assets?

#### **ACQUISITION OF IMMOVABLE PROPERTY IN INDIA THROUGH PURCHASE / GIFT/ INHERITANCE**

- D.165.** Who can purchase immovable property in India?
- 
- D.166.** Can NRI/PIO acquire agricultural land/ plantation property / farm house in India?

- D.167.** Are any documents required to be filed with the Reserve Bank after the purchase?
- D.168.** How many residential / commercial properties can NRI / PIO purchase under the general permission?
- D.169.** Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?
- D.170.** Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?
- 
- D.171.** Can a foreign national who is a person resident in India purchase immovable property in India?
- D.172.** Can the branch / liaison office of a foreign company purchase immovable property in India?
- D.173.** Can a NRI/PIO acquire immovable property in India by way of gift? Can a foreign national acquire immovable property in India by way of gift?
- D.174.** Can a non-resident inherit immovable property in India?
- D.175.** From whom can a non-resident person inherit immovable property?
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## **TRANSFER OF IMMOVABLE PROPERTY IN INDIA**

### **(I) TRANSFER BY WAY OF SALE**

- D.176.** Can an NRI/ PIO/foreign national sell his residential / commercial property?
- D.177.** Can a non-resident owning / holding an agricultural land / a plantation property / a farm house in India sell the said property?

### **(II) TRANSFER BY WAY OF GIFT**

- D.178.** Can a non-resident gift his residential / commercial property?
- D.179.** Can an NRI / PIO / foreign national holding an agricultural land / a plantation property / a farm house in India, gift the same?

### **(III) TRANSFER THROUGH MORTGAGE**

- D.180.** Can residential / commercial property be mortgaged by NRI/ PIO?
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## **MODE OF PAYMENT FOR PURCHASE OF IMMOVABLE PROPERTY IN INDIA.**

- D.181.** How can an NRI / PIO make payment for purchase of residential / commercial property in India?
- D.182.** Is repatriation of application money for booking of flat / payment made to the builder by NRI/ PIO allowed when the flat or plot is not allotted or the booking / contract is cancelled?
- D.183.** Can NRI / PIO avail of loan from an authorised dealer for acquiring flat / house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account / FCNR (B) account? How the loan can be repaid?
- D.184.** Can NRI / PIO, avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs / renovation / improvement of residential accommodation ? How can such loan be repaid?
- D.185.** Can NRI/PIO avail of housing loan in Rupees from his employer in India?
-



**REPATRIATION OF SALE PROCEEDS OF RESIDENTIAL / COMMERCIAL PROPERTY PURCHASED  
BY NRI / PIO**

- D.186.** Can NRI / PIO repatriate outside India the sale proceeds of immovable property held in India?
- D.187.** Can an NRI/PIO repatriate the proceeds in case the sale proceeds were deposited in the NRO account?
- D.188.** If a Rupee loan was taken by the NRI/ PIO from an Authorised Dealer or a Housing Finance Institution for purchase of residential property can the NRI / PIO repatriate the sale proceeds of such property?
- D.189.** If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale of such property?
- D.190.** If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

**PROVISIONS FOR FOREIGN EMBASSIES / DIPLOMATS / CONSULATES GENERAL**

- D.191.** Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?

**OTHER ASPECTS**

- D.192.** Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?
- D.193.** Can a person who had bought immovable property, when he was a resident, continue to hold such property even after becoming an NRI/PIO? In which account can the sale proceeds of such immovable property be credited?
- D.194.** Can the sale proceeds of the immovable property referred to in D.No. 29 be remitted abroad?
- D.195.** Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of the Reserve Bank continue to hold the same? Can they transfer such property?
- D.196.** Is a resident in India governed by the provisions of the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

**PURCHASE OF IMMOVABLE PROPERTY IN INDIA BY A FOREIGN NATIONAL OF NON- INDIAN  
ORIGIN RESIDENT OUTSIDE INDIA**

- D.197.** What are the provisions for purchase of Immovable Property in India by a Foreign National of Non- Indian Origin resident outside India?

**INVESTMENT IN OTHER SECURITIES**

- D.198.** Can a Non-resident Indian (NRI) and SEBI registered Foreign Institutional Investor (FII) invest in Government Securities/ Treasury bills and Corporate debt?
- D.199.** Can a NRI and SEBI registered FII invest in Tier I and Tier II instruments issued by banks in India?
- D.200.** Can a NRI and SEBI registered FII invest in Indian Depository Receipts (IDRs)?
- D.201.** What are the facilities available to NRIs for purchase of securities on repatriation & non-repatriation basis?

- D.202.** What are the facilities available to NRIs for purchase of other securities on repatriation & non-repatriation basis including small savings or PPF?
- Q.203** Can a Non-resident Indian purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue?
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**SALIENT FEATURES OF PORTFOLIO INVESTMENT SCHEME (PIS) FOR INVESTMENTS BY A NON RESIDENT INDIAN (NRI)**

- D.204** What are the salient features Salient features of Portfolio Investment Scheme (PIS) for investments by a Non Resident Indian (NRI)?
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**FOREIGN STUDENTS STUDYING IN INDIA – KYC PROCEDURE FOR OPENING OF BANK ACCOUNTS**

- D.205** What are the KYC procedure for opening of bank accounts for Foreign students studying in India?
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**CHAPTER D - FACILITIES TO NON-RESIDENT INDIANS (NRIs)/  
PERSONS OF INDIAN ORIGIN (PIOs)**

**D.1. How are NRIs and PIOs defined in different Regulations under FEMA?**

<b>Regulations</b>	<b>Definition of NRI</b>
<b>FEM (Deposit) Regulations</b>	
<b>FEM (Investment in Firm or Proprietary Concern in India) Regulations</b>	NRI means a person resident outside India who is a citizen of India or is a person of Indian origin (PIO)
<b>FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations</b>	
<b>FEM (Borrowing and Lending In Rupees) Regulations</b>	
<b>FEM (Remittance of Assets) Regulations</b>	NRI means a person resident outside India who is a citizen of India. PIO is excluded.
<b>Regulations</b>	<b>Definition of PIO</b>
<b>FEM (Deposit) Regulations</b>	PIO means a citizen of any country other than <u>Bangladesh or Pakistan</u> if
<b>FEM (Remittance of Assets) Regulations</b>	(a) he at any time held Indian passport or
<b>FEM (Borrowing and Lending In Rupees) Regulations</b>	(b) he or either of his parents or any of his grandparents was a citizen of India or
	(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)
<b>FEM (Investment in Firm or Proprietary Concern in India) Regulations</b>	PIO means a citizen of any country other than <u>Bangladesh or Pakistan or Sri Lanka</u> , if
	(a) he at any time held Indian passport or
	(b) he or either of his parents or any of his grandparents was a citizen of India or
	(c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)
<b>FEM (Acquisition and Transfer of Immovable Property In India) Regulations</b>	PIO means an individual (not being a citizen <u>of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan</u> ), who
	(a) at any time, held Indian passport or
	(b) who or either of whose parents or whose grandparents was a citizen of India
	<del>(c) the person is a spouse of an Indian citizen</del> (spouse excluded)

**Definition of NRI:**

**For the purposes of (i) FEM (Deposit) Regulations, (ii) FEM (Investment in Firm or Proprietary Concern in India) Regulations, (iii) FEM (Transfer or Issue of Security by a Person Resident Outside India) Regulations, and (iv) FEM (Borrowing and Lending In Rupees) Regulations:**

Non-resident Indian ('NRI') means a person resident outside India who is a citizen of India **or** is a person of Indian origin ('PIO').

**For the purposes of FEM (Remittance of Assets) Regulations:**

'Non-resident Indian (NRI)' means a person resident outside India who is a citizen of India. PIO is excluded.

**Definition of PIO:**

**For the purposes of (i) FEM (Deposit) Regulations, (ii) FEM (Borrowing and Lending In Rupees) Regulations, and (iii) FEM (Remittance of Assets) Regulations:**

'Person of Indian Origin' means a citizen of any country **other than Bangladesh or Pakistan**, if (a) he at any time held Indian passport; or (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**FEM (Investment in Firm or Proprietary Concern in India) Regulations:**

'Person of Indian Origin' means a citizen of any country **other than Bangladesh or Pakistan or Sri Lanka**, if (a) he at any time held Indian passport; or (b) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**FEM (Acquisition and Transfer of Immovable Property In India) Regulations:**

2(c) 'Person of Indian origin' means an individual (**not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan**), who (i) at any time, held Indian passport; or (ii) who or either of whose father or mother or whose grandfather or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

Accordingly, for the purposes of FEM (Investment in Firm or Proprietary Concern in India) Regulations, 'Sri Lanka' is also excluded from the definition of PIO. For the purposes of FEM (Acquisition and Transfer of Immovable Property In India) Regulations, individuals being citizens of Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan are also excluded from the definition of PIO. **Spouse is excluded.**

**D.2.** Who is a **"Person resident outside India"** under FEMA?

**Ans.** A **"Person resident outside India"** means a person who is not resident in India; [As per FEMA Sec 2(w)].

A **"Person resident in India"** means—[As per FEMA Sec 2( v)]

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—
  - (A) a person who has gone out of India or who stays outside India, in either case—
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
  - (B) a person who has come to or stays in India, in either case, otherwise than—
    - (a) for or on taking up employment in India, or
    - (b) for carrying on in India a business or vocation in India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India.

**D.3. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT OUTSIDE INDIA TO RESIDENT IN INDIA**

**Can a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?**

**Ans.** As per section 6(4) of FEMA, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or** inherited from a person who was resident outside India.

**D.4. What are the nature of transactions covered under Section 6(4)?**

**Ans.** Section 6(4) of FEMA, 1999 covers the following transactions:

- (i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- (ii) Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- (iii) Foreign exchange including any income arising there from, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- (iv) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received there for are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

**D.5. CHANGE OF RESIDENTIAL STATUS FROM RESIDENT IN INDIA TO RESIDENT OUTSIDE INDIA**

**Can a person resident outside India hold, own, transfer or invest in Indian currency, security or any immovable property situated in India?**

**Ans.** As per section 6(5) of FEMA, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

Any fresh investments in shares or expansion of the activities of the companies in which investment is made would be subject to the prevailing sectoral FDI cap and conditionalities. Further, sale proceeds of the assets would have to be deposited in the NRO Account and disposal thereof would be as per the applicable guidelines.

**BANKING ACCOUNTS FOR NRIs**

**D.6. Can an Authorised Dealer/ Authorised Bank accept deposits from an NRI?**

**Ans.** An authorised dealer in India may accept deposit

- (i) Under the Non-resident (External) Account Scheme (**NRE account**) from a **non-resident Indian**;
- (ii) Under the Foreign Currency (Non-resident) Account Banks Scheme, (**FCNR-B account**) from a **non-resident Indian**;
- (iii) Under the Non-resident (Ordinary) Account Scheme, (**NRO account**) from **any person resident outside India**;

Refer 'Summarised Features of various Deposit Schemes available for Non-Resident Indians (NRIs)' in this document.

**NRE ACCOUNT**

**D.7. Who is eligible to open an NRE account?**

**Ans.** The Non-resident Indian (NRI) is permitted to open and maintain NRE Account.

**D.8. Can NRE account be opened by the power of attorney holder in India?**

<b>Ans.</b>	The account should be opened by the non-resident account holder himself and not by the holder of the power of attorney in India.
<b>D.9.</b>	<b>Whether any approval is required while opening of NRE accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?</b>
<b>Ans.</b>	Opening of NRE accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership requires approval of Reserve Bank.
<b>D.10.</b>	<b>What are the different types of NRE accounts?</b>
<b>Ans.</b>	The accounts may be maintained in any form, <i>e.g.</i> , <b>savings, current, recurring or fixed deposit account</b> etc.
<b>D.11.</b>	<b>Are NRE accounts maintained in Indian Rupees?</b>
<b>Ans.</b>	Yes. NRE accounts are maintained in Indian Rupees.
<b>D.12.</b>	<b>What are the Permitted Credits into this account?</b>
<b>Ans.</b>	<ul style="list-style-type: none"> <li>(a) Proceeds of remittances to India in any permitted currency.</li> <li>(b) Proceeds of personal cheques drawn by the account holder on his foreign currency account and of travellers cheques, bank drafts payable in any permitted currency including instruments expressed in Indian rupees for which reimbursement will be received in foreign currency, deposited by the account holder in person during his temporary visit to India, provided the authorised dealer/bank is satisfied that the account holder is still resident outside India, the travellers' cheques/drafts are standing/endorsed in the name of the account holder and in the case of travellers' cheques, they were issued outside India.</li> <li>(c) Proceeds of foreign currency/bank notes tendered by account holder during his temporary visit to India, provided (i) the amount was declared on a Currency Declaration Form (CDF), where applicable, and (ii) the notes are tendered to the authorised dealer in person by the account holder himself and the authorised dealer is satisfied that account holder is a person resident outside India.</li> <li>(d) Transfers from other NRE/FCNR accounts.</li> <li>(e) Interest accruing on the funds held in the account.</li> <li>(f) Interest on Government securities and dividend on units of mutual funds, provided the securities/units were purchased by debit to the account holder's NRE/FCNR account or out of inward remittance through normal banking channels.</li> <li>(g) Maturity proceeds of Government securities including National Plan/Savings Certificate as well as proceeds of Government securities and units of mutual funds sold on a recognised stock exchange in India and sale proceeds of units received from mutual funds, provided the securities/units were originally purchased by debit to the account holder's NRE/FCNR account or out of remittances received from outside India in free foreign exchange.</li> <li>(h) Refund of share/debenture subscriptions to new issues of Indian companies or portion thereof, if the amount of subscription was paid from the same account or from other NRE/FCNR account of the account holder or by remittance from outside India through normal banking channels.</li> <li>(i) Refund of application/earnest money/purchase consideration made by the house building agencies/seller on account of non-allotment of flat/plot/cancellation of bookings/deals for purchase of residential/commercial property, together with interest, if any (net of income-tax payable thereon), provided the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the authorised dealer is satisfied about the genuineness of the transaction.</li> <li>(j) Transfer funds from NRO account to NRE account within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable (i.e. as applicable if funds were remitted abroad).</li> <li>(k) Sale proceeds of FDI investments.</li> <li>(l) Any other credit if covered under general or special permission granted by Reserve Bank.</li> </ul>

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**D.13. What are the Permitted Debits to this account?**

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- Ans.**
- (a) **Local disbursements.**
  - (b) **Remittances outside India.**
  - (c) **Transfer to NRE/FCNR accounts of the account holder or any other person eligible to maintain such account.**
  - (d) Investment in **shares/securities/commercial paper of an Indian company or for purchase of immovable property in India** provided such investment/purchase is covered by the regulations made, or the general/special permission granted, by the Reserve Bank.
  - (e) Any other transaction if covered under general or special permission granted by the Reserve Bank.

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**D.14. What is the applicable Rate of interest?**

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- Ans.** Rate of interest applicable to these accounts shall be in accordance with the directions/ instructions issued by the Reserve Bank from time to time.

Subject to cap as stipulated by the Department of Banking Operations and Development, Reserve Bank of India, banks are free to determine the interest rates of saving's and term deposits of maturity of one year and above.

Interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits.

With effect from August 14, 2013, banks may offer interest rates on deposits of 3 years and above without any ceiling.

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**D.15. Are there any credit facilities permitted against security of funds held in the account and to whom?**

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- Ans.**
- (a) **To Account holder –**
    - (i) personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/plantation activities or for investment in real estate business. The authorised dealer/bank should ensure that the advances are fully secured by the fixed deposits and regulations relating to normal margin, interest rate, etc., are complied with. Repayment shall be made either by adjustment of the deposit or by fresh inward remittances from outside India through normal banking channels. The loan can also be repaid out of local rupee resources in the NRO account of the borrower. The interest on such loans shall be in accordance with directives issued by Reserve Bank from time to time;
    - (ii) the purpose of making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/companies subject to compliance with the provisions of the Foreign Exchange Management (Transfer of Indian Security by a Person Resident outside India) Regulations, 2000 and Foreign Exchange Management (Investment in Proprietary or a Partnership Firm) Regulations, 2000;
    - (iii) the purpose of acquisition of flat/house in India for his own residential use subject to the provisions of the relevant Regulations made under the Act.
  - (b) **To Third Parties** - Authorised dealers and authorised banks may grant any type of fund based and/or non-fund based facilities to resident individuals/firms/companies in India against the collateral of fixed deposits held in NRE account subject to the following conditions:
    - (i) There should be no direct or indirect foreign exchange consideration for the non-resident depositor agreeing to pledge his deposits to enable the resident individual/firm/company to obtain such facilities.
    - (ii) Regulations relating to margin, interest rate, purpose of loan, etc., as stipulated by Reserve Bank from time to time should be complied with.
    - (iii) The loan should be utilised for personal purposes or for carrying on

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- business activities other than agricultural/plantation activities or real estate business. The loan should not be utilised for relending.
- (iv) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable to such credit facilities.

(c) **Loans outside India** - Authorised dealers may allow their branches/ correspondents outside India to grant any type of fund based and/or non-fund based facilities to or in favour of non-resident depositor or to third parties at the request of depositor for *bona fide* purpose against the security of funds held in the NRE accounts in India and also agree to remittance of the funds from India, if necessary, for liquidation of the outstanding.

(d) The loans and facilities granted under this paragraph shall be subject to such directions as may be issued by the Reserve Bank from time to time.

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**D.16. Are balances held in the NRE account freely repatriable?**

**Ans.** Yes. The balances held in the NRE account are freely repatriable.

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**D.17. What is the impact of change of resident status of the NRE account holder?**

**Ans.** NRE accounts should be redesignated as resident accounts or the funds held in these accounts may be **transferred to the RFC accounts** (if the account holder is eligible for maintaining RFC account) at the option of the account holder **immediately upon the return of the account holder to India** for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India for an uncertain period. **Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.**

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**D.18. How are funds lying in the NRE account of the deceased account holder repatriated?**

**Ans.** Authorised dealers/authorised banks may allow remittance of funds lying in the NRE account of the deceased account holder to his non-resident nominee.

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**D.19. Can two or more non-resident individuals open Joint accounts? What happens if one of the joint holders becomes resident?**

**Ans.** Joint accounts in the names of two or more non-resident individuals may be opened provided all the account holders are persons of Indian nationality or origin. When one of the joint holders becomes resident, the authorised dealer may either delete his name and allow the account to continue as a NRE account or redesignate the account as a resident account, at the option of the account holders.

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**D.20. Can a non-resident jointly open an NRE A/c with a resident?**

**Ans.** Opening of these accounts by a non-resident jointly with a resident is not permissible. However, NRI is permitted to open NRE / FCNR(B) account with their resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on 'former or survivor' basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.

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**D.21. Can an NRI open an NRE account during his temporary visit to India?**

**Ans.** An account may be opened in the name of an eligible NRI during his temporary visit to India against tender of foreign currency travellers cheques or foreign currency notes and coins tendered, provided the authorised dealer is satisfied that the person has not ceased to be a non-resident.

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**D.22. What types of operations are allowed on an NRE account by a Resident Power of Attorney holder? Who is eligible to operate the account as PoA holder?**

**Ans.** Authorised dealers/authorised banks may allow operations on an NRE account in terms of Power of Attorney or other authority granted in favour of a resident by the



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non-resident account holder, provided such operations are restricted to withdrawals for local payments or remittance to the account holder himself through normal banking channels. In cases where the account holder or a bank designated by him is eligible to make investments in India, the Power of Attorney holder may be permitted by the authorized dealers/banks to operate the account to facilitate such investment. The resident Power of Attorney holder shall not, however, be allowed to repatriate outside India funds held in the account under any circumstances other than to the account holder himself, nor to make payment by way of gift to a resident on behalf of the account holder or to transfer funds from the account to another NRE account. **The resident close relative shall be eligible to operate account as PoA holder during life time of NRI.**

**D.23. What kind of extra care must be taken by AD while issuing cheque books to NRE account holders?**

**Ans.** For easy identification and quicker processing of cheques drawn on NRE accounts, authorised dealers/banks shall issue cheque books containing a special series of cheques to their constituents holding NRE accounts.

**D.24. What are the provisions regarding over drawings?**

**Ans.** Authorised dealers/authorised banks may at their discretion/commercial judgment allow for a period of not more than two weeks, over drawings in NRE savings bank accounts, upto a limit of Rs. 50,000 subject to the condition that such over drawings together with the interest payable thereon are cleared/repaid within the said period of two weeks, out of inward remittances through normal banking channels or by transfer of funds from other NRE/FCNR accounts.

**D.25. What is the procedure followed by Resident Nominee for remittance of funds outside India to meet the liabilities of the deceased account holder?**

**Ans.** Application from a resident nominee for remittance of funds outside India for meeting the liabilities, if any, of the deceased account holder or for similar other purposes, should be forwarded to the Reserve Bank for consideration.

**D.26. Whether interest on NRE accounts chargeable to Income Tax? Is NRE A/c an eligible asset under Wealth Tax Act?**

**Ans.** Income from interest on balances standing to the credit of NRE Accounts is exempt from income-tax. Likewise balances held in such accounts are exempt from wealth-tax.

**D.27. Whether transactions in NRE accounts need to be reported to RBI?**

**Ans.** The transactions in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

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#### **FCNR (B) ACCOUNT**

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**D.28. Who is eligible to open FCNR(B) accounts?**

**Ans.** NRIs are eligible to open and maintain these accounts with an authorised dealer.

**D.29. Whether any approval required to open FCNR accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?**

**Ans.** Opening of FCNR(B) accounts in the names of NRIs of Bangladesh/Pakistan nationality/ownership requires approval of Reserve Bank.

**D.30. How can FCNR(B) accounts be opened?**

**Ans.** These accounts may be opened with funds remitted from outside India through normal banking channels or funds received in rupees by debit to the account of a non-resident bank maintained with an authorised dealer in India or funds which are of repatriable nature in terms of the regulations made by the Reserve Bank. Accounts may also be opened by transfer of funds from existing NRE/FCNR accounts.

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**D.31. Is it necessary to open FCNR(B) accounts in the Designated Currency?**

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**Ans.** Remittances from outside India for opening of or crediting to these accounts should be made in the designated currency in which the account is desired to be opened/maintained. Without prejudice to this, if the remittance is received in a currency other than the designated currency (including funds received in rupees by debit to the account of the non-resident bank), it should be converted into the latter currency by the authorised dealer at the risk and cost of the remitter and account should be opened/credited in only the designated currency.

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**D.32. How can a depositor with any convertible currency other than designated currency deposit in these accounts?**

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**Ans.** In case the depositor with any convertible currency other than designated currency desires to place a deposit in these accounts, authorised dealers may undertake with the depositor a fully covered swap in that currency against the desired designated currency. Such a swap may also be done between two designated currencies.

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**D.33. What are Designated currencies?**

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**Ans.** Deposit of funds in the accounts may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.

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**D.34. What are the different types of FCNR accounts?**

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**Ans.** These accounts may be opened only in the form of **term deposit** with maturity of such period as may be specified by the Reserve Bank from time to time for terms not less than 1 year and not more than 5 years.

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**D.35. What is the applicable Rate of interest?**

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**Ans.** The rate of interest on funds held in these deposit accounts will be in accordance with the directives issued by the Reserve Bank from time to time.

**FAQ**

With effect from the close of business in India as on August 14, 2013, interest on FCNR(B) Deposits shall be paid within the ceiling rate as under:

<b>Maturity period</b>	<b>Rate of Interest</b>
1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points
3-5 years	LIBOR/SWAP rates plus 400 basis points

On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/maturity plus 200/400 basis points. For floating rate deposits, the interest reset period shall be six months.

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**D.36. What are the Permissible Debits/Credits to these accounts?**

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**Ans.** All debits/credits permissible in respect of NRE accounts as specified shall be permissible in respect of these accounts also.

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**D.37. What is the applicable Rate for conversion of rupees into designated currencies and vice versa?**

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**Ans.** (i) Remittances received in Indian rupees for opening these accounts shall be converted by the authorised dealer into the designated foreign currency at the clean T.T. selling rate for that currency ruling on the date of conversion.  
(ii) For the purpose of payment in rupees, funds held in these accounts shall be converted into rupees at the authorised dealer's clean T.T. buying rate for the concerned currency ruling on the date of withdrawal.

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**D.38. Whether any inland commission charged to facilitate Inland Movement of Funds? Can an AD receiving foreign currency remittances in these accounts pass on the foreign currency to another AD?**

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**Ans.** Any inland movement of funds for the purpose of opening these accounts as well as for repatriation outside India of balances held in these accounts will be free of inland

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exchange or commission for the non-resident depositors. The Authorised Dealer receiving foreign currency remittances in these accounts will also, on request, pass on the foreign currency to another authorised dealer if the account has to be opened with the latter, at no extra cost to the remitter.

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**D.39. What are the provisions regarding payment of interest?**

**Ans.** (i) Interest on balances held in these accounts may be paid half-yearly or on an annual basis as desired by the depositor.  
(ii) Interest may be credited to a new FCNR(B) account or an existing/new NRE/NRO account in the name of the account holder, at his option.

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**D.40. Are there any credit facilities permitted against security of funds held in the account and to whom?**

**Ans.** (1) The terms and conditions as applicable to NRE deposits in respect of loans and overdrafts in India to depositor and to third parties as also loans outside India against security of deposits, shall apply *mutatis mutandis* to FCNR(B) deposits.  
(2) The margin requirement shall be notionally calculated on the rupee equivalent of the deposits.

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**D.41. What is the impact of change of resident status of the FCNR(B) account holder?**

**Ans.** When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR(B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the account holder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

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**D.42. What are the terms & conditions in respect of Joint account, repatriation of balances, etc.**

**Ans.** Terms and conditions as applicable to NRE accounts in respect of joint accounts, repatriation of funds, opening accounts during temporary visit, operation by power of attorney, loans/overdrafts against security of funds held in accounts, shall apply *mutatis mutandis* to FCNR(B) accounts.

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**D.43. Can AD permit remittance of the maturity proceeds of FCNR(B) deposits to third parties outside India?**

**Ans.** Authorised dealer may permit remittance of the maturity proceeds of FCNR(B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the authorised dealer is satisfied about the *bona fides* of the transactions.

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**D.44. Whether transactions in FCNR accounts need to be reported to RBI?**

**Ans.** The transactions in these accounts shall be reported to Reserve Bank in accordance with the directions issued by it from time to time.

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**D.45. Whether any kind of exchange rate guarantee provided by RBI to AD?**

**Ans.** Reserve Bank will not provide exchange rate guarantee to authorised dealers for deposits of any maturity in these accounts.

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**D.46. Is lending of resources under these accounts subject to any interest rate stipulations?**

**Ans.** Lending of resources mobilised by authorised dealers under these accounts are not subject to any interest rate stipulations.

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**NRO ACCOUNT**

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<b>D.47.</b>	<b>Who is eligible to open an NRO account?</b>
<b>Ans.</b>	<b>Any person resident outside India</b> may open NRO account with an authorised dealer or an authorised bank for the purpose of putting through <b>bona fide transactions</b> in rupees not involving any violation of the provisions of the Act, rules and regulations made there under.
<b>D.48.</b>	<b>Can an NRO account holder give foreign exchange from such account to a resident in India against reimbursement in Rupees?</b>
<b>Ans.</b>	The operations on the accounts should not result in the account holder making available foreign exchange to any person resident in India against reimbursement in rupees or in any other manner.
<b>D.49.</b>	<b>Whether any kind of undertaking required to be furnished by NRO A/c holder to AD with regard to investments/disinvestments?</b>
<b>Ans.</b>	At the time of opening of the account, the account holder should furnish an undertaking to the authorised dealer/authorised bank with whom the account is maintained that in cases of debits to the account for the purpose of investment in India and credits representing sale proceeds of investments, he will ensure that such investments/disinvestments will be in accordance with the regulations made by Reserve Bank in this regard.
<b>D.50.</b>	<b>Whether any approval required to open NRO accounts in the names of individuals/entities of Bangladesh/Pakistan nationality/ownership?</b>
<b>Ans.</b>	Opening of accounts by individuals/entities of Pakistan nationality/ ownership requires approval of Reserve Bank.  Opening of NRO accounts by individuals of Bangladesh Nationality does not require approval of Reserve Bank any more. Authorised banks would be permitted to open NRO account of individual/s of Bangladesh nationality without the approval of the Reserve Bank subject to the following conditions: <ul style="list-style-type: none"> <li>(i) The bank concerned should satisfy itself that the individual is holding valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/Foreigner Regional Registration Office (FRRO) concerned;</li> <li>(ii) The Authorised bank should put in place a system of quarterly reporting whereby each branch of the Authorised bank shall maintain a record of the bank accounts opened by individual/s of Bangladesh nationality and details of such account shall be forwarded to their Head Office. The Head Office of the bank shall furnish details of such accounts on quarterly basis to the Under Secretary (Foreigners), Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi- 110 001.</li> <li>(iii) The report shall contain details of Name/s of the Individual/s, Date of arrival in India, Passport No. and Place/Country of issue, Residential permit reference and date and place of issue, Name of the FRO/ FRRO concerned and the Complete address and contact number of the branch where the bank account is being maintained.</li> </ul> <p>Opening of accounts by entities of Bangladesh ownership shall continue to require approval of Reserve Bank, as hitherto.</p>
<b>D.51.</b>	<b>Can Post offices in India maintain savings bank accounts in the names of persons resident outside India? What are the terms &amp; conditions?</b>
<b>Ans.</b>	Post offices in India may maintain savings bank accounts in the names of persons resident outside India and allow operations on these accounts subject to the same terms and conditions as are applicable to NRO accounts maintained with an authorised dealer/authorised bank.
<b>D.52.</b>	<b>What are the different types of NRO accounts?</b>
<b>Ans.</b>	NRO accounts may be opened/maintained in the form of <b>current, savings, recurring or fixed deposit accounts</b> . The requirements laid down in the directives issued by Reserve Bank in regard to resident account shall apply to NRO accounts.

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**D.53. Is NRO account denominated in Indian Rupees?**

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**Ans.** Yes. NRO account should be denominated in Indian Rupees.

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**D.54. What are the Permissible Credits/Debits to these accounts?**

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**Ans.** (A) Credits

- (i) Proceeds of remittances from outside India through normal banking channels received in foreign currency which is freely convertible.
- (ii) Any foreign currency, which is freely convertible, tendered by the account holder during his temporary visit to India. Foreign currency exceeding USD 5000 or its equivalent in the form of cash should be supported by currency declaration form. Rupee funds should be supported by encashment certificate, if they represent funds brought from outside India.
- (iii) Transfers from rupee accounts of non-resident banks.
- (iv) Legitimate dues in India of the account holder. This includes current income like rent, dividend, pension, interest, etc.
- (v) Sale proceeds of assets including immovable property acquired out of rupee/foreign currency funds or by way of legacy/inheritance.
- (vi) Resident individual may make a rupee gift to a NRI/PIO who is a close relative of the resident individual [close relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer. The amount shall be credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c. The gift amount would be within the overall limit of US\$ 75,000 per financial year as permitted under the Liberalised Remittance Scheme (LRS) for a resident individual. (FAQ4-LRS dated 13.11.13)
- (vii) Resident individual to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to conditions within the overall limit under the Liberalised Remittance Scheme of US\$ 75,000 per financial year available for a resident individual. The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;

(B) *Debits*

- (i) All local payments in rupees including payments for investments in India subject to compliance with the relevant regulations made by the Reserve Bank.
- (ii) Remittance outside India of current income like rent, dividend, pension, interest, etc. in India of the account holder.
- (iii) Remittance up to USD one million, per financial year (April- March), for all bonafide purposes, to the satisfaction of the Authorised Dealer bank.
- (iv) Transfer to NRE account of NRI within the overall ceiling of USD one million per financial year subject to payment of tax, as applicable.

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**D.55. What are the provisions regarding Remittance of funds held in NRO accounts?**

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**Ans.** Balances in NRO accounts are not eligible for remittance outside India without the approval of Reserve Bank. Funds received by way of remittances from outside India in foreign exchange which have not lost their identity as remittable funds will only be considered by Reserve Bank for remittance outside India. Where an account (current/savings) is opened by a foreign tourist visiting India, with funds remitted from outside India in a specified manner or by sale of foreign exchange brought by him to India, authorised dealers may convert the balance in the account at the time of departure of the tourist from India to foreign currency for payment to the account holder provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

**D.56. Are there any credit facilities permitted against security of funds held in the account and to whom?**

**Ans. (A) To Account holders**

- (i) Loans to non-resident account holders may be granted in rupees against the security of fixed deposits subject to usual norms as are applicable to resident accounts, for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/plantation activity or for investment in real estate business.
- (ii) Authorised dealer/bank may permit overdraft in the account of the account holder subject to his commercial judgment and compliance with the interest rate etc. directives.

**B. To Third Parties** - Loans/overdrafts to resident individuals/firms/ companies in India may be granted against the security of deposits held in NRO accounts, subject to the following terms and conditions:

- (i) The loans shall be utilised only for meeting borrower's personal requirements and/or business purpose and not for carrying on agricultural/plantation activities or real estate business or for relending.
- (ii) Regulations relating to margin and rate of interest as stipulated by Reserve Bank from time to time shall be complied with
- (iii) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable for such loans/facilities.

**D.57. What is the treatment of Loans/Overdrafts in the event of change in the resident status of the borrower?**

**Ans.** In case of person who had availed of loan or overdraft facilities while resident in India and who subsequently becomes a person resident outside India, the authorised dealer may at their discretion and commercial judgment allow continuance of the loan/overdraft facilities. In such cases, payment of interests and repayment of loan may be made by inward remittance or out of legitimate resources in India of the person concerned.

**D.58. Can NRO accounts be jointly held with residents and/ or with non-residents?**

**Ans.** The accounts may be held jointly with residents and/ or with non-residents.

**D.59. What types of operations are allowed on an NRO account by a Resident Power of Attorney holder?**

**Ans.** Authorised dealers/authorized banks may allow operations on an NRO account in terms of a Power of Attorney, provided such operations are restricted to:

- (i) all local payments in rupees including payments for eligible investments subject to compliance with relevant regulations made by the Reserve Bank; and
- (ii) remittance outside India of current income in India of the non-resident individual account holder, net of applicable taxes.

The resident Power of Attorney-holder shall not repatriate outside India funds held in the account under any circumstances other than to the non-resident individual account-holder himself nor shall make payment by way of gift to a resident on behalf of the non-resident account holder or transfer funds from the account to another NRO account. Any remittance outside India shall be within the ceiling as may be prescribed by the bank from time to time and subject to tax compliance.

**D.60. What is the impact of change of resident status of the NRO account holder?**

- Ans.**
- (a) **From Resident to Non-resident** - When a person resident in India leaves India for a country (other than Nepal or Bhutan) for taking up employment, or for carrying on business or vocation outside India or for any other purpose indicating his intention to stay outside India for an uncertain period, his existing account should be designated as a Non-Resident (Ordinary) Account.
  - (b) **From Non-Resident to Resident** - NRO accounts may be re-designated as resident rupee accounts on the return to the account holder to India for taking

up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

**D.61. How is the payment of funds made to Non-Resident Nominee from NRO account of a deceased account holder?**

**Ans.** The amount due/payable to non-resident nominee from the account of a deceased account holder, shall be credited to NRO account of the nominee with an authorised dealer/authorised bank in India.

**D.62. What kinds of transactions in NRO accounts need to be reported to RBI?**

**Ans.** (i) The transaction in the account which may appear to represent reimbursement in rupees against foreign exchange made available to a person resident in India other than authorised dealer, as well as any other transaction of suspicious nature, should be reported to Reserve Bank.  
(ii) The transaction in these accounts shall be reported to the Reserve Bank in accordance with the directions issued by it from time to time.

**D.63. Can foreign nationals of non-Indian origin visiting India open an NRO account?**

**Ans.** NRO (current/savings) account can also be opened by a foreign national of non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. **The details of this facility are given in the FAQs on “Accounts opened by Foreign Nationals and Foreign Tourists”**

**Summarised Features of various Deposit Schemes  
available for Non-Resident Indians (NRIs)**

**Features of various Deposit Schemes available to Non-Resident Indians (NRIs)**  
(updated as on September 13, 2013)

**Features of various Deposit Schemes available for Non-Resident Indians (NRIs)<sup>1</sup>**

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme [FCNR (B) Account]	Non-Resident (External) Rupee Account Scheme [NRE Account]	Non-Resident Ordinary Rupee Account Scheme [NRO Account]
(1)	(2)	(3)	(4)
<b>Who can open an account</b>	NRIs (individuals/ entities of Bangladesh/ Pakistan nationality / ownership require prior approval of RBI)	NRIs (individuals/ entities of Bangladesh/Pakistan nationality / ownership require prior approval of RBI)	Any person resident outside India (other than a person resident in Nepal and Bhutan). Individuals / entities of Pakistan nationality / ownership, entities of Bangladesh <sup>2</sup> ownership and erstwhile Overseas Corporate Bodies <sup>5</sup> require prior approval of the Reserve Bank.
<b>Joint account</b>	In the names of two or more non-resident individuals provided all the account holders are persons of Indian nationality or origin; Resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on ‘former or survivor’ basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance	In the names of two or more non-resident individuals provided all the account holders are persons of Indian nationality or origin; Resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on ‘former or survivor’	May be held jointly with residents

	with extant instructions during the life time of the NRI/ PIO account holder.	basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with extant instructions during the life time of the NRI/ PIO account holder.							
Nomination	Permitted	Permitted	Permitted						
Currency in which account is denominated	Any permitted currency i.e. a foreign currency which is freely convertible	Indian Rupees	Indian Rupees						
Repatriability	Repatriable	Repatriable	Not repatriable except for the following: i) current income ii) up to USD 1 (one) million per financial year (April-March), for any bonafide purpose, out of the balances in the account, e.g., sale proceeds of assets in India acquired by way of purchase/ inheritance / legacy inclusive of assets acquired out of settlement subject to certain conditions.						
Type of Account	Term Deposit only	Savings, Current, Recurring, Fixed Deposit	Savings, Current, Recurring, Fixed Deposit						
Period for fixed deposits	For terms not less than 1 year and not more than 5 years.	At the discretion of the bank.	As applicable to resident accounts.						
Rate of Interest	<div>Deposits of all maturities contracted effective from the close of business in India as on August 14, 2013, interest shall be paid within the ceiling rate as under:</div> <table><tr><th>Maturity period</th><th>Rate of Interest</th></tr><tr><td>1 year to less than 3 years</td><td>LIBOR/SWAP rates plus 200 basis points</td></tr><tr><td>3-5 years</td><td>LIBOR/SWAP rates plus 400 basis points</td></tr></table> <div>(As against LIBOR/SWAP rates plus 300 basis points for maturity period of 3-5 years effective from close of business on May 04, 2012). On floating rate deposits, interest shall be paid within the ceiling of SWAP rates for the respective currency/maturity plus 200/400 basis points. For floating rate deposits, the interest reset period shall be six months.</div>	Maturity period	Rate of Interest	1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points	3-5 years	LIBOR/SWAP rates plus 400 basis points	<div>Subject to cap as stipulated by the Department of Banking Operations and Development, Reserve Bank of India :</div> <div>Banks are free to determine the interest rates of saving's and term deposits of maturity of one year and above.</div> <div>Interest rates offered by banks on NRE deposits cannot be higher than those offered by them on comparable domestic rupee deposits.</div> <div>With effect from August 14, 2013, banks may offer interest rates on deposits of 3 years and above without any ceiling (valid up to November 30, 2013;</div>	<div>Banks are free to determine their interest rates on savings deposits under Ordinary Non-Resident (NRO) Accounts.</div> <div>However, interest rates offered by banks on NRO deposits cannot be higher than those offered by them on comparable domestic rupee deposits.</div>
Maturity period	Rate of Interest								
1 year to less than 3 years	LIBOR/SWAP rates plus 200 basis points								
3-5 years	LIBOR/SWAP rates plus 400 basis points								



		subject to review)	
<b>Operations by Power of Attorney in favour of a resident by the non-resident account holder</b>	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations in the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments in rupees, remittance of current income to the account holder outside India or remittance to the account holder himself through normal banking channels. Remittance is subject to the ceiling of USD 1 (one) million per financial year.
<b>Loans</b>			
<b>a. In India</b>			
<b>i) to the Account holder</b>	Permitted without any ceiling subject to usual margin requirements.	Permitted without any ceiling subject to usual margin requirements	Permitted subject to the extant rules <sup>3</sup>
<b>ii) to Third Parties</b>	Permitted without any ceiling subject to usual margin requirements.	Permitted without any ceiling subject to usual margin requirements.	Permitted, subject to conditions <sup>4</sup>
<b>b. Abroad</b>			
<b>i) to the Account holder</b>	Permitted	Permitted	Not Permitted
<b>ii) to Third Parties</b>	Permitted	Permitted	Not Permitted
<b>c. Foreign Currency Loans in India</b>			
<b>i) to the Account holder</b>	Permitted without any ceiling subject to usual margin requirements.	Permitted without any ceiling subject to usual margin requirements.	Not Permitted
<b>ii) to Third Parties</b>	Permitted without any ceiling subject to usual margin requirements	Permitted without any ceiling subject to usual margin requirements	Not Permitted
<b>Purpose of Loan</b>			
<b>a. In India</b>			
<b>i) to the Account holder</b>	i) Personal purposes or for carrying on business activities* ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 9 of Schedule 2 to FEMA 5).	i) Personal purposes or for carrying on business activities.* ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies. iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 6(a) of Schedule1 to FEMA 5).	Personal requirement and / or business purpose.*
<b>ii) to Third</b>	Fund based and / or non-fund	Fund based and / or	Personal requirement

<b>Parties</b>	based facilities for personal purposes or for carrying on business activities *. (Please refer to para 9 of Schedule 2 to FEMA 5).	non-fund based facilities for personal purposes or for carrying on business activities *. (Please refer to para 6(b) of Sch. 1 to FEMA 5)	and / or business purpose *
<b>b. Abroad</b>			
<b>To the account holder and Third Parties</b>	Fund based and / or non-fund based facilities for bonafide purposes.	Fund based and / or non-fund based facilities for bonafide purposes.	Not permitted.

\* The loans cannot be utilised for the purpose of on-lending or for carrying on agriculture or plantation activities or for investment in real estate business.

**Note:**

a. When a person resident in India leaves India for Nepal and Bhutan for taking up employment or for carrying on business or vocation or for any other purpose indicating his intention to stay in Nepal and Bhutan for an uncertain period, his existing account will continue as a resident account. Such account should not be designated as Non-resident (Ordinary) Rupee Account.

b. Authorised Dealers (ADs) may open and maintain NRE / FCNR (B) Accounts of persons resident in Nepal and Bhutan who are citizens of India or of Indian origin, provided the funds for opening these accounts are remitted in free foreign exchange. Interest earned in NRE / FCNR (B) accounts can be remitted only in Indian rupees to NRIs and PIO resident in Nepal and Bhutan.

c. In terms of Regulation 4(4) of the Notification No.FEMA.5/2000-RB dated May 3, 2000, ADs may open and maintain Rupee accounts for a person resident in Nepal and Bhutan.

d. The regulations relating to the various deposit schemes available to Non-Resident Indians have been notified vide Notification No.FEMA.5 dated 3rd May 2000, as amended from time to time. The relevant Notifications and A.P. (DIR Series) Circulars are available on our website [[www.rbi.org.in](http://www.rbi.org.in) → Sitemap → FEMA → Notifications / A.P.(DIR Series) Circulars]. The Master Circular on Non-Resident Ordinary Rupee (NRO) Account [[www.rbi.org.in](http://www.rbi.org.in) → Sitemap → Master Circulars] may also be referred to. The details of rate of interest on the various accounts, are available in the “**Master Circular on Interest Rates on Rupee Deposits held in Domestic, Ordinary Non-Resident (NRO) and Non-Resident (External) (NRE) Accounts**” and “**Master Circular of instructions relating to deposits held in FCNR (B) Accounts**” issued by our Department of Banking Operations and Development, available on our website [[www.rbi.org.in](http://www.rbi.org.in)→ Sitemap → Master Circulars].

e. AD Category – I banks and authorized banks may credit the proceeds of account payee cheques/ demand drafts / bankers' cheques, issued against encashment of foreign currency to the NRE account of the NRI account holder where the instruments issued to the NRE account holder are supported by encashment certificate issued by AD Category-I / Category-II.

f. AD Category – I banks and authorised banks may permit remittance of the maturity proceeds of FCNR (B) deposits to third parties outside India, provided the transaction is specifically authorised by the account holder and the Authorised Dealer is satisfied about the bonafides of the transaction.

<sup>1</sup> NRI means a person resident outside India who is a citizen of India or is a person of Indian origin [Regulation 2 (vi) of Notification FEMA 5/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Deposit) Regulations, 2000].

<sup>2</sup>In terms of A.P.(DIR Series) Circular No. 82 dated February 11, 2013 Authorised banks are permitted to open NRO account of individual/s of Bangladesh nationality without the approval of the Reserve Bank subject to conditions.

<sup>3</sup> Subject to usual norms as are applicable to resident accounts, for personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural / plantation activity or for investment in real estate business.

<sup>4</sup> Subject to conditions such as (i) the loans shall be utilised only for meeting borrower's personal requirements and/ or business purpose and not for carrying on agricultural/ plantation activities or real estate business, or for relending, (ii) Regulations relating to margin and rate of interest as stipulated by the Reserve Bank from time to time shall be complied with and (iii) The usual norms and considerations as applicable in the case of advances to trade/industry shall be applicable for such loans/ facilities.

<sup>5</sup> Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty per cent by Non-Resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably, which was in existence as on September 16, 2003 and was eligible to undertake transactions pursuant to the general permission granted under Foreign Exchange Management Regulations

**DEPOSIT REGULATIONS UNDER FEMA 5**

**D.64. What is the definition of a 'Non-Resident Indian' for the purpose of Deposit Regulations (FEMA 5)?**

**Ans.** "Non-resident Indian (NRI)" means a **person resident outside India who is a citizen of India or is a person of Indian origin.**

**D.65. What is the definition of a 'Person of Indian Origin' for the purpose of Deposit Regulations (FEMA 5)?**

**Ans.** "**Person of Indian Origin**" means a citizen of any country **other than Bangladesh or Pakistan**, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**D.66. Can a person resident in India accept/make deposits from/with an NRI?**

**Ans.** No person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India.

**D.67. Can a company or body corporate accept deposits from an NRI?**

**Ans.** A company registered under the Companies Act, 1956, or a body corporate created under an Act of Parliament or State Legislature **shall not accept deposits on repatriation basis from a non-resident Indian.**

**D.68. On what conditions an Indian company can accept deposits by issue of Commercial Paper to an NRI?**

**Ans.** Deposits accepted by an Indian company by **issue of Commercial Paper to a Non-Resident Indian** shall be subject to the following conditions, namely:

- (a) the issue is in due compliance with the Non-Banking Companies (Acceptance of Deposits through Commercial Paper) Directions, 1989 issued by the Reserve Bank as also any other law, rule, directions, orders issued by the Government or any other regulatory authority, in regard to **acceptance of deposits by issue of Commercial Paper**;
- (b) payment for issue of Commercial Paper is received by the issuing company by inward remittance from outside India through normal banking channels or out of funds held in a deposit account maintained by a Non-Resident Indian in accordance with the Regulations made by Reserve Bank in that regard;
- (c) the amount invested in Commercial Paper shall **not be eligible for repatriation** outside India; and
- (d) the Commercial **Paper shall not be transferable.**

**D.69. What are the conditions under which an Indian company, including an NBFC, can accept deposits on repatriation basis from NRIs/PIO resident outside India?**

**Ans.** Acceptance of deposit on repatriation basis **was permitted up to 24.04.2004.** However, **company incorporated in India (including a non-banking finance company** registered with the Reserve Bank) may renew deposits accepted up to 24.04.2004 **from NRIs, on repatriation basis** subject to the following conditions:

- (i) The deposits are received **under a public deposit scheme.**
- (ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- (iii) The amount representing the deposit is received by inward remittance from outside India through normal banking channels or by debit to the Non-Resident (External) Account or Foreign Currency (Non-Resident) (Bank) Account maintained with an authorised dealer/authorised bank in India.

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- (iv) If the deposit accepting company is a non-banking finance company the rate of interest payable on deposits shall be in conformity with the guidelines/directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 1975.
  - (v) The maturity period of deposits shall not exceed 3 years.
  - (vi) The company accepting the deposit shall comply with the provisions of any other law, rules, regulations, orders issued by the Government of India or any other competent authority, as are applicable to it in regard to acceptance of deposits.
  - (vii) The amount of aggregate deposits accepted by the company shall not exceed 35% of its net owned funds.
  - (viii) The payment of interest net of taxes may be made by the company to the depositor by remittance through an authorised dealer or by credit to the depositor's NRE/FCNR(B)/NRO account as desired by him.
  - (ix) The amount of deposits so collected shall not be utilised by the company for re-lending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/plantation activities or real estate business or for investing in any other concern, firm or a company engaged in or proposing to engage in agricultural/plantation activities or real estate business.
  - (x) The repayment of the deposit may be made by the company to the depositor by remittance from India through an authorised dealer or by credit to the depositor's NRE/FCNR(B) account maintained with an authorised dealer in India, provided the depositor continues to be a non-resident at the time of repayment. While applying to the authorised dealer for remittance of maturity proceeds of deposit or credit thereof to NRE/FCNR(B) account, the company should certify that the amount of deposit was received either by inward remittance from outside India through normal banking channels or by debit to the depositor's NRE/FCNR(B) account, as the case may be.
  - (xi) The amount representing repayment of deposit may also be credited to the depositor's NRO account, at the depositor's option.

**D.70. What are the conditions under which an Indian proprietorship concern/firm or company (including non-banking finance company registered with Reserve Bank) can accept deposits on non-repatriation basis from NRIs/PIO resident outside India?**

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**Ans. A proprietorship concern or a firm in India, may accept deposits on non-repatriation basis from NRIs, and a company incorporated in India (including a non-banking finance company registered with Reserve Bank) may accept deposits on non-repatriation basis from NRIs subject to the following conditions :**

- (i) In the case of a company, the **deposits may be accepted either under private arrangement, or under a public deposit scheme.**
- (ii) If the deposit accepting company is a non-banking finance company, it should be registered with the Reserve Bank and should have obtained the required credit rating as stipulated under the guidelines issued by Reserve Bank for such companies.
- (iii) The **maturity period of deposit shall not exceed 3 years.**
- (iv) If the deposit accepting company is a non-banking finance company the rate of interest payable on deposits shall be in conformity with the guidelines/directions issued by Reserve Bank for such companies. In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under the Companies (Acceptance of Deposit) Rules, 1975.
- (v) **The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account.**
- (vi) The proprietorship concern/firm/company accepting the deposit should comply with the provisions of any other law, rules, regulations or orders made by Government or any other competent authority, as are applicable to it in regard to acceptance of deposits.

(vii) The proprietorship concern, firm or company accepting the deposit shall not utilise the amount of deposits for relending (not applicable to a Non-Banking Finance Company) or for undertaking agricultural/plantation activities or real estate business or for investing in any other concern or firm or company engaged in or proposing to engage in agricultural/plantation activities or real estate business.

(viii) The amount of deposits accepted **shall not be allowed to be repatriated outside India.**

**D.71. Can the amount of deposit be received by debit to NRE/FCNR(B) accounts, out of transfer of funds from NRE/FCNR(B) accounts into NRO account of NRI/PIO?**

**Ans.** No.

**D.72. Can AD open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India?**

**Ans.** With the prior approval of Reserve Bank, an authorised dealer may open an account expressed in foreign currency in the name of a person resident outside India for the purpose of adjustment of value of goods imported into India against the value of goods exported from India in terms of an arrangement voluntarily entered into by such person with a person resident in India.

#### **BORROWING AND LENDING IN RUPEES REGULATIONS UNDER FEMA 4**

**D.73. What is the definition of a 'Non-Resident Indian' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?**

**Ans.** "Non-resident Indian (NRI)" means a **person resident outside India who is a citizen of India or is a person of Indian origin.**

**D.74. What is the definition of a 'Person of Indian Origin' for purposes of Borrowing and Lending In Rupees Regulations (FEMA 4)?**

**Ans.** "**Person of Indian Origin**" means a citizen of any country **other than Bangladesh or Pakistan**, if

- (a) he at any time held Indian passport; or
- (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**D.75. Can resident individuals lend in Rupees to their non-resident NRIs/PIOs close relative (as defined in Section 6 of the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business?**

**Ans.** Yes. A resident individual is permitted to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to the following conditions:

- (i) The loan is free of interest and the minimum maturity of the loan is one year;
- (ii) The loan amount should be within the overall limit under the Liberalised Remittance Scheme of US\$ 75,000 per financial year available for a resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalised Remittance Scheme limit of US\$ 75,000 during the financial year;
- (iii) The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes in India;
- (iv) The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
  - (a) The business of chit fund, or
  - (b) Nidhi Company, or

	<p>(c) Agricultural or plantation activities or in real estate business, or construction of farm houses, or</p> <p>(d) Trading in Transferable Development Rights (TDRs).</p> <p>Explanation: For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential / commercial premises, roads or bridges.</p> <p>(v) The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO account;</p> <p>(vi) The loan amount shall not be remitted outside India; and</p> <p>(vii) Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.</p>
<b>D.76.</b>	<b>Whether use of Credit Card in India by a person resident outside India deemed as borrowing or lending in rupees?</b>
<b>Ans.</b>	Use of <b>Credit Card in India by a person resident outside India</b> shall not be deemed as borrowing or lending in rupees.
<b>D.77.</b>	<b>Can a person resident in India, not being a company incorporated in India, borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India?</b>
<b>Ans.</b>	<p><b>A person resident in India</b>, not being a company incorporated in India, <b>may borrow in rupees on non-repatriation basis</b> from a <b>non-resident Indian or a person of Indian origin</b> resident outside India, subject to the following conditions:</p> <p>(i) the amount of loan shall be received by way of inward remittance from outside India or out of Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR) account of the lender maintained with an authorised dealer or an authorised bank in India;</p> <p>(ii) the <b>period of loan shall not exceed three years</b>;</p> <p>(iii) the rate of interest on the loan shall not exceed two percentage points over the Bank rate prevailing on the date of avilment of loan;</p> <p>(iv) payment of interest and repayment of loan shall be made by credit to the lender's Non-resident Ordinary (NRO) account; and</p> <p>(v) <b>the amount borrowed shall not be allowed to be repatriated outside India.</b></p>
<b>D.78.</b>	<b>Can a company incorporated in India borrow in rupees from a non-resident Indian or a person of Indian origin resident outside India by way of investment in Non-convertible Debentures?</b>
<b>Ans.</b>	<p><b>A company incorporated in India</b> may borrow in rupees on <b>repatriation or non-repatriation basis</b>, from a <b>non-resident Indian or a person of Indian origin resident outside India</b> by way of investment in <b>Non-convertible Debentures</b> (NCDs) subject to the following conditions:</p> <p>(i) the issue of NCDs is made by <b>public offer</b>;</p> <p>(ii) the rate of interest on such NCDs does not exceed the prime lending rate of the State Bank of India as on the date on which the resolution approving the issue is passed in the borrowing company's General Body Meeting, <i>plus</i> 300 basis points;</p> <p>(iii) the period for redemption of such NCDs is not less than three years;</p> <p>(iv) the borrowing company does not and shall not carry on agricultural/ plantation/real estate business/Trading in Transferable Development Rights (TDRs) or does not and shall not act as Nidhi or Chit Fund company;</p> <p>(v) the borrowing company files with the nearest office of the Reserve Bank, not later than 30 days from the date—</p> <p>(A) of receipt of remittance for investment in NCDs, full details of the remittances received, namely; (a) a list containing names and addresses of <b>Non-resident Indians (NRIs)</b> who have remitted funds for investment in NCDs on repatriation and/or non-repatriation basis, (b) amount and date of</p>

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- receipt of remittance and its rupee equivalent; and (c) names and addresses of authorised dealers through whom the remittance has been received;
- (B) of issue of NCDs, full details of the investment, namely; (a) a list containing names and addresses of NRIs and number of NCDs issued to each of them on repatriation and/or non-repatriation basis and (b) a certificate from the Company Secretary of the borrowing company that all provisions of the Act, rules and regulations in regard to issue of NCDs have been duly complied with.

**D.79. What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on repatriation basis?**

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- Ans.** The borrowing by issue of non-convertible debentures on repatriation basis shall be subject to the following additional conditions, namely :
- (a) the percentage of NCDs issued to NRIs to the total paid-up value of each series of NCDs issued shall not exceed the ceiling prescribed for issue of equity shares/convertible debentures for foreign direct investment in India as specified by the Reserve Bank from time to time, under the relevant regulations, and
  - (b) the amount of investment is received by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India.

**D.80. What are the additional conditions need to be fulfilled in case of borrowing by issue of NCDs on non- repatriation basis?**

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- Ans.** The borrowing by issue of NCDs on non-repatriation basis shall be subject to the following additional conditions, namely:
- (a) the amount of investment is received either by remittance from outside India through normal banking channels or by transfer of funds held in the investor's Non-resident External (NRE)/Non-resident Ordinary (NRO)/Foreign Currency Non-resident (FCNR) account maintained with an authorised dealer or an authorised bank in India,
  - (b) where the investment is made out of funds held in Non-resident Special Rupee (NRSR) account, the interest on such Non-convertible Debentures (NCDs) shall also not be repatriable outside India, and the maturity proceeds and interest on such debentures are credited only to the Non-resident Special Rupee (NRSR) account of the investor.

**D.81. Whether borrowings by way of issue of preference shares and convertible debentures to a person resident outside India are considered as debt?**

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- Ans.** The borrowing by way of issue of preference shares on or after 30th day of April, 2007 other than those which are fully and mandatorily convertible into equity within a specified time and issue of convertible debentures on or after 7th day of June, 2007, other than those which are fully and mandatorily convertible into equity within a specified time, to a person resident outside India, shall be considered as debt and shall accordingly conform to Regulation 6 of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA 3/2000-RB, dated 3rd May, 2000) including the limits to such borrowings as specified in the said regulations.

**D.82. Are there any restrictions on the usage of borrowed funds?**

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- Ans.** No person resident in India who has borrowed in rupees from a person resident outside India
- (1) shall use such borrowed funds for any purpose except in his own business other than—
    - (i) the business of chit fund, or
    - (ii) as Nidhi Company, or
    - (iii) agricultural or plantation activities or real estate business (not include development of townships, construction of residential/commercial

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(iv) premises, roads or bridges); or construction of farm houses, or trading in Transferable Development Rights (TDRs),

- (2) shall use such borrowed funds for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.

It has now been decided to **permit** such resident entities / companies in India, authorised by the Government of India, **to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India** to use such borrowed funds for the following purposes:

- (a) for on lending / re-lending to the infrastructure sector; and  
(b) for keeping in fixed deposits with banks in India pending utilization by them for permissible end-uses.

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**D.83. Can an AD grant loans in rupees to NRIs? What are the conditions?**

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**Ans.** An authorised dealer in India may grant loan to a NRI,

- (A) Against the security of shares or other securities held in the name of the borrower, or  
(B) Against the security of immovable property (other than agricultural or plantation property or farm house), held by him in accordance with the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000:

**Provided** that—

- (a) The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes;  
(b) The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely:  
(i) the business of chit fund, or  
(ii) Nidhi Company, or  
(iii) agricultural or plantation activities or in real estate business, or construction of farm houses, or  
(iv) trading in Transferable Development Rights (TDRs).  
(c) The Reserve Bank's directives on advances against shares/ securities/ immovable property shall be duly complied with;  
(d) The loan amount shall not be credited to Non-resident External (NRE)/ Foreign Currency Non-resident (FCNR) account of the borrower;  
(e) The loan amount shall not be remitted outside India;  
(f) Repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to the Non-resident Ordinary (NRO)/ Non-resident External (NRE)/ Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted,  
(C) For any purpose as per the loan policy laid down by the Board of Directors of the Authorised Dealer.

**Provided** that—

- (a) the loan shall not be utilised either singly or in association with other person for—  
(i) the business of chit fund, or  
(ii) Nidhi company, or  
(iii) agricultural or plantation activities or in real estate business or construction of farm houses, or  
(iv) trading in Transferable Development Rights (TDRs), or  
(v) investment in capital market including margin trading and derivatives;  
(b) the Reserve Bank's directives on such advances shall be duly complied



	with;
	(c) the loan amount shall not be credited to NRE/FCNR(B) accounts;
	(d) the loan amount shall not be remitted outside India;
	(e) repayment of loan shall be made from out of remittances from outside India through normal banking channels or by debit to NRE/FCNR(B)/NRO accounts,]
<b>D.84.</b>	<b>Can the loans in Rupees to non-residents Indian against the security of shares or other securities and immovable property (other than agricultural or plantation property or farm house) by an authorised dealer in India be repaid by any close relative of the borrower in India?</b>
<b>Ans.</b>	Yes, by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.
<b>D.85.</b>	<b>On what conditions an AD in India can grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme?</b>
<b>Ans.</b>	An Authorised Dealer in India may grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the Employees Stock Option Plan (ESOP) Scheme subject to the following conditions: <ul style="list-style-type: none"> <li>(i) The ESOP Scheme should be as per the policy approved by the bank's Board.</li> <li>(ii) The loan amount should not exceed 90% of the purchase price of the shares or Rupees 20 lakhs per NRI employee, whichever is lower.</li> <li>(iii) The rate of interest and margin on such loans may be decided by the banks, subject to directives issued by the Reserve Bank from time to time.</li> <li>(iv) The amount shall be paid directly to the company and should not be credited to the borrowers' non-resident accounts in India.</li> <li>(v) The loan amount would have to be repaid by the borrower by way of inward remittances or by debit to his/her NRO/NRE/FCNR(B) account.</li> <li>(vi) The loans will be included for reckoning capital market exposures and the bank will ensure compliance with prudential limits, prescribed by the Reserve Bank from time to time, for such exposure to capital market.]</li> </ul>
<b>D.86.</b>	<b>Can the Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme be repaid by any close relative of the borrower in India?</b>
<b>Ans.</b>	Yes, by resident close relative (relative as defined in Section 6 of the Companies Act, 1956), of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.
<b>D.87.</b>	<b>On what conditions a housing loan in rupees can be granted to an NRI or PIO resident outside India from an authorised dealer or a housing finance institution?</b>
<b>Ans.</b>	An authorised dealer or a housing finance institution in India approved by the National Housing Bank may provide housing loan <b>to a Non-resident Indian or a person of Indian origin resident outside India</b> , for acquisition of a residential accommodation in India, subject to the following conditions, namely : <ul style="list-style-type: none"> <li>(a) the quantum of loans, margin money and the period of repayment shall be at par with those applicable to housing finance provided to a person resident in India;</li> <li>(b) the loan amount shall not be credited to Non-resident External (NRE)/Foreign Currency Non-resident (FCNR) account of the borrower;</li> <li>(c) the loan shall be fully secured by equitable mortgage of the property proposed to be acquired, and if necessary, also by lien on the borrower's other assets in India;</li> <li>(d) the instalment of loan, interest and other charges, if any, shall be paid by the borrower by remittances from outside India through normal banking channels or out of funds in his Non-resident External (NRE)/Foreign Currency Non-resident (FCNR)/ Non-resident Ordinary (NRO) account in India, or out of rental income derived from renting out the property acquired by utilisation of the loan <b>or by</b></li> </ul>

	<p><b>any relative of the borrower in India by crediting the borrower's loan account through the bank account of such relative.</b></p> <p>(e) the rate of interest on the loan shall conform to the directives issued by the Reserve Bank or, as the case may be, by the National Housing Bank.</p>
<b>D.88.</b>	<b>Can the housing loan so provided for acquisition of a residential accommodation in India be repaid by any close relative of the borrower in India?</b>
<b>Ans.</b>	Yes, by crediting the borrower's loan account through the bank account of such close relative (relative as defined in section 6 of the Companies Act, 1956).
<b>D.89.</b>	<b>On what conditions Rupee loans can be granted to NRI/PIO employees of Indian body corporate?</b>
<b>Ans.</b>	<p><b>A body corporate registered or incorporated in India may grant rupee loan to its employees who is a non-resident Indian or a Person of Indian Origin,</b> subject to the following conditions, namely :</p> <p>(i) the loan shall be granted only for personal purposes including purchase of housing property in India;</p> <p>(ii) the loan shall be granted in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme and other terms and conditions applicable to its Staff resident in India;</p> <p>(iii) the lender shall ensure that the loan amount is not used for the prohibited purposes;</p> <p>(iv) the lender shall credit the loan amount to the borrower's NRO Account in India or shall ensure credit to such account by specific indication on the payment instrument;</p> <p>(v) it shall be a term of the loan agreement that the repayment of loan shall be made by way of remittance from outside India or from NRE/NRO/FCNR Account of the borrower; and the lender shall not accept repayment made from any other source.]</p>
<b>D.90.</b>	<b>On what conditions AD can allow continuance of loan/ overdraft granted to a person resident in India who subsequently becomes a person resident outside India?</b>
<b>Ans.</b>	<p>An authorised dealer or, as the case may be, an authorised bank, may allow continuance of loan/ overdraft granted to a person resident in India <b>who subsequently becomes a person resident outside India</b>, subject to following terms and conditions :</p> <p>(a) the authorised dealer or the authorised bank is satisfied, according to his/its commercial judgment, about the reasons to continue the loan or overdraft;</p> <p>(b) the period of loan or overdraft shall not exceed the period originally fixed at the time of granting the loan or overdraft;</p> <p>(c) so long as the borrower continues to remain a person resident outside India, the repayment shall be made either by inward remittance from outside India through normal banking channels or from the funds held in Non-resident External (NRE)/Foreign Currency Non-resident (FCNR)/ Non-resident Ordinary (NRO) account of the borrower.</p>
<b>D.91.</b>	<b>What is the impact of change in the residential status of the lender?</b>
<b>Ans.</b>	In case a <b>rupee loan was granted by a person resident in India to another person resident in India and the lender subsequently becomes a non-resident</b> , the repayment of the loan by the resident borrower should be made by credit to the Non-resident Ordinary (NRO) account of the lender maintained with a bank in India, at the option of the lender.
<b>D.92.</b>	<b>Can an overdraft in rupee account be maintained with AD in India by a bank outside India?</b>
<b>Ans.</b>	An authorised dealer may permit a temporary overdraft for value <b>not exceeding rupees five hundred lakhs</b> , in rupee accounts maintained with him by his overseas branch or correspondent or Head Office outside India, subject to such terms and

conditions as the Reserve Bank may direct from time to time.

Explanation: For the purpose of calculating the ceiling of rupees five hundred lakhs under this Regulation, the aggregate amount of overdrafts permitted by the authorised dealer to all his branches, correspondents and Head Office outside India outstanding in the books of all his branches in India, shall be taken into account.

**D.93. What are the provisions for Non-resident guarantee for fund based & non-fund based facilities entered between two resident entities?**

**Ans. Borrowing and lending of Indian Rupees** between two persons resident in India does not attract the provisions of the Foreign Exchange Management Act, 1999. In case where a Rupee loan is granted against the **guarantee provided by a person resident outside India**, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The Reserve Bank vide Notification No. FEMA 29/2000-RB dated September 26, 2000 has granted **general permission to a person resident in India, being a principal debtor, to make payment to a person resident outside India, who has met the liability under a guarantee.**

It has been decided vide Circular No. 20 dated August 29, 2012 to **extend the facility** of non-resident guarantee under the general permission for **non-fund based facilities** (such as Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) ) entered into between two persons resident in India. The method of discharge of liability by the non-resident guarantor under the guarantee and the subsequent repayment of the liability by the principal debtor would continue, as hitherto, as detailed in A.P. (DIR Series) Circular No. 28 dated March 30, 2001.

**D.94. Can an individual resident in India borrow foreign exchange from his close relatives outside India? If yes, to what extent?**

**Ans. Yes. An individual resident in India** may borrow a sum not exceeding **US\$ 250,000** or its equivalent from **his close relatives** (as defined in section 6 of the Companies Act, 1956) **outside India**, subject to the conditions that—

- the minimum maturity period of the loan is one year;
- the loan is free of interest; and
- the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

#### **INVESTMENT IN FIRM OR PROPRIETARY CONCERN IN INDIA REGULATIONS UNDER FEMA 24**

**D.95. What is the definition of a 'Non-Resident Indian' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?**

**Ans.** "Non-Resident Indian (NRI)" means a person resident outside India who is a citizen of India.

**D.96. What is the definition of a 'Person of Indian Origin' for purposes of Investment in firm or a proprietary concern Regulations (FEMA 24)?**

**Ans.** "Person of Indian Origin" means a citizen of any country **other than Bangladesh or Pakistan or Sri Lanka**, if

- he at any time held Indian passport; or
- he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
- the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b);

**D.97. Under what conditions an NRI/PIO can invest in the capital of a firm or a proprietary concern in India on non-repatriation basis?**

**Ans.** A Non-Resident Indian (NRI) or a Person of Indian Origin (PIO) resident outside India can invest in the capital of a firm or a proprietary concern in India on non-

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repatriation basis provided;

- (a) Amount is invested by inward remittance or out of NRE/FCNR(B)/NRO account maintained with Authorized Dealers / Authorized banks.
- (b) The firm or proprietary concern is not engaged in any agricultural/plantation or real estate business or print media sector.
- (c) Amount invested shall not be eligible for repatriation outside India.
- (d) the firm or the proprietary concern is not engaged in print media.

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**D.98. What is the procedure for above Investments with repatriation option?**

**Ans.** Investments with repatriation option: NRIs/PIO may seek prior permission of Reserve Bank for investment in sole proprietorship concerns/partnership firms with repatriation option. The application will be decided in consultation with the Government of India.

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**D.99. Are there any exceptions to the investment in a firm or proprietorship concern in India by NRIs/PIO?**

**Ans.** An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in any agricultural/plantation activity or real estate business or Print Media.

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**D.100. Are there any prohibitions on making Investments in India by an NRI?**

**Ans.** No person resident outside India shall make investment in India, in any form, in any **company or partnership firm or proprietary concern** or any entity, whether incorporated or not, which is engaged or proposes to engage—

- (i) in the business of **chit fund**, or
- (ii) as **Nidhi Company**, or
- (iii) in **agricultural or plantation activities**, or
- (iv) in **real estate business, or construction of farm houses**, or
- (v) in trading in **Transferable Development Rights** (TDRs). Transferable Development Rights means certificates issued in respect of category of land acquired for public purpose either by Central or State Government in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole.

'Real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges.

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**D.101. Is a firm or a proprietary concern permitted to make payment to a non-resident Indian or a person of Indian origin who has made investment by way of profit on such investment?**

**Ans.** A firm or a proprietary concern in India may make payment to or for the credit of a non- resident Indian or a person of Indian origin the sum invested by such person in that firm or the proprietary concern or the income accruing to such person by way of profit on such investment.

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**D.102. How can the payment for investment be made?**

**Ans.** The payment for investment shall be made by remittance from abroad through normal banking channels or by debit to an account of the investor maintained with an authorised person in India in accordance with the regulations made by the Reserve Bank under the Act.

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**D.103. What are the different classes of capital account transactions of persons resident outside India?**

**Ans.**

- (a) Investment in India by a person resident outside India, that is to say,
  - (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
  - (ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- (b) Acquisition and transfer of immovable property in India by a person resident

- outside India.
- (c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
  - (d) Import and export of currency/currency notes into/from India by a person resident outside India.
  - (e) Deposits between a person resident in India and a person resident outside India.
  - (f) Foreign currency accounts in India of a person resident outside India.
  - (g) Remittance outside India of capital assets in India of a person resident outside India.

### REMITTANCE OF ASSETS REGULATIONS UNDER FEMA 13

**D.104. What is the definition of a 'Non-Resident Indian' for purposes of Remittance of Assets Regulations (FEMA 13)?**

**Ans.** "Non-Resident Indian (NRI)" means a person resident outside India who is a citizen of India.

**D.105. What is the definition of a 'Person of Indian Origin' for purposes of Remittance of Assets Regulations (FEMA 13)?**

**Ans.** "Person of Indian Origin (PIO)" means a citizen of **any country other than Bangladesh or Pakistan**, if

- (a) he at any time held Indian passport;
- or
- (b) he or either of his parents or any of his grand-parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955);
- or
- (c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b).

**D.106. What is the meaning of Remittance of assets?**

**Ans.** "Remittance of assets" means remittance outside India of funds representing a deposit with a bank or a firm or a company, provident fund balance or superannuation benefits, amount of claim or maturity proceeds of Insurance Policy, sale proceeds of shares, securities, immovable property or any other asset held in India in accordance with the provisions of the Act or rules or regulations made thereunder.

**D.107. Is Remittance of assets permitted?**

**Ans.** No person whether resident in India or not, shall make remittance of any asset held in India by him or by any other person.

**D.108. Is a Foreign citizen/PIO eligible to get the remittance facility of US\$ 1,000,000 per financial year? What documents need to be furnished to facilitate such remittance? Whether a Certificate from CA also mandatory?**

**Ans.** A citizen of foreign state, not being a citizen of Nepal or Bhutan or a **Person of Indian Origin (PIO)**, who:

- (i) has **retired from an employment in India**; or
- (ii) has **inherited the assets** from a person referred to in sub-section (5) of section 6 of the Act i.e. **A person resident outside India** who acquired **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person **when he was resident in India or inherited from a person who was resident in India**; or
- (iii) is a **widow resident outside India and has inherited assets of her deceased husband** who was an Indian citizen resident in India, may remit an amount, not exceeding US \$ **1,000,000 per financial year**, on production of,
  - (a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter; and
  - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of

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Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.

- (iv) **had come to India for studies/training and has completed his studies/training**, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/scholarship received from the Government or any Organisation in India.

**D.109. Under what cases remittance abroad can be made with Reserve Bank's prior permission?**

**Ans.** A person, who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:

- (i) Remittance **exceeding US\$ 1,000,000** per financial year (a) on account of legacy, bequest or inheritance to a citizen of foreign State, permanently resident outside India; and (b) by a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), out of the balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by way of inheritance/legacy;
- (ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made.

**D.110. Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US\$ 1,000,000?**

**Ans.** For the purpose of arriving at annual ceiling of remittance of US \$ **1,000,000**, the funds **representing sale proceeds of shares and immovable property** owned or held by the citizen of foreign State **on repatriation basis** in accordance with the FEMA 21 and FEMA 20, **shall not be included**.

**D.111. Is it necessary to make the remittance of all installments through the same AD?**

**Ans.** Where the remittance is made in more than one instalment, the remittance of all instalments shall be made through **the same authorised dealer**.

**D.112. How can an NRI/PIO avail the remittance facility of US\$ 1,000,000?**

**Ans.** A Non-Resident Indian (**NRI**)/Person of Indian Origin (**PIO**) may remit an amount, not exceeding **US\$ 1,000,000** per financial year,

- (i) Out of the **balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by him by way of inheritance/legacy on production of**:
  - (a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and
  - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.
- (ii) Under a deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler, on production of:
  - (a) the original deed of settlement; and
  - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002 :]

**Provided** that where the remittance under clauses (i) and (ii) is made in more than one instalment, the remittance of all instalments shall be made through the **same authorised dealer**.

**D.113. Is there any lock-in-period for remitting sale proceeds of immovable property purchased by NRI/PIO out of Rupee funds?**

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<b>Ans.</b>	NRI/PIO may remit sale proceeds of immovable property purchased by him out of Rupee funds (or as a person resident in India) as above without any lock-in-period.
<b>D.114.</b>	<b>What are the provisions regarding remittance of sale proceeds of assets acquired by way of inheritance or legacy or settlement?</b>
<b>Ans.</b>	In respect of remittance of sale proceeds of assets acquired <b>by way of inheritance or legacy or settlement</b> for which there is no lock-in period, NRI / PIO may submit to the Authorised Dealer documentary evidence in support of inheritance or legacy of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the prescribed formats. Settlement is also a mode of inheritance from the parent, the only difference being that the property under the settlement passes to the beneficiary on the death of the owner/parent without any legal procedures/hassles and helps in avoiding delay and inconvenience in applying for probate, etc. In case settlement is done without retaining any life interest in the property i.e. during the lifetime of the owner/parent, it would be tantamount to regular transfer by way of gift. Therefore, if the property is received by NRI/PIO by way of settlement without the settler retaining life interest, it may be reckoned as transfer by way of gift and the remittance of sale proceeds of such property would be <b>guided by the extant instructions on remittance of balance in the NRO account.</b>
<b>D.115.</b>	<b>What are the restrictions to repatriation of sale proceeds of residential property purchased by NRIs / PIO out of foreign exchange?</b>
<b>Ans.</b>	Repatriation of sale proceeds of residential property purchased by NRI / PIO is permitted to the extent of the amount paid for acquisition of immovable property in foreign exchange received through banking channels. The facility is restricted to not more than <b>two such properties</b> . The balance amount can be credited to the NRO account and can be remitted under USD one million facility.
<b>D.116.</b>	<b>What are the different kinds of repatriation permitted by AD? What are the conditions?</b>
<b>Ans.</b>	Authorised Dealer banks may permit repatriation of amounts representing the refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon), provided the original payment was made out of NRE / FCNR (B) account of the account holder, or remittance from outside India through normal banking channels and the Authorized Dealer bank is satisfied about the genuineness of the transaction. Such funds may also be credited to the NRE / FCNR (B) account of the NRI / PIO, if they so desire.
<b>D.117.</b>	<b>Is repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by them by way of loans from the authorized dealer banks / housing finance institutions allowed?</b>
<b>Ans.</b>	Authorised Dealer banks may allow repatriation of sale proceeds of residential accommodation purchased by NRIs/PIO out of funds raised by them by way of loans from the authorized dealer banks / housing finance institutions to the extent of such loan/s repaid by them out of foreign inward remittances received through normal banking channel or by debit to their NRE / FCNR(B) accounts.
<b>D.118.</b>	<b>What are the provisions for remittance of current income outside India?</b>
<b>Ans.</b>	Remittance outside India of <b>current income like rent, dividend, pension, interest, etc.</b> in India of the account holder is a permissible debit to the NRO account. Authorised Dealer banks may also allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs who <b>do not maintain an NRO account</b> in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for. While the principal of NRO deposits is non-repatriable, current income and interest earning is repatriable.

**D.119. Can NRIs/PIOs credit the current income to their Non-Resident (External) Rupee account?**

**Ans.** NRIs/PIO have the **option to credit the current income to their Non-Resident (External) Rupee account**, provided the Authorized Dealer bank is satisfied that the credit represents current income of the non-resident account holder and income tax thereon has been deducted / provided for.

**D.120. Are Authorised Dealer banks permitted to issue International Credit Cards to NRIs/PIO?**

**Ans.** Authorised Dealer banks have been permitted to issue International Credit Cards to NRIs/PIO, without prior approval of the Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the cardholder's FCNR(B) / NRE / NRO accounts.

#### **FACILITIES TO RETURNING NRIs/PIOs**

**D.121. Can a person resident in India hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India?**

**Ans.** As per section 6(4) of FEMA, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India **or** inherited from a person who was resident outside India.

**D.122. How can RFC Accounts facilitate returning NRIs/PIOs?**

**Ans.** Returning NRIs /PIOs may open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts.

Proceeds of assets held outside India at the time of return, can be credited to RFC account.

The funds in RFC accounts are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form outside India.

RFC accounts can be maintained in the form of current or savings or term deposit accounts, where the account holder is an individual and in the form of current or term deposits in all other cases.

RFC accounts are permitted to be held jointly with the resident close relative(s) as defined in the Companies Act, 1956 as joint holder (s) in their RFC bank account on 'former or survivor basis'. However, such resident Indian close relative, now being made eligible to become joint account holder shall not be eligible to operate the account during the life time of the resident account holder.

**D.123. Whether income and sale proceeds of assets held abroad by returning NRIs need to be repatriated?**

**Ans.** Income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement need not be repatriated (Circular 37 dated 19.10.2011).

**D.124. What is the impact of change of resident status of the NRE account, FCNR(B) account and NRO account holder?**

**Ans. NRE accounts:**

NRE accounts should be redesignated as resident accounts or the funds held in these accounts may be **transferred to the RFC accounts** (if the account holder is eligible for maintaining RFC account) at the option of the account holder **immediately upon the return of the account holder to India** for taking up employment or for carrying on business or vocation or for any other purpose indicating intention to stay in India



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for an uncertain period. **Where the account holder is only on a short visit to India, the account may continue to be treated as NRE account even during his stay in India.**

**FCNR(B) deposits:**

When an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR(B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the account holder to India. Authorised dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the account holder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.

**NRO accounts:**

NRO accounts may be re-designated as resident rupee accounts on the return to the account holder to India for taking up employment, or for carrying on business or vocation or for any other purpose indicating his intention to stay in India for an uncertain period. Where the account holder is only on a temporary visit to India, the account should continue to be treated as non-resident during such visit.

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**FOREIGN NATIONALS**

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**D.125. Can a foreign citizen be hired/appointed as technician/ Director/ Managing Director/ Whole-time Director; and payment of salary, remuneration and fee thereof?**

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**Ans.** Remuneration, salary, fees etc. being current account transactions, there are no restrictions from FEMA angle on remittances abroad.

**Foreign technicians:** Hiring of foreign nationals (technical or non-technical) is permissible without any restrictions. There is no ceiling on salary, which can be paid as per contract. Their salary can be remitted abroad, after applicable withholding tax. Their expenses of to and fro travel and local hospitality can be paid in Indian Rupees by Indian host.

**Managing/ Whole-Time Director:** A foreign national can be appointed as Managing Director/ Whole-Time Director. He will require permission from Ministry of Corporate Affairs, Government of India, irrespective of salary.

**Appointment as Director:** A foreign national/NRI can be appointed as a director in Indian Company without any permission. He can be paid sitting fees in Rupees. His expenses of to and fro travel and local hospitality can be paid in Indian Rupees by Indian company.

**D.126. How can a foreign citizen resident in India remit his salary payable to him for the services rendered in India?**

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**Ans.** A citizen of a foreign state resident in India, being an employee of a foreign company and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company or being an employee of a company incorporated in India, may open, hold and maintain a foreign currency account with a bank outside India and receive/ remit the whole salary payable to him for the services rendered, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.

**D.127. How can an Indian citizen employed by a foreign company outside India remit salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company?**

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**Ans.** A citizen of India, employed by a foreign company outside India and on deputation to

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the office/ branch/ subsidiary/ joint venture in India of such foreign company, may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.

**D.128. Can a foreign citizen Resident outside India purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?**

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**Ans.** A person resident outside India **including foreign citizen** Resident outside India (other than a citizen of Bangladesh or Pakistan or an entity incorporated outside India (other than an entity in Bangladesh or Pakistan), may purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme, subject to the terms and conditions specified in Schedule 1 of FEMA 20.

**D.129. Can a citizen of Bangladesh or Pakistan, or an entity incorporated in Bangladesh or Pakistan purchase shares or convertible debentures/preference shares of an Indian company under Foreign Direct Investment (FDI) Scheme?**

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**Ans.** A person who is a citizen of Bangladesh or an entity incorporated in Bangladesh may, with the prior approval of the Foreign Investment Promotion Board of the Government of India, purchase shares and convertible debentures of an Indian company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule 1 of FEMA 20.

A citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space and atomic energy.

**D.130. Are citizens of Nepal and Bhutan also permitted to invest in the capital of Indian companies, and that too on repatriation basis?**

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**Ans.** Citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

**D.131. Whether a citizen of foreign state, not being a citizen of Nepal or Bhutan is eligible for remittance facilities of US \$ 1,000,000 per financial year? If yes, then what are those facilities?**

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**Ans.** **A citizen of foreign state, not being a citizen of Nepal or Bhutan** or a Person of Indian Origin (PIO), who:

- (i) has **retired from an employment in India**; or
- (ii) has **inherited the assets** from a person referred to in sub-section (5) of section 6 of the Act i.e. **A person resident outside India** who acquired **Indian currency, security or any immovable property situated in India** if such currency, security or property was acquired, held or owned by such person **when he was resident in India or inherited from a person who was resident in India**; or
- (iii) is a **widow resident outside India and has inherited assets of her deceased husband** who was an Indian citizen resident in India, may remit an amount, not exceeding US \$ **1,000,000 per financial year**, on production of,
  - (a) documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter; and
  - (b) an undertaking by the remitter and certificate from a Chartered Accountant in the format prescribed by the Central Board of Direct Taxes, Ministry of Finance, Government of India in their Circular No. 10/2002, dated October 9, 2002.
- (iv) **had come to India for studies/training and has completed his studies/training**, may remit the balance available in his account, provided such balance represents funds derived out of remittances received from abroad

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through normal banking channels or rupee proceeds of foreign exchange brought by such person and sold to an authorised dealer or out of stipend/scholarship received from the Government or any Organisation in India.

**D.132. Under what cases remittance abroad can be made with Reserve Bank's prior permission?**

**Ans.** A person, who desires to make a remittance of assets in the following cases, may apply to the Reserve Bank, namely:

- (i) Remittance exceeding US\$ 1,000,000 per financial year (a) on account of legacy, bequest or inheritance to a citizen of foreign State, permanently resident outside India; and (b) by a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), out of the balances held in NRO accounts/sale proceeds of assets/the assets in India acquired by way of inheritance/legacy;
- (ii) Remittance to a person resident outside India on the ground that hardship will be caused to such a person if remittance from India is not made.

**D.133. Whether funds representing sale proceeds of shares and immovable property owned or held by the citizen of foreign State considered while computing amount of US \$ 1,000,000?**

**Ans.** For the purpose of arriving at annual ceiling of remittance of US \$ **1,000,000**, the funds **representing sale proceeds of shares and immovable property** owned or held by the citizen of foreign State on repatriation basis in accordance with the FEMA 21 and FEMA 20 **shall not be included**.

**D.134. Is it necessary to make the remittance of all installments through the same AD?**

**Ans.** Where the remittance is made in more than one instalment, the remittance of all installments shall be made through **the same authorised dealer**.

**D.135. Are these remittance facilities also available to citizens of Nepal and Bhutan?**

**Ans.** These remittance facilities are not available to citizens of Nepal and Bhutan.

**D.136. Whether citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China require any prior permission to establish a branch or a liaison office or a project office in India?**

**Ans.** No. Person, being a citizen of **Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China**, without prior permission of the Reserve Bank, shall establish in India, a **branch or a liaison office or a project office or any other place of business** by whatever name called.

**D.137. Are there any exceptions to the remittance facility in respect of sale proceeds of immovable property?**

**Ans.** The remittance facility in respect of sale **proceeds of immovable property** is **not available** to citizens of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan, Iran, Nepal and Bhutan.

**D.138. Are there any exceptions to the remittance facility in respect of sale proceeds of other financial assets?**

**Ans.** The facility of remittance of **sale proceeds of other financial assets** is **not available** to citizens of Pakistan, Bangladesh, Nepal and Bhutan.

**D.139. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?**

**Ans.** No.

**D.140. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?**

**Ans.** No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, he / she can acquire

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or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.

**D.141. Can a foreign national who is a person resident in India purchase immovable property in India?**

**Ans.** Yes, a foreign national who is a 'person resident in India' within the meaning of Section 2(v) of FEMA, 1999 can purchase immovable property in India, but the person concerned would have to obtain the approvals and fulfill the requirements, if any, prescribed by other authorities, such as, the State Government concerned, etc. The onus to prove his/her residential status is on the individual as per the extant FEMA provisions, if required by any authority. **However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank.**

**D.142. Is purpose of stay as well as the type of Indian visa granted important considerations to establish residential status in India?**

**Ans.** Yes, a foreign national who is residing in India for more than 182 days during the course of the preceding financial year for taking up employment or carrying on business / vocation or for any other purpose indicating his intention to stay for an uncertain period can acquire immovable property in India as he would be a 'person resident in India' as per section 2(v) of FEMA, 1999. To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of preceding financial year) but **also his purpose of stay as well as the type of Indian visa granted to him to clearly indicate the intention to stay in India for an uncertain period. In this regard, to be eligible, the intention to stay has to be unambiguously established with supporting documentation including visa.** It has also been observed that foreign nationals coming to India and staying beyond 182 days on a tourist or other visa meant for a certain period are illegally acquiring immovable property in India in violation of the extant rules and regulations under FEMA.

**D.143. Can Foreign nationals of non-Indian origin who have acquired immovable property in India transfer such property?**

**Ans.** Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of the Reserve Bank to i) a person resident in India ii) an NRI iii) a PIO.

**D.144. In which cases Foreign national of non-Indian origin resident outside India would require prior approval of Reserve bank?**

**Ans.** (i) Foreign national of non-Indian origin resident outside India would need *prior approval* of the Reserve Bank **to sell** agricultural land/plantation property/ farm house in India.

(ii) A foreign national of non-Indian origin would require the prior approval of the Reserve Bank **to gift an agricultural land / a plantation property / a farm house in India.**

(iii) A foreign national of non-Indian origin requires the prior approval of the Reserve Bank for **gifting the residential / commercial property.**

(iv) A foreign national of non-Indian origin can **mortgage a residential / commercial property** only with prior approval of the Reserve Bank.

(v) In case of a foreign national, sale proceeds can be repatriated if the **property is inherited from a person resident outside India** with the prior approval of the Reserve Bank.

**D.145. Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?**

**Ans.** In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassies/ Diplomats/ Consulates General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

- (i) Clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale; and
- (ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

**D.146. Can foreign tourists open a bank account in India during their short visit?**

**Ans.** Yes. Foreign tourists during their short visit to India can open a Non-Resident (Ordinary) Rupee (NRO) account (Current / Savings) with any Authorised Dealer bank dealing in foreign exchange. Such account can be opened up to a maximum period of 6 months.

**D.147. What are the documents required for opening such accounts?**

**Ans.** Passports and other valid identification proofs are required for opening the accounts. Authorised Dealer banks are also required to follow the Know Your Customer norms while opening of the accounts.

**D.148. What credits can be made to such accounts?**

**Ans.** Funds remitted from outside India through banking channel or those obtained by sale of foreign exchange brought by the tourists to India can be credited to the NRO account.

**D.149. Can the NRO account be used for making local payments?**

**Ans.** Yes. Tourists can freely make local payments through the NRO account. All payments to residents exceeding INR 50,000 can be made only by means of cheques / pay orders / demand drafts.

**D.150. Can foreign tourists repatriate the balance held in their NRO account at the time of departure from India?**

**Ans.** Yes. Allowed to convert the balance into foreign currency, provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

**D.151. What can be done to repatriate the proceeds of an account that has been maintained for more than six months?**

**Ans.** In such cases, applications for repatriation of balance may be made on plain paper to the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through the Authorised Dealer bank maintaining the account.

**D.152. Can foreign nationals Resident in India open resident account?**

**Ans.** Yes. Foreign nationals Resident in India can open and maintain a resident Rupee account in India. Foreign nationals who come to India on employment and become residents in terms of section 2 (v) of FEMA, 1999, and are eligible to open/hold a resident savings bank account, are permitted to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their legitimate dues subject to certain conditions.

A foreign national who has opened such account in India may leave the country and go out of India for business, employment of vocation for uncertain period. However, he may have to collect his pending dues. In such case, his resident account can be converted to NRO account after the foreign national leaves India to other country (except Nepal and Bhutan). The account can continue till his bona fide dues are received. He can remit funds from this account outside India. Remittance upto US\$

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one million per financial year are allowed. The account should be closed after dues are received.

**D.153. Can AD Category-I banks remit proceeds of such accounts on closure?**

**Ans.** Yes. But AD Category-I banks should ensure that the funds to be repatriated outside India were either received from abroad or they are repatriable in nature or permissible in terms of RBI notification No. FEMA 13/2000 dated 3rd May 2000, as amended from time to time. The foreign nationals employed in India holding valid visas are eligible to maintain resident accounts with an Authorised Dealer Category - I (AD Category-I) bank in India. In order to facilitate such foreign nationals to collect their pending dues in India, AD Category-I banks may, permit foreign nationals to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their pending bonafide dues, subject to conditions.

**D.154. What are the different types of Accounts that foreign diplomatic missions and diplomatic personnel can maintain to hold their Deposits? What are the permissible debits and credits to such accounts?**

**Ans.** (1) **Deposits held in rupee accounts maintained by foreign diplomatic missions and diplomatic personnel and their family members in India with an authorised dealer.**

(2) **Deposits held by diplomatic missions and diplomatic personnel in special rupee accounts namely Diplomatic Bond Stores Account to facilitate purchases of bonded stocks from firms and companies who have been granted special facilities by customs authorities for import of stores into bond, subject to following conditions :**

- (a) Credits to the account shall be only by way of proceeds of inward remittances received from outside India through normal banking channels or by a transfer from a foreign currency account in India of the account holder maintained with an authorised dealer in accordance with clause 3 of this Regulation;
- (b) All cheque leaves issued to the account holder shall be superscribed as 'Diplomatic Bond Stores Account No.';
- (c) Debits to the account shall be for local disbursements, or for payments for purchases of bonded stocks to firms and companies who have been granted special facilities by customs authorities for import of stores into bond;
- (d) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

(3) **Deposits held in accounts maintained in foreign currency by diplomatic missions, diplomatic personnel and non-diplomatic staff, who are the nationals of the concerned foreign countries and hold official passport of foreign embassies in India subject to the following conditions:**

- (a) Credits to the account shall be only by way of:
  - (i) Proceeds of inward remittances received from outside India through normal banking channels; and
  - (ii) transfer of funds, from the rupee account of the diplomatic mission in India, which are collected in India as visa fees and credited to such account;
- (b) Funds held in such account if converted in rupees shall not be converted back into foreign currency;
- (c) The account may be held in the form of current or term deposit account, and in the case of diplomatic personnel and non-diplomatic staff, may also be held in the form of savings account;
- (d) The rate of interest on savings or term deposits shall be such as may be determined by the authorised dealer maintaining the account;
- (e) The funds in the account may be repatriated outside India without the approval of Reserve Bank.

**D.155. Are non-resident close relative(s) permitted to be a joint holder(s) in resident bank accounts maintained by residents in India?**

**Ans.** Yes. Individuals resident in India are permitted to include non-resident close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as a joint holder(s) in their resident bank accounts on 'former or survivor' basis. However, such non-resident Indian close relatives shall not be eligible to operate the account during the life time of the resident account holder.

**D.156. Can foreign nationals resident outside India invest in rupee denominated units of equity schemes of domestic MFs, and units of domestic MF debt schemes which invest in infrastructure debt of infrastructure companies, on repatriation basis?**

**Ans.** Non-resident investors/ 'Qualified Foreign Investors' (QFIs) (other than SEBI registered FIIs and SEBI registered FVCIs) are permitted to purchase on repatriation basis rupee denominated units of equity schemes of domestic MFs issued by SEBI registered domestic MFs, under the two routes, namely:

1. Direct Route – SEBI registered Depository Participant (DP) route
2. Indirect Route - Unit Confirmation Receipt (UCR) route

Investments by the QFIs would be subject to a ceiling of US\$ 10 billion under both the routes plus up to an additional amount of US\$ 3 billion in units of domestic MF debt schemes which invest in infrastructure ("Infrastructure" as defined under the extant ECB guidelines) debt of minimum residual maturity of 5 years, within the existing ceiling of US\$ 25 billion for FII investment in corporate bonds issued by infrastructure companies.

The investment under both the routes by the QFIs will be in the units which are directly issued by the domestic MFs and no secondary market purchases would be allowed.

Units and UCRs issued under this scheme to QFIs, would be non-tradable and non-transferable.

## **ACQUISITION OF IMMOVABLE PROPERTY IN INDIA BY PERSONS RESIDENT OUTSIDE INDIA**

### **INTRODUCTION**

**D.157. Which regulation under FEMA regulates Acquisition of immovable property in India by persons resident outside India?**

**Ans.** Acquisition of immovable property in India by persons resident outside India (foreign national) is regulated in terms of section 6 (3) (i) of the Foreign Exchange Management Act (FEMA), 1999 as well as by the regulations contained in **FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2000** (FEMA 21), as amended from time to time.

**D.158. What are the meanings of 'person resident in India' and a 'person resident outside India'?**

**Ans.** Section 2 (v) and Section 2 (w) of FEMA, 1999 defines 'person resident in India' and a 'person resident outside India', respectively. Person resident outside India is categorized as Non- Resident Indian (NRI) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. The Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

A person resident in India who is not a citizen of India is also covered by the relevant Notifications.

**D.159. What are the provision when a person resident in India becomes a person**

**outside India, or any immovable property situated in India inherited from a person who was a resident in India?**

**Ans.** In terms of the provisions of Section 6(5) of FEMA 1999, a person resident outside India can hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India.

**D.160. What are the provision for acquisition of agricultural land or, plantation property or farm house by NRI/PIO?**

**Ans.** FEMA 21 permits a NRI or a PIO to acquire immovable property in India, other than agricultural land or, plantation property or farm house.

**D.161. What are the provision for acquisition immovable property in India by foreign companies?**

**Ans.** Foreign companies who have been permitted to open a Branch or Project Office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. Such dispensation is however not available to entities which are permitted to open liaison offices in India.

**D.162. What are the provision for acquisition by way of a lease for a period not exceeding 5 years?**

**Ans.** The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding 5 years or where a person is deemed to be resident in India.

In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the provisions of Section 2(v) of FEMA 1999.

**D.163. What are the provision for acquisition immovable property in India by Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan?**

**Ans.** Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan cannot acquire or transfer immovable property in India, (other than on lease not exceeding five years) without the prior permission of the Reserve Bank.

**D.164. What are the provisions for repatriation by NRIs/PIOs against sale proceeds of assets?**

**Ans.** NRIs/ PIOs are allowed to repatriate an amount up to USD one million per financial year (April-March), out of the balances held in the Non-Resident (Ordinary) Rupee (NRO) account, subject to compliance with applicable tax requirements. This amount includes sale proceeds of assets acquired by way of inheritance or settlement.

#### **ACQUISITION OF IMMOVABLE PROPERTY IN INDIA THROUGH PURCHASE / GIFT/ INHERITANCE**

**D.165. Who can purchase immovable property in India?**

**Ans.** Under the general permission available, the following categories can purchase immovable property in India:

- i) Non-Resident Indian (NRI)
- ii) Person of Indian Origin (PIO)

The general permission, however, covers only purchase of residential and commercial property and is not available for purchase of agricultural land / plantation property / farm house in India.

**D.166. Can NRI/PIO acquire agricultural land/ plantation property / farm house in India?**

**Ans.** No.



**D.167. Are any documents required to be filed with the Reserve Bank after the purchase?**

**Ans.** No. An NRI / PIO who has purchased residential / commercial property under general permission, is not required to file any documents/reports with the Reserve Bank.

**D.168. How many residential / commercial properties can NRI / PIO purchase under the general permission?**

**Ans.** There are no restrictions on the number of residential / commercial properties that can be purchased.

**D.169. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?**

**Ans.** No.

**D.170. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?**

**Ans.** No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India unless such property is acquired by way of inheritance from a person who was resident in India. However, he / she can acquire or transfer immovable property in India, on lease, not exceeding five years. In such cases, there is no requirement of taking any permission of /or reporting to the Reserve Bank.

**D.171. Can a foreign national who is a person resident in India purchase immovable property in India?**

**Ans.** Yes, a foreign national who is a 'person resident in India' within the meaning of Section 2(v) of FEMA, 1999 can purchase immovable property in India, but the person concerned would have to obtain the approvals and fulfill the requirements, if any, prescribed by other authorities, such as, the State Government concerned, etc. The onus to prove his/her residential status is on the individual as per the extant FEMA provisions, if required by any authority. **However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of the Reserve Bank.**

**D.172. Can the branch / liaison office of a foreign company purchase immovable property in India?**

**Ans.** A foreign company which has established a Branch Office or other place of business in India, in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through the proper banking channels. A declaration in form IPI should be filed with the Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for the purpose of borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only with the prior approval of the Reserve Bank. Further, acquisition of immovable property by entities incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan and who have set up Branch Offices in India and would require prior approval of the Reserve Bank.

However, if the foreign company has established a Liaison Office in India, it cannot acquire immovable property. In such cases, Liaison Offices can acquire property by way of lease not exceeding 5 years.

**D.173. Can a NRI/PIO acquire immovable property in India by way of gift? Can a foreign national acquire immovable property in India by way of gift?**

**Ans.** (a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from

- 
- i) a person resident in India; or
  - ii) an NRI; or
  - iii) a PIO.

However, the property can only be commercial or residential in nature. Agricultural land / plantation property / farm house in India cannot be acquired by way of gift.

- (b) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India by way of gift.

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**D.174. Can a non-resident inherit immovable property in India?**

**Ans.** Yes, a person resident outside India i.e. i) an NRI; ii) a PIO; and iii) a foreign national of non-Indian origin can inherit and hold immovable property in India from a person who was resident in India.

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**D.175. From whom can a non-resident person inherit immovable property?**

**Ans.** A person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) can inherit immovable property from

- (a) a person resident in India
- (b) a person resident outside India

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange law in force or FEMA regulations, applicable at the time of acquisition of the property.

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**TRANSFER OF IMMOVABLE PROPERTY IN INDIA**

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**(I) TRANSFER BY WAY OF SALE**

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**D.176. Can an NRI/ PIO/foreign national sell his residential / commercial property?**

**Ans.**

- (a) NRI can sell property in India to
  - i) a person resident in India; or
  - ii) an NRI; or
  - iii) a PIO.
- (b) PIO can sell property in India to
  - i) a person resident in India; or
  - ii) an NRI; or
  - iii) a PIO – **with the prior approval of the Reserve Bank**
- (c) Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of the Reserve Bank to
  - i) a person resident in India
  - ii) an NRI
  - iii) a PIO

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**D.177. Can a non-resident owning / holding an agricultural land / a plantation property / a farm house in India sell the said property?**

**Ans.**

- (a) NRI / PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.
- (b) Foreign national of non-Indian origin resident outside India would need prior approval of the Reserve Bank to sell agricultural land/plantation property/ farm house in India.

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**(II) TRANSFER BY WAY OF GIFT**

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**D.178. Can a non-resident gift his residential / commercial property?**

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- Ans.** Yes.
- (a) NRI / PIO may gift residential / commercial property to –
- (i) person resident in India or
  - (ii) an NRI or
  - (iii) PIO.
- (b) A foreign national of non-Indian origin requires the prior approval of the Reserve Bank for gifting the residential / commercial property.

**D.179. Can an NRI / PIO / foreign national holding an agricultural land / a plantation property / a farm house in India, gift the same?**

- Ans.**
- (a) NRI / PIO can gift an agricultural land / a plantation property / a farm house in India only to a person resident in India who is a citizen of India.
- (b) A foreign national of non-Indian origin would require the prior approval of the Reserve Bank to gift an agricultural land / a plantation property / a farm house in India.

**(III) TRANSFER THROUGH MORTGAGE**

**D.180. Can residential / commercial property be mortgaged by NRI/ PIO?**

- Ans.**
- i) NRI / PIO can mortgage a residential / commercial property to:
- (a) an Authorised Dealer / the housing finance institution in India without the approval of Reserve Bank
  - (b) a bank abroad, with the prior approval of the Reserve Bank.
- ii) A foreign national of non-Indian origin can mortgage a residential / commercial property only with prior approval of the Reserve Bank.
- iii) A foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an Authorised Dealer in India.

**MODE OF PAYMENT FOR PURCHASE OF IMMOVABLE PROPERTY IN INDIA.**

**D.181. How can an NRI / PIO make payment for purchase of residential / commercial property in India?**

- Ans.** Payment can be made by NRI / PIO out of:
- (a) funds remitted to India through normal banking channels or
  - (b) funds held in NRE / FCNR (B) / NRO account maintained in India

No payment can be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.

**D.182. Is repatriation of application money for booking of flat / payment made to the builder by NRI/ PIO allowed when the flat or plot is not allotted or the booking / contract is cancelled?**

- Ans.** The Authorised Dealers can allow NRIs / PIOs to credit refund of application/ earnest money/ purchase consideration made by the house building agencies/ seller on account of non-allotment of flat/ plot/ cancellation of bookings/ deals for purchase of residential, commercial property, together with interest, if any, net of income tax payable thereon, to NRE/FCNR account, provided, the original payment was made out of NRE/FCNR account of the account holder or remittance from outside India through normal banking channels and the Authorised Dealer is satisfied about the genuineness of the transaction.

**D.183. Can NRI / PIO avail of loan from an authorised dealer for acquiring flat / house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account / FCNR (B) account? How the loan can be repaid?**

- Ans.** Yes, such loans are permitted subject to the terms and conditions laid down in

Schedules 1 and 2 to the Notification No. FEMA 5/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time. Banks cannot grant fresh loans or renew existing loans in excess of Rs. 100 lakhs against NRE and FCNR (B) deposits, either to the depositors or to third parties. The banks should also not undertake artificial slicing of the loan amount to circumvent the ceiling of Rs. 100 lakh.

Such loans can be repaid in the following manner:

- (a) by way of inward remittance through normal banking channel or
- (b) by debit to the NRE / FCNR (B) / NRO account of the NRI/ PIO or
- (c) out of rental income from such property
- (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

**D.184. Can NRI / PIO, avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs / renovation / improvement of residential accommodation ? How can such loan be repaid?**

**Ans.** Yes, NRI/PIO can avail of housing loan in Rupees from an Authorised Dealer or a Housing Finance Institution subject to certain terms and conditions laid down in Regulation 8 of Notification No. FEMA 4/2000-RB dated May 3, 2000 viz. Foreign Exchange Management (Borrowing and lending in rupees) Regulations, 2000, as amended from time to time. Authorised Dealers/ Housing Finance Institutions can also lend to the NRIs/ PIOs for the purpose of repairs/renovation/ improvement of residential accommodation owned by them in India. Such a loan can be repaid (a) by way of inward remittance through normal banking channel or (b) by debit to the NRE / FCNR (B) / NRO account of the NRI / PIO or (c) out of rental income from such property; or (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

**D.185. Can NRI/PIO avail of housing loan in Rupees from his employer in India?**

**Ans.** Yes, subject to certain terms and conditions given in Regulation 8A of Notification No. FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003, i.e.,

- (i) The loan shall be granted only for personal purposes including purchase of housing property in India;
- (ii) The loan shall be granted in accordance with the lender's Staff Welfare Scheme/Staff Housing Loan Scheme and subject to other terms and conditions applicable to its staff resident in India;
- (iii) The lender shall ensure that the loan amount is not used for the purposes specified in sub-clauses (i) to (iv) of clause (1) and in clause (2) of Regulation 6 of Notification No.FEMA.4/2000-RB dated May 3, 2000.
- (iv) The lender shall credit the loan amount to the borrower's NRO account in India or shall ensure credit to such account by specific indication on the payment instrument;
- (v) The loan agreement shall specify that the repayment of loan shall be by way of remittance from outside India or by debit to NRE/NRO/FCNR Account of the borrower and the lender shall not accept repayment by any other means.

**REPATRIATION OF SALE PROCEEDS OF RESIDENTIAL / COMMERCIAL PROPERTY  
PURCHASED BY NRI / PIO**

**D.186. Can NRI / PIO repatriate outside India the sale proceeds of immovable property held in India?**

**Ans.** (a) In the event of sale of immovable property other than agricultural land / farm house / plantation property in India by a NRI / PIO, the Authorised Dealer may allow repatriation of the sale proceeds outside India, provided the following

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conditions are satisfied, namely:

- (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
- (ii) the amount to be repatriated does not exceed:
  - the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
  - the amount paid out of funds held in Foreign Currency Non-Resident Account, or
  - the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds held in Non-Resident External account for acquisition of the property; and
- (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

For this purpose, **repatriation outside India** means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency.

- (b) in case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/PIO. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account.

NRI/PIO are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and a tax clearance / no objection certificate from the Income Tax Authority for the remittance. Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

- (c) A person referred to in sub-section (5) of Section 6 of the Foreign Exchange Management Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

**D.187. Can an NRI/PIO repatriate the proceeds in case the sale proceeds were deposited in the NRO account?**

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**Ans.** Please refer to the answer at D.22 above. NRI/PIO may repatriate up to USD one million per financial year (April-March) from their NRO account which would also include the sale proceeds of immovable property. There is no lock in period for sale of immovable property and repatriation of sale proceeds outside India.

**D.188. If a Rupee loan was taken by the NRI/ PIO from an Authorised Dealer or a Housing Finance Institution for purchase of residential property can the NRI / PIO repatriate the sale proceeds of such property?**

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**Ans.** Yes, Authorised Dealers have been authorised to allow repatriation of sale proceeds of residential accommodation purchased by NRIs/ PIOs out of funds raised by them by way of loans from the authorised dealers/ housing finance institutions to the extent such loan/s repaid by them are out of the foreign inward remittances received through normal banking channel or by debit to their NRE/FCNR accounts. The balance amount, if any, can be credited to their NRO account and the NRI/PIO may

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repatriate up to USD one million per financial year (April-March) subject to payment of applicable taxes from their NRO account balances which would also include the sale proceeds of the immovable property.

**D.189. If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale of such property?**

**Ans.** The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

**D.190. If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?**

**Ans.** Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a person resident in India subject to the following conditions:

- (i) The amount should not exceed USD one million, per financial year
- (ii) This is subject to production of documentary evidence in support of acquisition / inheritance of assets and an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.4/2009 dated June 29, 2009
- (iii) In cases of deed of settlement made by either of his parents or a close relative (as defined in section 6 of the Companies Act, 1956) and the settlement taking effect on the death of the settler
- (iv) the original deed of settlement and a tax clearance / No Objection Certificate from the Income-Tax Authority should be produced for the remittance
- (v) Where the remittance as above is made in more than one installment, the remittance of all such installments shall be made through the same Authorised Dealer
- (vi) In case of a foreign national, sale proceeds can be repatriated if the property is inherited from a person resident outside India with the prior approval of the Reserve Bank. The foreign national has to approach the Reserve Bank with documentary evidence in support of inheritance of the immovable property and the undertaking and the C.A. Certificate mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of the Reserve Bank.

As FEMA, 1999 specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan. Therefore, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

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**PROVISIONS FOR FOREIGN EMBASSIES / DIPLOMATS / CONSULATES GENERAL**

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**D.191. Can Foreign Embassies / Diplomats / Consulates General purchase / sell immovable property in India?**

**Ans.** In terms of Regulation 5A of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000, Foreign Embassies/ Diplomats/ Consulates General, may purchase/ sell immovable property (other than agricultural land/ plantation property/ farm house) in India provided –

- (i) Clearance from the Government of India, Ministry of External Affairs has been obtained for such purchase/sale; and
- (ii) The consideration for acquisition of immovable property in India is paid out of funds remitted from abroad through the normal banking channels.

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**OTHER ASPECTS**

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**D.192. Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?**

**Ans.** Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. The

rent received can be credited to NRO / NRE account or remitted abroad. Powers have been delegated to the Authorised Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.

**D.193. Can a person who had bought immovable property, when he was a resident, continue to hold such property even after becoming an NRI/PIO? In which account can the sale proceeds of such immovable property be credited?**

**Ans.** Yes, a person who had bought the residential / commercial property / agricultural land/ plantation property / farm house in India when he was a resident, continue to hold the immovable property without the approval of the Reserve Bank even after becoming an NRI/PIO. The sale proceeds may be credited to NRO account of the NRI /PIO.

**D.194. Can the sale proceeds of the immovable property referred to in D.No. 29 be remitted abroad?**

**Ans.** Yes, From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

**D.195. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of the Reserve Bank continue to hold the same? Can they transfer such property?**

**Ans.** Yes, they may continue to hold the immovable property under holding license obtained from the Reserve Bank. However, they can transfer the property only with the prior approval of the Reserve Bank.

**D.196. Is a resident in India governed by the provisions of the Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?**

**Ans.** A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, as amended from time to time, i.e. she/he would require prior approval of the Reserve Bank for acquisition and transfer of immovable property in India even though she/he is resident in India. Such requests are considered by the Reserve Bank in consultation with the Government in India.  
The citizens of countries other than those listed above can be PIOs who are covered under the general permission (please refer to D.No.1). The provisions relating to foreign national of non-Indian origin are covered in detail in Q Nos. 6 and 7.

**PURCHASE OF IMMOVABLE PROPERTY IN INDIA BY A FOREIGN NATIONAL OF NON-INDIAN ORIGIN RESIDENT OUTSIDE INDIA**

**D.197. What are the provisions for purchase of Immovable Property in India by a Foreign National of Non- Indian Origin resident outside India?**

**Ans.** (i) Foreign nationals of non-Indian origin resident outside India are not permitted to acquire any immovable property in India unless such property is acquired **by way of inheritance from a person who was resident in India**. However, they can acquire or transfer immovable property in India, **on lease, not exceeding five years** without the prior permission of the Reserve Bank.

(ii) Foreign Nationals of non-Indian origin, **other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan**, can acquire immovable property in India **on becoming resident in India** in terms of Section 2(v) of the Foreign Exchange Management Act, 1999. In this connection,

he has to satisfy the condition of period of stay. **The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status** in terms of section 2(v) FEMA, 1999.

- (iii) Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank **cannot transfer such property without the prior permission of the Reserve Bank.**

**Summary provisions for** Acquisition & Transfer of Immovable Property in India by NRIs/PIOs:  
Refer next page

**SUMMARY PROVISIONS FOR ACQUISITION & TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY NRIS/PIOS: -Check for updated one???**

<b>In case of Residential/Commercial Property</b>			
	<b>NRI</b>	<b>PIO</b>	<b>Resident</b>
<b>NRI may:</b>			
Purchase from	Yes	Yes	Yes
Sell to	Yes	Yes	Yes
Receive Gift from	Yes	Yes	Yes
Give Gift to	Yes	Yes	Yes
Inheritance from person resident in India/Outside India – By	Yes	Yes	
<b>PIO may:</b>			
Purchase from	Yes	Yes	Yes
Sell to	Yes	Yes*	Yes
Receive Gift from	Yes	Yes	Yes
Give Gift to	Yes	Yes	Yes
<b>In case of Agricultural property/Plantation/ Farmhouse</b>			
	<b>NRI</b>	<b>PIO</b>	<b>Resident</b>
<b>NRI/PIO may:</b>			
Purchase from	No	No	No
Sell to	No	No	Yes @
Receive Gift from	No	No	No
Give Gift to	No	No	Yes @

\* Prior approval of RBI is mandatory; @ Who is a citizen of India.

**INVESTMENT IN OTHER SECURITIES**

**D.198. Can a Non-resident Indian (NRI) and SEBI registered Foreign Institutional Investor (FII) invest in Government Securities/ Treasury bills and Corporate debt?**

**Ans.** Under the FEMA Regulations, only NRIs and SEBI registered FIIs are permitted to purchase Government Securities/Treasury bills and Corporate debt. The details are as under .

A. A Non-resident Indian can purchase without limit,

(1) on repatriation basis

- i) Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- ii) Bonds issued by a public sector undertaking (PSU) in India; and
- iii) Shares in Public Sector Enterprises being disinvested by the Government of India.



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(2) on non-repatriation basis

- i) Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- ii) Units of Money Market Mutual Funds in India; and
- iii) National Plan/Savings Certificates.

B. A SEBI registered FII may purchase, on repatriation basis, dated Government securities/ treasury bills, listed non-convertible debentures/ bonds issued by an Indian company and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognised stock exchange in India.

Purchase of debt instruments including Upper Tier II instruments issued by banks in India and denominated in Indian Rupees by FIIs are subject to limits notified by SEBI and the Reserve Bank from time to time. The present limit for investment in Corporate Debt Instruments like non-convertible debentures / bonds by FIIs is USD 45 billion , which constitutes of the.

Out of USD 45 billion, USD 25 billion is earmarked for investment in infrastructure corporate bonds and the remaining USD 20 billion is earmarked for investment in non-infrastructure corporate bonds. Out of the USD 25 billion earmarked for FIIs investment in infrastructure corporate bonds, a uniform lock-in period of one year and residual maturity of fifteen months has been prescribed for USD 22 billion investment by FIIs excluding the USD 3 billion limit earmarked for QFIs investment in mutual fund debt oriented schemes. The present limit of investment by SEBI registered FIIs in Government Securities is USD 20 billion which constitutes of .

- USD 10 billion will be without any conditions and the remaining USD 10 billion is with the condition that the residual maturity of the instrument at the time of first purchase by FIIs should be at least three years.

Sovereign Wealth Funds (SWFs), Multilateral agencies, endowment funds, insurance funds, pension funds and foreign Central Banks to be registered with SEBI are also allowed to invest in Government securities within this enhanced limit of USD 20 billion.

**D.199. Can a NRI and SEBI registered FII invest in Tier I and Tier II instruments issued by banks in India?**

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**Ans.** SEBI registered FIIs and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions.

- a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue and investment by individual FII should not exceed the limit of 10 per cent of each issue.
- b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of each issue.
- c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.
- d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.
- e. Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by the SEBI for investment in corporate debt instruments.
- f. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the

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custodians and designated Authorised Dealer banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

**D.200. Can a NRI and SEBI registered FII invest in Indian Depository Receipts (IDRs)?**

**Ans.** NRI and SEBI registered FIIs have been permitted to invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the following conditions.

(i) The purchase, hold and transfer of IDRs is in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time.

A limited two way fungibility for IDRs (similar to the limited two way fungibility facility available for ADRs/GDRs) subject to the following terms and conditions.

- i. The conversion of IDRs into underlying equity shares would be governed by the conditions mentioned in paras 6 and 7 of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- ii. Fresh IDRs would continue to be issued in terms of the provisions of A.P. (DIR Series) Circular No. 5 dated July 22, 2009.
- iii. The re-issuance of IDRs would be allowed only to the extent of IDRs that have been redeemed / converted into underlying shares and sold.
- iv. There would be an overall cap of USD 5 billion for raising of capital by issuance of IDRs by eligible foreign companies in Indian markets. This cap would be akin to the caps imposed for FII investment in debt securities and would be monitored by SEBI.
- v. IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.
- vi. At the time of redemption / conversion of IDRs into the underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120 / RB-2004 dated July 7 2004, as amended from time to time.

The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs. The issuance, redemption and fungibility of IDRs would also be subject to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time as well as other relevant guidelines issued in this regard by the Government, the SEBI and the RBI from time to time.

**D.201. What are the facilities available to NRIs for purchase of securities on repatriation & non-repatriation basis?**

**Ans. Purchase of other securities by NRIs**

**(i) On non-repatriation basis**

(a) NRIs can purchase shares / convertible debentures issued by an Indian company on non-repatriation basis without any limit. Amount of consideration for such purchase shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE / FCNR(B) / NRO account maintained with the AD Category - I bank.

(b) NRIs can also, without any limit, purchase on non-repatriation basis dated Government securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds. Government of India has notified that NRIs are not permitted to make Investments in Small Savings Schemes including PPF. In case of investment on non-repatriation basis, the sale proceeds shall be credited to NRO account. The amount invested under the scheme and the capital appreciation thereon will not be allowed to be repatriated abroad.

*NRIs can also invest in non-convertible debentures issued by an Indian Company, both on repatriation basis and on non-repatriation basis, subject to the other terms and*

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conditions stated under [Notification No FEMA 4/2000-RB dated May 3,2000](#) (as amended from time to time).

**(ii) On repatriation basis**

A NRI can purchase on repatriation basis, without limit, Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds; bonds issued by a public sector undertaking (PSU) in India and shares in Public Sector Enterprises being disinvested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

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**D.202. What are the facilities available to NRIs for purchase of other securities on repatriation & non-repatriation basis including small savings or PPF?**

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**Ans. Investment facilities for NRIs**

**NRI may, without limit, purchase on repatriation basis:**

- \_ Government dated securities / Treasury bills
- \_ Units of domestic mutual funds;
- \_ Bonds issued by a public sector undertaking (PSU) in India.
- \_ Non-convertible debentures of a company incorporated in India.
- \_ Perpetual debt instruments and debt capital instruments issued by banks in India.
- \_ Shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.
- \_ Shares and convertible debentures of Indian companies under the FDI scheme (including automatic route & FIPB), subject to the terms and conditions specified in Schedule 1 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.
- \_ Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedule 3 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.

**NRI may, without limit, purchase on non-repatriation basis:**

- \_ Government dated securities / Treasury bills
- \_ Units of domestic mutual funds
- \_ Units of Money Market Mutual Funds
- \_ National Plan/Savings Certificates
- \_ Non-convertible debentures of a company incorporated in India
- \_ Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme, subject to the terms and conditions specified in Schedules 3 and 4 to the FEMA Notification No. 20/2000- RB dated May 3, 2000, as amended from time to time.
- \_ Exchange traded derivative contracts approved by the SEBI, from time to time, out of INR funds held in India on non-repatriable basis, subject to the limits prescribed by the SEBI.

**Note: NRIs are not permitted to invest in small savings or Public Provident Fund (PPF).**

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**Q.203 Can a Non-resident Indian purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue?**

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**Ans.** Under Schedule 4 of FEMA 20, a Non-resident Indian may without any limit, purchase on non-repatriation basis, shares or convertible debentures of an Indian company issued whether by public issue or private placement or right issue:

**Method of payment for purchase of shares/convertible debentures.**

The amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid by way of inward remittance

through normal banking channels from abroad or out of funds held in NRE/FCNR/NRO account maintained with an authorised dealer or as the case may be with an authorised bank in India:

**Provided** that in the case of an NRI resident in Nepal and Bhutan, the amount of consideration for purchase of shares or convertible debentures of an Indian company on non-repatriation basis, shall be paid only by way of inward remittance in foreign exchange through normal banking channels.

**Sale/Maturity proceeds of shares or convertible debentures.**

(i) The sale/maturity proceeds (net of applicable taxes) of shares or convertible debentures purchased under this Scheme shall be credited only to NRO account where the purchase consideration was paid out of inward remittance or funds held in NRE/FCNR/NRO account.

(ii) The amount invested in shares or convertible debentures under this Scheme and the capital appreciation thereon shall not be allowed to be repatriated abroad.

**SALIENT FEATURES OF PORTFOLIO INVESTMENT SCHEME (PIS) FOR INVESTMENTS BY A NON RESIDENT INDIAN (NRI)**

**D.204. What are the salient features Salient features of Portfolio Investment Scheme (PIS) for investments by a Non Resident Indian (NRI)?**

**Ans.**

a) An NRI intending to buy and sell shares / convertible debentures of an Indian company through a registered broker on a recognized stock exchange in India will apply in prescribed form to the designated branch of AD bank for participating in the Scheme on repatriation and / or non-repatriation basis.

b) While applying, the NRI should also undertake that

i) the particulars furnished are true and correct;

ii) he has no dealing with/ he will not deal with any other designated branch/bank under PIS;

iii) he will ensure that total holding in shares / convertible debentures, both on repatriation and non-repatriation basis in any one Indian company at no time shall exceed 5 per cent of the paid up capital/ paid up value of each series of convertible debentures of that company.

c) The designated branch of the AD bank will grant one time permission to the NRI applicant for purchase and sale of shares / convertible debentures of an Indian company. Two distinct permission letters (for repatriation basis and non-repatriation basis) shall be issued as per the prescribed format.

d) Designated branch shall open a separate sub account of NRE/NRO account (opened and maintained by an NRI in terms of the Foreign Exchange Management (Deposit) Regulations, 2000) for the exclusive purpose of routing the transactions under PIS on behalf of an NRI. NRE(PIS) account for investment made by the NRI on repatriation basis and NRO(PIS) account for investment made on non-repatriation basis under the Scheme. The designated branch shall ensure that amounts due to sale proceeds of shares / convertible debentures which have been acquired by modes other than PIS, such as underlying shares acquired on conversion of ADRs/GDRs, shares/ convertible debentures acquired under FDI Scheme, shares/ convertible debentures purchased outside India from other NRIs, shares/ convertible debentures acquired under private arrangement from residents / non-residents, shares/ convertible debentures purchased while resident in India, do not get credited/debited in the accounts opened exclusively for routing the PIS transactions.

e) The permissible credits and debits in the NRE (PIS) account for routing PIS transactions will be as under:

**Permissible Credits**

- 
- (i) Inward remittances in foreign exchange through normal banking channels;
  - (ii) Transfer from applicant's other **NRE accounts or FCNR (B) accounts** maintained with AD bank in India ;
  - (iii) Net sale proceeds ( after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation basis under PIS and sold on stock exchange through registered broker;
  - (iv) dividend or income earned on investments under PIS.

**Permissible debits**

- (i) Outward remittances of dividend or income earned;
  - (ii) Amounts paid on account of purchase of shares and convertible debentures on repatriation basis on stock exchanges through registered broker under PIS; and
  - (iii) Any charges on account of sale/ purchase of shares or convertible debentures under PIS.
- f) The permissible credits and debits in the **NRO(PIS) account** for routing PIS transactions will be as under;

**Permissible Credits**

- (i) Inward remittances in foreign exchange through normal banking channels;
- (ii) Transfer from applicant's other NRE accounts or FCNR (B) accounts or NRO accounts maintained with AD bank in India;
- (iii) Net sale proceeds ( after payment of applicable taxes) of shares and convertible debentures which were acquired on repatriation (at the NRI's option) and non repatriation basis under PIS and sold on stock exchange through registered broker; and
- (iv) dividend or income earned on investments under PIS.

**Permissible debits**

- (i) Outward remittances of dividend or income earned;
  - (ii) Amounts paid on account of purchase of shares and convertible debentures on non- repatriation basis on stock exchanges through registered broker under PIS.
  - (iii) Any charges on account of sale/ purchase of shares or convertible debentures under PIS.
- g) The purchase of equity shares in an Indian company, both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the paid up capital of the company subject to an overall ceiling of 10 per cent of the total paid-up capital of the company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
  - h) The purchase of convertible debentures of each series of an Indian company both repatriation and non-repatriation basis by each NRI shall not exceed 5 per cent of the total paid -up value of convertible debentures subject to an overall ceiling of 10 per cent of the total paid –up value of each series of the convertible debentures issued by the Indian company concerned by all NRIs both on repatriation and non-repatriation basis taken together.
  - i) Shares /convertible debentures purchased shall be held and registered in the

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name of the NRI.

- j) Shares /convertible debentures acquired by the NRI under this permission can be sold on recognized stock exchange in India through registered broker without any lock in period. NRI shall not engage in short selling and shall take delivery of the shares and convertible debentures purchased and give the delivery of the shares and debentures sold.
- k) Shares /convertible debentures acquired by the NRI under the Scheme shall not be transferred out of his name by way of gift except to his close relatives as defined in Section 6 of the Companies Act, 1956, as amended from time to time or Charitable Trust duly registered under the laws in India with prior approval of AD bank Shares /convertible debentures acquired by the NRI under the Scheme shall not be transferred out of his name by way of sale under private arrangement without prior approval of the Reserve Bank .
- l) Shares /convertible debentures acquired by the NRI under the Scheme shall not be pledged for giving loan to a third party without prior permission of the Reserve Bank.
- m) NRI is permitted to buy or sale shares/convertible debentures through his own broker who is an authorized member of a recognized stock exchange. Both purchase and sale contract notes, in original, should be submitted by the NRI within 24/48 hours of execution of the contract to his designated branch with whom his PIS account is maintained. The onus is on the NRI for submission of contract notes to the designated branch of the AD bank.
- n) NRI is at a liberty to change the designated branch / AD bank. The designated branch / AD bank from whom the PIS account is being transferred should
  - i) issue no objection certificate to the new designated branch / AD bank
  - ii) furnish the list of all the existing holding as also the dates of reporting the transaction in LEC(NRI) to the Reserve Bank to that designated branch/ AD bank to whom the PIS account is being transferred.
- o) In cases, where an NRI is eligible to make investment in India, his resident Power of Attorney holder can be permitted by AD bank to operate NRE(PIS)/NRO (PIS) account to facilitate investment under the Scheme.

<b>FOREIGN STUDENTS STUDYING IN INDIA – KYC PROCEDURE FOR OPENING OF BANK ACCOUNTS</b>
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**D.205. What are the KYC procedure for opening of bank accounts for Foreign students studying in India?**

**Ans.** Procedure for opening accounts of foreign students who are not able to provide an immediate address proof while approaching a bank for opening bank account;

- a) Banks may open a Non Resident Ordinary (NRO) bank account of a foreign student on the basis of his/her passport (with appropriate visa & immigration endorsement) which contains the proof of identity and address in the home country along with a photograph and a letter offering admission from the educational institution.
- b) Within a period of 30 days of opening the account, the foreign student should submit to the branch where the account is opened, a valid address proof giving local address, in the form of a rent agreement or a letter from the educational institution as a proof of living in a facility provided by the educational institution. Banks should not insist on the landlord visiting the branch for verification of rent documents and alternative means of verification of local address may be adopted by banks.
- c) During the 30 days period, the account should be operated with a condition of allowing foreign remittances not exceeding USD 1,000 into the account and a cap of monthly withdrawal to Rs. 50,000/-, pending verification of address.
- d) On submission of the proof of current address, the account would be treated as a normal NRO account, and will be operated in terms of instructions contained in RBI's Master Circular on Non-Resident Ordinary Rupee (NRO) Account No. RBI/2013-14/2 Master Circular No.2/2013-14 dated July 1,

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2013, and the provisions of Schedule 3 of FEMA Notification 5/2000 RB dated May 3, 2000 may also be kept in view.

- e) Students with Pakistani nationality will need prior approval of the Reserve Bank for opening the account.

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## CHAPTER E - FOREX FACILITIES FOR RESIDENTS (INDIVIDUALS)

### **E.1. What is the definition of a 'Person resident in India' being an Individual under FEMA?**

**Ans.** As per Section 2(v) of FEMA, 1999, Person resident in India means a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include

- (A) a person who has gone out of India or who stays outside India, in either case
  - (a) for or on taking up employment outside India, or
  - (b) for carrying on outside India a business or vocation outside India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, otherwise than
  - (a) for or on taking up employment in India, or
  - (b) for carrying on in India a business or vocation in India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

**To be treated as a person resident in India under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the preceding financial year) but has to also comply with the condition of the purpose/intention of stay.**

#### **Illustrations:**

If a person stayed in India in the preceding year for 182 days or less, he can never be 'person resident in India' in next following year, irrespective of his stay in India and irrespective of his purpose to come to India for employment, carrying on business or vocation or stay in India indefinitely.

If a person stayed in India during 2010-11 for less than 182 days, he will not be 'resident' during 2011-12 even if he resides in India for more than 182 days in 2011-12. However, if he resides in India for over 182 days in 2010-11, he will be 'resident' in 2011-12 provided he complies with any of the conditions of employment, business or vocation or indefinite stay in India. But, if he leaves India for the purpose of taking up employment outside India during 2011-12, or for carrying on business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure.

This provision equally applies to foreign citizen as well.

**Accordingly, person resident outside India** means a person who is not resident in India.

### **E.2. What is a Current Account Transaction for individuals resident in India?**

**Ans.** All transactions undertaken by a Resident in India that do not alter his / her assets or liabilities, including contingent liabilities, outside India are current account transactions.

As per Section 2(j) of FEMA, Current account transaction means a transaction other

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than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

- (i) Payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business,
- (ii) Payments due as interest on loans and as net income from investments,
- (iii) Remittances for living expenses of parents, spouse and children residing abroad, and
- (iv) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

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**E.3. What constitute capital account transactions of persons resident in India?**

- Ans.** Classes of capital account transactions of persons resident in India:
- (a) Investment by a person resident in India in foreign securities.
  - (b) Foreign currency loans raised in India and abroad by a person resident in India.
  - (c) Transfer of immovable property outside India by a person resident in India.
  - (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
  - (e) Export, import and holding of currency/currency notes.
  - (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
  - (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
  - (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
  - (i) Loans and overdrafts by a person resident in India to a person resident outside India.
  - (j) Remittance outside India of capital assets of a person resident in India.
  - (k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

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**E.4. Can a person resident in India freely buy or sell foreign exchange to facilitate a current account transaction?**

- Ans.** Any person resident in India may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000.

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**E.5. Are there any current account transactions for which drawal of foreign exchange is prohibited by Central Government?**

- Ans.** In terms of Section 5 of the FEMA, persons resident in India are free to buy or sell foreign exchange for any current account transaction except for those transactions for which drawal of foreign exchange (includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM Card) has been prohibited by Central Government, namely (Schedule I to the Foreign Exchange Management (Current Account Transactions) Rules, 2000):

- (a) a transaction for:
  - 1. Remittance out of lottery winnings (remittance in any form and under different heads, such as, processing fees/transaction fees/tax clearance charges/conversion charges, clearing fees, etc. towards participation in lottery schemes for the purpose of securing prize money/awards, etc. are prohibited.);
  - 2. Remittance of income from racing/riding, etc., or any other hobby.
  - 3. Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
  - 4. Payment of commission on exports made towards equity investment in



- Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
  6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
  7. Payment related to 'Call Back Services' of telephones.
  8. Remittance of interest income on funds held in Non-resident Special Rupee Scheme account.
- (b) a travel to Nepal and/or Bhutan; or
- (c) a transaction with a person resident in Nepal or Bhutan.

**E.6. Are there any current account transactions for which a person cannot draw foreign exchange without prior approval of RBI?**

**Ans.** A person shall draw foreign exchange for a transaction mentioned below if it exceeds the limits prescribed **with prior approval of the Reserve Bank** (Schedule III to the Foreign Exchange Management (Current Account Transactions) Rules, 2000):

1	One or more <b>private visits</b> to any country (except Nepal and Bhutan). A resident Indian is allowed to take INR of denomination of Rs.100 or lesser denomination to Nepal and Bhutan without limit.	Exceeding US\$ 10,000 or its equivalent in one financial year on a self declaration basis. This limit can also be availed of by a person who is availing of foreign exchange for travel abroad for any purposes, such as, for employment or immigration or studies.
2	<b>Gift</b>	Exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual. Remittance of gift by resident individuals is subsumed under the Liberalised Remittance Scheme.
3	<b>Donation</b>	Exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual. Remittance of donation by resident individuals is subsumed under the Liberalised Remittance Scheme.
4	<b>Donations by corporate</b> for, (a) creation of Chairs in reputed educational institutes; (b) to funds (not being an investment fund) promoted by educational institutes; and (c) to a technical institution or body or association in the field of activity of the donor company.	Exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less.
5	Exchange facilities for persons <b>going abroad for employment</b>	Exceeding US \$ 100,000 on the basis of self-declaration.
6	Exchange facilities <b>for emigration</b>	Exceeding US \$ 100,000 or amount prescribed by country of emigration
7	Remittance for <b>maintenance of close relatives abroad</b>	(i) Exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and (a) is a citizen of a foreign State other than Pakistan; or

		<p>(b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company,</p> <p>(ii) Exceeding US\$ 100,000 per year per recipient, in all other cases.</p> <p><i>Explanation:</i> For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years, is a resident but not permanently resident.</p>
8	For <b>business travel, or attending a Conference or specialised training, study tour</b> or for <b>maintenance expenses of a patient going abroad</b> for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up	Exceeding US \$ 25,000 to a person, irrespective of period of stay.
9	For meeting expenses for <b>medical treatment abroad</b>	Exceeding the estimate from the doctor in India or hospital/doctor abroad.
10	For <b>studies abroad</b>	Exceeding the estimates from the institution abroad or US \$ 100,000 per academic year, whichever is higher.
11	<b>Commission</b> , per transaction, to agents abroad for <b>sale of residential flats or commercial plots</b> in India	Exceeding US \$ 25,000 or 5% of the inward remittance whichever is more.
12	Remittances for any <b>consultancy services in respect of infrastructure projects</b> viz. Power, Telecommunication, Railways, Roads including bridges, Sea port and airport, Industrial parks, and Urban infrastructure (water supply, sanitation and sewage)	Exceeding US\$ 10,000,000 per project.
13	Remittances for other <b>consultancy services</b> procured from outside India	Exceeding US\$ 1,000,000 per project.
14	By an entity in India by way of <b>reimbursement of pre-incorporation expenses</b>	Exceeding five per cent of the investment brought into India or US\$ 1,00,000 whichever is higher.

The above **restriction shall not apply** where the payment is made out of funds held in Resident Foreign Currency (RFC) Account, or EEFC account of the remitter (except item nos. 2, 3, 11, & 14 above if out of EEFC account).

**E.7. What is the procedure to be followed for release of foreign exchange exceeding the above limits as prescribed in Schedule III to the Rules?**

**Ans.** All applications for release of foreign exchange exceeding the limits as prescribed in

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Schedule III to the Rules should be referred to the Regional Office concerned of the Foreign Exchange Department of the Reserve Bank, under whose jurisdiction the applicant is functioning / residing.

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#### **GUIDELINES ON TRAVEL RELATED MATTERS**

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**E.8. Who are authorized by the Reserve Bank to sell foreign exchange for travel purposes?**

**Ans.** Foreign exchange can be purchased from any authorised person, such as Authorised Dealer (AD) Category-I bank and AD Category II. Full-Fledged Money Changers (FFMCs) are also permitted to release exchange for business and private visits.

**E.9. Who is an Authorized Dealer?**

**Ans.** An Authorised Dealer is any person specifically authorized by the Reserve Bank under Section 10(1) of FEMA, 1999, to deal in foreign exchange or foreign securities (the list of ADs is available on [www.rbi.org.in](http://www.rbi.org.in)) and normally includes banks.

**E.10. Can the Authorised Dealers remit foreign exchange directly abroad on behalf of Travellers from India?**

**Ans.** Yes. Authorised Dealers may remit foreign exchange up to a reasonable limit, at the request of a traveller towards his hotel accommodation, tour arrangements, etc., in the countries proposed to be visited by him or for making other tour arrangements for travellers from India, provided in each case the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the traveller concerned from an Authorised Person (including exchange drawn for private travel abroad), in accordance with the Rules, Regulations and Directions in force.

**E.11. Can the Authorised Dealers remit foreign exchange directly abroad at the request of agents in India?**

**Ans.** Yes. Authorised Dealers may affect remittances at the request of agents in India who have tie-up arrangements with hotels / agents, etc., abroad for providing hotel accommodation or making other tour arrangements for travel from India, provided the Authorised Dealer is satisfied that the remittance is being made out of the foreign exchange purchased by the traveller concerned from an Authorised Person (including exchange drawn for private travel abroad) in accordance with the Rules, Regulations and Directions in force.

**E.12. Is it necessary to endorse the amount of foreign exchange sold for travel abroad on the passport of the traveler?**

**Ans.** No. It is not mandatory for Authorised Dealers to endorse the amount of foreign exchange sold for travel abroad on the passport of the traveller. However, if requested by the traveller, they may record under their stamp, date, signature and details of foreign exchange sold for travel.

**E.13. Has Reserve Bank prescribed the documents which should be verified by the Authorised Dealers?**

**Ans.** Reserve Bank will not prescribe the documents which should be verified by the Authorised Dealers while permitting remittances for various transactions, particularly of current account. In case the person on whose behalf the transaction is being undertaken refuses or does not give satisfactory compliance of the requirements of an authorised person, he shall refuse in writing to undertake the transactions. Where an authorized person has reasons to believe that a contravention or evasion of the Act or the Rules or Regulations made or Notifications issued there under was contemplated in the transaction that he has refused to undertake, he shall report the matter to the Reserve Bank.

**E.14. What is simplified Application-cum-Declaration form?**

**Ans.** Authorized dealers may release foreign exchange not exceeding US\$ 25,000 or its equivalent, for all permissible current account transactions. Authorised Dealers may

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obtain simplified Application-cum-Declaration form.

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**E.15. What are the limitations for remittances etc. for Nepal and Bhutan?**

**Ans.** **No release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal.** A resident Indian is allowed to take INR of denomination of Rs. 100 or lesser denomination to Nepal and Bhutan without limit. Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. If investment is made in freely convertible currency/ies, sale/winding up proceeds are required to be repatriated to India in freely convertible currencies.

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**E.16. How much foreign exchange can one buy when traveling abroad on private visits to a country outside India?**

**Ans.** For private visits abroad, other than to Nepal and Bhutan, viz., for tourism purposes, etc., any resident can obtain foreign exchange up to an aggregate amount of USD 10,000, from an Authorised Dealer, in any one financial year, on self-declaration basis, irrespective of the number of visits undertaken during the year. This limit of USD 10,000 or its equivalent per financial year for private visits can also be availed of by a person who is availing of foreign exchange for travel abroad for any purposes, such as, for employment or immigration or studies.

**No foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.**

A resident Indian is allowed to take INR of denomination of Rs.100 or lesser denomination to Nepal and Bhutan without limit.

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**E.17. How much foreign exchange is available for a business trip?**

**Ans.** For business trips abroad to countries, other than to Nepal and Bhutan, a person can avail of foreign exchange up to USD 25,000 per visit. Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits. Release of foreign exchange exceeding USD 25,000 for business travel abroad (other than to Nepal and Bhutan), irrespective of the period of stay, requires prior permission from the Reserve Bank.

**No release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal.**

Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. If investment is made in freely convertible currency/ies, sale/winding up proceeds are required to be repatriated to India in freely convertible currencies.

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**E.18. How much foreign currency can be taken while buying foreign exchange for travel abroad?**

**Ans.** Travellers going to all countries other than (a) and (b) below are allowed to purchase foreign currency notes / coins only up to USD 3000. Balance amount can be carried in the form of travellers cheque or banker's draft. Exceptions to this are (a) travellers proceeding to Iraq and Libya who can draw foreign exchange in the form of foreign currency notes and coins not exceeding USD 5000 or its equivalent; (b) travellers proceeding to the Islamic Republic of Iran, Russian Federation and other Republics of Commonwealth of Independent States who can draw entire foreign exchange in the form of foreign currency notes or coins.

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**E.19. How much foreign exchange can be drawn for medical treatment abroad?**

**Ans.** AD Category I banks and AD Category II, may release foreign exchange up to USD 100,000 or its equivalent to resident Indians for medical treatment abroad on self declaration basis, without insisting on any estimate from a hospital/doctor in India/abroad. A person visiting abroad for medical treatment can obtain foreign exchange exceeding the above limit, provided the request is supported by an estimate

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from a hospital/doctor in India/abroad.

An amount up to USD 25,000 is allowed **for maintenance expenses** of a patient going abroad for medical treatment or check-up abroad, or to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.

The amount of USD 25,000 allowed to the patient going abroad is in addition to the limit of USD 100,000 mentioned above.

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**E.20. Can foreign exchange be released by an Authorised Dealer for medical treatment outside India for a person who has fallen sick after proceeding abroad?**

**Ans.** Yes. A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer for medical treatment outside India.

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**E.21. Can Residents bear medical expenses of visiting NRIs/PIOS close relatives?**

**Ans.** **Yes.** Now, he can also bear **medical expenses of visiting NRIs/PIOS close relatives**, who is on a visit to India. **Earlier**, a person resident in India was free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related thereto or travel to and from and within India only, of a person resident outside India (including NRIs/PIOS), who is on a visit to India.

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**E.22. What are the facilities available to students for pursuing their studies abroad?**

**Ans.** For studies abroad the estimate received from the institution abroad or USD 100,000, per academic year, whichever is higher, may be availed of from an AD Category I bank and AD Category II. Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA, 1999. Educational and other loans availed of by students as residents in India can be allowed to continue. A student holding NRO account may withdraw and repatriate up to USD 1 million per financial year from his NRO account. The student may avail of an amount of USD 10,000 or its equivalent for incidental expenses out of which USD 3000 or its equivalent may be carried in the form of foreign currency while going for study abroad.

(Master Circular2013\_Facilities to NRI etc: Para 8.2)

**As non-residents, they will be eligible to receive remittances from India:**

- (i) up to US\$ 100,000 from close relatives in India, on self declaration, towards maintenance, which could include remittances towards their studies also,
- (ii) up to US\$ 1 million per financial year, out of sale proceeds of assets / balances in their NRO account maintained with an Authorised Dealer bank in India, and
- (iii) upto US\$ 75,000 per financial year under the Liberalized Remittance Scheme.

**All other facilities available to NRIs under FEMA are equally applicable to the students.**

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**E.23. What are the documents required for withdrawal of Foreign Exchange for the above purpose?**

**Ans.** Documentation may be done as advised by the Authorised Dealer.

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**E.24. How much foreign exchange is available to a person going abroad on employment?**

**Ans.** A person going abroad for employment can draw foreign exchange up to USD 100,000 from any Authorised Dealer in India on the basis of self-declaration.

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**E.25. How much foreign exchange is available to a person going abroad on**

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**emigration?**

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**Ans.** A person going abroad on emigration can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 100,000. He can draw foreign exchange up to USD 100,000 on self- declaration basis from an Authorised Dealer in India. This amount is only to meet the incidental expenses in the country of emigration. No amount of foreign exchange can be remitted outside India to become eligible or for earning points or credits for immigration. All such remittances require prior permission of the Reserve Bank. If requirement exceeds USD 100,000, the person requires to obtain the prior approval from the Reserve Bank.

**E.26. Is there any category of visit which requires prior approval from the Reserve Bank or the Government of India?**

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**Ans.** Dance troupes, artistes, etc., who wish to undertake cultural tours abroad, should obtain prior approval from the Ministry of Human Resources Development (Department of Education and Culture), Government of India, New Delhi.

**E.27. Whether permission is required for receiving grant/donation from abroad under the Foreign Contribution Regulation Act, 1976?**

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**Ans.** The Foreign Contribution Regulation Act, 1976 is administered and monitored by the Ministry of Home Affairs whose address is given below:  
Foreigners Division,  
Jaisalmer House,  
26, Mansingh Road,  
New Delhi-110 011.

No specific approval from the Reserve Bank is required in this regard.

**E.28. How many days in advance one can buy foreign exchange for travel abroad?**

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**Ans.** Permissible foreign exchange can be drawn 60 days in advance. In case it is not possible to use the foreign exchange within the period of 60 days, it should be immediately surrendered to an authorised person. However, residents are free to retain foreign exchange up to USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their Resident Foreign Currency (Domestic) [RFC (Domestic)] Accounts

**E.29. Can one pay by cash full rupee equivalent of foreign exchange being purchased for travel abroad?**

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**Ans.** Foreign exchange for travel abroad can be purchased from an authorized person against rupee payment in cash only up to Rs.50,000. However, if the Rupee equivalent exceeds Rs.50,000, the entire payment should be made by way of a crossed cheque/ banker's cheque/ pay order/ demand draft/ debit card / credit card / prepaid card only.

**E.30. What are the provisions for sale of foreign exchange exceeding the amount equivalent to Rs. 50,000?**

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**Ans.** Wherever the sale of foreign exchange exceeds the amount equivalent to Rs. 50,000, the payment must be received only by:

- (i) a crossed cheque drawn on the applicant's bank account, or
- (ii) crossed cheque drawn on the bank account of the firm/ company sponsoring the visit of the applicant, or
- (iii) Banker's Cheque- /- Pay Order- /- Demand Draft or
- (iv) Debit / credit / prepaid cards provided
  - a) KYC/AML guidelines are complied with
  - b) sale of foreign currency- /- issue of foreign currency TCs is within the limits (credit- /- prepaid cards) prescribed by the bank and
  - c) the purchaser of foreign currency- /- foreign currency TCs and the credit/debit/prepaid card holder is one and the same person.

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**Note:** Where the rupee equivalent of foreign exchange drawn exceeds Rs. 50,000 either for any single drawal or more than one drawal reckoned together for a single journey/visit, it should be paid by cheque or draft.

**E.31. How much foreign exchange can a resident individual send as gift / donation to a person resident outside India?**

**Ans.** Any resident individual, if he so desires, may remit the entire limit of USD 75,000 in one financial year under LRS as gift to a person residing outside India or as donation to a charitable/educational/ religious/cultural organization outside India. Remittances exceeding the limit of USD 75,000 will require prior permission from the Reserve Bank.

**E.32. Is it permitted to use International Credit Card (ICC)/ATM/Debit card for undertaking foreign exchange transactions?**

**Ans.** Use of International Credit Cards (ICCs) / ATMs/ Debit Cards can be made for travel abroad in connection with various purposes and for making personal payments like subscription to foreign journals, internet subscription, etc. The entitlement of foreign exchange on International Credit Cards (ICCs) is limited by the credit limit fixed by the card issuing authority only. With ICCs one can (i) meet expenses/make purchases while abroad (ii) make payments in foreign exchange for purchase of books and other items through internet in India. If the person has a foreign currency account in India or with a bank overseas, he/she can even obtain ICCs of overseas banks and reputed agencies. However, use of International Credit Cards/ATMs/Debit Cards is NOT permitted for prohibited transactions indicated in Schedule -1 of FEM (CAT) Rules 2000 such as purchase of lottery tickets, banned magazines etc.

**Use of these instruments for payment in foreign exchange in Nepal and Bhutan is not permitted.**

**E.33. Can resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad obtain ICCs?**

**Ans.** Resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad, as permissible under extant Foreign Exchange Regulations, are free to obtain ICCs issued by overseas banks and other reputed agencies. The charges incurred against the card either in India or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the card holder has a current or savings account. The remittance for this purpose should also be made directly to the card issuing agency abroad, and not to a third party.

**E.34. Can ICCs/IDCs be used on internet?**

**Ans.**

- (i) Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).
- (ii) ICCs/IDCs cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.
- (iii) There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.

**E.35. What are the provisions for issue and use of Store Value Card/Charge Card/Smart Card?**

**Ans.**

- (i) Certain Authorised Dealer banks are also issuing Store Value Card/Charge Card/Smart Card to residents traveling on private/business visit abroad which are used for making payments at overseas merchant establishments and also for drawing cash from ATM terminals.
- (ii) No prior permission from the Reserve Bank is required for issue of such cards.

	(iii) However, the use of such cards is limited to permissible current account transactions and subject to the prescribed limits under the Rules, as amended from time to time.
<b>E.36.</b>	<b>What are the provisions regarding redemption of unutilized balance on prepaid travel cards??</b>
<b>Ans.</b>	<p>As per the practice followed by issuers, resident Indians who purchase their travel cards, are permitted refund of the unutilised foreign exchange balance only after 10 days from the date of last transaction and accordingly, this condition is stated in the "user guide". Since these cards are expected to act as substitutes for cash/Travellers Cheques, the facilities available to the user will have to be similar.</p> <p>Accordingly, all such <b>Authorised Persons shall redeem the unutilized balance outstanding in the cards immediately upon request by the resident Indians to whom the cards are issued</b> subject to retention of:-</p> <ol style="list-style-type: none"> <li>The amounts that are authorised and remain unclaimed/ not settled by the acquirers as of the date of redemption till the completion of the respective settlement cycle;</li> <li>A small balance not exceeding US\$ 100, for meeting any pipeline transactions till the completion of the respective settlement cycle; and</li> <li>Transaction fees/service tax payable in India in Rupees</li> </ol> <p><b>For the amounts that are authorised but unclaimed/ not settled by the acquirer, the issuer of such cards can hold such amounts until such transactions are processed/ settled by the acquirers within the prescribed settlement timeframe.</b></p>
<b>E.37.</b>	<b>How much Indian currency can a person carry while going abroad?</b>
<b>Ans.</b>	<p>Residents are free to take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 10,000 per person. They may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.</p> <p>Explanation: 'Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.</p>
<b>E.38.</b>	<b>How much Indian currency can be brought in while coming into India?</b>
<b>Ans.</b>	<p>A resident of India, who has gone out of India on a temporary visit may bring into India at the time of his return from any place outside India (other than Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.10,000 A person can take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank notes, in denominations not exceeding Rs.100.</p>
<b>E. 39.</b>	<b>How much foreign exchange can be brought in while visiting India?</b>
<b>Ans.</b>	<p>A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000 or its equivalent and/or the value of foreign currency alone exceeds USD 5,000 or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.</p>
<b>E.40.</b>	<b>Is it required to follow complete export procedure when a gift parcel is sent outside India?</b>
<b>Ans.</b>	<p>A person resident in India is free to send (export) any gift article of value not exceeding Rs.5,00,000 provided export of that item is not prohibited under the extant Foreign Trade Policy and the exporter submits a declaration that goods of gift are not more than Rs.5,00,000 in value.</p> <p>Export of goods or services up to Rs.5,00,000 may be made without furnishing the declaration in Form GR/ SDF/ PP/ SOFTEX, as the case may be.</p>



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**E.41. How much jewellery can be carried while going abroad?**

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**Ans.** Taking personal jewellery out of India is as per the Baggage Rules, governed and administered by Customs Department, Government of India. While no approval of the Reserve Bank is required in this case, approvals, if any, required from Customs Authorities may be obtained.

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**E.42. Can a resident extend local hospitality to a non-resident?**

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**Ans.** A person resident in India is free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related thereto or travel to and from and within India, of a person resident outside India, who is on a visit to India.

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**E.43. Can residents purchase air tickets in India for their travel not touching India?**

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**Ans.** Residents may book their tickets in India for their visit to any third country. For instance, residents can book their tickets for travel from London to New York, through domestic/foreign airlines in India itself.

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**E.44. Can a resident open a foreign currency denominated account in India?**

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**Ans.** Persons resident in India are permitted to maintain foreign currency accounts in India under the following three Schemes:

**a. Exchange Earners Foreign Currency Accounts:-**

All categories of resident foreign exchange earners can credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule to Notification No. FEMA 10/2000-RB dated 3rd May, 2000 and as amended from time to time, to their EEFC Account with an Authorised Dealer in India. Funds held in EEFC account can be utilised for all permissible current account transactions and also for approved capital account transactions as specified by the extant Rules/Regulations/ Notifications/ Directives issued by the Government/RBI from time to time. The account is maintained in the form of a non-interest bearing current account.

**b. Resident Foreign Currency Accounts : -**

A person resident in India may open, hold and maintain with an Authorised Dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets which were held outside India at the time of return can be credited to such accounts. The foreign exchange received as (i) pension of any other superannuation or other monetary benefits from the employer outside India; (ii) received or acquired as gift or inheritance from a person referred to sub-section (4) of section 6 of FEMA, 1999 or (iii) referred to in clause (c) of section 9 of the Act or acquired as gift or inheritance there from or (iv) received as the proceeds of life insurance policy claims/maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority; may also be credited to this account.

RFC account can be maintained in the form of current or savings or term deposit accounts.

The funds in RFC account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment outside India.

**c. Resident Foreign Currency (Domestic) Account:-**

A resident Individual may open, hold and maintain with an Authorized Dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques, from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India. The account may also be credited with/opened out of foreign exchange earned abroad like proceeds of export of goods and/or services, royalty,

honorarium, etc., and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels. The account shall be maintained in the form of Current Account and shall not bear any interest. There is no ceiling on the balances in the account. The account may be debited for payments made towards permissible current and capital account transactions.

**E.45. Is Overseas forex trading using Credit Cards or through any other electronic / internet trading portals permitted?**

**Ans.** AD Category I banks were advised to exercise due caution and be extra vigilant in respect of the margin payments being made by the public for online forex trading transactions through credit cards / deposits in various accounts maintained with banks in India. Further, AD Category-I banks were also advised to exercise due caution in respect of the accounts being opened in the name of individuals or proprietary concerns at different bank branches for collecting the margin money, investment money, etc. in connection with such transactions.

However, it has been observed that some banking customers continue to undertake online trading in foreign exchange on portals / websites offering such schemes wherein they initially remit funds from Indian bank accounts using credit cards or other electronic channels to overseas websites / entities and subsequently receive cash refunds from the same overseas entities into their credit card or bank accounts.

With a view to further strengthening the restrictions on such online activities which are in violation of FEMA, 1999, AD Category I banks are hereby directed as follows:

- (i) All AD Category I banks who offer credit cards or online banking facilities to their customers should advise their customers that any person resident in India collecting and effecting / remitting payments directly /indirectly outside India in any form towards overseas foreign exchange trading through electronic/internet trading portals would make himself/ herself / themselves liable to be proceeded against with for contravention of the Foreign Exchange Management Act (FEMA), 1999 besides being liable for violation of regulations relating to Know Your Customer (KYC) norms / Anti Money Laundering (AML) standards.
- (ii) As and when any AD category I bank comes across any prohibited transaction undertaken by its credit card or online banking customer the bank will immediately close the card or account of the defaulting customer and report the same to Chief General Manager-in-Charge, Forex Markets Division, Foreign Exchange Department, Reserve Bank of India, Central Office, 5th Floor, Amar Building, P.M. Road, Mumbai – 400001 in the format provided in the Annex to this circular.

If it is observed that the concerned AD category I bank has failed to carry out the measures as outlined above, Reserve Bank of India may proceed against the defaulting bank under section 11(3) of FEMA, 1999 and take any action as may be deemed necessary.

**REALISATION, REPATRIATION & SURRENDER OF FOREX**

**E.46. What are the duties of a resident in India in respect of realization and repatriation of Foreign Exchange?**

**Ans.** A person resident in India to whom any amount of foreign exchange is due or has accrued shall take all reasonable steps to realise and repatriate to India such foreign exchange, and shall in no case do, or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing:

- (a) that the receipt by him of the whole or part of that foreign exchange is delayed;  
or
- (b) that the foreign exchange ceases in whole or in part to be receivable by him.

**E.47. What are the permitted actions for a resident in India post repatriation of Foreign Exchange to India?**

**Ans.** On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and

- (a) sell it to an authorised person in India in exchange for rupees; or
- (b) retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or
- (c) use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

**E.48. When is the person deemed to have repatriated the realised foreign exchange to India?**

**Ans.** A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

**E.49. Is there any time-frame for a traveller who has returned to India to surrender foreign exchange?**

**Ans.** On return from a foreign trip, travellers are required to surrender unspent foreign exchange held in the form of currency notes and travellers cheques within 180 days of return. However, they are free to retain foreign exchange up to USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their Resident Foreign Currency (Domestic) [RFC (Domestic)] Accounts. Exchange so brought back can be utilized by the individual for his/her subsequent visit abroad.

A person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc., to an authorized person within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

Where a person approaches an Authorised Person for surrender of unspent/unutilized foreign exchange after the prescribed period of 180 days, Authorised Person should not refuse to purchase the foreign exchange merely on the ground that the prescribed period has expired.

**E.50. Should foreign coins be surrendered to an Authorised Dealer on return from abroad?**

**Ans.** The residents can hold foreign coins without any limit.

**E.51. How much of foreign currency notes, bank notes and foreign currency travellers cheques etc. can be retained by a person resident in India?**

**Ans.** Retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers cheques not exceeding US \$ 2,000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travellers cheques;

(a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India;

or

(b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation;

or

(c) was acquired by him by way of honorarium or gift while on a visit to any place outside India;

or

(d) represents unspent amount of foreign exchange acquired by him from an

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authorised person for travel abroad.

**GUIDELINES FOR FINANCIAL INTERMEDIARIES OFFERING SPECIAL SCHEMES,  
PROTECTION UNDER THE SCHEME.**

**E.52. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

**Ans.** Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

**E.53. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?**

**Ans.** No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme of USD 75,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make.

**E.54. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?**

**Ans.** No. The Scheme does not envisage extension of credit facility against the security of the deposits. Further, the banks should not extend any kind of credit facilities to resident individuals to facilitate remittances under the Scheme.

**E.55. Can bankers open foreign currency accounts in India for residents under the Scheme?**

**Ans.** No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

**E.56. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**

**Ans.** No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

**E.57. Are individuals resident in India permitted to include non-resident close relatives as joint holder(s) in their resident bank accounts?**

**Ans.** Individuals resident in India are permitted to include non-resident close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as joint holder(s) in their resident bank accounts on 'former or survivor' basis. However, such non-resident Indian close relatives **were not earlier eligible to operate** the account during the life time of the resident account holder.

Now, AD banks may include an NRI close relative (relatives as defined in Section 6 of the Companies Act, 1956) in existing/new resident bank accounts as joint holder with the resident account holder on "Either or Survivor" basis subject to the following conditions:

- a) Such account will be treated as resident bank account for all purposes and all regulations applicable to a resident bank account shall be applicable.
- b) Cheques, instruments, remittances, cash, card or any other proceeds belonging to the NRI close relative shall not be eligible for credit to this account.
- c) **The NRI close relative shall operate such account only for and on behalf of the resident for domestic payment and not for creating any beneficial interest for himself.**
- d) Where the NRI close relative becomes a joint holder with more than one resident in such account, such NRI close relative should be the close relative of all the resident bank account holders.

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- e) Where due to any eventuality, the non-resident account holder becomes the survivor of such an account, it shall be categorized as Non-Resident Ordinary Rupee (NRO) account as per the extant regulations.
  - f) Onus will be on the non-resident account holder to keep AD bank informed to get the account categorized as NRO account and all such regulations as applicable to NRO account shall be applicable.
  - g) The above joint account holder facility may be extended to all types of resident accounts including savings bank account.

While extending this facility the AD bank should satisfy itself about the actual need for such a facility and also obtain the following declaration duly signed by the non-resident account holder:

“I am the joint account holder of SB/FD/RD/Current Account bearing No ..... which stands in my name and in the name of Shri/Smt. .... who is my ..... (state relationship). I hereby undertake that I shall not use the proceeds lying in the above account for any transaction in contravention of the provisions of the Foreign Exchange Management Act (FEMA) 1999, Rules/Regulations made thereunder and the related circulars/instructions issued by the Reserve Bank from time to time. I further undertake that if any such transaction is put through the said account in contravention of the FEMA, 1999 or Rules/Regulations made thereunder, I shall be held responsible for the same. I shall intimate my bank in the event of any change in my Non-resident/Resident status.”

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**E.58. Can a Non-Resident Indian (NRI) open NRE/FCNR (B) account with their resident close relative?**

**Ans.** Non-Resident Indian (NRI), as defined in FEMA Notification No. 5/ 2000-RB dated May 3, 2000 may be permitted to open NRE/FCNR(B) account with their resident close relative (relative as defined in Section 6 of the Companies Act, 1956) on ‘former or survivor’ basis. The resident close relative shall be eligible to operate the account as a Power of Attorney holder in accordance with the extant instructions during the life time of the NRI/PIO account holder.

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**E.59. Can a resident individual make a rupee gift to a NRI/PIO who is a close relative of resident individual by of crossed cheque/ electronic transfer?**

**Ans.** A resident individual is permitted to make a rupee gift to a NRI/PIO who is a close relative of the resident individual {close relative as defined in Section 6 of the Companies Act, 1956} by way of crossed cheque/ electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) Account of the NRI/ PIO and credit of such gift amount may be treated as an eligible credit to NRO account. The gift amount would be within the overall limit of USD 75,000 per financial year as permitted under the Liberalised Remittance Scheme (LRS) for a resident individual. It would be the responsibility of the resident donor to ensure that the gift amount being remitted is under the LRS and all the remittances under the LRS during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

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**E.60. Are resident individuals permitted to lend to a Non-resident Indian (NRI)/ Person of Indian Origin (PIO)?**

**Ans.** A resident individual may now lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to the following conditions:

- (i) the loan is free of interest and the minimum maturity of the loan is one year;
- (ii) the loan amount should be within the overall limit under the Liberalised Remittance Scheme of USD 75,000 per financial year available for a resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalised Remittance Scheme limit of USD 75,000 during the financial year;

- (iii) the loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes in India;
- (iv) the loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
  - (a) the business of chit fund, or
  - (b) Nidhi Company, or
  - (c) agricultural or plantation activities or in real estate business, or construction of farm houses, or
  - (d) trading in Transferable Development Rights (TDRs).

**Explanation:** For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential / commercial premises, roads or bridges.

- (v) The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c;
- (vi) the loan amount shall not be remitted outside India; and
- (vii) repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO)/ Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

**E.61. Can the loans of Non-resident close relatives by residents? Can the loans of Non-Resident repaid by close relatives resident in India?**

**Ans.** Where an authorised dealer in India has granted loan to a non-resident Indian in accordance with Regulation 7 of the Notification No. FEMA 4/2000-RB dated May 3, 2000 such loans may also be repaid by resident close relative (relative as defined in Section 6 of the Companies Act, 1956) of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.

**E.62. Is meeting of medical expenses of NRIs close relatives by Resident Individuals is permitted?**

**Ans.** Where the medical expenses in respect of NRI close relative (relative as defined in Section 6 of the Companies Act, 1956) are paid by a resident individual, such a payment being in the nature of a resident to resident transaction may be covered under the term "services related thereto" under Regulation 2(i) of Notification No. FEMA16/ 2000-RB dated May 3, 2000.

For further details/guidance, please approach any bank authorised to deal in foreign exchange or contact Regional Offices of the Foreign Exchange Department of the Reserve Bank.

**FOREIGN CURRENCY DENOMINATED ACCOUNTS IN INDIA BY RESIDENT IN INDIA**

**EEFC ACCOUNT**

**E.63. Who can open an EEFC account?**

**Ans.** All categories of foreign exchange earners, such as individuals, companies, etc. who are resident in India, may open EEFC accounts.

**E.64. What is an EEFC Account and what are its benefits?**

**Ans.** Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency with an Authorised Dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

**E.65. What are the different types of EEFC accounts? Can interest be paid on these accounts?**

**Ans.** An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts.

**E.66. How much of one's foreign exchange earnings can be credited into an EEFC account?**

**Ans.** 100% foreign exchange earnings can be credited to the EEFC account subject to the condition that the sum total of the accruals in the account during a calendar month should be converted into Rupees on or before the last day of the succeeding calendar month after adjusting for utilization of the balances for approved purposes or forward commitments.

**E.67. Whether EEFC Account can be opened by Special Economic Zone (SEZ) Units?**

**Ans.** No, SEZ Units cannot open EEFC Accounts.

However, a unit located in a Special Economic Zone can open a Foreign Currency Account with an authorised dealer in India subject to certain conditions. SEZ Developers can open EEFC Accounts.

**E.68. Is there any Cheque facility available?**

**Ans.** Yes; Cheque facility is available for operation of the EEFC account.

**E.69. Are any credit facilities permitted against the security of balances held in EEFC accounts?**

**Ans.** No credit facilities, either fund based or non-fund based shall be permitted against the security of balances held in EEFC accounts by the AD Category – I banks.

**E.70. What are the permissible credits into this account?**

**Ans.**

- i) Inward remittance through normal banking channels, other than remittances received on account of foreign currency loan or investment received from abroad or received for meeting specific obligations by the account holder;
- ii) Payments received in foreign exchange by a 100 per cent Export Oriented Unit or a unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park for supply of goods to similar such units or to a unit in Domestic Tariff Area;
- iii) Payments received in foreign exchange by a unit in the Domestic Tariff Area for supply of goods to a unit in the Special Economic Zone (SEZ);
- iv) Payment received by an exporter from an account maintained with an authorised dealer for the purpose of counter trade. (Counter trade is an arrangement involving adjustment of value of goods imported into India against value of goods exported from India in terms of the Reserve Bank guidelines);
- v) Advance remittance received by an exporter towards export of goods or services;
- vi) Payment received for export of goods and services from India, out of funds representing repayment of State Credit in U.S. Dollar held in the account of Bank for Foreign Economic Affairs, Moscow, with an authorised dealer in India;
- vii) Professional earnings including directors fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;
- viii) Re-credit of unutilised foreign currency earlier withdrawn from the account;
- ix) Amount representing repayment by the account holder's importer customer, of loan/advances granted, to the exporter holding such account; and
- x) The disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under the Sponsored ADR/GDR Scheme approved by the Foreign Investment Promotion Board of the Government of India.

**E.71. Can foreign exchange earnings received through an international credit card be**

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**credited to the EEFC account?**

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**Ans.** Yes, foreign exchange earnings received through an international credit card for which reimbursement has been made in foreign exchange may be regarded as a remittance through normal banking channel and the same can be credited to the EEFC account.

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**E.72. What are the permissible debits into this account?**

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**Ans.**

- i) Payment outside India towards a permissible current account transaction [in accordance to the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000] and permissible capital account transaction [in accordance to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000].
- ii) Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park
- iii) payment of customs duty in accordance with the provisions of the Foreign Trade Policy of the Central Government for the time being in force.
- iv) Trade related loans/advances, extended by an exporter holding such account to his importer customer outside India, subject to compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.
- v) Payment in foreign exchange to a person resident in India for supply of goods/services including payments for airfare and hotel expenditure.

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**E.73. Is there any restriction on withdrawal in rupees of funds held in an EEFC account?**

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**Ans.** No, there is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account.

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**E.74. Are there any restrictions on accessing the forex market by the EEFC account holder?**

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**Ans.** EEFC account holders are permitted to access the forex market for purchasing foreign exchange only after utilizing fully the available balances in the EEFC accounts. Accordingly ADs are required to obtain a declaration, while selling foreign exchange to their constituents.

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**E.75. Whether the EEFC balances can be covered against exchange risk?**

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**Ans.** Yes, the EEFC account balances can be hedged. The balances in the account sold forward by the account holders has to remain earmarked for delivery. However, the contracts can be rolled over.

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**E.76. Whether EEFC Account is permitted to be held jointly with a resident close relative?**

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**Ans.** Resident individuals have been permitted to include resident close relative (s) as defined in the Companies Act, 1956 as a joint holder (s) in this EEFC bank Account. However, they shall not be eligible to operate the account during the life time of the resident account holder.

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**E.77. If there is change of residential status from resident to non-resident, what would happen to balance lying in EEFC account?**

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**Ans.** Balance in EEFC account may be transferred to his NRE/FCNR(B) account at his option.

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**RFC ACCOUNT**

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**Regulation FEMA 10 Foreign Currency Accounts by a person resident in India**

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**E.78. What is an RFC Account & who can open such an account?**

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**Ans.** A person resident in India may open, hold and maintain with an Authorised Dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets which were held outside India at the time of return can be credited to such



accounts. A resident in India can maintain RFC account if the foreign exchange was earned when he was abroad, or he inherited the amount or obtained gift from a person who was not resident in India.

**E.79. What are the permissible credits into this account?**

**Ans.** The foreign exchange received as followed may also be credited to this account:

- (a) Received as pension or any other superannuation or other monetary benefits from his employer outside India; or
- (b) realized on conversion of the assets acquired by a person resident in India when he was resident outside India, and repatriated to India; or
- (c) Received or acquired as gift or inheritance from a person who was resident outside India; or
- (d) Referred to in clause (c) of section 9 of the Act, or acquired as gift or inheritance therefrom; or
- (e) Received as the proceeds of life insurance policy claims/maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

**E.80. What are the different types of RFC accounts?**

**Ans.** RFC account can be maintained in the form of current or savings or term deposit accounts.

**E.81. Is there any restriction on utilisation of foreign currency balances held in an RFC account?**

**Ans.** The funds in RFC account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment outside India.

**E.82. Are NRI/PIO permitted to open RFC account, and credit proceeds of sale of assets to RFC account?**

**Ans.** Yes. NRI/PIO is permitted to hold, own and transfer or invest in foreign currency, foreign security or immovable property situated outside India, if such currency, security or property was held or owned when resident outside India. Proceeds of sale of assets outside India can be credited to RFC account.

**E.83. Are Resident individuals permitted to include resident close relative(s) as defined in the Companies Act, 1956 as a joint holder(s) in their RFC bank accounts?**

**Ans.** Yes. Resident individuals are permitted to include resident close relative(s) as defined in the Companies Act, 1956 as a joint holder(s) in their RFC bank accounts on 'former or survivor' basis. However, such resident Indian close relative, now being made eligible to become joint account holder, shall not be eligible to operate the account during the life time of the resident account holder.

**RFC (DOMESTIC) ACCOUNT**

**E.84. What is an RFC (Domestic) Account?**

**Ans.** A resident individual may open, hold and maintain with an Authorised Dealer in India a foreign currency account, to be known as Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, bank notes and travellers cheques.

**E.85. What are the permissible credits into this account?**

**Ans.** Foreign exchange as followed acquired in the form of currency notes, bank notes and travellers cheques:

- (a) While on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or
- (b) From any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful

- obligation; or
- (c) By way of honorarium or gift while on a visit to any place outside India; or
  - (d) Represents the unspent amount of foreign exchange acquired by him from an authorised person for travel abroad; or
  - (e) As gift from a close relative (means relatives as defined in section 6 of the Companies Act, 1956); or
  - (f) By way of earning through export of goods/services, or as royalty, honorarium or by any other lawful means; or
  - (g) Representing the disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under the Sponsored ADR/GDR Scheme approved by the Foreign Investment Promotion Board of Government of India; or
  - (h) By way of earnings received as the proceeds of life insurance policy claims/maturity/surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority.

**E.86. What are the permissible debits into this account?**

**Ans.** Debits to the account shall be for payments towards a current account transaction in accordance with the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 and towards a capital account transaction permissible under the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000.

**E.87. What are the different types of RFC (Domestic) Accounts? Can interest be paid on these accounts?**

**Ans.** The account shall be maintained in the form of Current Account and shall not bear any interest.

**E.88. Is there any ceiling on the balances in RFC (Domestic) Account?**

**Ans.** There is no ceiling on the balances in the account.

**E.89. If there is change of residential status from resident to non-resident, what would happen to balance lying in RFC (Domestic) account?**

**Ans.** Balance in RFC (Domestic) may be transferred to his NRE/FCNR(B) account at his option.

**OTHER IMPORTANT CONDITIONS FOR OPENING OF FOREIGN CURRENCY ACCOUNTS BY RESIDENTS**

**E.90. How are funds out of the Foreign Currency Accounts remitted after the account holder's death?**

**Ans.** On the death of a foreign currency account holder,—

- (1) The authorised dealer with whom the account is held or maintained may remit to a nominee being a person resident outside India, funds to the extent of his share or entitlement from the account of the deceased account holder;
- (2) A nominee being a person resident in India, who is desirous of remitting funds outside India out of his share for meeting the liabilities abroad of the deceased, may apply to the Reserve Bank for such remittance.

**E.91. Can a person resident in India who has gone abroad for studies or who is on a visit to a foreign country open a Foreign Currency Account?**

**Ans.** A person resident in India who has gone abroad for studies or who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India. Provided that short visits to India by a person who has gone abroad for studies, before completion of his studies, shall not be treated as his return to India.

**E.92. In what circumstances, a resident in India can open a Foreign Currency Account**

**with a bank outside India?**

**Ans.** A person resident in India who has gone out of India to participate in an exhibition/trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/trade fair. However, the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/trade fair.

**E.93. Are non-resident close relative(s) permitted to be a joint holder(s) in resident bank accounts maintained by residents in India?**

**Ans.** Yes. Individuals resident in India are permitted to include non-resident close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as a joint holder(s) in their resident bank accounts on 'former or survivor' basis. However, such non-resident Indian close relatives shall not be eligible to operate the account during the life time of the resident account holder.

**ASSETS OUTSIDE INDIA BY A PERSON RESIDENT IN INDIA**

**E.94. Can a person resident in India hold assets outside India?**

**Ans.** In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

In this regard it is clarified that Section 6(4) of FEMA, 1999 covers the following transactions:

- (i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- (ii) Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- (iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- (iv) A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefore are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

**E.95. Whether income and sale proceeds of assets held abroad by returning NRIs need to be repatriated?**

**Ans.** Income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement need not be repatriated.

**E.96. Can resident individuals acquire and sell foreign securities under ESOP?**

**Ans.** Resident individuals who are either employees or director of an Indian office or branch of a foreign company in which foreign holding is not less than 51 per cent are permitted to acquire foreign securities under ESOP Scheme without any monetary limit. They are also permitted to freely sell the shares provided the proceeds thereof are repatriated to India.

**E.97. Whether a person resident in India allowed to take or hold a general insurance policy issued by an insurer outside India?**

**Ans.** A person resident in India may take or continue to hold a general insurance policy issued by an insurer outside India, provided that, the policy is held, under a specific

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or general permission of the Central Government.

**E.98. What are the conditions need to be met by resident in India to continue holding any general insurance policy issued by an insurer outside India when such person was resident outside India?**

**Ans.** A person resident in India may continue to hold any general insurance policy issued by an insurer outside India when such person was resident outside India. Provided that where the premium due on a general insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt thereof.

**E.99. Whether a person resident in India allowed to take or hold a life insurance policy issued by an insurer outside India?**

**Ans.** A person resident in India may take or continue to hold a life insurance policy issued by an insurer outside India, provided that, the policy is held, under a specific or general permission of the Reserve Bank of India.

**E.100. What are the conditions need to be met by resident in India to continue holding any life insurance policy issued by an insurer outside India when such person was resident outside India?**

**Ans.** A person resident in India may continue to hold any life insurance policy issued by an insurer outside India when such person was resident outside India. Provided that where the premium due on a life insurance policy has been paid by making remittance from India, the policy holder shall repatriate to India through normal banking channels, the maturity proceeds or amount of any claim due on the policy, within a period of seven days from the receipt thereof.

#### **FACILITIES FOR DIRECT INVESTMENT BY RESIDENT INDIVIDUALS ABROAD**

**E.101. Can an Individual resident in India make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS)?**

**Ans.** As per new Regulation 20A: 'Acquisition or Setting up of a JV or WOS abroad by resident individual' inserted in FEMA 120 (Foreign Exchange Management (Transfer or issue of Any Foreign Security) Regulations), w.e.f. August 05, 2013, a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification) satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme (presently USD 75,000).

**E.102. What are the new provisions added in Schedule V of Regulation 20A of FEMA 120?**

**Ans.** Schedule V of Regulation 20A of FEMA 120

**A. Overseas Direct Investments by Resident Individuals**

1. Resident individual is prohibited from making direct investment in a JV or WOS abroad which is engaged in the real estate business or banking business or in the business of financial services activity.
2. The JV or WOS abroad shall be engaged in bonafide business activity.
3. Resident individual is prohibited from making direct investment in a JV/WOS [set up or acquired abroad individually or in association with other resident individual and/or with an Indian party] located in the countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank.
4. The resident individual shall not be on the Reserve Bank's Exporters Caution List or List of defaulters to the banking system or under investigation by any investigation/enforcement agency or regulatory body.

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5. At the time of investments, the permissible ceiling shall be within the overall ceiling prescribed for the resident individual under Liberalised Remittance Scheme as prescribed by the Reserve Bank from time to time. [Explanation: The investment made out of the balances held in EEFC/RFC account shall also be restricted to the limit prescribed under LRS.]
  6. The JV or WOS, to be acquired/ set up by a resident individual under this Schedule, shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS.
  7. For the purpose of making investment under this Schedule, the valuation shall be as per Regulation 6(6)(a) of this Notification.
  8. The financial commitment by a resident individual to/on behalf of the JV or WOS, other than the overseas direct investments as defined under Regulation 2(e) read with Regulation 20A of this Notification, is prohibited.

#### **B. Post Investment Changes**

Any alteration in shareholding pattern of the JV or WOS may be reported to the designated AD within 30 days including reporting in the Annual Performance Report as required to be submitted in terms of Regulation 15 of this Notification.

#### **C Disinvestment by Resident Individuals**

1. A resident individual, who has acquired/set up a JV or WOS under the provisions of this Schedule, may disinvest (partially or fully) by way of transfer/sale or by way of liquidation/merger of the JV or WOS.
2. Disinvestment by a resident individual shall be allowed after one year from the date of making first remittance for setting up or acquiring the JV or WOS abroad.
3. The disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment and the same may be reported to the designated AD.
4. No write off shall be allowed in case of disinvestments by the resident individuals.

#### **D. Reporting Requirements**

1. The resident individual, making overseas direct investments under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorised dealer, within 30 days of making the remittance.
2. The investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank in Form ODI Part I and II within 30 days of making the remittance.
3. The obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule.
4. The disinvestment by the resident individual may be reported by the designated AD to the Reserve Bank in Form ODI Part IV within 30 days of receipt of disinvestment proceeds.

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#### **E.103. What are the general permissions available to persons resident in India for purchase / acquisition of securities abroad?**

**Ans.** General permission has been granted to persons resident in India for purchase / acquisition of securities as under:

- a. Out of funds held in the RFC account;
- b. As bonus shares on existing holding of foreign currency shares;
- c. When not permanently resident in India, from the foreign currency resources outside India.

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#### **E.104. What are the prohibited activities for overseas direct investment?**

**Ans.** Real estate and banking business are the prohibited sectors for overseas direct investment. Real estate business means buying and selling of real estate or trading in

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Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges.

**E.105. Can the partners hold shares of the overseas concerns for and on behalf of the firm?**

**Ans.** 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.

**E.106. Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?**

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

- a) to acquire foreign securities as a gift from any person resident outside India;
- b) to acquire shares under cashless Employees Stock Option Programme (ESOP) issued by a company outside India, provided it does not involve any remittance from India;
- c) to acquire shares by way of inheritance from a person whether resident in or outside India;
- d) to purchase equity shares offered by a foreign company under its ESOP Schemes, if he is an employee, or, a director of an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle (SPV), is not less than 51 per cent. AD Category – I banks are permitted to allow remittances for purchase of shares by eligible persons under this provision irrespective of the method of operationalisation of the scheme i.e. where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / a Special Purpose Vehicle (SPV) / step down subsidiary, provided (i) the company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees / directors are being offered shares, not less than 51 per cent of its equity, (ii) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and (iii) an Annual Return (Annex B) is submitted by the Indian company to the Reserve Bank through the AD Category – I bank giving details of remittances / beneficiaries, etc. A person resident in India may transfer by way of sale the shares acquired as stated above provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.  
**It has been decided to grant General Permission to the resident individuals 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.**
- e) Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided (i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999, (ii) the shares are being repurchased in terms of the initial offer document, and (iii) an annual return is submitted through the AD Category – I bank giving details of remittances / beneficiaries, etc.

**E.107. Can a resident individual acquire shares of a foreign company in his capacity as director?**

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**Ans.** A person resident in India being an individual may  
(a) acquire foreign securities as qualification shares issued by a company incorporated outside India for holding the post of a director in the company;

**Provided** that,—

- (i) the number of shares so acquired shall be the minimum required to be held for holding the post of director and in any case shall not exceed 1 per cent of the paid-up capital of the company, and
- (ii) the consideration for acquisition of such shares does not exceed the ceiling as stipulated by RBI from time to time,

Since the necessity of having certain qualification shares by an individual to be appointed as a Director of the company is governed by the law of the host country, **it has been decided to remove the existing cap of 1 (one) per cent on the ceiling for resident individuals to acquire qualification shares for holding the post of a Director in the overseas company.** Accordingly, henceforth, remittance shall be allowed from resident individuals for acquiring the 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. 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.

- (b) acquire foreign securities by way of rights shares in a company incorporated outside India:

**Provided** that the right shares are being issued by virtue of holding shares in accordance with the provisions of the law for the time being in force,

- (c) where such person is an employee or a director of the Indian promoter company, acquire by way of purchase shares of a Joint Venture or Wholly Owned Subsidiary outside India of the Indian promoter company, in the field of software :

**Provided** that—

- (i) the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time,
- (ii) the shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India, and
- (iii) 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.

(2) A person resident in India, being an individual holding qualification/rights shares in terms of sub-regulation (a) or (b) above may sell the shares so acquired, without prior approval, provided the sale proceeds are repatriated to India through banking channels and documentary evidence is submitted to the authorized dealer.

(3) An Indian company in the knowledge based sector may allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes.

**Residents are permitted to acquire a foreign security, if it represents qualification shares for becoming a director of a company outside India to the extent prescribed as per the law of the host country where the company is located provided it does not exceed the limit prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.**

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**E.108. Can a resident individual subscribe to the rights issue of shares held by him?**

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 the law.

**E.109. 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?**

**Ans.** 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:

- i. the consideration for purchase does not exceed US\$ 10,000 or its equivalent per employee in a block of five calendar years;
- ii. 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
- iii. 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 the consideration for purchase does not exceed USD 50,000 or its equivalent in a block of five calendar years.

**E.110. What are the limitations for an Indian proprietary concern to accept shares of a company outside India in lieu of fees for professional services?**

**Ans.** The two limitations for an Indian concern to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company are as follows:

- (a) the value of the shares accepted from each company outside India shall not exceed fifty per cent of the fees receivable by the Indian concern from that company; and
- (b) the Indian concern's shareholding in any one company outside India by virtue of shares accepted as aforesaid shall not exceed ten per cent of the paid-up capital of the company outside India, whose shares are accepted.

**E.111. What are the conditions need to be met by a Proprietary/unregistered partnership firm in India being a recognised Star Export House to set up a JV/WOS outside India?**

**Ans.** Proprietary/unregistered partnership firm in India being a recognised Star Export House with a proven track record and a consistently high export performance satisfying the criteria as per Schedule II of FEMA 120 may set up a JV/WOS outside India with the prior approval of the Reserve Bank.

**E.112. Can a Resident individual acquire shares in a foreign entity offered as consideration for professional services rendered to the foreign entity?**

**Ans.** A Resident individual may apply to the Reserve Bank for permission to acquire shares in a foreign entity offered as part/full consideration for professional services rendered to the foreign entity or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value is restricted to the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

**E.113. What are the factors considered by RBI while granting above permission to a resident individual to acquire shares in a foreign entity?**

**Ans.** Reserve Bank may, after taking into account, *inter alia* the following factors, grant permission subject to such terms and conditions as are considered necessary:

- (i) Credentials and net worth of the individual and the nature of his profession.
- (ii) The extent of his forex earnings/balances in his EEFC and/or RFC account;
- (iii) Financial and business track record of the foreign entity;
- (iv) Potential for forex inflow to the country;



(v) Other likely benefits to the country.

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**IMMOVABLE PROPERTY OUTSIDE INDIA**

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**E.114. Whether any approval required by a Resident in India to acquire or transfer any immovable property situated outside India?**

**Ans.** Yes. No person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

A person resident in India who hold any immovable property situated outside India may continue to hold such immovable property if such property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India (section 6(4) of FEMA).

**E.115. Whether above approval also required by a Foreign National resident in India?**

**Ans.** No. Property held by a person resident in India who is a national of a foreign State is permitted.

**E.116. How can a person resident in India acquire immovable property situated outside India?**

**Ans.** A person resident in India may acquire immovable property outside India,  
(a) by way of gift or inheritance from a person referred to in sub-section (4) of section 6 of FEMA i.e. A person resident in India who hold any immovable property situated outside India if such property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.  
(b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account.

**E.117 Can a person resident in India acquire immovable property situated outside India under LRS?**

**Ans.** No. The LRS scheme can no longer be used for acquisition of immovable property, directly or indirectly, outside India.

**E.118. Can a person resident in India transfer such immovable property situated outside India?**

**Ans.** Yes. A person resident in India, who has acquired immovable property outside India as above, may transfer it by way of gift to his relative who is a person resident in India.

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**BORROWING/LENDING IN FOREIGN EXCHANGE BY INDIVIDUAL RESIDENT IN INDIA**

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**E.119. Can an individual resident in India borrow foreign exchange from his close relatives outside India? If yes, to what extent?**

**Ans.** Yes. An individual resident in India may borrow a sum not exceeding US\$ 250,000 or its equivalent from his close relatives (as defined in section 6 of the Companies Act, 1956) outside India, subject to the conditions that—  
a. the minimum maturity period of the loan is one year;  
b. the loan is free of interest; and  
c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account of the non-resident lender.

**E.126. Can Indian companies in India grant loans in foreign currency to the employees of their branches outside India?**

**Ans.** Indian companies in India may grant loans in foreign currency to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.

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- 
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## CHAPTER F - LIBERALISED REMITTANCE SCHEME

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**F.1. What is the Liberalised Remittance Scheme of USD 75,000?**

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**Ans.** Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 75,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

In case of remitter being a minor, the LRS declaration form should be countersigned by the minor's natural guardian. Accordingly, the modified LRS application cum declaration form is attached in the 3rd end of this chapter.

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**F.2. Under which Regulation of FEMA, LRS is notified?**

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**Ans.** **Foreign Exchange Management (Permissible Capital Account Transactions) (Amendment) Regulations, 2013.**

Regulation 4(a): "Provided that –

- (a) subject to the provisions of the Act or the rules or regulations or directions or orders made or issued there under, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 75000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I. Further, any remittances for acquisition of immovable property outside India under the Scheme shall not be permitted.

**Explanation:** Drawal of foreign exchange by resident individuals towards remittances of gift or donations as per item No.3 and 4 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above;

- (b) where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 75000 or as decided by Reserve Bank from time to time as the case may be, per financial year, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal:

Provided further that no part of the foreign exchange of USD 75000 or as decided by Reserve Bank from time to time as the case may be, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned."

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**F.3. Please illustrate the capital account transactions permitted under the scheme.**

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**Ans.** Under the Scheme, resident individuals can acquire and hold shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank.

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**F.4. Are Individuals allowed to open foreign currency accounts with banks outside India for carrying out transactions permitted under the LRS?**

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**Ans.** Yes. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the Scheme. The foreign currency accounts may be used for putting through all transactions connected with or arising from remittances eligible under this Scheme without prior approval of the Reserve Bank.

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**F.5. What are the prohibited items under the Scheme?**

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**Ans.** The remittance facility under the Scheme is not available for the following:  
i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item

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- restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000;
  - ii) Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
  - iii) Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;
  - iv) Remittance for trading in foreign exchange abroad;
  - v) Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;
  - vi) Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories”, as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org). or as notified by the Reserve Bank from time to time;
  - vii) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks; and
  - viii) With effect from August 14, 2013, the scheme is not available for remittances for acquisition of immovable property directly or indirectly outside India.

**F.6. Whether LRS facility is in addition to existing facilities detailed in Schedule III under remittances?**

**Ans.** Yes. The facility under the Scheme is in addition to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes – other than gift and donation remittances.

**F.7. Whether LRS facility is in addition to existing facilities for gift and donation remittances detailed in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000?**

**Ans.** No. Remittances for gifts (US\$ 5,000 per financial year per remitter or donor) and donations (US\$ 5,000 per financial year per remitter or donor) cannot be made separately and are subsumed under the limit available under this LRS.

As per the current guidelines of LRS, only gifts (US\$ 5,000 per financial year per remitter or donor) and donations (US\$ 5,000 per financial year per remitter or donor) (from the list of items under Schedule III to FEM Current Account Transactions Rules, 2000), by a resident individual have been subsumed under the LRS limit. For all other purposes such as educational and medical expenses the limits of LRS and Schedule III to FEM Current Account Transactions Rules 2000 are separate, distinct, mutually exclusive and over and above each other respectively.

In this context, it may be noted that under the extant guidelines under FEMA the following remittances can be made over and above the annual limit of USD 75000 permissible under LRS:

- a. A resident individual can make remittances for meeting expenses for medical treatment abroad up to the estimate from a doctor in India or hospital/ doctor abroad under general permission (without any RBI approval – Para 9 of Schedule III to FEM Current Account Transactions Rules, 2000, as amended from time to time).
- b. A resident individual can make remittances up to USD 25,000 for maintenance expenses of a patient going abroad for medical treatment or check-up abroad or for accompanying as attendant to a patient going abroad for medical treatment/ check-up (without any RBI approval – Para 8 of Schedule III to FEM Current Account Transactions Rules, 2000, as amended from time to time).
- c. A resident individual can make remittances for studies up to the estimates from the institutions abroad or USD 100,000, whichever is higher (without any RBI approval – Para 10 of Schedule III to FEM Current Account Transactions Rules, 2000, as amended from time to time). This is over and above the remittance limit of USD 75,000 which can be made under the LRS route for the same.

- d. A resident individual can also make all other remittances (other than donation and gifts) as stipulated under Schedules III to FEM Current Account Transactions Rules, 2000, as amended from time to time.
- e. A resident individual can also carry out other permissible current account transactions (transactions which are not explicitly prohibited under Schedule I, or restricted under Schedules II and III, to FEM Current Account Transactions Rules, 2000, as amended from time to time) without any limits through an AD Bank in India subject to the AD bank verifying the bonafides of the transaction (para 6 to Annex 1 of ADMA Circular No.11 dated May 16, 2000).

Therefore notwithstanding the revised guidelines and reduction in the LRS limit these guidelines do not affect genuine transactions.

**F.8. Can a resident individual make a rupee gift to a NRI/PIO who is a close relative in India under the Scheme?**

**Ans.** Yes. A resident individual can give rupee gifts to his visiting NRI/ PIO close relatives [means relative as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque/ electronic transfer within the overall limit of USD 75,000 per financial year and the gifted amount should be credited to the beneficiary's NRO account.

**F.9. Can resident individuals lend in Rupees to their non-resident NRIs/PIOs close relative (as defined in Section 6 of the Companies Act, 1956) for any personal purpose or business activities other than agricultural/plantation activities or real estate or relending business, under the Scheme?**

**Ans.** Yes. A resident individual is permitted to lend to a Non resident Indian (NRI)/ Person of Indian Origin (PIO) close relative [as defined in Section 6 of the Companies Act, 1956] by way of crossed cheque /electronic transfer, subject to the following conditions:

- (i) The loan is free of interest and the minimum maturity of the loan is one year;
- (ii) The loan amount should be within the overall limit under the Liberalised Remittance Scheme of US\$ 75,000 per financial year available for a resident individual. It would be the responsibility of the lender to ensure that the amount of loan is within the Liberalised Remittance Scheme limit of US\$ 75,000 during the financial year;
- (iii) The loan shall be utilised for meeting the borrower's personal requirements or for his own business purposes in India;
- (iv) The loan shall not be utilised, either singly or in association with other person, for any of the activities in which investment by persons resident outside India is prohibited, namely;
  - (a) The business of chit fund, or
  - (b) Nidhi Company, or
  - (c) Agricultural or plantation activities or in real estate business, or construction of farm houses, or
  - (d) Trading in Transferable Development Rights (TDRs).

**Explanation:** For the purpose of item (c) above, real estate business shall not include development of townships, construction of residential / commercial premises, roads or bridges.

- (v) The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO account;
- (vi) The loan amount shall not be remitted outside India; and
- (vii) Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO) / Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

**F.10. Can the loans of Non-resident close relatives repaid by residents?**

**Ans.** Where an authorised dealer in India has granted loan to a non-resident Indian in

	accordance with Regulation 7 of the Notification No. FEMA 4/2000-RB dated May 3, 2000 such loans may also be repaid by resident close relative (relative as defined in Section 6 of the Companies Act, 1956) of the Non-Resident Indian by crediting the borrower's loan account through the bank account of such relative.
<b>F.11.</b>	<b>Are resident individuals under this Scheme required to repatriate back to India the accrued interest/ dividend on deposits/ investments abroad, over and above the principal amount?</b>
<b>Ans.</b>	No. The resident individual investors can retain and re-invest the income earned on investments made under the Scheme. The residents are not required to repatriate the funds or income generated out of investments made under the Scheme.
<b>F.12.</b>	<b>Are remittances under the Scheme on gross basis or net basis (net of repatriation from abroad)?</b>
<b>Ans.</b>	Remittance under this scheme is on a gross basis.
<b>F.13.</b>	<b>Can remittances under the facility be consolidated in respect of family members?</b>
<b>Ans.</b>	Yes. Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.
<b>F.14.</b>	<b>Can one use the Scheme for purchase of objects of art (paintings, etc.) either directly or through auction house?</b>
<b>Ans.</b>	Yes. Remittances under the Scheme can be used for purchasing objects of art subject to compliance with the extant Foreign Trade Policy of the Government of India and other applicable laws.
<b>F.15.</b>	<b>Is the Authorised Dealer required to check the permissibility of remittances based on the nature of transaction or can it allow the remittance based on remitter's declaration?</b>
<b>Ans.</b>	AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by the Reserve Bank of India, in this regard from time to time.
<b>F.16.</b>	<b>Can remittance be made under this Scheme for acquisition of ESOPs?</b>
<b>Ans.</b>	Yes. The Scheme can also be used for remittance of funds for acquiring ESOPs.
<b>F.17.</b>	<b>Is this scheme in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000 for a block of 5 calendar years)?</b>
<b>Ans.</b>	Yes. The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/ GDR.
<b>F.18.</b>	<b>Is this Scheme is in addition to acquisition of qualification shares?</b>
<b>Ans.</b>	No. Remittance shall be allowed from resident individuals for acquiring the 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. 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.
<b>F.19.</b>	<b>Can a resident individual invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?</b>
<b>Ans.</b>	Yes. A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc. under this Scheme. Further, the resident can invest in such securities through the bank account opened abroad for the purpose under the Scheme.



<b>F.20.</b>	<b>Whether LRS can be used for acquisition of both listed and unlisted shares of an overseas company?</b>
<b>Ans.</b>	In terms of the extant FEMA provisions LRS can be used to acquire both listed and unlisted shares of an overseas company.
<b>F.21.</b>	<b>Can an individual, who has availed of a loan abroad while as a non-resident Indian repay the same on return to India, under this Scheme as a resident?</b>
<b>Ans.</b>	Yes. This is permissible. An individual who has availed of a loan abroad while as a non resident can repay the same on return to India under the Scheme as a resident.
<b>F.22.</b>	<b>Is it mandatory for resident individuals to have a PAN number for sending outward remittances under the Scheme?</b>
<b>Ans.</b>	Yes. It is mandatory to have PAN number to make remittances under the Scheme.
<b>F.23.</b>	<b>In case a resident individual requests for an outward remittance by way of issuance of a demand draft (either in his own name or in the name of the beneficiary with whom he intends to putting through the permissible transactions) at the time of his private visit abroad, whether the remitter can effect such an outward remittance against self-declaration?</b>
<b>Ans.</b>	Yes. Such outward remittance in the form of a DD can be effected against the declaration by the resident individual in the format prescribed under the Scheme.
<b>F.24.</b>	<b>Are there any restrictions on the frequency of the remittance?</b>
<b>Ans.</b>	There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 75,000
<b>F.25.</b>	<b>What are the requirements to be complied with by the remitter?</b>
<b>Ans.</b>	The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. The Authorised Dealer should ensure that the payment is received out of funds belonging to the person seeking to make the remittance, by a cheque drawn on the applicant's bank account or by debit to his account or by Demand Draft / Pay Order. He has to furnish an application-cum-declaration in the specified format (Annex) regarding the purpose of the remittance and declare that the funds belong to him and will not be used for the purposes prohibited or regulated under the Scheme.
<b>F.26.</b>	<b>Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?</b>
<b>Ans.</b>	Once a remittance is made for an amount up to USD 75,000 during the <b>financial year</b> , he would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.
<b>F.27.</b>	<b>Are remittances required to be made only in US Dollars?</b>
<b>Ans.</b>	The remittances can be made in any freely convertible foreign currency equivalent to USD 75,000 in a <b>financial year</b> .
<b>F.28.</b>	<b>In the past resident individuals could invest in overseas companies listed on a recognised stock exchange abroad and which has the shareholding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India. Does this condition still exist?</b>
<b>Ans.</b>	Investment by resident individual in overseas companies is subsumed under the

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Scheme of USD 75,000. The requirement of 10 per cent reciprocal shareholding in the listed Indian companies by such overseas companies has since been dispensed with.

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**F.29. Can resident individuals make remittances under LRS for investments in immovable properties abroad which were acquired under instalment basis?**

**Ans.** Resident individuals are permitted to make remittances for acquiring immovable property within the annual limit of USD 75000 for already contracted cases, i.e. only for those contracts which were entered into on or before the date of the circular, i.e., August 14, 2013, subject to satisfaction of the genuineness of the transactions by the AD bank. Such cases should be immediately reported post facto to the Reserve Bank of India by the A D banks.

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**F.30. Can remittances be made to acquire Joint Ventures abroad?**

**Ans.** With effect from August 05, 2013, this Scheme, can be used by Resident individuals to set up Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) outside India for bonafide business activities within the limit of USD75000 subject to the terms & conditions stipulated in FEMA Notification No.263.

Please refer FAQs on 'Direct Investment by Residents in Joint Venture (JV)-Wholly Owned Subsidiaries (WOS) abroad' under Chapter G.

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**F.31. What are RBI's reporting requirements in context with LRS data?**

**Ans.** AD Category -I banks were required to furnish information on the number of applications received and the total amount remitted under the LRS, on a monthly basis, in the prescribed format in both hard copy as well as soft copy in Excel format. All AD banks were also advised to submit the monthly statement before 5th of the succeeding month to RBI.

Since October 2008, AD Banks were required to submit the LRS data through the Online Returns Filing System (ORFS) of Reserve Bank, in addition to submitting the same in hard copy.

It has now been decided, to collect the data **in soft form only** and to dispense with the submission of hard copies of the monthly statements by the AD banks. Accordingly, with effect from July 01, 2013, AD Category – I banks are required to upload the data (LRS data of June 2013) in ORFS on or before fifth of the following month. Where there is no data to furnish, AD banks are advised to upload 'nil' figures in the ORFS system.

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**F.32. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

**Ans.** Yes. Banks including those not having operational presence in India are required to obtain prior approval from the Department of Banking Operations and Development, Central Office, Reserve Bank of India, Central Office Building, Shahid Bhagat Singh Marg, Mumbai, for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

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**F.33. Are there any restrictions on the kind/ quality of debt or equity instruments an individual can invest in?**

**Ans.** No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments under the Scheme.

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**F.34. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?**

**Ans.** No. The Scheme does not envisage extension of credit facility against the security of the deposits. Further, the banks should not extend any kind of credit facilities to resident individuals to facilitate outward remittances under the Scheme.

**F.35. Can bankers open foreign currency accounts in India for residents under the Scheme?**

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**Ans.** No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

**F.36. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?**

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**Ans.** No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

**Application cum Declaration for purchase of foreign exchange under the Liberalised  
Remittance Scheme of USD 75,000 for Resident individuals**

(To be completed by the applicant)

**I. Details of the applicant**

- a. Name .....
- b. Address.....
- c. Account No.....
- d. PAN No.....

**II. Details of the foreign exchange required**

- 1. Amount (Specify currency).....
- 2. Purpose .....

**III. Source of funds: .....****IV. Nature of instrument**

Draft.....

Direct remittance.....

**V. Details of the remittance made under the Scheme in the financial year (April-March) 20.. – 20..**

Date :.....

Amount :.....

**VI. Details of the Beneficiary**

- 1. Name .....
- 2. Address .....
- 3. Country .....
- 4\*. Name and address of the bank.....
- 5\*. Account No.....

(\* Required only when the remittance is to be directly credited to the bank account of the beneficiary)

**This is to authorize you to debit my account and effect the foreign exchange remittance/ issue a draft as detailed above. (strike out whichever is not applicable).**

**Declaration**

*I, .....(Name), hereby declare that the total amount of foreign exchange purchased from or remitted through, all sources in India during the financial year as per item No. V of the Application, including loan extended or gift made in rupees credited to NRO account of non-resident close relative(s), is within the limit of USD 75,000 (US Dollar Seventy Five thousand only), which is the limit prescribed by the Reserve Bank for the purpose and certify that the source of funds for making the said remittance belongs to me and will not be used for prohibited purposes.*

Signature of the applicant  
(Name)

**Certificate by the Authorised Dealer**

This is to certify that the remittance is not being made by/ to ineligible entities and that the remittance is in conformity with the instructions issued by the Reserve Bank from time to time under the Scheme.

Name and designation of the authorised official:

Place:

Signature:

Date: Stamp and Seal

### Index of Questions

#### CHAPTER G - DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE (JV) / WHOLLY OWNED SUBSIDIARY (WOS) ABROAD

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- G.4.** What is the significance of overseas direct investments (ODI) for the country and for the investor?
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- 
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**NON-BANKING FINANCIAL COMPANIES  
(OPENING OF BRANCH/SUBSIDIARY/JOINT VENTURE/ REPRESENTATIVE OFFICE OR  
UNDERTAKING INVESTMENT ABROAD BY NBFCs) DIRECTIONS, 2011**

- G.90.** Can NBFCs make Overseas Investments? What are the terms and conditions?
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- 
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**CORE INVESTMENT COMPANIES - OVERSEAS INVESTMENT (RESERVE BANK) DIRECTIONS, 2012**

- G.98.** What is a Systemically Important Core Investment Company (CIC-ND-SI)?
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- 
- G.101.** A single group is having under its fold four to five prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. In such a situation, which company among the group companies is required to seek registration as CIC with the Bank.
- G.102.** A single group is having under its fold various prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. One of the entities has raised / holds public funds (one of the pre requisites for qualifying as a CIC-ND-SI). In such a situation, whether every CIC within the group or only the parent CIC or the specific entity that has raised/ holds public funds would be regarded as CIC-ND-SI, and thus would be required to seek registration as CIC-ND-SI with the Bank.
- For Example: HCo is the parent group CIC holding 100 per cent equity capital of A, B and C, all of which are also CICs . In case C has accessed public funds, whether HCo as well as A, B and



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- G.103.** Whether the investment of a company in its subsidiary's subsidiary (step down subsidiary) will be taken into account for determining not less than ninety percent of its net assets.
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- G.105.** In case an existing NBFC-ND-SI is converted into a CIC-ND-SI after fulfilling the stipulated criteria, will the existing CoR continue or will a fresh application need to be made?
- 
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- G.108.** Whether investments in a group entity other than a Company, say partnership firms, LLPs, Trusts, Association of Persons, etc by CICs-ND-SI could be regarded as investments in Group Companies for the purpose of calculating 90% investment in Group Companies.
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- 
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- G.112.** What is the eligibility criteria for CICs for investments abroad?
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- 
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- G.117.** Whether NBFCs already registered with the Bank as category "B" company whose asset size is below Rs. 100 crore, but fulfilling the CIC criteria, can seek voluntary deregistration (as such companies are not otherwise required to get registered with the Bank under the new norms)? If so, which source should be relied upon viz certificate from Statutory auditor or audited balance sheet for one year or more?
- G.118.** Whether CICs having asset size below Rs. 100 crore are regulated by the Reserve Bank?
- G.119.** As per the definition of CIC, only investment/loans/debt in group companies is eligible for computing 90% exposure? What treatment is to be given to company's investment in group's partnership concerns?
- G.120.** If a company is unlisted, would the terms of block deals apply? What is the minimum number/value of shares transferred for it to be defined as a block deal/block sale.
- 
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- G.122.** What does the term public funds include? Is it the same as public deposits?
- G.123.** In the definition of public funds, what do the term "indirect receipt of public funds" mean?
- G.124.** Can CICs issue guarantees and will this be considered part of definition of public funds?
- G.125.** What is a Group company?
- 
- G.126.** Is the definition of group company the same for CICs/ CICS-ND-SI as that for NBFCs?
- G.127.** How can a company register as a CIC-ND-SI?
- G.128.** A CIC-ND-SI should have 90% investment within the group, and in terms of current exposure

norms, NBFCs-ND-SI are permitted only 40% of both lending and investment within any group. Therefore, no NBFC as it stands, would be able to become a CIC without breaching the NOF, CRAR or Concentration Norms, since its entire business is in a subsidiary. However, an NBFC may voluntarily seek to become a CIC-ND-SI since it brings clarity to the holding structure in their organization. How would this issue be resolved? Could NBFCs-ND-SI be provided exemption from Capital adequacy/exposure norms during the transition period, just as unregistered CICs-ND-SI are given 6 months time.

**G.129.** A company has investments in Group companies but does not meet the criteria of principal business as defined in terms of asset-income criteria to be as an NBFC. Can the company still be registered as a CIC or does it need to first register as an NBFC?

**G.130.** If a company is a CIC but does not exactly meet the criteria specified, does the company need to register as NBFC?

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**G.131.** Whether a Holding Company which is not able to comply with the CIC criteria (all four conditions), would still need to comply with NBFC requirements and prudential norms even in the event that it is not satisfying the asset-income criteria. (For example: the holding company owns 60 per cent equity in another group company. Therefore, it does not qualify as a CIC. Further, the income from financial assets is also less than 50 per cent of total income. Whether such a company would require compliance with NBFC norms).

**G.132.** A group would like to set up a CIC-ND-SI in the group to rationalize the set up. However, no company can commence the business of NBFI without COR from RBI. Therefore the proposed company would have to apply for COR before transferring shares from different companies to the CIC-ND-SI. But at that time the company would not be eligible in terms of the requirements, as it would not have 90% of net assets as investment in group companies. What should the company do?

**G.133.** Whether CICs that are exempt from registration either because they have an asset size of less than Rs 100 crore or are not accessing public funds are required to register as NBFCs?

**G.134.** Would a similar benefit apply to NBFCs i.e. would NBFCs with an asset size of less than Rs 100 crore and not accessing public funds be exempted from registration with the Bank?

**G.135.** Should Net assets include operating assets?

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**G.136.** Definition of Group Companies should include LLPs and Partnerships in the Group?

**G.137.** While instruments that are compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue are excluded from Outside Liabilities, in terms of the Companies Act such instruments are excluded from the definition of 'public deposit' if they are convertible with a period of 20 years?

**G.138.** Unlike other NBFCs, CICs ND-SI can no longer make overseas investment or raise ECB under automatic route or obtain bank finance for acquisition of shares?

**G.139.** If one of the small CICs in a group does not access public funds why should it register based on the condition of aggregate asset size?

**G.140.** Will adjusted net worth of all the CICs in the Group also be aggregated for compliance purposes?

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**G.141.** There is an apparent anomaly in the definition of 'public funds' as the moment public deposits is included in the definition of 'public funds' and CICs will be deemed to have raised public deposits and will therefore become an NBFC subject to exposure norms?

- G.142.** Whether Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank permitted to raise ECB?

**GUIDELINES FOR ENTRY OF CORE INVESTMENT COMPANIES INTO INSURANCE**

- G.143.** Is a CIC registered with RBI permitted to set up a joint venture company for undertaking insurance business?
- G.144.** What is the eligibility criteria for joint venture participant?
- G.145.** Is CIC allowed to conduct such business departmentally?
- 
- G.146.** Whether an NBFC is allowed to join an insurance company on risk participation basis?
- G.147.** Are CICs permitted to invest up to 100% of the equity of the insurance company?
- G.148.** Can CICs enter into insurance business as agents?
- G.149.** Do CICs exempted from registration with RBI in terms of the Core Investment Companies (Reserve Bank) Directions, 2011 also require prior approval?

**CHAPTER G - DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE (JV) /  
WHOLLY OWNED SUBSIDIARY (WOS) ABROAD**

**G.1. Where are the Statutory basis, and guidelines pertaining to overseas direct investments?**

**Ans.** Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers conferred under the Act, the Reserve Bank of India vide Notification No. **FEMA 120/RB-2004** dated July 7, 2004 notified the **Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004**. The Notification seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

A **Master Circular** titled 'Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad' dated July 01, 2013 (updated as on 07.02.2014) is a compendium of all notifications/circulars incorporating the developments.

Frequently Asked Questions (FAQs) are issued by Reserve Bank, from time to time, as and when felt necessary. These FAQs are to be read along with, and in relation to FEMA, respective Rules & Regulations made, and Master circulars so issued every year on July 01 (updated version). As at present, Reserve bank has issued FAQs on 'Direct Investment by Residents in Joint Venture (JV)-Wholly Owned Subsidiaries (WOS) abroad dated 22.10.2013'.

**G.2. What is the definition of a Joint Venture (JV)?**

**Ans.** As per regulation 2(m) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, "Joint Venture (JV)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment.

**G.3. What is the definition of a Wholly owned Subsidiary (WoS)?**

**Ans.** As per regulation 2(q) of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, "Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party.

**G.4. What is the significance of overseas direct investments (ODI) for the country and for the investor?**

**Ans.** 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.

**G.5. Where are the guidelines pertaining to overseas direct investments available?**

<b>Ans.</b>	The guidelines have been notified by the Reserve Bank of India vide Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time, which can be accessed at the Reserve Bank's website <a href="http://www.rbi.org.in/scripts/Fema.aspx">http://www.rbi.org.in/scripts/Fema.aspx</a> . 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 <a href="http://www.rbi.org.in">http://www.rbi.org.in</a> .
<b>G.6.</b>	<b>Where can one get clarifications pertaining to the guidelines on overseas investment?</b>
<b>Ans.</b>	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 <a href="#">e-mail</a>
<b>G.7.</b>	<b>What is direct investment outside India?</b>
<b>Ans.</b>	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)).
<b>G.8.</b>	<b>Does the definition as given in Q.5 mean that one cannot acquire an existing company either partially or wholly?</b>
<b>Ans.</b>	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.
<b>G.9.</b>	<b>Can overseas direct investment be made in any activity?</b>
<b>Ans.</b>	An Indian Party can make overseas direct investment in any bonafide activity (except those that are specifically prohibited as stated in separate FAQ). 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 separate FAQ on this.
<b>G.10.</b>	<b>Who are eligible to make overseas direct investment under the Automatic Route? Who is an "Indian Party"?</b>
<b>Ans.</b>	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".
<b>G.11.</b>	<b>What are the prohibited activities for overseas direct investment?</b>
<b>Ans.</b>	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.
<b>G.12.</b>	<b>Can overseas structures having equity participation of Indian parties offer financial products linked to Indian Rupee e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.?</b>

**Ans.** It is clarified that any overseas entity having equity participation directly/ indirectly shall not offer financial products linked to Indian Rupee e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc. without the specific approval of the Reserve Bank of India given that currently Indian Rupee is not fully convertible and such products could have implications for the exchange rate management of the country. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.

**G.13. What exactly is covered under the term real estate business?**

**Ans.** 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.

**G.14. What is the Automatic Route?**

**Ans.** 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 affecting 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.

**G.15. What are the limits and requirements for direct investment to be made under the Automatic Route?**

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

- The Indian Party can invest up to 100% 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 100% 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. Further, if the source of funding is through availing ECB, the permissible limit is 400% of the net worth of the Indian Party;
- 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
- 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.

**G.16. What are the reduced of limit for Overseas Direct Investment with effect from 14 August 2014, and Rationalization/Clarifications on earlier limit of 400% of the net worth**

<b>Ans.</b>	<b>Existing</b>	<b>Revised</b>
Total overseas direct investment (ODI) of an Indian Party in all its Joint Ventures (JVs) and / or Wholly Owned Subsidiaries (WOSs) abroad engaged in any bonafide business activity	<b>400 per cent</b> of the net worth of the Indian Party as on the date of the last audited balance sheet under the Automatic Route.	<b>100 per cent</b> of the net worth of the Indian Party as on the date of the last audited balance sheet under the Automatic Route.
Total investment in the overseas unincorporated entities in the energy and natural resources sectors	<b>400 per cent</b> of the net worth of the Indian Party as on the date of the last audited balance sheet under the Automatic Route.	<b>100 per cent</b> of the net worth of the Indian Party as on the date of the last audited balance sheet

		under the Automatic Route.
Any <b>ODI in excess of 100%</b> of the net worth shall be considered <b>under the Approval Route</b> by the Reserve Bank of India.		
In respect of the <b>Navaratna Public Sector Undertakings (PSUs), ONGC Videsh Limited (OVL) and Oil India Ltd (OIL)</b> , the extant provision for investing in overseas unincorporated entities and the overseas incorporated entities in the oil sector (i.e., for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, <b>without any limits under the automatic route</b> , would however <b>continue</b> as hitherto.		
It is clarified that all the financial commitments made on or before August 14, 2013, in compliance with the earlier limit of 400% of the net worth of the Indian Party under the automatic route will continue to be allowed. In other words, such investments shall not be subject to any unwinding or approval from the Reserve Bank. Also, the limit of financial commitments for an Indian Party (presently 100% of its net worth) shall <b>not apply</b> to the financial commitments <b>funded out of EEFC account</b> of the Indian Party <b>or</b> out of funds raised by <b>way of ADRs / GDRs</b> by the Indian Party, as hitherto. It has been decided further <b>to retain the limit of 400% of the net worth</b> of the Indian Party for the financial commitments <b>funded by way of eligible External Commercial Borrowing (ECB)</b> raised by the Indian Party as per the extant ECB guidelines issued by the Reserve Bank of India from time to time.		
S. No.	Query	Answer / Clarification
1.	Whether an Indian Party (IP) can make fresh financial commitments in a JV/WOS already set-up/ acquired on or before August 14, 2013 [i.e. date of issue of A.P. (DIR Series) Circular No. 23]?	An IP can make fresh financial commitments in the existing JV / WOS (including for the purpose of setting up of/acquiring step down subsidiaries outside India) only up to the revised limit of 100%, under the automatic route. Any financial commitment beyond the 100% cap shall require prior approval of the Reserve Bank under the approval route for ODI.
2.	What happens if the fresh financial commitments, which are up to the earlier limit of 400%, have been committed on or before August 14, 2013 by the Indian Party? Would such cases attract the provisions of the present circular?	In case of an already contracted/committed financial commitment for an <u>existing</u> JV/WOS, the earlier limit of 400%, under the automatic route, would apply. The onus of ensuring the veracity/authenticity of the contract/commitment before permitting remittances will lie with the designated AD bank. Such cases should be immediately reported post facto to RBI by the AD banks.
3.	For setting up or acquiring a <u>new</u> JV / WOS, for which contract / agreement has been put in place on or before August 14, 2013, whether the new directions of 100% shall be applicable or the existing 400%?	In this case also the dispensation given in 2 above would apply i.e. applicability of automatic route upto 400% of net worth and post facto reporting of such cases to RBI immediately by the AD banks.
4.	What will be the status of an application, for financial	All applications received by the Reserve Bank or/and an AD bank

		commitment in a JV / WOS, which are already forwarded to the AD / RBI, on or before August 14, 2013, under the automatic route / approval route of 400%?	on or before August 14, 2013 would be examined and dealt with by the Reserve Bank or/and an AD bank under the earlier guidelines only, i.e., guidelines prior to August 14, 2013.
	5.	How will the 100% limit be calculated for new JV/WOS? Will the earlier investments made by the Indian Party be also reckoned towards this 100% or not?	Yes, it will be reckoned, subject to the answers/clarifications given in this Annex.
	6.	Whether an Indian Party, making fresh financial commitment in an existing overseas JV / WOS of another Indian Party (either by way of transfer of existing stake or by way of fresh contribution), shall qualify for 100% limit?	Yes. This would be treated as fresh financial commitment by the new Indian Party and it would have to be within the revised limit of 100%, under the automatic route.
	7.	In para 3 of the Circular, term 'Government of India' has been prescribed. Keeping in view that all the proposals of ODI by Navratna PSUs / OVL / OIL are not approved by the GoI, whether all the proposals need to be approved by the GoI for being eligible under the automatic route without any limit?	The term 'Government of India' may be considered to read as the 'Competent Authority'. 'Competent Authority', depending on the amount involved, would be (1) Board of Directors of the respective PSU, (2) Empowered Committee of the Secretaries (ECS); and (3) Cabinet Committee on Economic Affairs (CCEA) as laid down in paragraph 2 of <a href="#">A.P. (DIR Series) Circular No. 59 dated May 18, 2007</a> .

**G.17. What is the procedure to be followed by an Indian party to make direct investment in a JV/WOS under the Automatic Route?**

**Ans.** 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 and approach an Authorized Dealer (designated Authorized Dealer) for making the investment/remittance.

**G.18. Where does one find the Form ODI?**

**Ans.** 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 01, 2013' 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.

**G.19. What is 'financial commitment'?**

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

- by way of contribution to 100% equity shares of the JV / WOS abroad
- 100% of the amount of compulsorily and mandatorily convertible preference shares
- 100% of the amount of other preference shares
- 100% loans to its the JV / WOS abroad



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- v. 100% of the amount of corporate guarantee (other than performance guarantee) issued on behalf of its overseas JV/WOS and
  - vi. 50% of the amount of performance guarantee issued on behalf of its overseas JV/WOS.
  - vii. 100% of 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
  - viii. 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).  
 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.

**G.20. Are bank guarantees issued on behalf of JV / WOS reckoned for computation of Financial Commitment?**

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**Ans.** Bank guarantee 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, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly. The amount and period of the guarantee should be specified upfront.

**G.21. What are the valuation norms referred?**

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**Ans.** 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 its WOS which is made at premium or discount, the concept of valuation as indicated above shall be applicable.

**G.22. Are overseas investments freely allowed in all the countries and are there any restrictions regarding the currency of investment?**

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**Ans.** Overseas direct investment by Indian Parties in Pakistan shall now be considered under the Approval Route.

Investments in Nepal can be only in Indian Rupees.  
 Investments in Bhutan are allowed in Indian Rupees and in freely convertible currencies.

**G.23. 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?**

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**Ans.** 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

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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.

**G.24. What if one Indian promoter has more than one JV in either the same country or in different countries?**

**Ans.** 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.

**G.25. Is prior registration with the Reserve Bank necessary for direct investments under the Automatic Route?**

**Ans.** 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. Indian Party shall quote such number in all its communications and reports to the Reserve Bank and the authorized dealer.

**G.26. Does the allotment of UIN by the Reserve Bank for direct investments under the automatic route constitute an approval from the Reserve Bank?**

**Ans.** 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.

It may also be noted that the subsequent remittances under the automatic route and remittances under the approval route are to be reported online in Part II of form ODI, only after receipt of the e-mail communication/confirmation conveying the UIN.

The applications in form ODI for overseas direct investment under the approval route would continue to be submitted to the Reserve Bank in physical form as hitherto, in addition to the online reporting of Part I of the Form as contemplated in A.P. (DIR Series) Circular No. 36 dated February 24, 2010.

**G.27. What is the Approval route? What is the procedure to be followed for investment proposed to be made under the Approval Route?**

**Ans.** 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 100% 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

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corporates exceeding 100% 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 / incorporated 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.

**G.28. What are the other provisions for investment in unincorporated entities overseas under the Automatic Route?**

**Ans.** Indian companies are also permitted to participate in a consortium with other international operators to **construct and maintain submarine cable systems** on co-ownership basis under the automatic route. Accordingly, AD Category - I banks may allow remittances by Indian companies for overseas direct investment, after ensuring that the Indian company has obtained necessary licence from the Department of Telecommunication, Ministry of Telecommunication & Information Technology, Government of India to establish, install, operate and maintain International Long Distance Services and also by obtaining a certified copy of the Board Resolution approving such investment.

Accordingly, these transactions may be reported by the Indian parties investing in the consortium to the AD Category-I banks in Form ODI for enabling on-line submission of the same by the AD Category-I banks to the Reserve Bank for allotment of Unique Identification Number.

**G.29. What are the guidelines for Overseas Investments by Proprietorship Concerns?**

- Ans.**
- (1) With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietorship concerns and unregistered partnership firms are allowed to set up JVs / WOS outside India with the prior approval of the Reserve Bank subject to satisfying certain eligibility criteria. An application in form ODI may be made to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5<sup>th</sup> Floor, Fort, Mumbai 400 001, through the AD Category - I bank. AD Category - I banks may forward the applications to the Reserve Bank along with their comments and recommendations, for consideration.
  - (2) Investments by established proprietorship or unregistered partnership exporter firms will be subject to the following conditions:
    - i) The Partnership / Proprietorship firm is a DGFT recognized Star Export House.
    - ii) The AD Category – I bank is satisfied that the exporter is KYC (Know Your Customer) compliant and is engaged in the proposed business and meets the requirement as indicated at i) above.
    - iii) Exporter has proven track record i.e. overdue exports do not exceed 10 per cent of the average export realization of preceding three financial years.
    - iv) The exporter has not come under adverse notice of any Government agency

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like Directorate of Enforcement, CBI and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India.

- v) The amount of investment outside India does not exceed 10 per cent of the average export realization of the preceding three financial years or 200 per cent of the net owned funds of the firm, whichever is lower.

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**G.30. What are the guidelines for Overseas investment by Registered Trust / Society?**

**Ans.** Registered Trusts and Societies engaged in manufacturing / educational / hospital sector are allowed to make investment in the same sector(s) in a JV/WOS outside India, with the prior approval of the Reserve Bank. Trusts / Societies satisfying the eligibility criteria, as indicated below, may submit the application/s in Form ODI-Part I, through their AD Category - I bank/s, to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5<sup>th</sup> Floor, Fort, Mumbai 400 001, for consideration.

Eligibility Criteria:

(a) Trust

- i) The Trust should be registered under the Indian Trust Act, 1882;
- ii) The Trust deed permits the proposed investment overseas;
- iii) The proposed investment should be approved by the trustee/s;
- iv) The AD Category - I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- v) The Trust has been in existence at least for a period of three years;
- vi) The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

(b) Society

- i) The Society should be registered under the Societies Registration Act, 1860.
- ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee.
- iii) The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- iv) The Society has been in existence at least for a period of three years;
- v) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

In addition to the registration, the AD Category - I bank should ensure that the special license / permission has been obtained by the applicant in case the activities require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

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**G.31. What are the parameters for considering proposals under the approval route?**

**Ans.** 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.

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**G.32. Can any Indian company make investment in a JV/WOS abroad in the financial services sector?**

**Ans.** 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:

- i. has earned net profit during the preceding three financial years from the financial services activities;

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- ii. is registered with the appropriate regulatory authority in India for conducting financial services activities;
  - iii. has obtained approval for undertaking such activities from the regulatory authorities concerned both in India and abroad before venturing into such financial activity;
  - iv. has fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India; and
  - v. 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.

**The definition of financial services as defined by RBI vide Notification No. FEMA 242/ 2012-RB dated 19th October, 2012.**

The term 'other financial services' has not been defined/explained anywhere – neither in FDI Policy or under FEMA 20/FEMA 120. However, RBI under Annex 1 to vide Notification No. FEMA 242/ 2012-RB dated 19th October, 2012 (published in the Gazette of India on 30th October, 2012) has defined "Financial services" to mean service rendered by banking and non-banking companies regulated by the Reserve Bank, insurance companies regulated by Insurance Regulatory and Development Authority (IRDA), pension funds regulated by the Pension Fund Regulatory and Development Authority, other companies regulated by any other financial regulator and such other services as may be directed by Reserve Bank from time to time.

**Financial Services Companies**

For the purpose of prudential guidelines on investments in subsidiaries and other companies, 'financial services companies' are companies engaged in the 'business of financial services'. The 'business of financial services' means –

- i) the forms of business enumerated in clauses (a), (c), (d), (e) of sub-section (1) of section 6 of the Banking Regulation Act, 1949 and notified under clause (o) of sub-section (1) of section 6 of the Banking Regulation Act, 1949;
- ii) the forms of business enumerated in clause (c) and clause (f) of Section 45 I of the Reserve Bank of India Act, 1934;
- iii) business of credit information as provided under the Credit Information Companies (Regulation) Act, 2005;
- iv) operation of a payment system as defined under the Payment and Settlement Systems Act, 2007;
- v) operation of a stock exchange, commodity exchange, derivatives exchange or other exchange of similar nature;
- vi) operation of a depository as provided under the Depositories Act, 1996;
- vii) business of a securitization or reconstruction company as provided under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- viii) business of a merchant banker, portfolio manager, stock broker, sub-broker, share transfer agent, trustee of trust deeds, registrar to an issue, merchant banker, underwriter, debenture trustee, investment adviser and such other intermediary as provided in the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder;
- ix) business of a credit rating agency as defined in Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999;
- x) business of a collective investment scheme as defined under the Securities and Exchange Board of India Act, 1992;
- xi) business of managing a pension fund;
- xii) business of an authorized person as defined under the Foreign Exchange Management Act, 1999; and
- xiii) such other business as may be specified by the Reserve Bank from time to time.

**G.33. Can an Indian company in the financial services sector make investment in a JV/WOS abroad in the non-financial services sector?**

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**Ans.** 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.(a) above.

**G.34. Can an Indian company set up JV / WOS for trading in Overseas Commodities Exchanges?**

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**Ans.** Trading in Commodities Exchanges overseas and setting up of JV / WOS for trading in Overseas Commodities Exchanges will be reckoned as financial services activity

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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.

**G.35. What are the permissible sources for funding overseas direct investment?**

**Ans.** 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 100 per cent of the net worth does not apply. Further, if the source of funding is through availing ECB, the permissible limit is 400% of the net worth of the Indian Party.

**G.36. Can an Indian Party utilise the net worth of its Indian subsidiary / holding company for investing in a JV/WOS abroad?**

**Ans.** For the purpose of reckoning net worth of an Indian party, the net worth of its 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.

In cases where the **investment is being made jointly by more than one Indian party**, form ODI is required to be **signed jointly by all the investing entities** and submitted to the designated branch of the AD Category – I bank. AD Category – I banks should file on-line a consolidated form ODI indicating details of each party.

**G.37. Can an Indian Party capitalise the proceeds of the exports to its overseas JV / WOS?**

**Ans.** 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.

**G.38. How are Compulsorily Convertible Preference Shares (CCPS) to be treated for the purpose of Overseas Direct Investment?**

**Ans.** 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.
<b>G.39.</b>	<b>Whether Compulsorily Convertible Preference Shares (CCPS) come under the purview of equity participation?</b>
<b>Ans.</b>	The extant provisions of Overseas Direct Investments envisage setting up / acquiring JV / WOS abroad by subscribing / contributing to the equity capital of the JV / WOS. Therefore, contribution to the preference share capital (whether convertible or non-convertible) of the JV / WOS abroad by the Indian party is treated as loan to them. Keeping in view the nature of the Compulsorily Convertible Preference Shares (CCPS), it has been decided that CCPS shall be 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.
<b>G.40.</b>	<b>How the preference shares, other than the compulsorily convertible preference shares (CCPS), are to be treated for the purpose of ODI?</b>
<b>Ans.</b>	All types of preference shares, other than CCPS, are to be treated as loan extended by the Indian party to its JV / WOS abroad and compliance to the provisions <i>inter alia</i> under Regulation 6(4) of the Notification No. FEMA.120/RB-2004 dated July 07, 2004, as amended from time to time, is to be ensured. The AD banks shall report funded exposure like preference capital, debentures, notes, bonds, etc. under the head 'Loan' in Form ODI Part II.
<b>G.41.</b>	<b>What is the requirement for direct investment in an overseas concern by way of share swap?</b>
<b>Ans.</b>	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.
<b>G.42.</b>	<b>What are the permitted activities that partnership firms can undertake through overseas direct investment route?</b>
<b>Ans.</b>	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.
<b>G.43.</b>	<b>Are there any restrictions for setting up of a second generation company? Can such step down subsidiaries be set up under the Automatic Route?</b>
<b>Ans.</b>	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 above.
<b>G.44.</b>	<b>Can an Indian Party have a JV/WOS through a Special Purpose Vehicle (SPV) under the Automatic Route?</b>
<b>Ans.</b>	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.
<b>G.45.</b>	<b>Can an Indian Party directly fund such step- down subsidiaries?</b>
<b>Ans.</b>	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

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the permissible financial commitment of the Indian Party.

**G.46. What are the obligations of the Indian party, which has made direct investment outside India?**

- Ans.** An Indian Party will have to comply with the following: -
- i. 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;
  - ii. repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc.;
  - iii. 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;
  - iv. 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;
  - v. 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; and
  - vi. **Annual return of Foreign Liabilities and Assets:** In order to capture the statistics **relating to Foreign Direct Investment (FDI), both inward and outward** in a more comprehensive manner as also to align it with international best practices, RBI has decided to replace Part B of the Form FCGPR by a separate 'Annual Return on Foreign Liabilities and Assets' given as Annex-I to A.P. (DIR Series) Circular No.45 dated 15th March, 2011 as amended vide A.P. (DIR Series) Circular No.133 dated June 20, 2012 . The return should be submitted by July 15 of every year to the Director, Balance of Payment Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, C-9, 8th floor, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051. Further, **the return should be submitted by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment)** in the previous year(s) including the current year. RBI Circular gives the concepts and definitions useful in filling the Annual Return on Foreign Liabilities and Assets.

**G.47. Is it mandatory to furnish Annual Performance Reports (APR) of the overseas JV/WOS based on its audited financial statements?**

- Ans.** 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:
- a. 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
  - b. That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party.

**G.48. What are the penalties for non-submission of Annual Performance Reports (APRs)?**

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

An Indian party needs to submit to the Reserve Bank through the designated



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Authorised Dealer bank every year an Annual Performance Report in Form ODI Part III in respect of each Joint Venture or Wholly Owned Subsidiary outside India, set up or acquired by the Indian party, after the finalization of the audited accounts of the Joint Venture /Wholly Owned Subsidiary outside India.

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 unaudited annual accounts of the JV / WOS provided:

- a. 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
- b. That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party.

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**G.49. Can Indian corporates invest overseas other than by way of direct investment?**

**Ans.** 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 – Portfolio Investment.

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**G.50. Are unlisted companies incorporated in India allowed to raise capital abroad by listing abroad on any stock exchange outside India?**

**Ans.** Vide RBI Circular No. 69 dated November 08, 2013, it has now been decided to allow unlisted companies incorporated in India to raise capital abroad, without the requirement of prior or subsequent listing in India, initially for a period of two years, subject to conditions mentioned below. This scheme will be implemented from the date of the Government Notification of the scheme, subject to review after a period of two years. The investment shall be subject to the following conditions:

- (a) Unlisted Indian companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
- (b) The ADRs/ GDRs shall be issued subject to sectoral cap, entry route, minimum capitalisation norms, pricing norms, etc. as applicable as per FDI regulations notified by the Reserve Bank from time to time;
- (c) The pricing of such ADRs/GDRs to be issued to a person resident outside India shall be determined in accordance with the captioned scheme as prescribed under paragraph 6 of Schedule 1 of Notification No. FEMA. 20 dated May 3, 2000, as amended from time to time;
- (d) The number of underlying equity shares offered for issuance of ADRs/GDRs to be kept with the local custodian shall be determined upfront and ratio of ADRs/GDRs to equity shares shall be decided upfront based on applicable FDI pricing norms of equity shares of unlisted company;
- (e) The unlisted Indian company shall comply with the instructions on downstream investment as notified by the Reserve Bank from time to time;
- (f) The criteria of eligibility of unlisted company raising funds through ADRs/GDRs shall be as prescribed by Government of India;
- (g) The capital raised abroad may be utilised for retiring outstanding overseas debt or for bona fide operations abroad including for acquisitions;
- (h) In case the funds raised are not utilised abroad as stipulated above, the company shall repatriate the funds to India within 15 days and such money shall be parked only with AD Category-1 banks recognised by RBI and shall be used for eligible purposes;
- (i) The unlisted company shall report to the Reserve Bank as prescribed under sub-paragraphs (2) and (3) of Paragraph 4 of Schedule 1 to FEMA Notification No. 20.

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**G.51. What are the conditions required to be fulfilled to acquire shares of a foreign company engaged in a bonafide business activity, in exchange of ADRs/GDRs?**

**Ans.** An Indian party may acquire shares of a foreign company engaged in a bonafide

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business activity, in exchange of ADRs/GDRs issued to the latter 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 there under from time to time by the Government of India, provided:

- (i) ADRs/GDRs are listed on any stock exchange outside India;
- (ii) The ADR and/or GDR issued for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian party;
- (iii) The total holding in the Indian entity by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment under FDI;
- (iv) Valuation of the shares of the foreign company shall be
  - (a) as per the recommendations of the Investment Banker if the shares are not listed on any recognized stock exchange; or
  - (b) based on the current market capitalisation of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report in other cases.

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**G.52. What are the avenues available to Indian Mutual Funds for investment abroad?**

**Ans.** 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;
- c) initial and follow on public offerings for listing at recognized overseas stock exchanges;
- d) foreign debt securities- short term as well as long term with rating not below investment grade - in the countries with fully convertible currencies;
- e) money market investments not below investment grade; repos where the counter party is not below investment grade;
- f) repos in the form of investment, where the counterparty is rated not below investment grade. The repos should not, however, involve any borrowing of funds by mutual funds;
- g) government securities where countries are not rated below investment grade;
- h) derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;
- i) short term deposits with banks overseas where the issuer is rated not below investment grade; and
- j) units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.

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**G.53. What are the investment opportunities for Domestic Venture Capital Funds?**

**Ans.** 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.

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**G.54. Is investment in agriculture permitted?**

**Ans.** 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:

- i. 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
- i. 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.

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**G.55. Is acquisition of a foreign company through bidding or tender procedure permitted?**

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**Ans.** On being approached by an Indian Party, which is eligible under the Regulations to make investment outside India, an authorised dealer may allow remittance towards earnest money deposit or issue a bid bond guarantee on its behalf for participation in bidding or tender procedure for acquisition of a company incorporated outside India.

**G.56. Is hedging of Overseas Direct Investments permitted?**

**Ans.** Resident entities having overseas direct investments are permitted to hedge the foreign exchange rate risk arising out of such investments. AD Category - I banks may enter into forward / option contracts with resident entities who wish to hedge their overseas direct investments (in equity and loan), subject to verification of such exposure. Cancellation of such forward contracts may be permitted by AD Category - I banks and 50 per cent of such cancelled contracts may be allowed to be rebooked. If a hedge becomes naked in part or full owing to shrinking of the market value of the overseas direct investment, the hedge may continue to the original maturity. Rollovers on the due date are permitted up to the extent of market value as on that date.

**G.57. Can a bank in India acquire shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT)?**

**Ans.** A banking company in India, being licensed by the Reserve Bank of India under the provisions of the Banking Regulation Act, 1949, may acquire the shares of SWIFT, Belgium as per the by-laws of SWIFT, provided that such banking company has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as member.

**G.58. (a) What are the different modes of disinvestments from the JV / WOS abroad**

**Ans.** 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.

**G.59. (b) Can an Indian Party disinvest in case where write off is not involved?**

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

- the sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- 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;
- 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;
- 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
- the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

The Indian entity is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

**G.60. (c) In case of disinvestment of stake in overseas JV/WOS, can an Indian party disinvest with write off of part of investment?**

**Ans.** 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:

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

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- 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.

**G.61. (d) Are there any pre-conditions/compliances subject to which such write off at the time of disinvestment is permitted?**

**Ans.** Yes. Please refer above.

**G.62. Whether restructuring of the balance sheet of the JV / WOS abroad involving write-off of capital and receivables is allowed?**

**Ans.** 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.

**G.63. What is the criteria for setting up of office (trading or non-trading) or its branch set up outside India or its representative posted outside India?**

**Ans.** A registered Firm, Company or Body Corporate can **establish trading or non-trading office, branch and representative office outside India** under Automatic route for conducting normal business activities, subject to following conditions:

- i. At the time of setting up of the office, AD Category – I banks may allow **remittances towards initial expenses up to fifteen per cent** of the average annual sales/income or turnover during the last two financial years or up to twenty five per cent of the net worth, whichever is higher.

Restrictions contained shall not apply in a case where the remittances are made out of funds held in EEFC account of the Indian entity.

- ii. **For recurring expenses, remittances up to ten per cent** of the average annual sales/income or turnover during the last two financial years may be sent for the purpose of normal business operations of the office (trading / non trading) / branch or representative office outside India subject to the following terms and conditions:
  - a) The overseas branch/office has been set up or representative is posted overseas for **conducting normal business activities of the Indian entity**;
  - b) The overseas branch/office/representative **shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations** made there under;
  - c) The overseas office (trading / non-trading) / branch / representative **should**

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**not create any financial liabilities contingent or otherwise for the head office in India and also not invest surplus funds abroad without prior approval of Reserve Bank.** Any funds rendered surplus should be repatriated to India.

Restrictions contained shall not apply in a case where the remittances are made out of funds held in EEFC account of the Indian entity.

- iii. The **details of bank accounts** opened in the overseas country should be promptly **reported to the AD Bank.**

**G.64. Is acquisition of immovable property outside India permitted for overseas offices?**

**Ans.** AD Category – I banks may also allow remittances by a company incorporated in India having overseas offices, within the above limits for initial and recurring expenses, to acquire immovable property outside India for its business and for residential purpose of its staff.

**G.65. What are the conditions need to be met by a software exporter company /firm for setting up of an overseas office / branch?**

**Ans.**

- (i) The overseas office / branch of software exporter company /firm may repatriate to India 100 per cent of the contract value of each 'off-site' contract.
- (ii) The overseas office/branch of software exporter company/ firm, may repatriate to India at least 30% of the contract value of each 'on-site' contract and may utilise the balance amount (70%) of the contract value of 'on-site' contracts for contract related expenses including office/ branch expenses abroad.
- (iii) In case of companies taking up 'on site' contracts, they should repatriate the profits of such 'on site' contracts after the completion of the said contracts.
- (iv) An audited yearly statement showing receipts under 'off-site' and 'on-site' contracts undertaken by the overseas office, expenses and repatriation thereon may be sent to the AD Category – I banks.

**G.66. What are the regulations pertaining to opening/holding/maintaining the Foreign Currency Account by Indian party outside India?**

**Ans.** An Indian party is allowed to open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments subject to the following terms and conditions:

- i. The Indian party is eligible for overseas direct investments in terms of Regulations 6 (Regulation 7, if applicable) of Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time.
- ii. The host country Regulations stipulate that the investments into the country is required to be routed through a designated account.
- iii. FCA shall be opened, held and maintained as per the regulation of the host country.
- iv. The remittances sent to the FCA by the Indian party should be utilized only for making overseas direct investments into the JV/WOS abroad.
- v. Any amount received in the account by way of dividend and/or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- vi. The Indian party should submit the details of debits and credits in the FCA on yearly basis to the designated AD bank with a certificate from the Statutory Auditors of the India party certifying that the FCA was maintained as per the host country laws and the extent FEMA regulations/provisions as applicable.
- vii. The FCA so opened shall be closed immediately or within 30 days from the date of disinvestment from JV/WOS or cessation thereof.

**G.67. Can an Indian Party open/maintain an account in Foreign currency abroad?**

**Ans.** 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.
<b>G.68.</b>	<b>Can a loan given to an overseas venture be converted into equity? If yes what are the reporting requirements?</b>
<b>Ans.</b>	Yes, a loan can be converted into equity and reported to RBI by a letter.
<b>G.69.</b>	<b>Whether equity exposures can be converted into loan or other forms of funded exposure like preference capital, debentures, etc.?</b>
<b>Ans.</b>	In terms of the extant provisions under Regulation 16(2) of the Notification No. FEMA.120/RB-2004 dated July 07, 2004, as amended from time to time, the disinvestment proceeds are to be repatriated to India within the prescribed time limit. Therefore, conversion of equity based exposure into loan or other form of funded exposures like preference capital, debenture, etc., without repatriating the disinvestment proceeds to India, shall require prior approval of RBI.
<b>G.70.</b>	<b>What are the conditions need to be met by an Indian Party while offering any form of guarantees to a person resident outside India?</b>
<b>Ans.</b>	An Indian Party may offer to a person resident outside India <b>any form of guarantees</b> , that is, <b>corporate or personal/primary or collateral/guarantee by promoter company in India/guarantee by group company, sister concern or associate company in India</b> , provided that <ul style="list-style-type: none"> <li>(a) total 'financial commitment' including all forms of guarantees remains within the overall ceiling stipulated for overseas investment by an Indian Party; and</li> <li>(b) <b>no guarantee is 'open ended'</b> i.e. the amount and period of the guarantee should be specified upfront.</li> </ul> <p>As in the case of corporate guarantees, all guarantees (including performance guarantees) are required to be reported to the Reserve Bank, in Form ODI-Part II.</p>
<b>G.71.</b>	<b>Whether issuance of personal guarantee by the direct / indirect individual promoters of the Indian Party permitted?</b>
<b>Ans.</b>	Issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be 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.
<b>G.72.</b>	<b>Can an Indian Party extend loan or guarantee to an overseas entity without any equity participation in that entity?</b>
<b>Ans.</b>	<ul style="list-style-type: none"> <li>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 100% of the Indian party's net worth as on the date of the last audited balance sheet.</li> </ul> <p>However, 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.</p> <p>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.</p> <p>It has been decided that irrespective of whether the direct subsidiary is an operating company or a SPV, the Indian promoter entity may extend corporate guarantee on behalf of the first generation step down operating company under the Automatic Route, within the prevailing limit for overseas direct investment.</p>

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Such guarantees will have to be reported to the Reserve Bank in Form ODI, as hitherto, through the designated AD Category – I bank concerned.

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 **indirect stake of not less than 51%** in the step down operating subsidiary and guarantee is reckoned for the purpose of computing the financial commitment of the Indian party.

- ii) Navaratna Public Sector Undertakings, ONGC Videsh Ltd. and Oil India are allowed to invest in overseas unincorporated/incorporated 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.

**G.73. Can an Indian party issue performance guarantee in favour of overseas JV/WOS?**

**Ans.** 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 100 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 100 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.

In case of invocation of a performance guarantee, which had been issued before August 14, 2013, the limit of 400% shall be applicable and remittance on account of such invocation over & above 400% of the net worth of the Indian party shall require prior approval of the Reserve Bank.

**G.74. Can an Indian party issue corporate guarantee on behalf of its second generation subsidiary abroad?**

**Ans.** Indian party is permitted to issue 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 **indirectly holds 51 per cent or more** stake in the overseas subsidiary for which such guarantee is intended to be issued.

**G.75. Can individual indirect promoters of the Indian Party issue personal guarantee to an overseas lender on behalf of the JV/WOS under general permission?**

**Ans.** 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

**G.76. Can open ended corporate guarantees be extended by an India party on behalf of its overseas subsidiary?**

**Ans.** As per A.P. (DIR Series) Circular No. 29 March 27, 2006 no guarantee can be open ended.

**G.77. What are the provisions regarding Rollover of Guarantees?**

**Ans.** (1) It has been decided not to treat / reckon the renewal / rollover of an existing / original guarantee, which is part of the total financial commitment of the Indian

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party in terms of Regulation 6 of the Notification *ibid*, as a fresh financial commitment, provided that:

- (a) the existing / original guarantee was issued in terms of the then extant / prevailing FEMA guidelines;
- (b) there is no change in the end use of the guarantee, i.e. the facilities availed by the JV / WOS / Step Down Subsidiary;
- (c) there is no change in any of the terms & conditions, including the amount of the guarantee except the validity period;
- (d) the reporting of the rolled over guarantee would be done as a fresh financial commitment in Part II of Form ODI, as hitherto; and
- (e) if the Indian party is under investigation by any investigation / enforcement agency or regulatory body, the concerned agency / body shall be kept informed about the same.

(2) In case, however, the above conditions are not met, the Indian party shall obtain prior approval of the Reserve Bank for rollover / renewal of the existing guarantee through the designated AD bank.

**G.78. Can one create 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?**

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**Ans.** Specific approval of the Reserve Bank will be required for creating charge on immovable / moveable property and other financial assets (except pledge of shares of overseas JV / WOS) of the Indian party / group companies in favour of a non-resident entity within the overall limit fixed (presently 100%) for the financial commitment subject to submission of a 'No Objection' by the Indian party and their group companies from their Indian lenders.

Proposals from the Indian party for creation of charge in the form of pledge / mortgage / hypothecation on the immovable / movable property and other financial assets (except shares of JV/WOS) of the Indian Party and their group companies may be considered by the Reserve Bank **under the approval route** within the overall limit fixed (presently 100%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.

**G.79. Can the shares of a JV/WOS abroad be pledged for the purpose of financial assistance?**

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**Ans.** 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.

**G.80. What are the provisions regarding pledge of shares of JV/WoS?**

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An Indian party may pledge the shares of JV / WOS to an AD Category – I bank or a public financial institution in India for availing of any credit facility for itself or for the JV / WOS abroad in terms of Regulation 18 of the Notification.

Indian party may also transfer by way of pledge, the shares held in overseas JV/WOS, to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian party remain within the limit stipulated by the Reserve Bank for overseas investments, from time to time.

**G.81. What are the general permissions available to persons in India for purchase / acquisition of securities abroad?**

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

- a. Out of funds held in the RFC account;



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- b. As bonus shares on existing holding of foreign currency shares;
  - c. 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 75,000 per financial year under the Liberalised Remittance Scheme (LRS), for permitted current and capital account transactions including purchase of securities. The resident individual is allowed to set up/acquire JV/WOS overseas within the LRS limit with effect from August 5, 2013 in terms of FEMA Notification No. 263 subject to the terms and conditions specified therein.

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**G.82. Can the partners hold shares of the overseas concerns for and on behalf of the firm?**

**Ans.** 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.

**G.83. Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?**

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

- i. as a gift from a person resident outside India;
- ii. 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;
- iii. 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;
- iv. as inheritance from a person whether resident in or outside India;
- v. 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
- vi. by way of bonus/rights shares on the foreign securities already held by them.

**G.84. Can a resident individual acquire shares of a foreign company in his capacity as Director?**

**Ans.** 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.

**G.85. 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?**

**Ans.** 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.

**G.86. Can a resident individual subscribe to the rights issue of shares held by him?**

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**Ans.** 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.

**G.87. 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?**

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**Ans.** 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:

- (i) 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
- (ii) 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.
- (iii) 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.88. What are the guidelines/regulations for acquisition or Setting up of a JV or WOS abroad by resident individual?**

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**Ans. Overseas Direct Investments by resident individuals**

With effect from August 05, 2013, a resident individual (single or in association with another resident individual or with an 'Indian Party') satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme (presently USD 75,000).

The terms and conditions prescribed under Schedule V of the Notification are:

**A. Acquisition or Setting up of a JV or WOS abroad by resident individual**

A resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in this Notification) satisfying the criteria as per Schedule V of this Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India.

**Insertion of New Schedule V**

After Schedule IV, the following Schedule shall be inserted:

"Schedule V [See Regulation 20A]

**A. Overseas Direct Investments by Resident Individuals**

1. Resident individual is prohibited from making direct investment in a JV or WOS abroad which is engaged in the real estate business or banking business or in the business of financial services activity.
2. The JV or WOS abroad shall be engaged in bonafide business activity.
3. Resident individual is prohibited from making direct investment in a JV/WOS [set up or acquired abroad individually or in association with other resident individual and/or with an Indian party] located in the countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank.

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4. The resident individual shall not be on the Reserve Bank's Exporters Caution List or List of defaulters to the banking system or under investigation by any investigation/enforcement agency or regulatory body.
  5. At the time of investments, the permissible ceiling shall be within the overall ceiling prescribed for the resident individual under Liberalised Remittance Scheme as prescribed by the Reserve Bank from time to time. [Explanation: The investment made out of the balances held in EEFC/RFC account shall also be restricted to the limit prescribed under LRS.]
  6. The JV or WOS, to be acquired/ set up by a resident individual under this Schedule, shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS.
  7. For the purpose of making investment under this Schedule, the valuation shall be as per Regulation 6(6)(a) of this Notification.
  8. The financial commitment by a resident individual to/on behalf of the JV or WOS, other than the overseas direct investments as defined under Regulation 2(e) read with Regulation 20A of this Notification, is prohibited.

**B. Post Investment Changes**

Any alteration in shareholding pattern of the JV or WOS may be reported to the designated AD within 30 days including reporting in the Annual Performance Report as required to be submitted in terms of Regulation 15 of this Notification.

**C. Disinvestment by Resident Individuals**

1. A resident individual, who has acquired/set up a JV or WOS under the provisions of this Schedule, may disinvest (partially or fully) by way of transfer/sale or by way of liquidation/merger of the JV or WOS.
2. Disinvestment by a resident individual shall be allowed after one year from the date of making first remittance for setting up or acquiring the JV or WOS abroad.
3. The disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment and the same may be reported to the designated AD.
4. No write off shall be allowed in case of disinvestments by the resident individuals.

**D. Reporting Requirements**

1. The resident individual, making overseas direct investments under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorised dealer, within 30 days of making the remittance.
2. The investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank in Form ODI Part I and II within 30 days of making the remittance.
3. The obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule.
4. The disinvestment by the resident individual may be reported by the designated AD to the Reserve Bank in Form ODI Part IV within 30 days of receipt of disinvestment proceeds."

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**G.89. What are on-line reporting guidelines?**

**Ans.** With effect from March 2, 2010 on-line reporting of the ODI forms has been operationalised in a phased manner. The system enables on-line generation of the Unique Identification Number (UIN), acknowledgment of remittance/s and filing of the Annual Performance Reports (APRs) and easy accessibility to data at the AD level for reference purposes.

- a) Initially, Part I (Sections A to D), II and III of form ODI should be filed on-line in the Overseas Investment Application 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, as stipulated in the A. P. (DIR Series) Circular No. 68 dated June 1, 2007, which should be preserved, UIN wise, for onward submission to the Reserve Bank, if specifically required. Transactions in

respect of Mutual Funds, Portfolio Investment Scheme (PIS) and Employees Stock Options Scheme (ESOPS) are also required to be reported on-line in the Overseas Investment Application.

- b) The on-line reporting would be required to be made by the Centralized Unit/Nodal Office of AD Category - I banks. The Overseas Investment Application is hosted on the Reserve Bank's Secured Internet Website (SIW) <https://secweb.rbi.org.in> and a link has been made available for accessing the Application on the main page of the website. AD Category - I banks would be responsible for the validity of the information reported on-line.
- c) The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical form as hitherto, in addition to the on-line reporting of Part I as contemplated above, for approval purposes.
- d) In case of disinvestment / closure / winding up / voluntary liquidation under the Automatic Route, in terms of A. P. (Dir Series) Circular No. 29 dated March 27, 2006, a report should continue to be submitted by the designated AD Category - I bank, in Part IV of form ODI. In all other cases of disinvestment, an application along with the necessary supporting documents should be submitted to the Reserve Bank as per the existing procedure.
- e) As per the new reporting system, AD Category - I banks would be able generate the UIN on-line under the automatic route. However, subsequent remittances under the automatic route and remittances under the approval route should be made and reported on-line in Part II, only after receipt of auto generated e-mail from RBI confirming the UIN.

**NON-BANKING FINANCIAL COMPANIES  
(OPENING OF BRANCH/SUBSIDIARY/JOINT VENTURE/ REPRESENTATIVE OFFICE OR  
UNDERTAKING INVESTMENT ABROAD BY NBFCs) DIRECTIONS, 2011**

**G.90. Can NBFCs make Overseas Investments? What are the terms and conditions?**

**Ans.** NBFCs were advised to refer to Regulation No. 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, dated July 07, 2004, in terms of which an Indian party requires prior approval of the concerned regulatory authorities both in India and abroad, to make an investment in an entity outside India engaged in financial services activities. Further in terms of para B.5.3 of the Master Circular on Direct Investment in Joint Venture (JV) / Wholly owned subsidiary (WOS) abroad dated July 01, 2013 issued by Foreign Exchange Department, RBI, regulated entities in the financial sector making investments in any activity overseas are required to comply with the above regulation.

Instances have been observed where NBFCs have made overseas investments without regulatory clearance of the Department of Non-Banking Supervision, Reserve Bank of India. Any investments made by NBFCs without regulatory clearance is a violation of FEMA 1204 and attracts penal provisions.

In this regard, it is emphasised that all NBFCs desirous of making any overseas investment must obtain 'No Objection' (NoC) of the Department of Non-Banking Supervision of RBI before making such investment, from the Regional Office in whose jurisdiction the head office of the company is registered.

Applications in this regard shall clearly state the activities intended to be undertaken by the overseas entity. NBFCs may also note that in terms of the Regulations *ibid*, they are not permitted to make direct investment in a foreign entity engaged in activities not approved under FEMA.

**G.91. Whether prior approval of RBI is required in case of opening of branch/subsidiary/joint venture/representative office or undertaking investment abroad by NBFCs?**

**Ans.** 1. No NBFC shall open subsidiaries/joint ventures/representative office abroad or shall make investment in any foreign entities without obtaining prior approval in

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writing from the Reserve Bank of India. The application from the NBFC seeking No Objection would be considered subject to these directions.

2. These directions are in addition to those prescribed by Foreign Exchange Department for opening of branches abroad or for investments in Joint Venture/Wholly Owned Subsidiary.
3. The following general and specific conditions are prescribed for permitting subsidiaries/joint ventures/representative office or making investments abroad by a NBFC (both deposit taking and non-deposit taking) registered with RBI.

**G.92. What are the general conditions to be met by NBFCs while making overseas investments?**

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- Ans.**
- a. Investment in non-financial service sectors shall not be permitted.
  - b. Direct investment in activities prohibited under FEMA or in sectoral funds will not be permitted.
  - c. Investments will be permitted only in those entities having their core activity regulated by a financial sector regulator in the host jurisdiction.
  - d. The aggregate overseas investment should not exceed 100% of the NoF. The overseas investment in a single entity, including its step down subsidiaries, by way of equity or fund based commitment shall not be more than 15% of the NBFC's owned funds.
  - e. Overseas investment should not involve multi layered, cross jurisdictional structures and at most only a single intermediate holding entity shall be permitted.
  - f.
    - (i) The CRAR of the deposit taking NBFCs, post investment in subsidiary abroad, should be not less than that applicable to deposit taking NBFCs in terms of Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms(Reserve Bank) Directions, 2007, as amended from time to time;
    - (ii) The CRAR of the NBFC-ND-SI, post investment in subsidiary abroad, should be not less than that applicable to them in terms of Non-Banking Financial (Non- Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, as amended from time to time;
    - (iii) The CRAR of the non-deposit taking NBFCs (other than NBFC-ND-SI), post investment in subsidiary abroad, should not be less than 10%, or as modified from time to time.
  - g. The NBFC should continue to maintain required level of NOF after accounting for investment in the proposed subsidiary/investment abroad as prescribed in the explanation to Section 45-IA of the RBI Act, 1934.
  - h. The level of Net Non-Performing Assets of the NBFC should not be more than 5% of the net advances.
  - i. The NBFC should be earning profit for the last three years and its performance in general should be satisfactory during the period of its existence.
  - j. The NBFC shall comply with the regulations issued under FEMA, 1999 from time to time.
  - k. Regulatory compliance and servicing of public deposits, if held by the NBFC,

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should be satisfactory.

1. The NBFC shall comply with the KYC norms.
- m. SPVs set up abroad or acquisition abroad shall be treated as investment or subsidiary/joint venture abroad, depending upon percentage of investment in overseas entity.
- n. An annual certificate from statutory auditors shall be submitted by the NBFC to the Regional Office of Department of Non-Banking Supervision (DNBS) where it is registered, certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment.
- o. A quarterly return in the prescribed format shall be submitted by the NBFC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM).
- p. If any adverse features come to the notice of the Bank, the permission granted shall be withdrawn. All approvals for investment abroad shall be subject to this condition.

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**G.93. Can NBFCs open a branch abroad?**

**Ans.** As a general policy, NBFCs shall not be allowed to open a branch abroad. However Non-banking financial companies which have already set up branch(es) abroad for undertaking financial business shall be allowed to continue to operate them subject to complying with the revised guidelines, as applicable.

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**G.94. What are the additional stipulations applicable to NBFCs while opening a subsidiary abroad?**

**Ans.** In case of opening of a subsidiary abroad by the NBFCs, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process. In addition, the following stipulations are made, which shall be applicable to all NBFCs:

- a. In case of opening of subsidiary abroad, the parent NBFC shall not be permitted to extend implicit or explicit guarantee to or on behalf of such subsidiaries;
- b. No request for letter of comfort in favour of the subsidiary abroad from any institution in India shall be permitted;
- c. It shall be ensured that NBFC's liability in the proposed overseas entity is restricted to its either equity or fund based commitment to the subsidiary;
- d. The subsidiary being established abroad should not be a shell company i.e. "a company that is incorporated, but has no significant assets or operations." However companies undertaking activities such as financial consultancy and advisory services with no significant assets shall not be considered as shell companies;
- e. The subsidiary being established abroad by the NBFC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations;
- f. In order to ensure compliance of the provisions, the parent NBFC shall obtain periodical reports/audit reports about the business undertaken by the subsidiary abroad and shall make them available to Reserve Bank and inspecting officials of the Bank;
- g. If the subsidiary has not undertaken any activity or such reports are not forthcoming, the approvals given for setting up a subsidiary abroad shall be

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reviewed/ recalled;

- h. The permission granted to any NBFC for setting up of overseas subsidiary shall be subject to condition that the subsidiary shall make disclosure in its Balance Sheet to the effect that liability of the parent entity in the proposed overseas entity shall be limited to its either equity or fund based commitment to the subsidiary;
- i. All the operations of the subsidiary abroad shall be subject to regulatory prescriptions of the host country.

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**G.95. What are the guidelines for opening Joint Ventures abroad by NBFCs?**

**Ans.** Investments abroad, other than in subsidiaries also shall be governed by same guidelines as those applicable to subsidiaries.

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**G.96. Can NBFCs set up representative offices abroad? What are the terms and conditions?**

**Ans.** The representative office can be set up abroad for the purpose of liaison work, undertaking market study and research but not undertaking any activity which involves outlay of funds, provided it is subject to regulation by a regulator in the host country. As it is not envisaged that such office would be carrying on any activity other than liaison work, no line of credit should be extended.

The parent NBFC shall obtain periodical reports about the business undertaken by the representative office abroad. If the representative office has not undertaken any activity or such reports are not forthcoming, the approvals given for the purpose shall be reviewed/ recalled.

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**G.97. Does violation of above directions invite penal action under the provisions of Reserve Bank of India Act, 1934?**

**Ans.** Yes. Violation of these directions shall invite penal action under the provisions of Reserve Bank of India Act, 1934.

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**CORE INVESTMENT COMPANIES - OVERSEAS INVESTMENT (RESERVE BANK)  
DIRECTIONS, 2012**

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**G.98. What is a Systemically Important Core Investment Company (CIC-ND-SI)?**

**Ans.** A CIC-ND-SI is a Non-Banking Financial Company

- (i) with asset size of Rs 100 crore and above;
- (ii) carrying on the business of acquisition of shares and securities and which satisfies the following conditions as on the date of the last audited balance sheet :-
- (iii) it holds not less than 90% of its net assets in the form of investment in equity shares, preference shares, bonds, debentures, debt or loans in group companies;
- (iv) its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its net assets as mentioned in clause (iii) above;
- (v) it does not trade in its investments in shares, bonds, debentures, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- (vi) it does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies.
- (vii) it accepts public funds.

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**G.99. Will existing Core Investment Companies (CICs) which had previously been exempted from registration and whose asset size is less than Rs. 100 crore again**

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**be required to submit application for exemption?**

**Ans.** Existing CICs which were exempted from registration in the past and have an asset size of less than Rs 100 crore are exempted from registration in terms of section 45NC of the RBI Act 1934, as stated in Notification No. DNBS.(PD) 220/CGM(US)-2011 dated January 5, 2011, and as such are not required to submit any application for exemption.

**G.100. Would existing CICs which had previously been exempted from registration and whose asset size is less than Rs. 100 crore be required to submit Statutory Auditor's Certificate with reference to position as on March 31 of each year to the effect that the company continues to comply with the earlier norms based on which it was treated as a 'Core Investment Company'.**

**Ans.** No, Existing CICs which have been exempted from registration in the past and have an asset size of less than Rs 100 crore are exempted from registration as stated in Notification No. DNBS.(PD) 220/CGM(US)-2011 dated January 5, 2011. As such they are not required to submit any auditor's certificate that they comply with the requirements of the Notification.

**G.101. A single group is having under its fold four to five prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. In such a situation, which company among the group companies is required to seek registration as CIC with the Bank.**

**Ans.** All companies in the group that are CICs would be regarded as CICs-ND-SI (provided they have accessed public fund) and would be required to obtain a Certificate of Registration from the Bank.

**G.102. A single group is having under its fold various prospective Core Investment Companies with an aggregate asset size of more than Rs. 100 crore. One of the entities has raised / holds public funds (one of the pre requisites for qualifying as a CIC-ND-SI). In such a situation, whether every CIC within the group or only the parent CIC or the specific entity that has raised/ holds public funds would be regarded as CIC-ND-SI, and thus would be required to seek registration as CIC-ND-SI with the Bank.**

**For Example: HCo is the parent group CIC holding 100 per cent equity capital of A, B and C, all of which are also CICs . In case C has accessed public funds, whether HCo as well as A, B and C must seek registration as CIC-ND-SI or will just C need registration?**

**Ans.** In such a case only C will be registered, provided C is not being funded by any of the other CICs either directly or indirectly.

**G.103. Whether the investment of a company in its subsidiary's subsidiary (step down subsidiary) will be taken into account for determining not less than ninety percent of its net assets.**

**Ans.** All direct investments in group companies, as appearing in the CICs balance sheet will be taken into account for this purpose. Investments made by subsidiaries in step down subsidiaries or other entities will not be taken into account for computing 90 percent of net assets.

**G.104. Would Current Liabilities also form part of Outside Liabilities? What will be the treatment of DTL, Advance Tax Due and Provision for Income Tax? Will they be Outside Liabilities?**

**Ans.** Anything that has to be repaid will be an outside liability.

**G.105. In case an existing NBFC-ND-SI is converted into a CIC-ND-SI after fulfilling the stipulated criteria, will the existing CoR continue or will a fresh application need to be made?**

**Ans.** As there would be a separate application form for CICs-ND-SI, they would have to apply afresh.



**G.106. What items are included in the 10% of Net assets which CIC's/CIC's-ND-SI can hold outside the group?**

**Ans.** These would include real estate or other fixed assets which are required for effective functioning of a company, but should not include other financial investments/loans in non group companies. It would however include investments in other group entities that are not companies eg: Trusts etc.

**G.107. Is there an enabling provision for use of statutory accounts based on some date other than 31<sup>st</sup> March, such as December 31<sup>st</sup>?**

**Ans.** While such accounts could be taken into account in view of the fact that developments after balance sheet date are also taken into account, all NBFCs including CICs-ND-SI would mandatorily have to finalise their accounts as on March 31 of the year, and submit annual auditors certificate based on this figure.

**G.108. Whether investments in a group entity other than a Company, say partnership firms, LLPs, Trusts, Association of Persons, etc by CICs-ND-SI could be regarded as investments in Group Companies for the purpose of calculating 90% investment in Group Companies.**

**Ans.** No, only investments in companies registered under Section 3 of the Companies Act 1956 would be regarded as investments in Group companies for the purpose of calculating 90% investment in Group companies. However, CICs/CICs ND SI can deploy balance 10% of their net assets in group entities other than a company.

**G.109. Are CICs-ND-SI exempt from the NBFC (Non-Deposit holding) Prudential Norms Directions 2007?**

**Ans.** No, they are only exempt from norms regarding submission of Statutory Auditor Certificate regarding continuance of business as NBFC, capital adequacy and concentration of credit / investments norms.

**G.110. Would CICs-ND-SI require NOC in terms of Regulation 7 of FEMA (Transfer or Issue of Any Foreign Security) Amendment Regulations Act 2004 in case they want to invest abroad?**

**Ans.** Yes, as they are regulated by RBI, they would require NOC from Department of Non-Banking Supervision (DNBS) for making investments in the financial sector. However, a registered CIC making investments in the non-financial sector need not obtain prior approval from the Department of Non-Banking Supervision (DNBS), RBI. It will only need to report such investments to the Department within 30 days of such investment.

**G.111. Do CICs which are exempt from registration, and investing overseas need NOC from DNBS?**

**Ans.** Exempted CICs desirous of making overseas investment in financial sector shall first need to hold a Certificate of Registration (CoR) from Reserve Bank of India (the Bank) and will have to comply with all the regulations applicable to registered CIC-ND-SI. However, they need not obtain NOC from the Bank if their investments overseas are in the non-financial sector.

**G.112. What is the eligibility criteria for CICs for investments abroad?**

**Ans. The eligibility criteria for investments abroad is as under:**

- i. The Adjusted Net Worth (ANW) of the CIC shall not be less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year. The CIC shall continue to meet the requirement of minimum ANW, post overseas investment. For this purpose, the risk weights are as laid down in the Notification No.219 dated January 05, 2011.
- ii. The level of Net Non-Performing Assets of the CIC should not be more than 1% of the net advances as on the date of the last audited balance sheet;

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- iii. The CIC should generally be earning profit continuously for the last three years and its performance should be satisfactory during the period of its existence.

**G.113. What are the other conditions prescribed for CICs for investments abroad?**

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- Ans.**
- i. Direct investment in activities prohibited under FEMA will not be permitted;
  - ii. The total overseas investment should not exceed 400% of the owned funds of the CIC.
  - iii. The total overseas investment in financial sector should not exceed 200% of its owned funds;
  - iv. Investment in financial sector shall be only in regulated entities abroad.
  - v. Entities set up abroad or acquired abroad shall be treated as wholly owned subsidiaries (WOS) /joint ventures (JV) abroad;
  - vi. Overseas investments by a CIC in financial /non-financial sector would be restricted to its financial commitment. However with regard to issuing guarantees / Letter of Comfort in this regard the following may be noted:
    - a. The CIC can issue guarantees / letter of comfort to the overseas subsidiary engaged in non-financial activity;
    - b. CICs must ensure that investments made overseas do not result in creation of complex structures. In case the structure overseas requires a Non-Operating Holding Company, there should not be more than two tiers in the structure.
    - c. CICs having more than one non-operating holding company in existence, in their investment structure, shall report the same to the Reserve Bank for a review.
    - d. CICs shall comply with the regulations issued under FEMA, 1999 from time to time;
    - e. An annual certificate from statutory auditors shall be submitted by the CIC to the Regional Office of DNBS where it is registered, certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment. The certificate as on end March every year shall be submitted by April 30 each year; 4
    - f. A quarterly return in the enclosed format as given in Annex shall be submitted by the CIC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM), RBI within 15 days of the close of the quarter.
    - g. If any serious adverse features come to the notice of the Bank, the permission granted shall be withdrawn. All approvals for investment abroad shall be subject to this condition.

**G.114. Are CICs permitted to open branches overseas?**

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- Ans.** As CICs are non-operating entities, they will not, in the normal course, be allowed to open branches overseas. CICs which have already set up branch(es) abroad for undertaking investment business should approach RBI within 3 months from the date of these Directions for a review.

**G.115. What are the conditions to be met by a CIC while opening of a WOS/JV abroad?**

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- Ans.** In the case of opening of a WOS/JV abroad by a CIC, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process. In addition, the following conditions shall apply to all CICs:
- a. The WOS/JV being established abroad should not be a shell company i.e "a company that is incorporated, but has no significant assets or operations." However companies undertaking activities such as financial consultancy and

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advisory services shall not be considered as shell companies;

- b. The WOS/JV being established abroad by the CIC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations;
- c. In order to ensure compliance of the provisions, the parent CIC shall obtain periodical reports/audit reports at least quarterly about the business undertaken by the WOS/JV abroad and shall make them available to the inspecting officials of the Bank;
- d. If the WOS/JV has not undertaken any activity or such reports are not forthcoming, the approvals given for setting up the WOS/JV abroad shall be reviewed;
- e. The WOS/JV shall make disclosure in its Balance Sheet the amount of liability of the parent entity towards it and also whether it is limited to equity / loan or if guarantees are given, the nature of such guarantees and the amount involved;
- f. All the operations of the WOS/JV abroad shall be subject to regulatory prescriptions of the host country.

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**G.116. Are CICs permitted to open representative offices abroad?**

**Ans.** CICs will need prior approval from the DNBS, RBI for opening representative offices abroad. The representative offices can be set up abroad for the purpose of liaison work, undertaking market study and research but not for undertaking any activity which involves outlay of funds. The representative offices shall also comply with regulations, if any, in this regard stipulated by a regulator in the host country. As it is not envisaged that such offices would be carrying on any activity other than liaison work, no line of credit should be extended.

The parent CICs shall obtain periodical reports about the business undertaken by the representative offices abroad. If the representative offices have not undertaken any activity or such reports are not forthcoming, the Bank may advise the CIC to wind up the establishment.

**G.117. Whether NBFCs already registered with the Bank as category “B” company whose asset size is below Rs. 100 crore, but fulfilling the CIC criteria, can seek voluntary deregistration (as such companies are not otherwise required to get registered with the Bank under the new norms)? If so, which source should be relied upon viz certificate from Statutory auditor or audited balance sheet for one year or more?**

**Ans.** Yes, CICs presently registered with the Bank but fulfilling the criteria for exemption under Notification No 220 dated January 05, 2010 can seek voluntary deregistration. Both audited balance sheet and auditors certificate are required to be submitted for the purpose.

**G.118. Whether CICs having asset size below Rs. 100 crore are regulated by the Reserve Bank?**

**Ans.** CICs having asset size of below Rs 100 crore are exempted from registration and regulation from the Reserve Bank, except if they wish to make overseas investments in the financial sector.

**G.119. As per the definition of CIC, only investment/loans/debt in group companies is eligible for computing 90% exposure? What treatment is to be given to company’s investment in group’s partnership concerns?**

**Ans.** CICs can invest balance 10% of Net Assets in such concerns.

**G.120. If a company is unlisted, would the terms of block deals apply? What is the minimum number/value of shares transferred for it to be defined as a block**

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**deal/block sale.**

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**Ans.** The term used in the CIC circulars is block sale and not block deal which has been defined by SEBI. In the context of the circular, a block sale would be a long term or strategic sale made for purposes of disinvestment or investment and not for short term trading. Unlike a block deal, there is no minimum number/value defined for the purpose.

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**G.121. Can CICs/CICs-ND-SI accept deposits?**

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**Ans.** No, CICs/ CICs-ND-SI cannot accept deposits. That is one of the eligibility criteria.

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**G.122. What does the term public funds include? Is it the same as public deposits?**

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**Ans.** Public funds are not the same as public deposits. Public funds include public deposits, inter-corporate deposits, bank finance and all funds received whether directly or indirectly from outside sources such as funds raised by issue of Commercial Papers, debentures etc. However, even though public funds include public deposits in the general course, it may be noted that CICs/CICs-ND-SI cannot accept public deposits.

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**G.123. In the definition of public funds, what do the term “indirect receipt of public funds” mean?**

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**Ans.** Indirect receipt of public funds means funds received not directly but through associates and group entities which have access to public funds.

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**G.124. Can CICs issue guarantees and will this be considered part of definition of public funds?**

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**Ans.** Yes, CICs may be required to issue guarantees or take on other contingent liabilities on behalf of their group entities. Guarantees per se do not fall under the definition of public funds. However, it is possible that CICs which do not accept public funds take recourse to public funds if and when the guarantee devolves. Hence, before doing so, CICs must ensure that they can meet the obligation there under, as and when they arise. In particular, CICs which are exempt from registration requirement must be in a position to do so without recourse to public funds in the event the liability devolves. If unregistered CICs with asset size above Rs. 100 crore access public funds without obtaining a Certificate of Registration (CoR) from RBI, they will be seen as violating Core Investment Companies (Reserve Bank) Directions, 2011 dated January 05, 2011.

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**G.125. What is a Group company?**

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**Ans.** For the purposes of determining whether a company is a CIC/CIC-ND-SI, ‘companies in the group’ have been exhaustively defined in para 3(1) b of Notification No. DNBS. (PD) 219/CGM(US)-2011 dated January 5, 2011 as “an arrangement involving two or more entities related to each other through any of the following relationships, viz., Subsidiary – parent (defined in terms of AS 21), Joint venture (defined in terms of AS 27), Associate (defined in terms of AS 23), Promoter-promotee [as provided in the SEBI (Acquisition of Shares and Takeover) Regulations, 1997] for listed companies, a related party (defined in terms of AS 18) Common brand name, and investment in equity shares of 20% and above).”

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**G.126. Is the definition of group company the same for CICs/ CICS-ND-SI as that for NBFCs?**

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**Ans.** No the definition is not the same for CICs / CICs-ND-SI and NBFCs. The definition of group Company for the purpose of classifying a company as a CIC / CICs-ND-SI is much more exhaustive and gives a benefit to the CICs/CICs-ND-SI.

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**G.127. How can a company register as a CIC-ND-SI?**

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**Ans.** The application form for CICs-ND-SI available on the Bank’s website can be downloaded and filled in and submitted to the Regional Office of the DNBS in whose jurisdiction the Company is registered along with necessary supporting documents mentioned in the application form.

**G.128. A CIC-ND-SI should have 90% investment within the group, and in terms of current exposure norms, NBFCs-ND-SI are permitted only 40% of both lending and investment within any group. Therefore, no NBFC as it stands, would be able to become a CIC without breaching the NOF, CRAR or Concentration Norms, since its entire business is in a subsidiary. However, an NBFC may voluntarily seek to become a CIC-ND-SI since it brings clarity to the holding structure in their organization. How would this issue be resolved? Could NBFCs-ND-SI be provided exemption from Capital adequacy/exposure norms during the transition period, just as unregistered CICs-ND-SI are given 6 months time.**

**Ans.** The NBFC would have to apply to RBI with full details of the plan and exemptions could be considered on a selective basis on the merits of the case.

**G.129. A company has investments in Group companies but does not meet the criteria of principal business as defined in terms of asset-income criteria to be as an NBFC. Can the company still be registered as a CIC or does it need to first register as an NBFC?**

**Ans.** CICs need not meet the principal business criteria for NBFCs.

**G.130. If a company is a CIC but does not exactly meet the criteria specified, does the company need to register as NBFC?**

**Ans.** A holding company not meeting the criteria for a CIC laid down in para 2 of Notification No DNBS. (PD) 219/CGM(US)-2011 dated January 5, 2011 would require to register as an NBFC. However, if such company wishes to register as CIC-ND-SI/ be exempted as CIC, it would have to apply to RBI with an action plan achievable within the specific period to reorganize its business as CIC. If it is not able to do so, it would need to comply with NBFC requirements and prudential norms.

**G.131. Whether a Holding Company which is not able to comply with the CIC criteria (all four conditions), would still need to comply with NBFC requirements and prudential norms even in the event that it is not satisfying the asset-income criteria. (For example: the holding company owns 60 per cent equity in another group company. Therefore, it does not qualify as a CIC. Further, the income from financial assets is also less than 50 per cent of total income. Whether such a company would require compliance with NBFC norms).**

**Ans.** Yes, Section 45 IA of the RBI Act states that a company requires a COR” to commence or carry on the business of NBFI”. Therefore it requires the COR before it becomes NBFC.

**G.132. A group would like to set up a CIC-ND-SI in the group to rationalize the set up. However, no company can commence the business of NBFI without COR from RBI. Therefore the proposed company would have to apply for COR before transferring shares from different companies to the CIC-ND-SI. But at that time the company would not be eligible in terms of the requirements, as it would not have 90% of net assets as investment in group companies. What should the company do?**

**Ans.** The company would have to apply for COR to RBI, giving a business plan within a prescribed time period of one year in which it would achieve CIC-ND-SI status. In case the company is unable to do so, the exemptions would not apply and the company would have to comply with NBFC capital adequacy and exposure norms.

**G.133. Whether CICs that are exempt from registration either because they have an asset size of less than Rs 100 crore or are not accessing public funds are required to register as NBFCs?**

**Ans.** CICs that (a) have an asset size of less than Rs.100 crore irrespective of whether they are accessing public funds or not and (b) have an asset size of Rs. 100 crore and above and are not accessing public funds have been exempt from registration with the Bank under Section 45IA of the RBI Act, 1934 in terms of notification No. DNBS.PD.221/CGM(US) 2011 dated January 5, 2011. Thus, they are not required to

	register with the Bank at all. As this is an exemption given under Section 45NC of the RBI Act, 1934, they are not required to approach the Bank at all.
<b>G.134.</b>	<b>Would a similar benefit apply to NBFCs i.e. would NBFCs with an asset size of less than Rs 100 crore and not accessing public funds be exempted from registration with the Bank?</b>
<b>Ans.</b>	No this exemption is specifically given to CICs only. NBFCs other than CICs are not covered by this or any other aspect of the CIC Directions and would have to register with the Bank and comply with all applicable Directions of the Bank as issued from time to time.
<b>G.135.</b>	<b>Should Net assets include operating assets?</b>
<b>Ans.</b>	Net assets have been defined in Notification No. DNBS.(PD) 219/CGM(US)-2011 dated January 05, 2011 (para3(1)e) specifically for the purpose of defining a CIC. As such they will only include the items specifically mentioned therein, irrespective of whether any of these qualify as operating assets or not.
<b>G.136.</b>	<b>Definition of Group Companies should include LLPs and Partnerships in the Group?</b>
<b>Ans.</b>	Neither LLPs nor Partnerships are companies and hence have been deliberately excluded from the definition of Group Company. Further, in view of the loose structure and regulatory framework for these entities it is felt that they should not be included in the definition. However, such investments by CICs have been allowed in the additional 10% of net assets.
<b>G.137.</b>	<b>While instruments that are compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue are excluded from Outside Liabilities, in terms of the Companies Act such instruments are excluded from the definition of 'public deposit' if they are convertible with a period of 20 years?</b>
<b>Ans.</b>	The period of 10 years was specified as a prudential measure not necessarily in alignment with a provision of the Companies Act. Moreover, the issue here is not public deposits but Outside Liabilities.
<b>G.138.</b>	<b>Unlike other NBFCs, CICs ND-SI can no longer make overseas investment or raise ECB under automatic route or obtain bank finance for acquisition of shares?</b>
<b>Ans.</b>	The Directions on CIC-ND-Sis have not restricted them from making overseas investment or raising ECBs on the lines of other NBFCs. Regarding the issue of bank finance, currently bank finance is not allowed for investments in equity which is however only 60% of net assets of a CIC. (and would therefore be a lesser percentage of total assets). CICs-ND-SI may have access to bank finance to the extent it is not used for investment in shares.
<b>G.139.</b>	<b>If one of the small CICs in a group does not access public funds why should it register based on the condition of aggregate asset size?</b>
<b>Ans.</b>	As already clarified in the FAQs, a CIC that does not access public funds is exempt from registration irrespective of having other CICs in the Group that access public funds. Illustratively, if A is a CIC and B and C are also CICs and Group Companies of A. <b>Provided A does not access any form of public funds including any funds from any Group Company including B and C, it would not require to register as a CIC. If A, B and C do not access public funds in any form none of them would be required to register as a CIC.</b>
<b>G.140.</b>	<b>Will adjusted net worth of all the CICs in the Group also be aggregated for compliance purposes?</b>
<b>Ans.</b>	Adjusted net worth (ANW) is a concept akin to capital requirement wherein the ANW should not be less than 30% of the risk weighted assets (RWA). In cases where asset size is aggregated, all the CICs within the group will be registered as CIC-ND-SI ANW

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will be applicable individually.

**G.141. There is an apparent anomaly in the definition of ‘public funds’ as the moment public deposits is included in the definition of ‘public funds’ and CICs will be deemed to have raised public deposits and will therefore become an NBFC subject to exposure norms?**

**Ans.** Even though public funds include public deposits in the general course, it may be noted that CICs cannot accept public deposits. It may further be reiterated that no NBFC can accept public deposits without specific permission of the Bank even if it holds a CoR from the Bank.

**G.142. Whether Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank permitted to raise ECB?**

**Ans.** In order to strengthen the flow of resources to infrastructure sector, it has been decided to permit Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank to raise ECB under the automatic route/approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs) with the following terms and conditions:

- i. The business activity of the SPV should be in the infrastructure sector where “infrastructure” is defined as per the extant ECB guidelines;
- ii. The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project;
- iii. The ECB proceeds is utilized either for fresh capital expenditure (capex) or for refinancing of existing Rupee loans (under the approval route) availed of from the domestic banking system for capex as per the extant norms on refinancing;
- iv. The ECB for SPV can be raised up to 3 years after the Commercial Operations Date of the SPV;
- f. The SPV should give an undertaking that no other method of funding, such as, trade credit (if for import of capital goods), etc. will be utilized for that portion of fresh capital expenditure financed through ECB proceeds;
- vi. The ECB proceeds should be kept in a separate escrow account as per the extant guidelines on parking of ECB proceeds pending utilization for permissible end-uses and use of such proceeds should be strictly monitored by the ADs for permissible uses;
- vii. In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework of the Reserve Bank, the additional terms and conditions for raising ECB for project use in SPVs will be as under:
  - a) The ECB availed is within the ceiling of leverage stipulated for CICs, i.e., their outside liabilities including ECB cannot be more than 2.5 times of their adjusted net worth as on the date of the last audited balance sheet; and
  - b) In case of CICs with asset size below Rupees 100 crore, the ECB availed of should be on fully hedged basis.

#### **GUIDELINES FOR ENTRY OF CORE INVESTMENT COMPANIES INTO INSURANCE**

**G.143. Is a CIC registered with RBI permitted to set up a joint venture company for undertaking insurance business?**

**Ans.** Any CIC registered with RBI which satisfies the eligibility criteria given below will be permitted to set up a joint venture company for undertaking insurance business with risk participation, subject to safeguards. The maximum equity contribution such a CIC can hold in the joint venture company will be as per IRDA approval. Holding of equity by a promoter CIC in an insurance company or investment in insurance business will be subject to compliance with any rules and regulations laid down by the IRDA/Central Government. This will include compliance with Section 6AA of the Insurance Act as amended by the IRDA Act, 1999, for divestment of equity in excess of 26 per cent of the paid up capital within a prescribed period of time.

**G.144. What is the eligibility criteria for joint venture participant?**

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<b>Ans.</b>	The eligibility criteria for joint venture participant will be as under, as per the latest available audited balance sheet: i. The owned funds of the CIC shall not be less than Rs. 500 crore; ii. The level of net non-performing assets shall be not more than 1% of the total advances; iii. The CIC should have registered net profit continuously for three consecutive years; iv. The track record of the performance of the subsidiaries, if any, of the concerned CIC should be satisfactory; v. The CIC shall comply with all applicable regulations including CIC Directions, 2011. Thus CICs-ND-SI are required to maintain adjusted net worth which shall be not less than 30% of aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items.
<b>G.145.</b>	<b>Is CIC allowed to conduct such business departmentally?</b>
<b>Ans.</b>	No CIC would be allowed to conduct such business departmentally.
<b>G.146.</b>	<b>Whether an NBFC is allowed to join an insurance company on risk participation basis?</b>
<b>Ans.</b>	An NBFC (in its group / outside the group) would normally not be allowed to join an insurance company on risk participation basis and hence should not provide direct or indirect financial support to the insurance venture.
<b>G.147.</b>	<b>Are CICs permitted to invest up to 100% of the equity of the insurance company?</b>
<b>Ans.</b>	Within the group, CICs may be permitted to invest up to 100% of the equity of the insurance company either on a solo basis or in joint venture with other non-financial entities in the group. This would ensure that only the CIC either on a solo basis or in a joint venture with the group company is exposed to insurance risk and the NBFC within the group is ring-fenced from such risk.
<b>G.148.</b>	<b>Can CICs enter into insurance business as agents?</b>
<b>Ans.</b>	No. CICs cannot enter into insurance business as agents. CICs that wish to participate in insurance business as investors or on risk participation basis will be required to obtain prior approval of the Reserve Bank. The Reserve Bank will give permission on case to case basis keeping in view all relevant factors. It should be ensured that risks involved in insurance business do not get transferred to the CIC.
<b>G.149.</b>	<b>Do CICs exempted from registration with RBI in terms of the Core Investment Companies (Reserve Bank) Directions, 2011 also require prior approval?</b>
<b>Ans.</b>	CICs exempted from registration with RBI in terms of the Core Investment Companies (Reserve Bank) Directions, 2011 do not require prior approval provided they fulfil all the necessary conditions of exemption.



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<b>H.50.</b>	Whether prepayment of ECB is allowed by AD banks? If yes, to what extent?
<b>H.51.</b>	Is refinancing of an existing ECB under the Approval Route permitted? Is there any condition?
<b>H.52.</b>	Is rescheduling of an existing ECB under the Approval Route at a higher all-in-cost permitted? Is there any condition?
<b>H.53.</b>	Is Debt Servicing permitted to AD banks?

<b>H.54.</b>	What is the procedure to be followed by borrowers while raising ECBs under the Approval Route?
<b>H.55.</b>	What is the definition of a Foreign Currency Exchangeable Bond?
<b>H.56.</b>	Who is an eligible issuer of an FCEB?
<b>H.57.</b>	Who can be the Offered Company?
<b>H.58.</b>	Who is not eligible to issue FCEB?
<b>H.59.</b>	Who are the eligible subscribers to FCEB?
<b>H.60.</b>	Who is not eligible to subscribe to FCEB?
<b>H.61.</b>	What are the permissible end-uses of FCEB proceeds?
<b>H.62.</b>	What are the permissible & non-permissible end-uses of investments out of the FCEB proceeds received by Promoter Group Companies?
<b>H.63.</b>	What is the all-in-cost ceiling for FCEB?
<b>H.64.</b>	What is the Pricing Policy of FCEB?
<b>H.65.</b>	What is the Average Maturity Period of an FCEB? Can the exchange option be exercised? Is Cash (Net) settlement of FCEB permissible?
<b>H.66.</b>	What are the provisions related to parking of FCEB proceeds abroad?
<b>H.67.</b>	What is the operational procedure for issuance of FCEB?
<b>H.68.</b>	What is the role of an Empowered Committee?
<b>H.69.</b>	Are Indian companies permitted to refinance the outstanding FCCBs? If yes, what are the terms and conditions?
<b>H.70.</b>	Is restructuring of FCCBs involving change in the existing conversion price permissible?
<b>H.71.</b>	Whether proposals of Buyback / Prepayment of FCCBs considered by RBI?
<b>H.72.</b>	Is restructuring of FCCBs not involving change in conversion price permissible?
<b>H.73.</b>	What are the other cases where a person other than authorised dealer can borrow or lend in Foreign Exchange?
<b>H.74.</b>	What are the different Reporting Arrangements relating to ECBs?
<b>H.75.</b>	What action is taken by RBI for dissemination of information?
<b>H.76.</b>	What are the provisions for providing guarantee by a non-resident for rupee loan (borrowing and lending in INR between two residents)?
<b>H.77.</b>	Whether the facility of credit enhancement by eligible non-resident entities can be extended? What are the terms and conditions?
<b>H.78.</b>	What is the meaning of Take-Out Finance? Under what conditions, take-out financing arrangement through ECB, under the approval route, is permitted?
<b>H.78A.</b>	Is conversion of ECB into equity permitted? If yes, what are the conditions?
<b>H.79.</b>	What are the reporting requirements at the time of conversion of ECB into Equity?
<b>H.80.</b>	What is the procedure followed by AD banks to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporates in India into Rupees?
<b>H.81.</b>	Under what circumstances, Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme? What are the reporting requirements for such approval?
<b>H.82.</b>	Can designated AD Category-I banks approve any changes in the terms and conditions of the ECB after obtaining LRN from DSIM, RBI? What are the factors considered by AD banks for such approval in different situations?

- H.83.** What is the definition of Trade Credits?
- H.84.** What is the permitted maximum limit of amount and minimum maturity period for a Trade Credit?
- H.85.** Can AD banks approve trade credit exceeding USD 20 million per import transaction?
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- H.86.** What are the current all-in-cost ceilings of Trade Credits?
- H.87.** Are AD banks permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution? If yes, what are the terms and conditions?
- H.88.** What are the reporting requirements in relation to Trade Credits?
- H.89.** What are the reporting requirements in relation to issuance of LCs / Guarantees / LoU / LoC?

**H.1. What are the different types of instruments through which Indian companies are allowed to access funds from abroad?**

**Ans.** At present, Indian companies are allowed to access funds from abroad in the following methods:

- (i) External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years.
- (ii) Foreign Currency Convertible Bonds (FCCBs) mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency. Further, the bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The ECB policy is applicable to FCCBs. The issue of FCCBs is also required to adhere to the provisions of Notification FEMA No. 120/RB-2004 dated July 7, 2004, as amended from time to time.
- (iii) Preference shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and should conform to the ECB policy. Accordingly, all the norms applicable for ECB, viz. eligible borrowers, recognised lenders, amount and maturity, end use stipulations, etc. shall apply. Since these instruments would be denominated in Rupees, the rupee interest rate will be based on the swap equivalent of LIBOR plus the spread as permissible for ECBs of corresponding maturity.
- (iv) Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB must comply with the "Issue of Foreign Currency Exchangeable Bonds (FCEB) Scheme, 2008", notified by the Government of India, Ministry of Finance, Department of Economic Affairs vide Notification G.S.R.89(E) dated February 15, 2008. The guidelines, rules, etc governing ECBs are also applicable to FCEBs.

**H.2. What kinds of approval are required while accessing ECBs?**

**Ans.** ECB can be accessed under two routes:

- i. Automatic Route; and
- ii. Approval Route.

ECB for investment in real sector-industrial sector, infrastructure sector-in India, and specified service sectors are under Automatic Route, i.e. do not require Reserve Bank / Government of India approval.

In case of doubt as regards eligibility to access the Automatic Route, applicants may take recourse to the Approval Route.

**H.3. Who all are the eligible borrowers for ECBs covered under the Automatic Route?**

**Ans.** The following are the eligible borrowers who can raise ECBs under the Automatic Route:

- (a) Corporates, including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) except financial intermediaries, such as banks, financial institutions (FIs),

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Housing Finance Companies (HFCs) and Non-Banking Financial Companies (NBFCs) are eligible to raise ECB. Individuals, Trusts and Non-Profit making organizations are not eligible to raise ECB.

- (b) Units in Special Economic Zones (SEZ) are allowed to raise ECB for their own requirement. However, they cannot transfer or on-lend ECB funds to sister concerns or any unit in the Domestic Tariff Area
- (c) NBFCs-IFCs are permitted to avail of ECBs for on-lending to the infrastructure sector as defined under the ECB policy.
- (d) NBFCs-AFCs are permitted to avail of ECBs for financing the import of infrastructure equipments for leasing to infrastructure projects.
- (e) Non-Government Organizations (NGOs) engaged in micro finance activities are eligible to avail of ECB.
- (f) Micro Finance Institutions (MFIs) engaged in micro finance activities are eligible to avail of ECBs. MFIs registered under the Societies Registration Act, 1860, MFIs registered under Indian Trust Act, 1882, MFIs registered either under the conventional state-level cooperative acts, the national level multi-state cooperative legislation or under the new state-level mutually aided cooperative acts (MACS Act) and not being a co-operative bank, Non-Banking Financial Companies (NBFCs) categorized as 'Non Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) and complying with the norms prescribed as per circular DNBS.CC.PD.No. 250/03.10.01/2011-12 dated December 02, 2011 and Companies registered under Section 25 of the Companies Act, 1956 and are involved in micro finance activities.
- (g) Small Industries Development Bank of India (SIDBI) can avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006.

**H.4. What are the additional conditions required to be fulfilled by NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives and engaged in micro finance to be the eligible borrowers for ECBs?**

- Ans.** NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives and engaged in micro finance would require:
- 1. a satisfactory borrowing relationship for at least 3 years with a scheduled commercial bank authorized to deal in foreign exchange in India; and
  - 2. a certificate of due diligence on 'fit and proper' status of the Board/ Committee of management of the borrowing entity from the designated AD bank.

**H.5. Can NBFCs, categorised as Asset Finance Companies (AFCs) by the Reserve Bank avail of ECB?**

- Ans.** Non-banking financial companies (NBFCs) are allowed to avail of ECB under approval route from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks with **minimum average maturity of 5 years to finance import of infrastructure equipment for leasing to infrastructure projects**. Further, NBFC – Infrastructure Finance Companies (IFCs) have been permitted to avail of ECB for on-lending to infrastructure sector both under automatic and approval routes subject to certain terms and conditions.

It has now been decided to **allow NBFCs, categorised as Asset Finance Companies (AFCs) by the Reserve Bank** and complying with the norms prescribed in the Circular DNBS. PD. CC. No. 85/03.02.089/2006-07 dated December 6, 2006 of the Bank, as amended from time to time, **to avail of ECB** subject to following conditions:

- (i) NBFC-AFCs are allowed to avail of ECB under the automatic route from all recognised lenders as per the extant ECB guidelines with minimum average maturity period of five years in order to finance the import of infrastructure equipment for leasing to infrastructure projects;
- (ii) in cases, where the NBFC-AFCs avail of ECB in the form of Foreign Currency Bonds from international capital markets, such ECBs will be permitted to be raised only from those international capital markets that are subject to

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- regulations prescribed by the host country regulator in a Financial Action Task Force (FATF) member country compliant with FATF guidelines;
  - (iii) such ECBs (including outstanding ECBs) under the automatic route can be availed upto 75 per cent of owned funds of NBFC-AFCs, subject to a maximum of USD 200 million or its equivalent per financial year;
  - (iv) ECBs by AFCs above 75 per cent of their owned funds will be considered under approval route by Reserve Bank; and
  - (v) the currency risk of such ECBs is required to be hedged in full.

**H.6. Who are considered as the recognized lenders from whom eligible borrowers can raise ECBs under the Automatic Route?**

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- Ans.** Borrowers can raise ECB from internationally recognized sources, such as
- (a) international banks,
  - (b) international capital markets,
  - (c) multilateral financial institutions (such as IFC, ADB, CDC, etc.) / regional financial institutions and Government owned development financial institutions,
  - (d) export credit agencies,
  - (e) suppliers of equipments,
  - (f) foreign collaborators, and
  - (g) foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].

**H.7. What are the additional conditions required for a "foreign equity holder" to be eligible as "recognized lender" under the automatic route?**

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- Ans.** A "foreign equity holder" to be eligible as "recognized lender" under the automatic route would require minimum holding of paid-up equity in the borrower company as set out below:
- (i) For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
  - (ii) For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 4:1.

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the 'equity' of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

**H.8. Who are considered as the recognized lenders from whom NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives can raise ECBs under the Automatic Route?**

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- Ans.** NGOs engaged in micro finance and MFIs registered as societies, trusts and co-operatives can avail of ECBs from:
- (a) international banks,
  - (b) multilateral financial institutions,
  - (c) export credit agencies,
  - (d) overseas organizations, and
  - (e) individuals.

NBFC-MFIs will be permitted to avail of ECBs from multilateral institutions, such as IFC, ADB etc./ regional financial institutions/international banks / foreign equity holders and overseas organizations.

**H.9. Who are considered as the recognized lenders from whom Companies registered**

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**under Section 25 of the Companies Act, 1956 and engaged in micro finance can raise ECBs under the Automatic Route?**

- Ans.** Companies registered under Section 25 of the Companies Act, 1956 and are engaged in micro finance will be permitted to avail of ECBs from:
- international banks,
  - multilateral financial institutions,
  - export credit agencies,
  - foreign equity holders, and
  - overseas organizations and
  - Individuals.

**H.10. What are the safeguards need to be complied by Overseas organizations and individuals providing ECB?**

- Ans.** Overseas organizations and individuals providing ECB need to comply with the following safeguards:
- Overseas Organizations proposing to lend ECB would have to furnish to the AD bank of the borrower a certificate of due diligence from an overseas bank, which, in turn, is subject to regulation of host-country regulator and adheres to the Financial Action Task Force (FATF) guidelines. The certificate of due diligence should comprise the following (i) that the lender maintains an account with the bank for at least a period of two years, (ii) that the lending entity is organised as per the local laws and held in good esteem by the business/local community and (iii) that there is no criminal action pending against it.
  - Individual Lender has to obtain a certificate of due diligence from an overseas bank indicating that the lender maintains an account with the bank for at least a period of two years. Other evidence /documents such as audited statement of account and income tax return which the overseas lender may furnish need to be certified and forwarded by the overseas bank. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

**H.11. What are the maximum limits of amount of ECBs that can be raised by different eligible borrowers, and their respective minimum average maturity periods?**

- Ans.**
- The maximum amount of ECB which can be raised by a corporate other than those in the hotel, hospital and software sectors is USD 750 million or its equivalent during a financial year.
  - Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.
  - ECB up to USD 20 million or its equivalent in a financial year with minimum average maturity of three years. An illustration of average maturity period calculation is as under:

**Calculation of Average Maturity- An Illustration**

**Loan Amount = USD 2 million**

Date of drawal/ repayment (MM/DD/YY)	Drawal	Repayment	Balance	No. of Days** balance with the borrower	Product= (Col.4 * Col. 5)/ (Loan amount * 360)
Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6
11/05/2007	0.75		0.75	24	0.0250
05/06/2007	0.50		1.25	85	0.1476
31/08/2007	0.75		2.00	477	1.3250
27/12/2008		0.20	1.80	180	0.4500



27/06/2009		0.25	1.55	180	0.3875
27/12/2009		0.25	1.30	180	0.3250
27/06/2010		0.30	1.00	180	0.2500
27/12/2010		0.25	0.75	180	0.1875
27/06/2011		0.25	0.50	180	0.1250
27/12/2011		0.25	0.25	180	0.0625
27/06/2012		0.25	0.00		
<b>Average Maturity</b>					<b>3.2851</b>

\*\* Calculated by = DAYS360 (first date, second date, 360).

- d. NBFC-IFCs can avail of ECB up to 75 per cent of their owned funds (ECB including outstanding ECBs) and must hedge 75 per cent of their currency risk exposure.
- e. NBFC-AFCs can avail of ECBs up to 75 per cent of their owned funds (ECB including outstanding ECBs) subject to a maximum of USD 200 million or its equivalent per financial year with a minimum maturity of 5 years and must hedge the currency risk exposure in full.
- f. SIDBI can avail of ECB to the extent of 50 per cent of their owned funds including the outstanding ECB, subject to a ceiling of USD 500 million per financial year.
- d) ECB above USD 20 million or equivalent and up to USD 750 million or its equivalent with a minimum average maturity of five years.
- e) NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year. Designated AD bank has to ensure that at the time of drawdown the forex exposure of the borrower is fully hedged.
- f) ECB up to USD 20 million or equivalent can have call/put option provided the minimum average maturity of three years is complied with before exercising call/put option.
- g) All eligible borrowers can avail of ECBs designated in INR from 'foreign equity holders' as per the extant ECB guidelines.
- h) NGOs engaged in micro finance activities can avail of ECBs designated in INR, from overseas organizations and individuals as per the extant guidelines.

**H.12. What are the present all-in-cost ceilings applicable for ECB under the Automatic Route?**

**Ans.** The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are applicable and subject to review thereafter:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

\* for the respective currency of borrowing or applicable benchmark.

In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.

**H.13. What is the meaning of LIBOR?**

**Ans.** London Interbank Offered Rate (LIBOR) is an average rate which is calculated from the interest rates given by key banks in London on a daily basis. It is controlled by the British Bankers Association in London. Libor is one of the most commonly used interest rates in the world for various loans & banking transactions. It is also used in derivatives transactions globally (especially in US derivative markets) which are one of the complex contracts in the world.

**H.14. What does an All-in-cost ceiling include?**

**Ans.** All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

**H.15. What are the permissible end-uses for ECB proceeds?**

- Ans.**
- a) ECB can be raised for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors, namely, hotel, hospital, software in India.
  - b) Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad under FEMA 120.
  - c) Utilization of ECB proceeds is permitted for first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.  
It is clarified that **ECB is allowed for all subsequent stages of acquisition of shares in the disinvestment process** under the Government's disinvestment programme of the PSU shares; in other words, facility of ECB is available for multiple rounds of disinvestment of PSU shares under the Government disinvestment programme.
  - d) Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, where "infrastructure" is defined as per the extant ECB guidelines, subject to IDC being capitalized and forming part of the project cost.
  - e) For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
  - f) NBFC-IFCs can avail of ECBs only for on-lending to the infrastructure sector as defined under the ECB policy.
  - g) NBFC-AFCs can avail of ECBs only for financing the import of infrastructure equipments for leasing to infrastructure projects.
  - f) Payment for Spectrum Allocation.  
Relaxation for the successful Bidders of 2G spectrum Re-auction
    - (i) to make the upfront payment initially out of Rupee loans availed of from the domestic lenders and refinance such Rupee loans with a long-term ECB provided such ECB is raised within a period of 18 months from the date of sanction of such Rupee loans for the stated purpose from the domestic lenders.
    - (ii) Availing of short term foreign currency loan in the nature of bridge finance for the purpose of making upfront payment and replace the same with a long term ECB subject to condition that the long term ECB is raised within a period of 18 months from the date of drawdown of the bridge finance.
    - (iii) ECB can be availed of from their ultimate parent company without any maximum ECB liability-equity ratio subject to the condition that the lender holds minimum paid-up equity of 25 per cent in the borrower company, either directly or indirectly.
  - g) Infrastructure Finance Companies (IFCs) i.e. Non Banking Financial Companies (NBFCs) categorized as IFCs by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, up to 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions: i) compliance with the norms prescribed in the DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010 ii) hedging of the currency risk in full. Designated Authorised Dealer should ensure compliance with the extant norms while certifying the ECB application.
  - h) Maintenance and operations of toll systems for roads and highways for capital expenditure provided they form part of the original project.
  - i. SIDBI can on lend to the borrowers in the MSME sector for permissible end uses, having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the

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foreign currency risk shall be fully hedged by SIDBI.

- j. Refinancing of Bridge Finance (including buyers' / suppliers' credit) availed of for import of capital goods by companies in Infrastructure Sector
- k. ECB is allowed for Import of services, technical know-how and payment of license fees. The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.

**H.16. What is the definition of infrastructure sector for the purpose of availing ECB?**

**Ans.** The existing definition of infrastructure sector for the purpose of availing ECB includes:

(i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining, (ix) cold storage or cold room facility, including farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

Taking into account the Harmonised Master List of Infrastructure sub-sectors and Institutional Mechanism for its updation approved by Government of India vide Notification F. No. 13/06/2009-INF dated March 27, 2012, it has been decided to expand the existing definition for infrastructure sector for the purpose of availing ECB. **The expanded infrastructure sector and sub-sectors for the purpose of ECB include:**

- (v) Energy which will include (i) electricity generation, (ii) electricity transmission, (iii) electricity distribution, (iv) oil pipelines, (v) oil/gas/liquefied natural gas (LNG) storage facility (includes strategic storage of crude oil) and (vi) gas pipelines (includes city gas distribution network);
- (vi) Communication which will include (i) mobile telephony services/companies providing cellular services, (ii) fixed network telecommunication (includes optic fibre/cable networks which provide broadband/internet) and (iii) telecommunication towers;
- (vii) Transport which will include (i) railways (railway track, tunnel, viaduct, bridges and includes supporting terminal infrastructure such as loading/unloading terminals, stations and buildings), (ii) roads and bridges, (iii) ports, (iv) inland waterways, (v) airport and (vi) urban public transport (except rolling stock in case of urban road transport);

On a review, it has been decided that, for the purpose of ECB, 'Maintenance, Repairs and Overhaul' (MRO) will also be treated as a part of airport infrastructure. Accordingly, MRO, as distinct from the related services which are other than infrastructure, will be considered as part of the sub-sector of Airport in the Transport Sector of Infrastructure.

- (viii) Water and sanitation which will include (i) water supply pipelines, (ii) solid waste management, (iii) water treatment plants, (iv) sewage projects (sewage collection, treatment and disposal system), (v) irrigation (dams, channels, embankments, etc.) and (vi) storm water drainage system;
- (ix) (i) mining, (ii) exploration and (iii) refining;
- (x) Social and commercial infrastructure which will include (i) hospitals (capital stock and includes medical colleges and para medical training institutes), (ii) Hotel Sector which will include hotels with fixed capital investment of Rs.200 crore and above, convention centres with fixed capital investment of Rs.300 crore and above and three star or higher category classified hotels located outside cities with population of more than 1 million (fixed capital investment is excluding of land value), (iii) common infrastructure for industrial parks, SEZs, tourism facilities, (iv) fertilizer (capital investment), (v) post harvest storage infrastructure for

	<p>agriculture and horticulture produce including cold storage, (vi) soil testing laboratories and (vii) cold chain (includes cold room facility for farm level pre-cooling, for preservation or storage or agriculture and allied produce, marine products and meat.</p> <p>(xi) Any other sectors as prescribed by the Reserve Bank in consultation with Government of India.</p>
<b>H.17.</b>	<b>Whether import of services, technical know-how and license fees included in import of capital goods by the companies in manufacturing and infrastructure sectors?</b>
<b>Ans.</b>	<p>It has now been decided to <b>include import of services, technical know-how and payment of license fees as part of import of capital goods</b> by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECB under the automatic / approval route as the case may be subject to:</p> <ul style="list-style-type: none"> <li>(i) there should be a duly signed agreement between the service provider and the borrower company;</li> <li>(ii) the original invoice raised by the service provider as per the payment schedule in the agreement should be duly certified by the borrower company;</li> <li>(iii) declaration by the importer that the <b>entire expenditure on import of services will be capitalised;</b></li> <li>(iv) declaration by the <b>importer that entire expenditure on import of services forms part of project cost;</b> and</li> <li>(v) AD category – I bank has to ensure the bonafides of the transaction.</li> </ul>
<b>H.18.</b>	<b>What are the non- permissible end-uses for ECB proceeds under the Automatic Route?</b>
<b>Ans.</b>	<p>Other than the purposes specified in the above Questions, the borrowings shall not be utilized for any other purpose including the following purposes, namely:</p> <ul style="list-style-type: none"> <li>(a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate [investment in Special Purpose Vehicles (SPVs), Money Market Mutual Funds (MMMFs), etc., are also considered as investment in capital markets].</li> <li>(b) For real estate sector,</li> <li>(c) For working capital, general corporate purpose and repayment of existing Rupee loans.</li> </ul>
<b>H.19.</b>	<b>Can Guarantees, LIC, letter of undertaking/comfort be issued from India in relation to ECBs?</b>
<b>Ans.</b>	<p>Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted.</p>
<b>H.20.</b>	<b>What are the provisions regarding Security (creation of charge as immovable assets, financial securities and corporate/personal guarantee) to be provided by the borrower to the lender under the Automatic Route?</b>
<b>Ans.</b>	<p>The choice of security to be provided to the lender/supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000, respectively, as amended from time to time.</p> <p>AD Category - I banks have been delegated powers to convey 'no objection' under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower. Before according 'no objection' under FEMA, 1999, AD Category - I banks should ensure and satisfy themselves that:</p> <ul style="list-style-type: none"> <li>• the underlying ECB is strictly in compliance with the extant ECB guidelines,</li> <li>• there exists a security clause in the loan agreement requiring the borrower to create charge on immovable assets / financial securities / furnish corporate or</li> </ul>

	<p>personal guarantee,</p> <ul style="list-style-type: none"> <li>the loan agreement has been signed by both the lender and the borrower, and</li> <li>the borrower has obtained Loan Registration Number (LRN) from the Reserve Bank.</li> </ul>
<b>H.21.</b>	<b>Under what conditions, AD Category - I banks may convey their 'no objection' under FEMA, 1999 for creation of charge on immovable assets?</b>
<b>Ans.</b>	<p>On compliance with the above conditions, AD Category - I banks may convey their 'no objection', under FEMA, 1999 for creation of charge on immovable assets, financial securities and issue of personal or corporate guarantee, subject to the conditions indicated below:</p> <p>The 'no objection' for creation of charge on immovable assets may be conveyed under FEMA, 1999 either in favour of the lender or the security trustee, subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(i) 'No objection' shall be granted only to a resident ECB borrower.</li> <li>(ii) The period of such charge on immovable assets has to be co-terminus with the maturity of the underlying ECB.</li> <li>(iii) Such 'no objection' should not be construed as a permission to acquire immovable asset (property) in India, by the overseas lender / security trustee.</li> <li>(iv) In the event of enforcement / invocation of the charge, the immovable asset (property) will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.</li> </ul>
<b>H.22.</b>	<b>Under what conditions, AD Category - I banks may convey their 'no objection' under FEMA, 1999 to the resident ECB borrower for pledge of shares of the borrowing company held by promoters as well as in domestic associate companies of the borrower to secure the ECB?</b>
<b>Ans.</b>	<p>AD Category – I banks may convey their 'no objection' under FEMA, 1999 to the resident ECB borrower for pledge of shares of the borrowing company held by promoters as well as in domestic associate companies of the borrower to secure the ECB subject to the following conditions:</p> <ul style="list-style-type: none"> <li>(i) The period of such pledge shall be co-terminus with the maturity of the underlying ECB.</li> <li>(ii) In case of invocation of pledge, transfer shall be in accordance with the extant FDI policy.</li> <li>(iii) A certificate from the Statutory Auditor of the company that the ECB proceeds have been / will be utilized for the permitted end-use/s.</li> </ul>
<b>H.23.</b>	<b>Under what circumstances, AD Category - I banks may convey their 'no objection' to the resident ECB borrower for issue of corporate or personal guarantee under FEMA, 1999</b>
<b>Ans.</b>	<p>The 'no objection' to the resident ECB borrower for issue of corporate or personal guarantee under FEMA, 1999 may be conveyed after obtaining:</p> <ul style="list-style-type: none"> <li>(i) Board Resolution for issue of corporate guarantee from the company issuing such guarantees, specifying names of the officials authorised to execute such guarantees on behalf of the company or in individual capacity.</li> <li>(ii) Specific requests from individuals to issue personal guarantee indicating details of the ECB.</li> <li>(iii) Ensuring that the period of such corporate or personal guarantee is co-terminus with the maturity of the underlying ECB.</li> </ul>
<b>H.24.</b>	<b>What is scope of area for the 'no objection' issued by an AD Category – I bank?</b>
<b>Ans.</b>	<p>AD Category – I banks may invariably specify that the 'no objection' is issued from the foreign exchange angle under the provisions of FEMA, 1999 and should not be construed as an approval by any other statutory authority or Government under any</p>

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other law/ regulation. If further approval or permission is required from any other regulatory / statutory authority or Government under the relevant laws / regulations, the applicant should take the approval of the authority concerned before undertaking the transaction. Further, the 'no objection' should not be construed as regularizing or validating any irregularities, contravention or other lapses, if any, under the provisions of FEMA or any other laws or regulations.

**H.25. What are the provisions related to parking of ECB proceeds under the Automatic Route?**

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**Ans.** Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be repatriated immediately for credit to the borrowers' Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

**H.26. How can ECB proceeds parked overseas be invested?**

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**Ans.** ECB proceeds parked overseas can be invested in the following liquid assets:

- (a) Deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's,
- (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above, and
- (c) Deposits with overseas branches / subsidiaries of Indian banks abroad. The funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

**H.27. Who is responsible to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India? Will any contravention of the ECB guidelines attract penalty?**

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**Ans.** The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

**H.28. Whether prepayment of ECB is allowed by AD banks? If yes, to what extent?**

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**Ans.** Yes. Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.

**H.29. Is refinancing of an existing ECB under the Automatic Route permitted? Is there any condition?**

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**Ans.** The existing ECB under the Automatic Route may be refinanced by raising a fresh ECB subject to the condition that the fresh ECB is raised at a lower all-in-cost and the outstanding maturity of the original ECB is maintained.

**H.30. Can an existing ECB under the Automatic Route be refinanced by raising a fresh ECB at a higher all-in-cost?**

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**Ans.** Earlier, an existing ECB under the Automatic Route may be refinanced by raising a fresh ECB at a higher all-in-cost under the approval route.

It has now been decided to **discontinue this facility of allowing eligible borrowers**

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**to raise ECB at a higher all-in-cost** to refinance / reschedule an existing ECB **with effect from October 01, 2013.**

**H.31. Is Debt Servicing permitted to AD banks?**

**Ans.** The designated AD bank has the general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank of India from time to time.

**H.32. Whether Corporates under investigation permitted to avail of ECB?**

**Ans.** All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending may avail of ECBs as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, Authorised Dealers while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.

**H.33. What is the procedure to be followed by borrowers while raising ECBs under the Automatic Route?**

**Ans.** Borrowers may enter into loan agreement complying with the ECB guidelines with recognised lender for raising ECB under Automatic Route without the prior approval of the Reserve Bank. The borrower must obtain a Loan Registration Number (LRN) from the Reserve Bank of India before drawing down the ECB.

**H.34. Who all are the eligible borrowers for ECBs covered under the Approval Route?**

**Ans.** The following types of proposals for ECB are covered under the Approval Route:

- a) On lending by the EXIM Bank for specific purposes will be considered on a case by case basis.
- b) Banks and financial institutions which had participated in the textile or steel sector restructuring package as approved by the Government are also permitted to the extent of their investment in the package and assessment by the Reserve Bank based on prudential norms. Any ECB availed for this purpose so far will be deducted from their entitlement.
- c) ECB with minimum average maturity of 5 years by Non-Banking Financial Companies (NBFCs) from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks to finance import of infrastructure equipment for leasing to infrastructure projects.
- d. NBFCs-IFCs are permitted to avail of ECB, beyond 75 per cent of their owned funds (including the outstanding ECBs) for on-lending to the infrastructure sector as defined under the ECB policy.
- e. NBFCs-AFCs are permitted to avail of ECB, beyond 75 per cent of their owned funds (including outstanding ECBs) to finance the import of infrastructure equipment for leasing to infrastructure projects.
- d) Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs), categorized as IFCs, by the Reserve Bank, are permitted to avail of ECBs, including the outstanding ECBs, beyond 50 per cent of their owned funds, for on-lending to the infrastructure sector as defined under the ECB policy, subject to their complying with the following conditions:
  - i) compliance with the norms prescribed in the DNBS Circular DNBS.PD.CCNo.168 / 03.02.089 / 2009-10 dated February 12, 2010
  - ii) hedging of the currency risk in full. Designated Authorised Dealer should ensure compliance with the extant norms while certifying the ECB application. While forwarding such proposals to the Reserve Bank of India, designated AD Category – I banks should certify the leverage ratio (i.e. outside liabilities/owned funds) of IFCs.
- e) Foreign Currency Convertible Bonds (FCCBs) by Housing Finance Companies satisfying the following minimum criteria:
  - (i) the minimum net worth of the financial intermediary during the previous

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- three years shall not be less than Rs. 500 crore,
- (ii) a listing on the BSE or NSE,
  - 3. minimum size of FCCB is USD 100 million, and
  - 4. the applicant should submit the purpose / plan of utilization of funds.
- f) Special Purpose Vehicles, or any other entity notified by the Reserve Bank, set up to finance infrastructure companies / projects exclusively, will be treated as Financial Institutions and ECB by such entities will be considered under the Approval Route.
  - g) Multi-State Co-operative Societies engaged in manufacturing activity and satisfying the following criteria:
    - i) the Co-operative Society is financially solvent, and
    - ii) the Co-operative Society submits its up-to-date audited balance sheet.
  - h) SEZ developers can avail of ECBs for providing infrastructure facilities within SEZ, as defined in the extant ECB policy.
  - i) Developers of National Manufacturing Investment Zones (NMIZs) can avail of ECB for providing infrastructure facilities within SEZ, as defined in the extant ECB policy.
  - j) Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year
  - k) Corporates in the services sector viz. hotels, hospitals and software sector can avail of ECB beyond USD 200 million or equivalent per financial year
  - l) Service sector units, other than those in hotels, hospitals and software, subject to the condition that the loan is obtained from foreign equity holders. This would facilitate borrowing by training institutions, R&D, miscellaneous service companies, etc
  - n. Small Industries Development Bank of India (SIDBI) is eligible to avail of ECB for on-lending to MSME sector, as defined under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, beyond 50 per cent of their owned funds, subject to a ceiling of USD 500 million per financial year provided such on-lending by SIDBI shall be to the borrowers' for permissible end-use and having natural hedge by way of foreign exchange earnings. SIDBI may on-lend either in INR or in foreign currency (FCY). In case of on-lending in INR, the foreign currency risk shall be fully hedged by SIDBI.
  - o. Low Cost Affordable Housing Projects: Developers/builders / Housing Finance Companies (HFCs) / National Housing Bank (NHB) may avail of ECB for low cost affordable housing projects [refer to para I B (vii) *ibid*].
  - p. Corporates Under Investigation: All entities against which investigations / adjudications / appeals by the law enforcing agencies are pending, may avail of ECBs as per the current norms, if they are otherwise eligible, notwithstanding the pending investigations / adjudications / appeals, without prejudice to the outcome of such investigations / adjudications / appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations / adjudications / appeals, the Reserve Bank of India while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter.
  - m) Corporates which have violated the extant ECB policy and are under investigation by the Reserve Bank and / or Directorate of Enforcement are allowed to avail of ECB only under the approval route.
  - n) Cases falling outside the purview of the automatic route prescribed limits and maturity period.

**H.35. Who are considered as the recognized lenders from whom eligible borrowers can raise ECBs under the Approval Route?**

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- Ans.** Borrowers can raise ECB from internationally recognised sources, such as
- international banks,
  - international capital markets,
  - multilateral financial institutions (such as IFC, ADB, CDC, etc.)/ regional financial institutions and Government owned development financial institutions,



- export credit agencies,
- suppliers' of equipment,
- foreign collaborators, and
- foreign equity holders (other than erstwhile OCBs).

**H.36. What are the additional conditions need to be met by a "foreign equity holder" to be eligible as "recognized lender" under the approval route?**

**Ans.** A "foreign equity holder" to be eligible as "recognized lender" under the approval route would require minimum holding of paid-up equity in the borrower company as set out below:

- For ECB up to USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender,
- For ECB more than USD 5 million - minimum paid-up equity of 25 per cent held directly by the lender and ECB liability-equity ratio not exceeding 7:1
- ECB from indirect equity holders provided the indirect equity holding by the lender in the Indian company is at least 51 per cent;
- ECB from a group company provided both the borrower and the foreign lender are subsidiaries of the same parent.

Besides the paid-up capital, free reserves (including the share premium received in foreign currency) as per the latest audited balance sheet shall be reckoned for the purpose of calculating the 'equity' of the foreign equity holder in the term ECB liability-equity ratio. Where there are more than one foreign equity holder in the borrowing company, the portion of the share premium in foreign currency brought in by the lender(s) concerned shall only be considered for calculating the ECB liability-equity ratio for reckoning quantum of permissible ECB.

For calculating the 'ECB liability', not only the proposed borrowing but also the outstanding ECB from the same foreign equity holder lender shall be reckoned.

The total outstanding stock of ECBs (including the proposed ECBs) from a foreign equity lender should not exceed seven times the equity holding, either directly or indirectly of the lender (in case of lending by a group company, equity holdings by the common parent would be reckoned).

**H.37. What are the maximum limits of amount of ECBs that can be raised by different eligible borrowers under the Approval Route?**

**Ans.** Eligible borrowers under the automatic route other than corporates in the services sector viz. hotel, hospital and software can avail of ECB beyond USD 750 million or equivalent per financial year.

Corporates in the services sector viz. hotels, hospitals and software sector are allowed to avail of ECB beyond USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

Earlier, Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines, can avail of ECBs in Renminbi (RMB), subject to an annual ceiling of USD one billion for the entire sector, pending further review.

It has been observed that the facility of ECB in Renminbi (RMB) had remained unused so far. Accordingly, the scheme of ECB in Renminbi has been reviewed and it has been decided that this scheme may be **discontinued from the date of issue of the circular.**

**H.38. What are the present all-in-cost ceilings applicable for ECB under the Approval Route?**

**Ans.** All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The

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payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost.

The all-in-cost ceilings for ECB are reviewed from time to time. The following ceilings are applicable and subject to review thereafter:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

\* for the respective currency of borrowing or applicable benchmark

In the case of fixed rate loans, the swap cost plus the margin should be the equivalent of the floating rate plus the applicable margin.

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**H.39. What are the permissible end-uses for ECB proceeds under the Approval Route?**

- Ans.**
- (a) ECB can be raised only for investment [such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), implementation of new projects, modernization/expansion of existing production units] in real sector - industrial sector including small and medium enterprises (SME) and infrastructure sector - in India.
  - (b) Overseas Direct Investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.
  - (c) Interest During Construction (IDC) for Indian companies which are in the infrastructure sector, as defined under the extant ECB guidelines subject to IDC being capitalized and forming part of the project cost.
  - (d) The payment by eligible borrowers in the Telecom sector, for spectrum allocation may, initially, be met out of Rupee resources by the successful bidders, to be refinanced with a long-term ECB, under the approval route, subject to the following conditions:
    - (i) The ECB should be raised within 12 months from the date of payment of the final installment to the Government;
    - (ii) The designated AD - Category I bank should monitor the end-use of funds;
    - (iii) Banks in India will not be permitted to provide any form of guarantees; and
    - (iv) All other conditions of ECB, such as eligible borrower, recognized lender, all-in-cost, average maturity, etc, should be complied with.
  - (e) The first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.

It is clarified that **ECB is allowed for all subsequent stages of acquisition of shares in the disinvestment process** under the Government's disinvestment programme of the PSU shares; in other words, facility of ECB is available for multiple rounds of disinvestment of PSU shares under the Government disinvestment programme.
  - (f) Repayment of Rupee loans availed of from domestic banking system
  - (g) Indian companies which are in the infrastructure sector (except companies in the power sector), as defined under the extant ECB guidelines, are permitted to utilise 25 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system, subject to the following conditions:-
    - (i) at least 75 per cent of the fresh ECB proposed to be raised should be utilised for capital expenditure towards a 'new infrastructure' project(s)
    - (ii) in respect of remaining 25 per cent, the refinance shall only be utilized for repayment of the Rupee loan availed of for 'capital expenditure' of earlier completed infrastructure project(s); and
    - (iii) the refinance shall be utilized only for the Rupee loans which are outstanding in the books of the financing bank concerned.

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- Companies in the power sector are permitted to utilize up to 40 per cent of the fresh ECB raised by them towards refinancing of the Rupee loan/s availed by them from the domestic banking system subject to the condition that at least 60 per cent of the fresh ECB proposed to be raised should be utilized for fresh capital expenditure for infrastructure project(s).
- (h) ECB is allowed for Import of services, technical know-how and payment of license fees. The companies in the manufacturing and infrastructure sectors may import services, technical know-how and payment of license fees as part of import of capital goods subject to certain conditions.
  - (i) Bridge Finance: Indian companies which are in the infrastructure sector, as defined under the extant ECB policy are permitted to import capital goods by availing of short term credit (including buyers' / suppliers' credit) in the nature of 'bridge finance', under the approval route, subject to the following conditions:-
    - (i) the bridge finance shall be replaced with a long term ECB;
    - (ii) the long term ECB shall comply with all the extant ECB norms; and
  - iii. prior approval shall be sought from the Reserve Bank for replacing the bridge finance with a long term ECB.

**It has been decided to allow refinancing of such bridge finance (if in the nature of buyers'/suppliers' credit) availed of, with an ECB under the automatic route subject to the following conditions:-**

- (i) the buyers'/suppliers' credit is refinanced through an ECB before the maximum permissible period of trade credit;**
- (ii) the AD evidences the import of capital goods by verifying the Bill of Entry;**
- (iii) the buyers'/suppliers' credit availed of is compliant with the extant guidelines on trade credit and the goods imported conform to the DGFT policy on imports; and**
- iv. the proposed ECB is compliant with all the other extant guidelines relating to availment of ECB.**

**The borrowers will, therefore, approach the Reserve Bank under the approval route only at the time of availing of bridge finance.**

**The designated AD - Category I bank shall monitor the end-use of funds and banks in India will not be permitted to provide any form of guarantees for the ECB.**

- (j) ECB for working capital for civil aviation sector: Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital. Such ECBs will be allowed based on the cash flow, foreign exchange earnings and the capability to service the debt and the ECBs can be raised with a minimum average maturity period of three years.

The overall ECB ceiling for the entire civil aviation sector would be USD one billion and the maximum permissible ECB that can be availed by an individual airline company will be USD 300 million. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over. The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability should be extinguished only out of the foreign exchange earnings of the borrowing company.

The scheme of raising ECB for working capital for Civil Aviation Sector will continue till March 31, 2015.

- (k) ECB for general corporate purposes from foreign equity holders: Eligible borrowers can avail ECB under approval route from their foreign equity holder company with a minimum average maturity of 7 years for general corporate

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purposes (which includes working capital) subject to the following conditions:

- i. Minimum paid-up equity of 25 per cent should be held directly by the lender;
- ii. Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India); and
- iii. Repayment of the principal shall commence only after completion of minimum average maturity of 7 years. No prepayment will be allowed before maturity.

**H.40. Whether ECB for working capital allowed as a permissible end-use for the civil aviation sector?**

**Ans.** Availing of **ECB for working capital is not a permissible end-use**. On a review of the policy related to ECB and keeping in view the announcement made in the Union Budget for the Year 2012-13, it has been decided to allow ECB for working capital as a permissible end-use **for the civil aviation sector, under the approval route, subject to the following conditions:**

3. Airline companies registered under the Companies Act, 1956 and possessing scheduled operator permit license from DGCA for passenger transportation are eligible to avail of ECB for working capital;
4. ECB will be allowed to the airline companies based on the cash flow, foreign exchange earnings and its capability to service the debt;
5. The ECB for working capital should be raised within 12 months from the date of issue of the circular (will continue till **December 31, 2013**);
6. The ECB can be raised with a minimum average maturity period of three years; and
7. The **overall ECB** ceiling for the **entire civil aviation sector would be USD one billion** and the maximum permissible ECB that can be availed **by an individual airline company will be USD 300 million**. This limit can be utilized for working capital as well as refinancing of the outstanding working capital Rupee loan(s) availed of from the domestic banking system. Airline companies desirous of availing of such ECBs for refinancing their working capital Rupee loans may submit the necessary certification from the domestic lender/s regarding the outstanding Rupee loan/s.
8. ECB availed for working capital/refinancing of working capital as above will not be allowed to be rolled over.
9. The application for such ECB should be accompanied by a certificate from a chartered accountant confirming the requirement of the working capital loan and the projected foreign exchange cash flows/earnings which would be used for servicing the loan. Authorised Dealer should ensure that the foreign exchange for repayment of ECB is not accessed from Indian markets and **the liability is extinguished only out of the foreign exchange earnings of the borrowing company**.

**H.41. What are the terms and conditions for repayment of Rupee loans and/or fresh Rupee capital expenditure for Indian companies availing ECBs?**

**Ans.** 1. Indian companies in the manufacturing and infrastructure sector and hotel sector (with a total project cost of INR 250 crore or more irrespective of geographical location for hotel sector), can avail of ECBs for repayment of Rupee loans availed of for capital expenditure from the domestic banking system which are still outstanding and/or fresh Rupee capital expenditure provided they are consistent foreign exchange earners during the past three financial years and not in the default list/caution list of the Reserve Bank of India.

The overall limit for such ECBs is USD 10 billion and the maximum permissible ECB that can be availed of by an individual company will be limited to 50 per cent of the average annual export earnings realized during the past three financial years.

**Further, the maximum permissible limit of ECB that can be availed of has been**

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enhanced to:

- (a) **75 per cent of the average foreign exchange earnings realized during the immediate past three financial years or 50 per cent of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher;**
- (b) **in case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realized during the past financial year; and**
- (c) **The maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion.**

The overall ceiling for such ECBs shall be USD 10 (ten) billion and the maximum ECB that can be availed by an individual company or group, as a whole, under this scheme will be restricted to USD 3 billion. Further, the maximum permissible ECB that can be availed of by an individual company will be limited to 75 per cent of the average annual export earnings realized during the past three financial years or 50 per cent of the highest foreign exchange earnings realized in any of the immediate past three financial years, whichever is higher. In case of Special Purpose Vehicles (SPVs), which have completed at least one year of existence from the date of incorporation and do not have sufficient track record/past performance for three financial years, the maximum permissible ECB that can be availed of will be limited to 50 per cent of the annual export earnings realized during the past financial year.

The foreign exchange for repayment of ECB should not be accessed from Indian markets and the liability arising out of ECB should be extinguished only out of the foreign exchange earnings of the borrowing company.

- b) Within the overall ceilings given at (a) above, Indian companies in the aforesaid sectors (as given at (a) above) which have established Joint Venture (JV) / Wholly Owned Subsidiary (WOS) / have acquired assets overseas in compliance with extant regulations under FEMA, 1999 can avail ECB for repayment of all term loans having average residual maturity of 5 years and above / credit facilities availed of by Indian companies from domestic banks for overseas investment in JV/WOS, in addition to 'Capital Expenditure'. The maximum permissible ECB that can be availed of by an individual company will be limited to 75 per cent of the average annual export earnings realized during the past three financial years or 75 per cent of the assessment made about the average foreign exchange earnings potential for the next three financial years of the Indian companies from the JV / WOS / assets abroad as certified by Statutory Auditors / Chartered Accountant / Certified Public Accountant / Category I Merchant Banker registered with SEBI / an Investment Banker outside India registered with the appropriate regulatory authority in the host country. The ECB availed should be repaid out of forex earnings from the overseas JV / WOS / assets.

The past earnings in the form of dividend/repatriated profit/ other forex inflows like royalty, technical know-how, fee, etc from overseas JV/WOS/assets will be reckoned as foreign exchange earnings under this scheme.

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**H.42. What are the provisions for ECB for Low Cost Affordable Housing?**

- Ans.**
- (a) For the purpose of ECB, a low cost affordable housing project is a project in which at least 60 per cent of the permissible FSI would be for units having maximum carpet area up to 60 square meters. Slum rehabilitation projects will also be eligible under the low cost affordable housing scheme, the eligibility of which would be based on the parameters to be set by the Central Sanctioning

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- and Monitoring Committee of the Affordable Housing in Partnership Scheme (AHP) constituted for the purpose. ECB proceeds shall be utilized only for low cost affordable housing projects and shall not be utilized for acquisition of land.
- (b) Developers/builders may avail of ECB for low cost affordable housing projects provided they are companies registered under the Companies Act, 1956, having minimum 3 years' experience in undertaking residential projects, have good track record in terms of quality and delivery and the project and all necessary clearances from various bodies including Revenue Department with respect to land usage/environment clearance, etc., are available on record. They should also not have defaulted in any of their financial commitments to banks/financial institutions or any other agencies and the project should not be a matter of litigation. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis.
  - (c) Housing Finance Companies (HFCs) can also avail of ECB for financing prospective owners of low cost affordable housing units. HFCs registered with the National Housing Bank (NHB) and operating in accordance with the regulatory directions and guidelines issued by NHB are eligible to avail of ECB for financing low cost affordable housing units. The minimum Net Owned Funds (NOF) of HFCs for the past three financial years should not be less than INR 300 crore. Borrowing through ECB should be within overall borrowing limit of 16 (sixteen) times of their Net Owned Fund (NOF) and the net non-performing assets (NNPA) should not exceed 2.5 % of the net advances. The maximum loan amount sanctioned to the individual buyer will be capped at INR 25 lakh subject to the condition that the cost of the individual housing unit shall not exceed INR 30 lakh. The ECB should be swapped into Rupees for the entire maturity on fully hedged basis. HFCs while making the applications, shall submit a certificate from NHB that the availment of ECB is for financing prospective owners of individual units for the low cost affordable housing and ensure that the interest rate spread charged by them to the ultimate buyer is reasonable.
  - (d) NHB is also eligible to raise ECB for financing low cost affordable housing units of individual borrowers. Further, in case, a developer of low cost affordable housing project not being able to raise ECB directly as envisaged above, National Housing Bank is permitted to avail of ECB for on-lending to such developers which satisfy the conditions prescribed to developers / builders subject to the interest rate spread set by RBI. ECB proceeds shall be utilized only for low cost affordable housing projects and shall not be utilized for acquisition of land.
  - (e) Interest rate spread to be charged by NHB may be decided by NHB taking into account cost and other relevant factors. NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners' of individual units under the low cost affordable housing scheme is reasonable.
  - (f) Builders / developers meeting the eligibility criteria shall have to apply to the National Housing Bank (NHB) in the prescribed format. NHB shall act as the nodal agency for deciding a project's eligibility as a low cost affordable housing project, and on being satisfied, forward the application to the Reserve Bank for consideration under the approval route. Once NHB decides to forward an application for consideration of RBI, the prospective borrower (builder/developer) will be advised by the NHB to approach RBI for availing ECB through his Authorised Dealer in the prescribed format.
  - (g) Developers / builders / HFCs / NHB will not be permitted to raise Foreign Currency Convertible Bonds (FCCBs) under this scheme.
  - (h) An aggregate limit of USD 1(one) billion each for the financial year 2013-14 and 2014-15 is fixed for ECB under the low cost affordable housing scheme which includes ECBs to be raised by developers/builders and NHB/specified HFCs.

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**H. 43. Is there any ECB window for financing 3G spectrum rupee loans?**

**Ans.** The payment for spectrum allocation may initially be met out of the Rupee resources by the successful bidders, to be refinanced with a long term ECB, under the approval route, subject to the condition that ECB should be raised within 12 months from the date of payment of the final installment to the Government.

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It has now been decided that **ECB window for financing 3G spectrum rupee loans**, that are still outstanding in telecom operator's books of accounts, will be **open upto March 31, 2014**.

**H.44. What are the non- permissible end-uses for ECB proceeds under the Approval Route?**

**Ans.** Other than the purposes specified in the above ques., the borrowings shall not be utilised for any other purpose including the following purposes, namely:

- (a) For on-lending or investment in capital market or acquiring a company (or a part thereof) in India by a corporate except for eligible Infrastructure Finance Companies (IFCs), banks and financial institutions.
- (b) For real estate.
- (c) For working capital (except as stated above) and general corporate purpose (except as stated above) and repayment of existing Rupee loans (except as stated above).

**H.45. What are the provisions regarding issuance of Guarantee, etc. under the Approval Route?**

**Ans.** Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, financial institutions and NBFCs relating to ECB is not normally permitted. Applications for providing guarantee/standby letter of credit or letter of comfort by banks, financial institutions relating to ECB in the case of SME will be considered on merit subject to prudential norms.

With a view to facilitating capacity expansion and technological upgradation in Indian textile industry, issue of guarantees, standby letters of credit, letters of undertaking and letters of comfort by banks in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

**H.46. What are the provisions regarding Security to be provided by the borrower to the lender under the Approval Route?**

**Ans.** The choice of security to be provided to the lender / supplier is left to the borrower. However, creation of charge over immovable assets and financial securities, such as shares, in favour of the overseas lender is subject to Regulation 8 of Notification No. FEMA 21/RB-2000 dated May 3, 2000 and Regulation 3 of Notification No. FEMA 20/RB-2000 dated May 3, 2000 as amended from time to time, respectively. Powers have been delegated to Authorised Dealer Category I banks to issue necessary NOCs under FEMA as detailed in para I (A) (viii) *ibid*.

**H.47. What are the provisions related to parking of ECB proceeds under the Approval Route?**

**Ans.** Borrowers are permitted to either keep ECB proceeds abroad or to remit these funds to India, pending utilization for permissible end-uses.

The proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending.

**H.48. How can ECB proceeds parked overseas be invested?**

**Ans.** ECB proceeds parked overseas can be invested in the following liquid assets:

- (a) Deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's;
- (b) Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above; and
- (c) Deposits with overseas branches / subsidiaries of Indian banks abroad. The

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funds should be invested in such a way that the investments can be liquidated as and when funds are required by the borrower in India.

**H.49. Who is responsible to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India? Will any contravention of the ECB guidelines attract penalty?**

**Ans.** The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown

**H.50. Whether prepayment of ECB is allowed by AD banks? If yes, to what extent?**

**Ans.** Yes. Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank subject to compliance with the stipulated minimum average maturity period as applicable to the loan.  
Pre-payment of ECB for amounts exceeding USD 500 million would be considered by the Reserve Bank under the Approval Route.

**H.51. Is refinancing of an existing ECB under the Approval Route permitted? Is there any condition?**

**Ans.** Yes. Existing ECB under the Approval Route may be refinanced by raising a fresh ECB at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

**H.52. Is rescheduling of an existing ECB under the Approval Route at a higher all-in-cost permitted? Is there any condition?**

**Ans.** Yes. An existing ECB under the Approval Route can be rescheduled at a higher all-in-cost subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

**H.53. Is Debt Servicing permitted to AD banks?**

**Ans.** The designated AD bank has general permission to make remittances of installments of principal, interest and other charges in conformity with the ECB guidelines issued by Government / Reserve Bank from time to time.

**H.54. What is the procedure to be followed by borrowers while raising ECBs under the Approval Route?**

**Ans.** Applicants are required to submit an application in form ECB through designated AD bank to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, External Commercial Borrowings Division, Mumbai – 400 001, along with necessary documents.

**H.55. What is the definition of a Foreign Currency Exchangeable Bond?**

**Ans.** Foreign Currency Exchangeable Bond (FCEB) means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an Issuing Company and subscribed to by a person who is a resident outside India, in foreign currency and exchangeable into equity share of another company, to be called the Offered Company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments. The FCEB may be denominated in any freely convertible foreign currency.

**H.56. Who is an eligible issuer of an FCEB?**

**Ans.** The Issuing Company shall be part of the promoter group of the Offered Company and shall hold the equity share/s being offered at the time of issuance of FCEB.



<b>H.57.</b>	<b>Who can be the Offered Company?</b>
<b>Ans.</b>	The Offered Company shall be a listed company, which is engaged in a sector eligible to receive Foreign Direct Investment and eligible to issue or avail of Foreign Currency Convertible Bond (FCCB) or External Commercial Borrowings (ECB).
<b>H.58.</b>	<b>Who is not eligible to issue FCEB?</b>
<b>Ans.</b>	An Indian company, which is not eligible to raise funds from the Indian securities market, including a company which has been restrained from accessing the securities market by the SEBI shall not be eligible to issue FCEB.
<b>H.59.</b>	<b>Who are the eligible subscribers to FCEB?</b>
<b>Ans.</b>	Entities complying with the Foreign Direct Investment policy and adhering to the sectoral caps at the time of issue of FCEB can subscribe to FCEB. Prior approval of the Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.
<b>H.60.</b>	<b>Who is not eligible to subscribe to FCEB?</b>
<b>Ans.</b>	Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.
<b>H.61.</b>	<b>What are the permissible end-uses of FCEB proceeds?</b>
<b>Ans.</b>	<ul style="list-style-type: none"> <li>(i) The proceeds of FCEB may be invested by the issuing company overseas by way of direct investment including in Joint Ventures or Wholly Owned Subsidiaries abroad, subject to the existing guidelines on overseas investment in Joint Ventures / Wholly Owned Subsidiaries.</li> <li>(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.</li> </ul>
<b>H.62.</b>	<b>What are the permissible &amp; non-permissible end-uses of investments out of the FCEB proceeds received by Promoter Group Companies?</b>
<b>Ans.</b>	<p>Promoter group companies receiving investments out of the FCEB proceeds may utilize the amount in accordance with end-uses prescribed under the ECB policy.</p> <p>The promoter group company receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.</p>
<b>H.63.</b>	<b>What is the all-in-cost ceiling for FCEB?</b>
<b>Ans.</b>	The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as specified by Reserve Bank under the ECB policy.
<b>H.64.</b>	<b>What is the Pricing Policy of FCEB?</b>
<b>Ans.</b>	<p>At the time of issuance of FCEB the exchange price of the offered listed equity shares shall not be less than the higher of the following two:</p> <ul style="list-style-type: none"> <li>(i) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on the stock exchange during the six months preceding the relevant date; and</li> <li>(ii) The average of the weekly high and low of the closing prices of the shares of the offered company quoted on a stock exchange during the two week preceding the relevant date.</li> </ul>
<b>H.65.</b>	<b>What is the Average Maturity Period of an FCEB? Can the exchange option be exercised? Is Cash (Net) settlement of FCEB permissible?</b>
<b>Ans.</b>	Minimum maturity of FCEB shall be five years. The exchange option can be exercised at any time before redemption. While exercising the exchange option, the holder of the FCEB shall take delivery of the offered shares. Cash (Net) settlement of FCEB shall not be permissible.
<b>H.66.</b>	<b>What are the provisions related to parking of FCEB proceeds abroad?</b>

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**Ans.** The proceeds of FCEB may be retained and / or deployed overseas by the issuing / promoter group companies in accordance with the policy for the ECB or repatriated to India for credit to the borrowers' Rupee accounts with AD Category I banks in India pending utilization for permissible end-uses. It shall be the responsibility of the issuing company to ensure that the proceeds of FCEB are used by the promoter group company only for the permitted end-uses prescribed under the ECB policy. The issuing company should also submit audit trail of the end-use of the proceeds by the issuing company / promoter group companies to the Reserve Bank duly certified by the designated AD bank.

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**H.67. What is the operational procedure for issuance of FCEB?**

**Ans.** Issuance of FCEB shall require prior approval of the Reserve Bank under the Approval Route for raising ECB. The Reporting arrangement for FCEB shall be as per the extant ECB policy.

**H.68. What is the role of an Empowered Committee?**

**Ans.** Reserve Bank has set up an Empowered Committee to consider proposals coming under the Approval Route.

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**H.69. Are Indian companies permitted to refinance the outstanding FCCBs? If yes, what are the terms and conditions?**

**Ans.** FCCBs are governed by the 'Issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depositary Receipt Mechanism) Scheme, 1993' as amended from time to time and FEMA Notification No.120/RB-2004 dated July 7, 2004. The issuance of FCCBs was brought under the ECB guidelines in August 2005 and FCCBs are also subject to all the regulations which are applicable to ECBs.

Keeping in view the need to provide a window to facilitate refinancing of FCCBs by the Indian companies which may be facing difficulty in meeting the redemption obligations, Designated AD Category - I banks have been, under the automatic route, subject to compliance with the terms and conditions set out hereunder: -

- i. Fresh ECBs/ FCCBs shall be raised with the stipulated average maturity period and applicable all-in-cost being as per the extant ECB guidelines;
- ii. The amount of fresh ECB/FCCB shall not exceed the outstanding redemption value at maturity of the outstanding FCCBs;
- iii. The fresh ECB/FCCB shall not be raised six months prior to the maturity date of the outstanding FCCBs ;
- iv. The purpose of ECB/FCCB shall be clearly mentioned as 'Redemption of outstanding FCCBs' in Form 83 at the time of obtaining Loan Registration Number from the Reserve Bank;

It has been decided that **at the time of availing Loan Registration Number (LRN) from the Reserve Bank, borrowers should provide bifurcation of the utilization of the ECB proceeds towards foreign currency and Rupee expenditure in Form-83.** The primary responsibility to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated to India for credit to their Rupee accounts with AD Category- I banks in India is that of the borrower concerned and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under the Foreign Exchange Management Act (FEMA), 1999. The designated AD bank is also required to ensure that the ECB proceeds meant for Rupee expenditure are repatriated to India immediately after drawdown.

Also, it has been decided to rationalize the Form-83 submitted to the Reserve Bank for obtaining Loan Registration Number (LRN) to reflect the liberalization and rationalization measures that have been carried out over a period of time. Accordingly, borrowers desirous of obtaining Loan Registration Number (LRN) with effect from July 01, 2012 may submit Form-83 in the revised format as annexed to the Circular.

- v. The designated AD - Category I bank should monitor the end-use of funds;
- vi. ECB / FCCB beyond USD 500 million for the purpose of redemption of the

	existing FCCB will be considered under the approval route; and
vii.	ECB / FCCB availed of for the purpose of refinancing the existing outstanding FCCB will be reckoned as part of the limit of USD 750 million available under the automatic route as per the extant norms.
<b>H.70.</b>	<b>Is restructuring of FCCBs involving change in the existing conversion price permissible?</b>
<b>Ans.</b>	No. Restructuring of FCCBs involving change in the existing conversion price is not permissible.
<b>H.71.</b>	<b>Whether proposals of Buyback / Prepayment of FCCBs considered by RBI?</b>
<b>Ans.</b>	The proposal of Buyback / prepayment of FCCBs from Indian Companies may be considered subject to condition that the buyback value of the FCCBs shall be at a minimum discount of five per cent on the accreted value. In case the Indian company is planning to raise a foreign currency borrowing for buyback of the FCCBs, all FEMA rules/ regulations relating to foreign currency borrowing shall be complied with. The entire process of buyback should be completed by December 31, 2013 after which the scheme will stand discontinued.
<b>H.72.</b>	<b>Is restructuring of FCCBs not involving change in conversion price permissible?</b>
<b>Ans.</b>	Proposals for restructuring of FCCBs not involving change in conversion price will, however, be considered under the approval route depending on the merits of the proposal.
<b>H.73.</b>	<b>What are the other cases where a person other than authorised dealer can borrow or lend in Foreign Exchange?</b>
<b>Ans.</b>	<ol style="list-style-type: none"> <li>(1) An Indian entity may lend in foreign exchange to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2000.</li> <li>(2) A person resident in India may borrow, whether by way of loan or overdraft or any other credit facility, from a bank situated outside India, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.</li> <li>(3) An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplies of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.</li> <li>(4) A person resident in India may lend in foreign currency out of funds held in his EEFC account, for trade related purposes to his overseas importer customer : [<b>Provided</b> that where the amount of loan exceeds US \$ 100,000, a guarantee of a bank of international repute situated outside India is provided by the overseas borrower in favour of the lender.]</li> <li>(5) Foreign currency loans may be extended by Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited or any other institution in India to their constituents in India out of foreign currency borrowings raised by them with the approval of the Central Government for the purpose of onward lending.</li> <li>(6) An individual resident in India may borrow a sum not exceeding US\$ 250,000 or its equivalent from his close relatives outside India, subject to the conditions that— <ol style="list-style-type: none"> <li>a. the minimum maturity period of the loan is one year;</li> <li>b. the loan is free of interest; and</li> <li>c. the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR</li> </ol> </li> </ol>

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account of the non-resident lender.

*Explanation:* "Close relative" means relative as defined in section 6 of the Companies Act, 1956.

- (7) Indian companies in India may grant loans in foreign currency to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.

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**H.74. What are the different Reporting Arrangements relating to ECBs?**

- Ans.** (a) With a view to simplifying the procedure, submission of copy of loan agreement is dispensed with.
- (b) For allotment of Loan Registration Number (LRN), borrowers are required to submit Form 83, in duplicate, certified by the Company Secretary (CS) or Chartered Accountant (CA) to the designated AD bank. One copy is to be forwarded by the designated AD bank to the Director, Balance of Payments Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, Bandra-Kurla Complex, Mumbai – 400 051.
- Note: copies of loan agreement and offer documents for FCCB are not required to be submitted with Form 83.
- (c) The borrower can draw-down the loan only after obtaining the LRN from DSIM, Reserve Bank.
- (d) Borrowers are required to submit ECB-2 Return certified by the designated AD bank on monthly basis so as to reach DSIM, Reserve Bank within seven working days from the close of month to which it relates.

Note: All previous returns relating to ECB viz. ECB 3 – ECB 6 have been discontinued with effect from January 31, 2004.

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**H.75. What action is taken by RBI for dissemination of information?**

- Ans.** For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the Reserve Bank's website, on a monthly basis, with a lag of one month to which it relates.

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**H.76. What are the provisions for providing guarantee by a non-resident for rupee loan (borrowing and lending in INR between two residents)?**

- Ans.** Borrowing and lending in Indian Rupees between two residents does not attract any provisions of the Foreign Exchange Management Act, 1999. In cases where a Rupee loan is granted against the guarantee provided by a non-resident, there is no transaction involving foreign exchange until the guarantee is invoked and the non-resident guarantor is required to meet the liability under the guarantee. The non-resident guarantor may discharge the liability by i) payment out of rupee balances held in India or ii) by remitting the funds to India or iii) by debit to his FCNR(B)/NRE account maintained with an AD bank in India. In such cases, the non-resident guarantor may enforce his claim against the resident borrower to recover the amount and on recovery he may seek repatriation of the amount if the liability is discharged either by inward remittance or by debit to FCNR(B)/NRE account. However, in case the liability is discharged by payment out of Rupee balances, the amount recovered can be credited to the NRO account of the non-resident guarantor.

The Reserve Bank vide its Notification No. FEMA.29/ RB-2000 dated September 26, 2000 has granted general permission to a resident, being a principal debtor to make payment to a person resident outside India, who has met the liability under a guarantee. Accordingly, in cases where the liability is met by the non-resident out of funds remitted to India or by debit to his FCNR(B)/NRE account, the repayment may be made by credit to the FCNR(B)/NRE/NRO account of the guarantor provided, the amount remitted/credited shall not exceed the rupee equivalent of the amount paid by the non-resident guarantor against the invoked guarantee.

**H.77. Whether the facility of credit enhancement by eligible non-resident entities can be extended? What are the terms and conditions?**

**Ans.** The facility of credit enhancement by eligible non-resident entities may be extended to domestic debt raised through issue of capital market instruments, such as Rupee denominated debentures and bonds, is available to all borrowers eligible to raise ECB by Indian companies engaged exclusively in the development of infrastructure and by the Infrastructure Finance Companies (IFCs), which have been classified as such by the Reserve Bank in terms of the guidelines contained in the circular DNBS.PD. CC No. 168 / 03.02.089 / 2009-10 dated February 12, 2010, under the automatic route, subject to the following conditions:

- i) credit enhancement should be provided by eligible non-resident entities (multilateral institutions) ; multilateral / regional financial institutions/ Government owned development financial institutions/ direct foreign equity holder(s) as per extant ECB guidelines (minimum holding of 25 per cent of the paid up capital) and indirect foreign equity holder, holding at least 51% of the paid-up capital,;
- ii) the underlying debt instrument should have a minimum average maturity of three years;
- iii) prepayment and call / put options are not permissible for such capital market instruments up to an average maturity period of 3 years;
- iv) guarantee fee and other costs in connection with credit enhancement will be restricted to a maximum 2 per cent of the principal amount involved;
- v) on invocation of the credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the Trade Credit / ECBs, is applicable to the novated loan. The all-in- cost ceilings, depending on the average maturity period, are applicable as follows:

Average maturity period of the loan on invocation	All-in-cost ceilings over 6 month LIBOR*
Up to 3 years	350 basis points
Three years and up to five years	350 basis points
More than five years	500 basis points

\*for the respective currency of borrowing or applicable benchmark

- vi) In case of default and if the loan is serviced in Indian Rupees, the applicable rate of interest would be the coupon of the bonds or 250 bps over the prevailing secondary market yield of 5 years Government of India Security, as on the date of novation, whichever is higher;
- vii) IFCs proposing to avail of the credit enhancement facility should comply with the eligibility criteria and prudential norms laid down in the circular DNBS.PD.CC No.168 / 03.02.089 / 2009-10 dated February 12, 2010 and in case the novated loan is designated in foreign currency, the IFC should hedge the entire foreign currency exposure; and
- viii) The reporting arrangements as applicable to the ECBs would be applicable to the novated loans.

**H.78. What is the meaning of Take-Out Finance? Under what conditions, take-out financing arrangement through ECB, under the approval route, is permitted?**

**Ans.** As per the extant norms, refinancing of domestic Rupee loans with ECB is not permitted. However, keeping in view the special funding needs of the infrastructure sector, a scheme of take-out finance has been put in place. Accordingly, take-out financing arrangement through ECB, under the approval route, has been permitted for refinancing of Rupee loans availed of from the domestic banks by eligible borrowers in the sea port and airport, roads including bridges and power sectors for the development of new projects, subject to the following conditions:

- i. The corporate developing the infrastructure project should have a tripartite

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- agreement with domestic banks and overseas recognized lenders for either a conditional or unconditional take-out of the loan within three years of the scheduled Commercial Operation Date (COD). The scheduled date of occurrence of the take-out should be clearly mentioned in the agreement.
- ii. The loan should have a minimum average maturity period of seven years.
  - iii. The domestic bank financing the infrastructure project should comply with the extant prudential norms relating to take-out financing.
  - iv. The fee payable, if any, to the overseas lender until the take-out shall not exceed 100 bps per annum.
  - v. On take-out, the residual loan agreed to be taken out by the overseas lender would be considered as ECB and the loan should be designated in a convertible foreign currency and all the extant norms relating to ECB should be complied with.
  - vi. Domestic banks / Financial Institutions will not be permitted to guarantee the take-out finance.
  - vii. The domestic bank will not be allowed to carry any obligation on its balance sheet after the occurrence of the take-out event.
  - viii. Reporting arrangement as prescribed under the ECB policy should be adhered to.

**H.78A Is conversion of ECB into equity permitted? If yes, what are the conditions?**

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- Ans.** Yes. Conversion of ECB into equity is permitted subject to the following conditions:
- (a) The activity of the company is covered under the Automatic Route for Foreign Direct Investment or Government (FIPB) approval for foreign equity participation has been obtained by the company, wherever applicable.
  - (b) The foreign equity holding after such conversion of debt into equity is within the sectoral cap, if any,
  - (c) Pricing of shares is as per the pricing guidelines issued under FEMA, 1999 in the case of listed/ unlisted companies.

It is clarified that where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. Reserve Bank will have no objection if the borrower company wishes to issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

It is further clarified that the principle of calculation of INR equivalent for a liability denominated in foreign currency as mentioned above shall apply, *mutatis mutandis*, to all cases where any payables/liability by an Indian company such as, lump sum fees/royalties, etc. are permitted to be converted to equity shares or other securities to be issued to a non-resident subject to the conditions stipulated under the respective Regulations.

**H.79. What are the reporting requirements at the time of conversion of ECB into Equity?**

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- Ans.** Conversion of ECB may be reported to the Reserve Bank as follows:
- (a) Borrowers are required to report full conversion of outstanding ECB into equity in the form FC-GPR to the Regional Office concerned of the Reserve Bank as well as in form ECB-2 submitted to the DSIM, RBI within seven working days from the close of month to which it relates. The words "ECB wholly converted to equity" should be clearly indicated on top of the ECB-2 form. Once reported, filing of ECB-2 in the subsequent months is not necessary.
  - (b) In case of partial conversion of outstanding ECB into equity, borrowers are required to report the converted portion in form FC-GPR to the Regional Office concerned as well as in form ECB-2 clearly differentiating the converted portion from the unconverted portion. The words "ECB partially converted to equity"

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should be indicated on top of the ECB-2 form. In subsequent months, the outstanding portion of ECB should be reported in ECB-2 form to DSIM.

**H.80. What is the procedure followed by AD banks to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporates in India into Rupees?**

**Ans.** AD banks desiring to crystallize their foreign exchange liability arising out of guarantees provided for ECB raised by corporates in India into Rupees, may make an application to the Chief General Manager-in-Charge, Foreign Exchange Department, External Commercial Borrowings Division, Reserve Bank of India, Central Office, Mumbai 400 001, giving full details viz., name of the borrower, amount raised, maturity, circumstances leading to invocation of guarantee /letter of comfort, date of default, its impact on the liabilities of the overseas branch of the AD bank concerned and other relevant factors.

**H.81. Under what circumstances, Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme? What are the reporting requirements for such approval?**

**Ans.** Designated AD banks are permitted to approve elongation of repayment period for loans raised under the erstwhile USD 5 Million Scheme, provided there is a consent letter from the overseas lender for such reschedulement without any additional cost. Such approval with existing and revised repayment schedule along with the Loan Key/Loan Registration Number should be initially communicated to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division Reserve Bank of India, Central Office, Mumbai within seven days of approval and subsequently in ECB - 2.

**H.82. Can designated AD Category-I banks approve any changes in the terms and conditions of the ECB after obtaining LRN from DSIM, RBI? What are the factors considered by AD banks for such approval in different situations?**

**Ans.** Any changes in the terms and conditions of the ECB after obtaining LRN from DSIM, RBI required the prior approval of RBI. The powers have been delegated to the designated AD Category-I banks to approve the following requests from the ECB borrowers, subject to specified conditions:

- (a) **Changes/modifications in the drawdown/repayment schedule:** Designated AD Category-I banks may approve changes/modifications in the drawdown/repayment schedule of the ECBs already availed, both under the approval and the automatic routes, subject to the condition that the average maturity period, as declared while obtaining the LRN, is maintained. Designated AD Category-I bank may also approve requests from ECB borrowers for changes/modifications in the drawdown schedule resulting in the original average maturity period undergoing change in respect of ECBs availed both under the automatic and approval routes, subject to ensuring that there are no changes/modifications in the repayment schedule of the ECB, the average maturity period of the ECB is reduced as against the original average maturity period stated in the Form 83 at the time of obtaining the LRN, such reduced average maturity period complies with the stipulated minimum average maturity period as per the extant ECB guidelines, the change in all-in-cost is only due to the change in the average maturity period and the ECB complies with the extant guidelines and the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM. The changes in the drawdown/repayment schedule should be promptly reported to the DSIM, RBI in Form 83. However, any elongation/rollover in the repayment on expiry of the original maturity of the ECB would require the prior approval of the Reserve Bank.
- (b) **Changes in the currency of borrowing:** Designated AD Category-I banks may allow changes in the currency of borrowing, if so desired, by the borrower

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company, in respect of ECBs availed of both under the automatic and the approval routes, subject to all other terms and conditions of the ECB remaining unchanged. Designated AD banks should, however, ensure that the proposed currency of borrowing is freely convertible. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

- (c) **Change of the AD bank:** Designated AD Category-I banks may allow change of the existing designated AD bank by the borrower company for effecting its transactions pertaining to the ECBs subject to No-Objection Certificate (NOC) from the existing designated AD bank and after due diligence. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.
- (d) **Changes in the name of the Borrower Company:** Designated AD Category-I banks may allow changes in the name of the borrower company subject to production of supporting documents evidencing the change in the name from the Registrar of Companies. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.
- (e) **Change in the recognized lender:** Designated AD Category-I banks may approve the request from the ECB borrowers with respect to change in the recognized lender when the original lender is an international bank or a multilateral financial institution (such as IFC, ADB, CDC, etc.) or a regional financial institution or a Government owned development financial institution or an export credit agency or supplier of equipment and the new lender also belongs to any one of the above mentioned categories, subject to the Authorised Dealer ensuring that the new lender is a recognized lender as per the extant ECB norms, there is no change in the other terms and conditions of the ECB and the ECB is in compliance with the extant guidelines. The changes in the recognized lender should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83. However, changes in the recognized lender in case of foreign equity holder and foreign collaborator would require the prior approval of the Reserve Bank.
- (f) **Cancellation of LRN:** The designated AD Category-I bank may directly approach DSIM for cancellation of LRN for ECBs availed, both under the automatic and approval routes, subject to ensuring that no draw down for the said LRN has taken place and the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM.
- (g) **Change in the end-use of ECB proceeds:** The designated AD Category-I bank may approve requests from ECB borrowers for change in end-use in respect of ECBs availed under the automatic route, subject to ensuring that the proposed end-use is permissible under the automatic route as per the extant ECB guidelines, there is no change in the other terms and conditions of the ECB, the ECB continues to comply with the extant guidelines and the monthly ECB-2 returns till date in respect of the LRN have been submitted to DSIM. The changes in the end-use should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83. However, change in the end-use of ECBs availed under the approval route will continue to be referred to the Foreign Exchange Department, Central Office, Reserve Bank of India, as hitherto.
- (h) **Reduction in amount of ECB:** The designated AD Category-I bank may approve requests from ECB borrowers for reduction in loan amount in respect of ECBs availed under the automatic route, subject to ensuring that the consent of the lender for reduction in loan amount has been obtained, the average maturity



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period of the ECB is maintained, the monthly ECB-2 returns in respect of the LRN have been submitted to the Department of Statistics and Information Management (DSIM); and there are no changes in the other terms and conditions of the ECB. The changes should be promptly reported to the Department of Statistics and Information Management, Reserve Bank of India in Form 83.

- (i) **Reduction in the all-in-cost of ECB:** The designated AD Category-I bank may approve requests from ECB borrowers for reduction in all-in-cost, in respect of ECBs availed both under the automatic and approval routes, subject to ensuring that the consent of the lender has been obtained, there are no other changes in the terms and conditions of the ECB and the monthly ECB-2 returns in respect of the LRN have been submitted to DSIM.

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**H.83. What is the definition of Trade Credits?**

**Ans.** Trade Credits' (TC) refer to credits extended for imports directly by the overseas supplier, bank and financial institution for maturity of less than three years. Depending on the source of finance, such trade credits include suppliers' credit or buyers' credit. Suppliers' credit relates to credit for imports into India extended by the overseas supplier, while buyers' credit refers to loans for payment of imports into India arranged by the importer from a bank or financial institution outside India for maturity of less than three years. It may be noted that buyers' credit and suppliers' credit for three years and above come under the category of External Commercial Borrowings (ECB) which are governed by ECB guidelines.

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**H.84. What is the permitted maximum limit of amount and minimum maturity period for a Trade Credit?**

**Ans.** AD banks are permitted to approve trade credits for imports into India up to USD 20 million per import transaction for imports permissible under the current Foreign Trade Policy of the DGFT with a maturity period up to one year (from the date of shipment). For import of capital goods as classified by DGFT, AD banks may approve trade credits up to USD 20 million per import transaction with a maturity period of more than one year and less than three years (from the date of shipment). No roll-over/extension will be permitted beyond the permissible period.

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**H.85. Can AD banks approve trade credit exceeding USD 20 million per import transaction?**

**Ans.** No. AD banks shall not approve trade credit exceeding USD 20 million per import transaction.

The companies in the infrastructure sector, where "infrastructure" is as defined under the extant guidelines on External Commercial Borrowings (ECB) have been allowed to avail of trade credit up to a maximum period of five years for import of capital goods as classified by DGFT subject to conditions that the trade credit must be *ab initio* contracted for a period not less than fifteen months and should not be in the nature of short-term roll overs. However, the condition of '*ab initio*' buyers' credit would be for 6 (six) months only for trade credits availed of on or before December 14, 2012.

The period of trade credit should be linked to the operating cycle and trade transaction. AD Category – I banks may ensure that these instructions are strictly complied with.

It has been decided to **allow companies in all sectors** to avail of trade credit not exceeding USD 20 million up to a maximum period of five years for import of capital goods as classified by Director General of Foreign Trade (DGFT). It has also been decided to relax the *ab-initio* contract period of 15 (fifteen) months for all trade credits to 6 (six) months.

AD Category - I banks are, however, not permitted to issue Letters of

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Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years.

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**H.86. What are the current all-in-cost ceilings of Trade Credits?**

**Ans.** The current all-in-cost ceilings are as under :

Maturity period	All-in-cost ceilings over 6 months LIBOR*
Up to one year	350 basis points
More than one year and upto but less than three years	
More than three years and upto five years	

\* for the respective currency of credit or applicable benchmark

The all-in-cost ceilings include arranger fee, upfront fee, management fee, handling/processing charges, out of pocket and legal expenses, if any. The existing all-in-cost ceiling is applicable upto March 31, 2014 and would be subject to review thereafter.

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**H.87. Are AD banks permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution? If yes, what are the terms and conditions?**

**Ans.** AD banks are permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution, up to USD 20 million per transaction for a period up to one year for import of all non-capital goods permissible under Foreign Trade Policy (except gold, palladium, platinum, Radium, silver etc.) and up to three years for import of capital goods, subject to prudential guidelines issued by Reserve Bank from time to time. The period of such Letters of credit / guarantees / LoU / LoC has to be co-terminus with the period of credit, reckoned from the date of shipment.

In respect of companies in the infrastructure sector as mentioned at para (a) (ii) above, AD banks are not permitted to issue Letters of Credit/guarantees/Letter of Undertaking (LoU) /Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years.

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**H.88. What are the reporting requirements in relation to Trade Credits?**

**Ans.** AD banks are required to furnish details of approvals, drawal, utilisation, and repayment of trade credit granted by all its branches, in a consolidated statement, during the month, in form TC (format in Annex IV) from April 2004 onwards to the Director, Division of International Finance, Department of Economic Policy and Research, Reserve Bank of India, Central Office Building, 8th floor, Fort, Mumbai – 400 001 (and in MS-Excel file through email to deapdif@rbi.org.in) so as to reach not later than 10th of the following month. Each trade credit may be given a unique identification number by the AD bank.

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**H.89. What are the reporting requirements in relation to issuance of LCs / Guarantees / LoU / LoC?**

**Ans.** AD banks are required to furnish data on issuance of LCs / Guarantees / LoU / LoC by all its branches, in a consolidated statement, at quarterly intervals (format in Annex V) to the Chief General Manager-in-Charge, Foreign Exchange Department, ECB Division, Reserve Bank of India, Central Office Building, 11<sup>th</sup> floor, Fort, Mumbai – 400 001 (and in MS-Excel file through email to fedcoecbd@rbi.org.in) from December 2004 onwards so as to reach the Department not later than 10th of the following month.

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- I.2.** What will be the consequences in case we do not file the said FLA Return by 15th July, as our accounts are not audited as yet, and we do not wish to file it with unaudited figures. Will there be any imposition of penalty or prosecution initiated against the company by RBI or FEMA? Since nowhere it is mentioned either in the Circular No. 133 dated June 20, 2012 or in the Annex to AP (DIR Series) Circular No. 133 about the penalty or the prosecution, so, can we assume that we can file the same once our accounts are audited without any risk of penalty or other proceedings from the concerned authority in future?
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- I.29.** What is the meaning of Technical Foreign Collaboration (item-11)?

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- I.30.** The section II Password is asked while entering data. Is the Return password protected?
- I.31.** What are participating and non-participating preference shares?
- I.32.** Whether equity participation includes equity shares as well as compulsorily convertible debentures (CCD)?
- I.33.** Whether, in Section II- Block 1A- Item 3.0, the Non-Resident Equity and participating Preference Shares Capital holding (%) is being calculated with respect to Item 1.0 (Total Paid-up capital) or Item 1.1 (Total Equity and participating Preference Shares Capital)?

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- I.34.** Where should we report the premium on issue of Equity Share Capital?
- I.35.** We are not able to insert negative figures at item 4.1 of Block 1C. What should we do?

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- I.36.** What should we include in Block 1D?

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##### **Block 2A/2B**

- I.37.** How will we do the valuation of the equity capital for unlisted companies?
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- I.39.** What constitute the 'Other Capital' component of FDI?
- I.40.** What is the definition of related party?
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- I.43.** What treatment should be given to share application money received from non-resident investor?
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- I.45.** In the FLA Return, whether FDI should be reported based on the country of immediate investor or country of ultimate holding company? Where should we report the receivable/ payables with non-resident ultimate holding company?
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#### **Block 2C**

- I.46.** What constitute in the Equity Securities under portfolio Investment?
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- I.48.** Can you explain, what exactly is the meaning of Block 3A of Section IV under Foreign assets?
- I.49.** If the overseas subsidiaries/ joint venture company's accounting period is different from the reference/reporting period (i.e. April-March) in the Return, then what information should we furnish in Section IV?

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- I.50.** In case where overseas company (DIE) is unlisted, how can we calculate the market value of overseas equity investment using OFBV method under Block 4A of Section IV?
- I.51.** How will we do the valuation of the equity capital for listed DIE?
- I.52.** What constitute the 'Other Capital' component of ODI?

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- I.53.** What constitute in the Equity Securities under Portfolio Investment Abroad?
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#### **FAQs Related to Section V**

#### **Block: 6**

- I.55.** In case of section-V of the form, it is written that position with foreign unrelated parties to be given. Please clarify what transactions are to be reported under the same?
- I.56.** Will EEFC account with Bank come under Section V (Currency and Deposit of Outstanding Claims)?
- I.57.** Whether, any assets or liabilities for Indian party (i.e. domestic assets and liabilities) are to be included in the FLA Return?

**CHAPTER I - Annual Return on Foreign Liabilities and Assets (FLA return)  
under FEMA, 1999**

**I.1. When was Annual Return on Foreign Liabilities and Assets first notified, and what is the purpose? When was this last modified?**

**Ans.** RBI vide A.P. (DIR Series) Circular No.45 dated 15th March, 2011 first notified FLA Return. In order to capture the statistics relating to Foreign Direct Investment (FDI), both inward and outward in a more comprehensive manner as also to align it with international best practices, it was decided to replace Part B of the Form FC-GPR by a separate 'Annual Return on Foreign Liabilities and Assets'. The return should be submitted by July 15 of every year to the Director, Balance of Payment Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, C-9, 8th floor, Bandra Kurla Complex, Bandra (E), Mumbai-400 051. The Annex-II gives the concepts and definitions useful in filling the Annual Return on Foreign Liabilities and Assets.

Vide RBI A.P. (DIR Series) Circular No.133 dated June 20, 2012, FLA Return was revised.

**I.2. What will be the consequences in case we do not file the said FLA Return by 15th July, as our accounts are not audited as yet, and we do not wish to file it with unaudited figures. Will there be any imposition of penalty or prosecution initiated against the company by RBI or FEMA? Since nowhere it is mentioned either in the Circular No. 133 dated June 20, 2012 or in the Annex to AP (DIR Series) Circular No. 133 about the penalty or the prosecution, so, can we assume that we can file the same once our accounts are audited without any risk of penalty or other proceedings from the concerned authority in future?**

**Ans.** Annual return on Foreign Liabilities and Assets has been notified under FEMA 1999 and it is required to be submitted by all the India resident companies which have received FDI and/ or made overseas investment in any of the previous year(s), including current year by July 15 every year. Non-filing of the return before due date will be treated as a violation of FEMA.

**I.3. What information should be reported in FLA return, if balance sheet of the company is not audited before the due date of submission?**

**Ans.** If the company's accounts are not audited before the due date of submission, i.e. July 15, then the FLA Return should be submitted based on unaudited (provisional) account. Once the accounts gets audited and there are revisions from the provisional information submitted by the company, they are supposed to submit the revised FLA return based on audited accounts by end - September.

**I.4. In case where Account Closing Period of the company is different from reference period (end-March), can we report the information as per Account Closing Period?**

**Ans.** No. Information should be reported for all the reference period, i.e. Previous March and Latest March. If Account Closing Period of the company is different from the reference period, then information should be given for the reference period on internal assessment.

**Eligible Companies to Submit the FLA Return**

**I.5. Which companies are required to submit the FLA Return?**

**Ans.** The annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies which have received FDI (foreign direct investment) and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year i.e. who holds foreign Assets or Liabilities in their Balance

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Sheets.

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**I.6. How to identify the reporting Company in terms of inward FDI (Item 9, Section-I): (a) Subsidiary of Foreign entity (b) Associate of foreign entity (c) Public Private Partnership (d) Special Purpose Vehicle (d) Other?**

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**Ans. a) Foreign Subsidiary:**

An Indian company is called as a Foreign Subsidiary if a non-resident investor owns more than 50% of the voting power/equity capital OR where a non-resident investor and its subsidiary(s) combined own more than 50% of the voting power/equity capital of an Indian enterprise.

**b) Foreign Associate:**

An Indian company is called as Foreign Associate if non-resident investor owns at least 10% and no more than 50% of the voting power/equity capital OR where non-resident investor and its subsidiary(s) combined own at least 10% but no more than 50% of the voting power/equity capital of an Indian enterprise.

**c) Special Purpose Vehicle:**

A special purpose Vehicle (SPV) is a legal entity (usually a limited company of some type or, sometimes, a limited partnership) created to fulfil narrow, specific or temporary objectives. SPV have little or no employment, or operations, or physical presence in the jurisdiction in which they are created by their parent enterprises, which are typically located in other jurisdictions (economies). They are often used as devices to raise capital or to hold assets and liabilities and usually do not undertake significant production.

**d) Public Private Partnership:**

Public-private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project.

**I.7. If a company did not receive FDI or made overseas investment in any of the previous year(s) including the current year, do we need to submit the FLA Return?**

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**Ans.** If the Indian company does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, the company need not submit the FLA Return.

**I.8. If a company has only share application money, then is that company supposed to submit the FLA Return?**

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**Ans.** If a company has received only share application money and does not have any foreign direct investment or overseas direct investment outstanding as on end-March of the reporting year, then that company is not required to fill up FLA return.

**I.9. If the company has not received any inward FDI / made overseas investment in the latest year, do they need to submit the FLA Return?**

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**Ans.** If the company has not 'received any fresh FDI and/or ODI (overseas direct investment)' in the latest year but the company has outstanding FDI and/or ODI, then that company is required to submit the FLA Return every year by July 15.

**I.10. Whether FLA Return is required to be submitted by Registered Partnership Firms (Registered under Partnership Registration Act) or branches or trustees, who have made Overseas Direct Investment or it is mandatory only for Companies (Registered under Companies Act, 1956)?**

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**Ans.** If the Partnership firms, Branches or Trustees have any outward FDI outstanding as on end-March of the reporting year, then they are required to send a request mail to

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get a dummy CIN number which will enable them to file the Excel based FLA Return. If any entity has already got the dummy CIN number from the previous survey, they should use the same CIN number in the current survey also.

**It is also informed that these dummy CIN numbers are provided by RBI for filling the excel based FLA return only and not for any other purpose.**

**I.11. Is it required to submit Annual Performance Report for ODI, if we have submitted FLA Return?**

**Ans.** Yes. FLA Return and Annual Performance Report (APR) for ODI are two different returns as per different FEMA Notifications. While APR is to be submitted separately for every JV / WOS of an Indian party, based on the audited (or un-audited, if permitted) accounts of the JV / WOS, by June 30th every year, FLA Return is to be submitted by the Indian company by July 15th every year based on their balance sheet.

**I.12. If non-resident shareholders of a company has transferred their shares to the residents during the reporting period, then whether that company is required to submit the FLA Return?**

**Ans.** If all non-resident shareholders of a company has transferred their shares to the residents during the reporting period and the company does not have any outstanding investment in respect of inward and outward FDI as on end-March of reporting year, then the company need not submit the FLA Return.

**I.13. If company issued the shares to non-resident on Non-Repatriable basis, whether that company is required to submit the FLA Return?**

**Ans.** Shares issued by reporting company to non-resident on Non-Repatriable basis should not be considered as foreign investment; therefore, companies which have issued the shares to non-resident only on Non-Repatriable basis, is not required to submit the FLA Return.

**Procedure for Submission of the FLA Return and Acknowledgement therefor**

**I.14. Where can company get revised format of Annual Return on Foreign Liabilities and Assets (FLA Return)?**

**Ans.** The revised format of FLA is available on RBI's web site,  
[http://rbi.org.in/scripts/BS\\_ViewFemaForms.aspx](http://rbi.org.in/scripts/BS_ViewFemaForms.aspx)  
(Home >> Forms >> Foreign Exchange Management Act Forms )  
Annual return on Foreign Liabilities and Assets

Company can download the updated FLA return every year by end of May. Company should use FLA return only.

**I.15. What is the due date of submission of the FLA return?**

**Ans.** FLA return is mandatory under FEMA 1999 and companies are required to submit the same based on audited/ unaudited account by **July 15** every year.

**I.16. Where should we submit the FLA return?**

**Ans.** Filled-in the Excel based FLA return should be sent by email by 15 July. Any other attachment should not be forwarded along with the FLA return.

**I.17. Where should we contact regarding any clarification for submission of FLA Return?**

**Ans.** Any query regarding filling of FLA return should be sent by email. You may also contact RBI person handling FLA return at (022) 26578348/ 26578217/ 26578454/ 26578340/ 26578241

**I.18. From whose mail id the FLA Return should be e-mailed? Whether it is necessary**



**to e-mail the FLA Return from the mail id of the person mentioned in Contact Details?**

**Ans.** The filled-in Excel based FLA return should be forwarded through the official email id of any authorized person like CFO, Director, Company Secretary etc. Acknowledgement will be forwarded to the both email ids (sender and mentioned in Contact Details).

**I.19. Is it required to submit any financial statements like balance sheet or P&L accounts (audited/ unaudited) along with the FLA return?**

**Ans.** You are required to submit only the filled-in Excel based format of FLA by email before due date. Financial statements or any information in separate annex should not be forwarded along with the FLA return.

**I.20. We have already submitted a hard copy of the FLA return with RBI office. Do we need to submit the FLA return in revised format once again?**

**Ans.** The Return has to be submitted in the Excel based format, which has **inbuilt checks and validations**. So if there are any discrepancies in the furnished information, you will be able to know and rectify them at your end before submitting the information to RBI. Further, by submission of the information in Excel based format by email will ensure that you will receive the **confirmation email** from RBI within a week for successful processing of data submitted by you. In view of this, you are advised to resubmit the information in prescribed format of FLA return through email.

**I.21. As per the circular, excel file of return is required to be mailed. However, there is no column for the signature in the soft form. Should we, therefore, submit the signed hard copy or scanned copy of return to your office later or sending soft copy (validated) only would be sufficient compliance?**

**Ans.** It is sufficient to submit the validated excel based soft copy of filled-in FLA return through **official email id of any authorized person of company like CFO, Director, Company Secretary etc.** by email before due date for compliance purpose.

**I.22. How would an acknowledgement is provided to us on submission of the form via e-mail?**

**Ans.** After sending the Excel based FLA return to email, you will receive an acknowledgement. Ensure that you have received a successful processing acknowledgement. **If some error is mentioned in the acknowledgement rather than successful processing statement, then you have to resubmit the form by rectifying the mentioned error.**

**I.23. Can we send the PDF copy of the FLA return as we are facing some technical problem while furnishing the information in excel based format?**


**Ans.** You need to submit the information in the Excel based format only through email. In case of technical problem, you may forward the filled-in excel based form as it is as draft excel based FLA return to email in for rectifying the problem faced by you.

#### **System Requirement for the FLA Return**

**I.24. What is the system requirement at company's side for filling the FLA Return and procedure for filling it electronically?**

**Ans.** Company should have MS office Excel – 2003 onwards. Before filling the information in Excel based FLA Return, make sure that you have **enabled the macro in Excel**. In order to enable the macro, please do the following:

**a) In Microsoft 2007**

Go to  Office Button >> Excel Options >> popular Select **'Show developer tab in the Ribbon'**, then Go to Developer tab >> Macro Security >> select **'Enable all macros'**

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**b) In Microsoft 2010**

Go to File >> option >> trust centre >> trust centre setting >> macro setting  
Select 'Enable all macros'

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**I.25. How should we save the return?**

**Ans.** It is required to save the FLA return in **Excel 97-2003 Workbook (.xls format)**.

In order to save the return as follows:



Go to Office Button >> Save As >> Save as type Select 'Excel 97-2003 Workbook'

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**FAQs Related to Section I**

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**I.26. Where can we find the detailed description of NIC-2008 code (item-6)?**

**Ans.** In the FLA Return, industry codes are given as per the National Industrial Classification (NIC)-2008 codes. The details on NIC-2008 codes can be accessed through the following link,  
[http://mospi.nic.in/mospi\\_new/upload/nic\\_2008\\_17apr09.pdf](http://mospi.nic.in/mospi_new/upload/nic_2008_17apr09.pdf).

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**I.27. If a company has more than one activity during the year then which NIC code should be reported by company (item-6)?**

**Ans.** Company will select that activity, from which, they have earned major revenue.

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**I.28. If Company has only Outward Investment and no inward FDI, then what should we select in Identification of the reporting company (in terms of inward investment) under Section I (Item 9)?**

**Ans.** Option 'Others' can be selected in respect of Identification of the reporting company under Section I.

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**I.29. What is the meaning of Technical Foreign Collaboration (item-11)?**

**Ans.** Indian company which has entered into an agreement with a foreign entity in terms of technology transfer, know-how transfer, use of patent, brand name etc, then such type of agreements are treated as Foreign Technical Collaboration (FTC). If Indian reporting company has such type of FTC during the reporting period, then they should select 'Yes' against the item 11 under Section I of the FLA return.

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**FAQs Related to Section II**

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**Block 1A**

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**I.30. The section II Password is asked while entering data. Is the Return password protected?**

**Ans.** Don't try to fill purple cells in the Return, as those are locked/ password protected. Fill-in the yellow cells only. Purple cells denote calculated fields, which are computed automatically.

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**I.31. What are participating and non-participating preference shares?**

**Ans.** Participating preference shares are those shares which have one or more of the following rights:

- (a) To receive dividend, out of surplus profit after paying the dividend to equity shareholders.
- (b) To have share in surplus assets remaining after the entire capital is paid in case of winding up of the company.

On the other hand Non-participating Preference Shares are those shares which do not have one or more of the above said rights.

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**I.32. Whether equity participation includes equity shares as well as compulsorily**

**convertible debentures (CCD)?**

**Ans.** Compulsorily convertible debentures (CCD) issued by the company should not be included in the paid up capital while furnishing the information in Block 1A (in Section II) of the FLA Return. However, if the CCDs / Debentures are held by the non-resident direct investor who is holding the equity shares of Indian reporting company, then CCD / Debentures holding should be reported in 'other capital' component of either Block 2A or 2B (in Section III), depending upon the per cent equity held by the non-resident direct investor.

However if the investor holds only CCD as on end March, then it should be reported in item 2.2 of Block 2C. Similar treatment should be considered while reporting the compulsory convertible preference shares also.

**I.33. Whether, in Section II- Block 1A- Item 3.0, the Non-Resident Equity and participating Preference Shares Capital holding (%) is being calculated with respect to Item 1.0 (Total Paid-up capital) or Item 1.1 (Total Equity and participating Preference Shares Capital)?**

**Ans.** Since Non-Participating share capital is a type of debt investment and is part of Item 1.0, Non-Resident Equity and participating Preference Shares Capital holding (%) is calculated with respect to item 1.1 of Block 1A (in Section II).

**Block 1C**

**I.34. Where should we report the premium on issue of Equity Share Capital?**

**Ans.** Premium on issue of Equity Share Capital is a part of Reserve, which should be reported under the item 4.1 of Block 1C- Reserves and Surplus, (in Section II).

**I.35. We are not able to insert negative figures at item 4.1 of Block 1C. What should we do?**

**Ans.** At item 4.1 of Block 1C, you are supposed to mention the information on Reserves **excluding Profit & Loss account balance**, which is always be positive and Profit & loss account balances (carried forward to the balance sheet) should be reported separately at item 4.2 of Block 1C, which can be negative. Ensure that the item 4.3 of Block 1C (i.e. Item 4.1 + Item 4.2), which is auto calculated figure, must be equal to the Reserve and Surplus mention in Balance sheet of the company.

**Block 1D**

**I.36. What should we include in Block 1D?**

**Ans.** In Block 1D, you are required to provide the information relating to all purchases (including capital and revenue of goods and services)/ sales made domestically as well as foreign during the reference period (April - March).

**FAQs Related to Section III****Block 2A/2B**

**I.37. How will we do the valuation of the equity capital for unlisted companies?**

**Ans.** To calculate the market value of equity capital for unlisted companies use the OFBV method as follows:

Market value of equity capital held by Non- resident at OFBV  
= (Net worth of the company) \* (% non-resident equity holding)

Where, Net worth of the company  
= (Paid up Equity & Participating Preference share capital of company + Reserves & Surplus - Accumulated losses)

However, in excel based format of FLA Return, Net worth of company will be

	automatically calculated at item 4.4 of Block 1C under Section II, which may be used for valuation of non-resident equity investment under Section III.
<b>I.38.</b>	<b>What valuation guidelines should be used while reporting foreign equity investment under Section III for listed companies?</b>
<b>Ans.</b>	If the <b>Indian reporting company is listed</b> then closing share price as on reference period, i.e. end-March of previous and latest year should be used for valuation of non-resident equity investment.
<b>I.39.</b>	<b>What constitute the ‘Other Capital’ component of FDI?</b>
<b>Ans.</b>	Other capital is a debt which is to be reported as follows: <ol style="list-style-type: none"> <li>(a) Other capital, item 2.1 &amp; 2.2 of Block-2A includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its <b>direct investors holding more than 10 per cent equity</b>.</li> <li>(b) Other capital, item 2.1 &amp; 2.2 of Block-2B includes all other liabilities and claims at Nominal value, except equity and participating preference shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with <b>non-resident investors holding less than 10 per cent equity and indirect related parties</b> (fellow enterprise or ultimate parent company or group company etc.).</li> </ol>
<b>I.40.</b>	<b>What is the definition of related party?</b>
<b>Ans.</b>	<p>A related party is a person or entity that is related to the entity that is preparing its financial statements (referred to as the ‘reporting entity’).</p> <p>A person or a close member of that person’s family is related to a reporting entity if that person:</p> <ol style="list-style-type: none"> <li>1. has control or joint control over the reporting entity;</li> <li>2. has significant influence over the reporting entity; or</li> <li>3. is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.</li> </ol> <p>In the definition of a related party, an associate includes subsidiaries of the associate and a joint venture includes subsidiaries of the joint venture. Therefore, for example, an associate’s subsidiary and the investor that has significant influence over the associate are related to each other.</p>
<b>I.41.</b>	<b>Where should we report the non-participating preference share issued to non-resident?</b>
<b>Ans.</b>	Non-participating preference share are treated as debt securities. (a) If the Non-participating preference shares are held by foreign investor who is also holding equity shares of Indian reporting company, then Non-participating preference share should be reported at item 2.1 of Block 2A or 2B (depending upon the % equity & participating preference share held by foreign investor) at nominal value.
<b>I.42.</b>	<b>Where should we report Fully/Partially/Non-convertible debentures issued to the non-residents in FLA Return?</b>
<b>Ans.</b>	Fully/Partially/Non-convertible debentures are treated as debt securities. (a) If the debentures (of any type) are held by foreign investor, the amount should be reported at item 2.1 of Block 2A or 2B (depending upon the % equity plus participating preference share held by foreign investor) at nominal value.
<b>I.43.</b>	<b>What treatment should be given to share application money received from non-resident investor?</b>
<b>Ans.</b>	If the share application money is received from the existing non-resident shareholder,

then the outstanding share application money should be reported at item 2.1 of Block 2A or 2B, depending upon per cent of equity plus participating preference share holding by non-resident investor.

**I.44. On validating section III of the FLA Return we are getting the error message regarding mismatch of non-resident equity and participating preference share holding (%) between Section III and Section II. How should we resolve the error?**

**Ans.** Non-resident equity holding per cent (%) is calculated for current year at item 3.0 of Block 1A under Section II. Ensure that the sum of Non-resident equity holding per cent (%) reported under Block 2A, 2B & 2C of Section III must be equal to value given at item 3.0 of Block 1A of Section II.

**I.45. In the FLA Return, whether FDI should be reported based on the country of immediate investor or country of ultimate holding company? Where should we report the receivable/ payables with non-resident ultimate holding company?**

**Example: A company incorporated in Mauritius has invested into Indian company. The parent company of Mauritian company is incorporated in USA. So whether claims and liabilities of Indian company with parent company incorporated in USA also needs to be disclosed in the FLA Return and if yes, where?**

**Ans.** While filling the FLA return, FDI reporting should be based on the country of immediate investor. However, if there are any receivables/payables with the non-resident ultimate holding company, then same should also be reported at 'Other capital' component of Block 2B under Section III.

In respect of the above example, claims and liabilities of Indian company with the parent USA Company will be reported at 'Other capital' component of Block 2B under Section III.

#### **Block 2C**

**I.46. What constitute in the Equity Securities under portfolio Investment?**

**Ans.** Please furnish here the outstanding equity investments (secondary / stock market investment) by non-resident investors, other than those made under Foreign Direct Investment Scheme in India (i.e. other than those reported in Block-2A & Block-2B).

**I.47. What constitute in the Debt Securities under portfolio Investment?**

**Ans.** Following items are included in Debt Securities:

- (a) Money Market Instruments and Bonds & Other instruments are invested by non-resident investors, **(other than those are reported in Block-2A & Block-2B)**
- (b) Non-participating preference shares and debentures are held by foreign investor who is not holding equity share, then the same should be reported at item 2.2 of Block 2C (Bonds & Notes) at nominal value.

#### **FAQs Related to Section IV**

##### **Block 3A**

**I.48. Can you explain, what exactly is the meaning of Block 3A of Section IV under Foreign assets?**

**Ans.** Block 3A of Section IV on foreign assets captures the information on financial details of Overseas Company in which your company's equity holding is 10 per cent or more.

**I.49. If the overseas subsidiaries/ joint venture company's accounting period is different from the reference/reporting period (i.e. April-March) in the Return,**

**then what information should we furnish in Section IV?**

**Ans.** Companies are required to furnish the information on outstanding external liabilities and assets as on end-March of previous and latest year. In case if the accounting period of overseas subsidiaries/ joint venture of Indian reporting company is different from the reference period, then the information for end-March should be given on internal assessment basis.

**Block 4A**

**I.50. In case where overseas company (DIE) is unlisted, how can we calculate the market value of overseas equity investment using OFBV method under Block 4A of Section IV?**

**Ans.** For valuation of overseas equity investment OFBV Method should be used, as explained below:

OFBV Method:

Market value of equity capital held by you at OFBV = (Net worth of the DIE) \* (% of equity held by you)

Where,

Net worth of the DIE = (Paid up Equity & Participating Preference share capital of company + Reserves & Surplus - Accumulated losses)

As per Block 3A of section IV the formula is given below:

Item 1.1 of Block 4A = (Item 3.2/ Item 3.1)\* (Item 3.6\* Item 3.7)/100000 for reference period Where, Item 3.1, Item 3.2, Item 3.6 and Item 3.7 are extracted from block 3A

**I.51. How will we do the valuation of the equity capital for listed DIE?**

**Ans.** If the **overseas company is listed** then closing share price as on reference period, i.e. end-March of previous and latest year should be used for valuation of equity investment.

**I.52. What constitute the 'Other Capital' component of ODI?**

**Ans.** Other capital is a debt which to be reported as follows:

- (a) Other capital, item 2.1 & 2.2 of Block-4A includes all other claims and liabilities at Nominal value, except equity shares, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with its DIE reported in Block-4A.
- (b) Other capital, item 2.1 & 2.2 of Block-4B includes all other liabilities and claims at Nominal value, except equity, (i.e. trade credit, loan, debentures, Non-participating share capital, other accounts receivable and payables etc.) of Indian reporting company with non-resident companies where Indian company holds less than 10 per cent equity and also with indirect related parties (fellow enterprise or ultimate parent company or group company etc.).

**Block 5**

**I.53. What constitute in the Equity Securities under Portfolio Investment Abroad?**

**Ans.** Please furnish here the outstanding equity investments (foreign stock market investment) by reporting company, other than those made under Foreign Direct Investment Abroad (i.e. other than those reported in Block-4A & Block-4B).

**I.54. What constitute in the Debt Securities under Portfolio Investment Abroad?**

**Ans.** Money Market Instruments and Bonds & Other instruments are invested by reporting company (other than those are reported in Block-4A & Block-4B) are included in the Debt Securities under Portfolio Investment Abroad.

FAQs Related to Section V
Block: 6

**I.55. In case of section-V of the form, it is written that position with foreign unrelated parties to be given. Please clarify what transactions are to be reported under the same?**

**Ans.** All financial outstanding liabilities and claims (Trade Credit, Loans, Currency & Deposits, and other receivable & payable accounts) with foreign unrelated Parties should be reported in Block 6. **Any domestic liabilities or assets (even if it is in foreign currency) should not be reported in the FLA return.**

Further, if the share application money is received from foreign investor who does not hold equity shares of Indian reporting company as on reference date, then outstanding share application money should be disclosed under Section V, at point 6.4: Other receivable and payable accounts.

**I.56. Will EEFC account with Bank come under Section V (Currency and Deposit of Outstanding Claims)?**

**Ans.** EEFC account with Bank is not creating any external Assets and Liabilities. Therefore it will not come under Section V.

**I.57. Whether, any assets or liabilities for Indian party (i.e. domestic assets and liabilities) are to be included in the FLA Return?**

**Ans.** Any domestic liabilities or assets (even if it is in foreign currency) should not be reported in the FLA return.

[illegible]



## Index of Questions

### CHAPTER J - COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

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**J.1. What broadly are the contraventions under FEMA?**

**Ans.** As per **section 13 of FEMA, 1999**, if any person contravenes any provision of FEMA, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under FEMA, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

If any person fails to make full payment of the penalty imposed on him under section 13 within a period of ninety days from the date on which the notice for payment of such penalty is served on him, he shall be liable to civil imprisonment under this section.

Any Adjudicating Authority adjudging any contravention, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include:

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

**J.2. What is meant by Compounding?**

**Ans.** Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. It is a voluntary process in which an individual or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, malafide and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

**J.3. What kinds of contraventions can be compounded?**

**Ans.** As per **section 15 of FEMA**, any contravention under section 13 except the contraventions under section 3 (a) of FEMA (dealing essentially with Hawala transactions) may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application subject to Foreign Exchange (Compounding Proceedings) Rules, 2000 read with A.P. (DIR Series) Circular No. 56 dated June 28, 2010, Circular No. 57 dated December 13, 2011, A.P. (DIR Series) Circular No.20 dated 12th August, 2013 and FAQ dated July 02, 2012.

**J.4. Who is empowered to deal with the compounding applications for specified contraventions?**

**Ans.** CEFA (Cell for Effective Implementation of FEMA) is a Cell in the Foreign Exchange Department of the Reserve Bank of India, Central Office, Mumbai, attending to all matters relating to compounding. Regional offices of RBI are also empowered to deal with Compounding applications for specified contraventions.

**J.5. Who can apply for compounding?**

**Ans.** Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

**J.6. When should one apply for compounding?**

**Ans.** When a person is made aware of the contravention of the provisions of FEMA, 1999 by the Reserve Bank or the Foreign Investment Promotion Board (FIPB) or any other statutory authority or the auditors or by any other means, she/he/it may apply for compounding. One can also make an application for compounding, suo moto, on becoming aware of the contravention.

**J.7. What is the procedure for applying for compounding?**

**Ans.** The form given as Annex – I to the A.P.(DIR Series) Circular No. 56 dated June 28, 2010 issued by the Reserve Bank of India, can be used for applying for compounding. The same can also be downloaded from the Reserve Bank's website by clicking on the link i.e. [http://www.rbi.org.in/Scripts/BS\\_ApCircularsDisplay.aspx](http://www.rbi.org.in/Scripts/BS_ApCircularsDisplay.aspx).

**J.8. Where should one apply for compounding?**

**Ans.** Regional Offices of the Reserve Bank of India mentioned below are permitted to compound the contraventions of FEMA involving

- (i) Delay in reporting inward remittance received for issue of shares.
- (ii) Delay in filing form FC(GPR) after issue of shares.
- (iii) Delay in issue of shares/refund of share application money beyond 180 days, mode of receipt of funds, etc.
- (iv) Violation of pricing guidelines for issue of shares.
- (v) Issue of ineligible instruments such as nonconvertible debentures, partly paid shares, shares with optionality clause, etc.
- (vi) Issue of shares without approval of RBI or FIPB respectively, wherever required.

(viz. paragraphs 9(1)(A), 9(1)(B), 8, 5, Regulation 2(ii) read with Regulation 5(1), and 2 or 3 respectively, of the Schedule I to FEMA 20)

	Regional Offices	Amount of Contravention
a)	All Regional Offices (except Kochi and Panaji)	without any limit
b)	Kochi and Panaji	Below Rupees One Crore only

The contraventions above Rupees one hundred lakh (Rs.1,00,00,000/-) under the jurisdiction of Panaji and Kochi Regional Offices and all other contraventions of FEMA will continue to be compounded at Cell for Effective Implementation of FEMA (CEFA), Mumbai, as hitherto.

Accordingly, applications for compounding related to the above contraventions may be submitted by the concerned entities to the respective Regional Offices under whose jurisdiction they fall. For all other contraventions, applications may continue to be submitted to CEFA, Foreign Exchange Department, 5th floor, Amar Building, Sir P.M. Road, Fort, Mumbai 400001.

The prescribed fee of Rs. 5000 may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office where the application is being submitted and at Mumbai if the application is submitted at CEFA, Mumbai.

**J.9. Are any fees required to be paid for seeking compounding?**

**Ans.** Yes. The application in the prescribed format along with necessary documents and a demand draft for Rs. 5000 (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.

**J.10. What are the details required to be filled in the application form?**

**Ans.** Along with the application in the prescribed format, the applicant may also furnish the details\*\* as per the Annexes - relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as applicable, (attached to the A.P. (DIR Series) Circular No. 20 dated 12 August, 2013) along with an undertaking that they are not under investigation of any agency such as DOE, CBI, etc., a copy of the Memorandum and Articles of Association and latest audited balance sheet while applying for compounding of contraventions under FEMA, 1999.

To expedite the refund of compounding fees, it has been decided to credit the same to the applicant's account through NEFT. The applicants are advised to furnish their mandate and details of their bank account as per ANNEX to Circular No. 20 dated 12 August, 2013.

**\*\*Details to be furnished along with application for compounding of contravention relating to Foreign Direct Investment in India**

Name of the applicant; Date of incorporation; Income-tax PAN; Nature of activities undertaken (Please give NIC code-1987); Brief particulars about the foreign investor; Details of foreign inward remittances received by Applicant Company from date of incorporation till date; Copies of Balance Sheet during the period of receipt of share application money and allotment of shares; Nature of contravention and reasons for the contravention.

**Details to be furnished along with application for compounding of contravention relating to External Commercial Borrowing**

Name of the applicant; Date of incorporation; Income-tax PAN; Nature of activities undertaken (Please give NIC code-1987); Brief particulars about the foreign lender; Is the applicant an eligible borrower?; Is the lender eligible lender?; Is the lender an equity holder?; What is the level of his holding at the time of loan agreement?; **Details of ECB:** Date of Loan agreement; Amount in Foreign Currency and Indian Rupee; Rate of interest; Period of loan; Repayment particulars; Details of draw down; Date of draw down; Amount in Foreign Currency; Amount in INR; Details of LRN Number-application and receipt; Details of ECB 2 returns submitted; Period of return: Date of submission; Details of Utilization of ECB in Foreign Currency and Indian Rupee; Nature of contravention and reasons for the contravention; All supporting documents may be submitted.

**Details to be furnished along with application for compounding of contravention relating to Overseas Investment**

Name of the applicant; Date of incorporation; Income-tax PAN; Nature of activities undertaken (Please give NIC code-1987); Name of Overseas entity; Date of incorporation of overseas entity; Nature of activities under taken by overseas entity; Nature of entity- WOS/JV; Details of remittance sent- Date of remittance; Amount in FCY and in INR; Details of other financial Commitment; Details of UIN applied and received; Date of receipt of share certificate; Approval of other regulators if required; Details of APRs submitted: For the period ended; date of submission; Nature of contravention and reasons for the contravention; All supporting documents may be submitted.

**Details to be furnished along with application for compounding of contravention relating to Branch/Liaison Office in India**

Name of the applicant; Date of incorporation; Income-tax PAN; Nature of activities undertaken (Please give NIC code-1987); Date of approval for opening of Liaison Office/ Branch Office; Validity period of the approval; income and expenditure of the LO/BO; Dates of submission of Annual activity Certificates; Nature of contravention and reasons for the contravention; All supporting documents may be submitted.

**J.11. What are the compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE)?**

**Ans.** The compounding powers of the Reserve Bank and the Directorate of Enforcement (DoE), respectively, are as under:

- (a) Reserve Bank has been empowered to compound the contraventions of all the Sections of FEMA, 1999, except clause (a) of Section 3\* of the Act in the following manner:

Sum involved	Authorise Officer
Upto 10 lakh	Assistant General Manager
More than 10 lakh but less than 40 lakh	Deputy General Manager
More than 40 lakh but less than 100 lakh	General Manager
More than 100 lakh	Chief General Manager

- (b) Directorate of Enforcement would exercise powers of compounding under clause (a) of Section 3 of FEMA, 1999 (dealing essentially with Hawala transactions).

For effective implementation of compounding process under FEMA, 1999, the Reserve Bank has framed the procedure for compounding of contraventions. Once a contravention has been compounded by the Compounding Authority, no proceeding or further proceeding will be initiated or continued, as the case may be, against the contravener.

\* Section 3 -Dealing in foreign exchange, etc.-Save as otherwise provided in this Act, rules or regulations made there under, or with the general or special permission of the Reserve Bank, no person shall-(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person.

**J.12. Can an application for compounding be sent to the Reserve Bank pending fulfilment of certain obligations?**

**Ans.** No. All requisite approvals should be obtained and compliances should be completed before seeking compounding of contravention. Compounding can be done only after rectifying the records by way of obtaining post-facto approvals or unwinding the transactions in cases where such transactions are not permissible under FEMA, 1999. Copies of approvals and other compliances should be enclosed along with the application.

**J.13. What happens to contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules?**

**Ans.** In terms of sub rule (2) of Rule 4 of Foreign Exchange (Compounding Proceedings) Rules, 2000, in respect of a contravention committed by any person within a period of three years from the date on which a similar contravention committed by him was compounded under the Compounding Rules, such contraventions would not be compounded and relevant provisions of the FEMA, 1999 shall apply. Any second or subsequent contravention committed after the expiry of a period of three years from the date on which the contravention was previously compounded shall be deemed to be a first contravention.

**J.14. What action is taken by the Reserve Bank on receipt of the application?**

**Ans.** The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are prima-facie in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If technical, the applicant will be issued a cautionary advice. If the contravention is material, it will be compounded by imposing a penalty after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same

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would be referred to the Directorate of Enforcement (DoE) for further investigation/ action.

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**J.15. What are sensitive contraventions?**

**Ans.** The contraventions, prima facie, involving money laundering, national and security concerns involving serious infringement of the regulatory framework, etc., are sensitive contraventions.

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**J.16. Who should classify the contravention as technical, material or sensitive?**

**Ans.** Whether contravention under FEMA is to be treated as technical and/ or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves suo moto, or on the basis of external advice to decide whether a particular contravention is technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.

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**J.17. What is the scope and manner of Compounding?**

**Ans.** The application for compounding will be disposed of on merits, upon consideration of the records and submissions and at the absolute discretion of the Compounding Authority. The following factors, which are only indicative, may be taken into consideration for the purpose of passing the Compounding Order and for arriving at the quantum of sum on payment of which contravention shall be compounded:

- (i) the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- (ii) the amount of loss caused to any authority / agency / exchequer as a result of the contravention;
- (iii) economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- (iv) the repetitive nature of the contravention, the track record and / or history of non-compliance of the contravener;
- (v) contravener's conduct in undertaking the transaction and disclosure of full facts in the application and submissions made during the personal hearing; and
- (vi) any other factor considered relevant and appropriate.

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**J.18. What is the new rule relating to 'technical' contravention and subsequent compounding thereof where the compounding application is filed by the concerned entity suo moto?**

**Ans.** Whenever a contravention is identified by the Reserve Bank or brought to its notice by the entity involved in contravention by way of a reference other than through the prescribed application for compounding, the Bank will continue to decide:

- whether a contravention is technical and/or minor in nature and, as such, can be dealt with by way of an administrative/ cautionary advice;
- whether it is material and, hence, is required to be compounded for which the necessary compounding procedure has to be followed; or
- whether the issues involved are sensitive / serious in nature and, therefore, need to be referred to the Directorate of Enforcement (DOE).

However, once a compounding application is filed by the concerned entity **suo moto**, admitting the contravention, the same will not be considered as 'technical' or 'minor' in nature and the compounding process shall be initiated in terms of section 15 (1) of FEMA read with Rule 9 of Foreign Exchange (Compounding Proceedings) Rules, 2000.

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**J.19. Is it mandatory to appear for the personal hearing?**

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**Ans.** It is not mandatory to attend the personal hearing. In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority.

The Reserve Bank of India has clarified that appearing for a personal hearing before the compounding authority is optional and the applicant can choose not to appear for it. The applicant may enclose full information relating to the case as prescribed in AP (Dir series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011, respectively, with the application or thereafter and may exercise his discretion with regard to appearing for hearing.

The Reserve Bank also clarified that if the applicant opts for appearing for the personal hearing, the Reserve Bank would encourage the applicant to appear directly for it rather than being represented / accompanied by legal experts / consultants, as compounding is only for admitted contraventions. The Reserve Bank further stated that appearing for or opting out of personal hearing does not have any bearing whatsoever on the amount of penalty involved in the compounding order.

Rule 8(2) of Foreign Exchange (Compounding Proceedings) Rules, 2000 states that the compounding authority shall pass an order of compounding after affording an opportunity of being heard to all the concerned as expeditiously as possible and not later than 180 days from the date of application. Many applicants interpret this provision / facility to mean that personal hearing is compulsory and that consultants / advocates must represent them in the personal hearing before the compounding authority.

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**J.20. Can the applicant authorise another person to attend the personal hearing?**

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**Ans.** Yes, another person may be authorised by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention and the related matters.

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**J.21. How is the compounding process brought to the conclusion?**

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**Ans.** The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the penalty imposed.

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**J.22. When should the amount indicated in the order be paid?**

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**Ans.** The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at the Regional office which has issued the compounding order and at Mumbai if the order is issued by CEFA, Mumbai.

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**J.23. How does the application for compounding finally get disposed of?**

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**Ans.** On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority.

The provisions of the Rules do not confer any right on the contravener, after a compounding order is passed, to seek to withdraw the order or to hold the compounding order as void or request a review of the order passed by the Compounding Authority.

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**J.24. Is second adjudication by any authority possible on the contraventions already compounded?**

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**Ans.** No. There cannot be a second adjudication by any authority on the contravention

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compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.

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**J.25. What happens if the amount is not paid within 15 days of the order?**

**Ans.** In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.

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**J.26. Can there be an appeal against the order of the Compounding Authority?**

**Ans.** As compounding is based on voluntary admissions and disclosures, there cannot be an appeal against the order of the Compounding Authority.

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**J.27. What is the timeframe for completing the compounding process?**

**Ans.** The compounding process is normally completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank.

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**J.28. What happens in case contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained?**

**Ans.** Contraventions relating to any transaction where proper approvals or permission from the Government or statutory authority concerned, as the case may be, have not been obtained, such contraventions would not be compounded unless the required approvals are obtained from the authorities concerned.

In case the application has to be returned for this reason or any other reason, the application fees of Rs. 5000 received along with the application fees is also returned. To expedite the refund of compounding fees in such cases, it has been decided to credit the same to the applicant's account through NEFT. The applicants are advised to furnish their mandate and details of their bank account as per Annex along with the application in the prescribed format and other documents required to be submitted in terms of the instructions contained in A.P. (DIR Series) Circular Nos. 56 and 57 dated June 28, 2010 and December 13, 2011 respectively.

Further, the Annexes relating to Foreign Direct Investment, External Commercial Borrowings, Overseas Direct Investment and Branch Office / Liaison Office, as given in A.P.(Dir Series) Circular No.57 dated December 13, 2011, have also been modified to include the details of income-tax PAN and the activity as per NIC codes – 1987. It may be noted that the application will be treated as incomplete without these details.

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**J.29. Where can one get more details about compounding?**

**Ans.** One can visit to Master circular on compounding available on Reserve Bank's website at following link [http://www.rbi.org.in/scripts/BS\\_ViewMasterCircularDetails.aspx](http://www.rbi.org.in/scripts/BS_ViewMasterCircularDetails.aspx) and FAQ dated July 02, 2012.

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**J.30. What are the responsibly of Authorised Dealers for reporting under Foreign Exchange Management Act, 1999? What are the main contraventions being dealt with by the Reserve Bank during compounding which relate to ADs?**

**Ans.** In terms of Section 11 (2) of FEMA, 1999, the Reserve Bank may, for the purpose of ensuring the compliance with the provisions of the Act or of any rule, regulation, notification, direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit. Accordingly, RBI has entrusted to the Authorised Dealers (ADs) the responsibility of complying with the prescribed rules/ regulations for the foreign exchange transactions and reporting the same as per the directions issued from time to time.



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2. During the compounding process, on a number of occasions, it has been brought to our notice by the applicants that the contraventions of the provisions of FEMA by corporates and individuals are due to the acts of omission and commission of the Authorised Dealers and some of the applicants have also produced documentary evidence in support of their claim. Such contraventions being dealt with by the Reserve Bank mainly relate to:

- i. Draw down of External Commercial Borrowing (ECB) without obtaining Loan Registration Number (LRN) [Regulations 3 and 6 of FEMA 3/2000];
- ii. Allowing draw down of ECB under the automatic route from unrecognised lender, to ineligible borrower, for non-permitted end uses, etc. [Regulations 3 and 6 of FEMA 3/2000];
- iii. Non-filing of form ODI for obtaining UIN before making the second remittance to overseas WOS/JV for Overseas Direct Investment (ODI) [Regulation 6(2)(vi) of FEMA 120/2004];
- iv. Non-submission of Annual Performance Reports (APRs) / copies of Share Certificates to the AD (and non-reporting thereof by the AD to Reserve Bank) in respect of overseas investments [Regulation 15 of FEMA 120/2004];
- v. Delay in submission of the Advance Reporting Format in respect of Foreign Direct Investment (FDI) to the concerned Regional Office of the Reserve Bank [paragraph 9 (1) (A) of Schedule I to FEMA 20/2000];
- vi. Delay in filing of details after issue of eligible instruments under FDI within 30 days in form FC-GPR to the concerned Regional Office of the Reserve Bank [paragraph 9 (1) (B) of Schedule I to FEMA 20/2000];
- vii. Delay in filing of details pertaining to transfer of shares for FDI transactions in form FC-TRS by resident individual/companies [Regulation 10 (A) (b) of FEMA 20/2000]; etc.

3. From the data on compounding cases received by Reserve Bank, it is observed that more than 70% of the total cases pertain to FDI within which about 72% relate to delay in advance reporting/ submission of FCGPR. In the case of ECB, 24% of the cases received relate to drawdown without obtaining LRN. Similarly, 66% of the ODI cases relate to non-reporting of overseas investments online. Authorised Dealers have an important role to play in avoidance of such contraventions and accordingly, the dealing officials in the banks need to be sensitised and trained to discharge this function efficiently.

4. All the transactions involving Foreign Direct Investment (FDI), External Commercial Borrowing (ECB) and Outward Foreign Direct Investment (ODI) are important components of our Balance of Payments statistics which are being compiled and published on a quarterly basis. Any delay in reporting affects the integrity of data and consequently the quality of policy decisions relating to capital flows into and out of the country. Authorised Dealers are, therefore, advised to take necessary steps to ensure that checks and balances are incorporated in systems relating to dealing with and reporting of foreign exchange transactions so that contraventions of provisions of FEMA, 1999 attributable to the Authorised Dealers do not occur.

[illegible]