



Income Tax Department

Government of India

FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF ANY FOREIGN SECURITY) REGULATIONS, 2004 ¹

FEMA 120/2004-RB, dated 7-7-2004 [GSR 757(E), dated 7-7-2004] - In exercise of the powers conferred by clause (a) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of Notification No. FEMA 19/RB-2000, dated 3rd May, 2000, as amended from time to time the Reserve Bank of India makes the following regulations relating to transfer or issue of any foreign security by a person resident in India, namely :-

Short title and commencement

1. (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.

(ii) They shall come into force from the date of their publication in the Official Gazette.

Definitions

2. In these Regulations, unless the context otherwise requires:

(a) "Act" means Foreign Exchange Management Act, 1999 (42 of 1999);

(b) "authorised dealer" means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act;

(c) "American Depository Receipt (ADR)" means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India;

(d) "Core Activity" means an activity carried on by an Indian entity turnover wherefrom constitutes not less than 50% of its total turnover in the previous accounting year;

(e) "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but does not include portfolio investment;

¹[(ea) "Domestic Depository" shall have the same meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004;

(eb) "Eligible Company" means a Company eligible to issue Indian Depository Receipts under rule 4 of the Companies (Issue of Indian Depository Receipts) Rules, 2004;]

(f) "Financial commitment" means ²[the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees] issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;

(g) "Foreign Currency Convertible Bond (FCCB)" means 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;

(h) "Form" means the forms annexed to these Regulations;

(i) "Global Depository Receipt (GDR)" means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India;

(j) "Host country" means the country in which the foreign entity receiving the direct investment from an Indian party is registered or incorporated;

¹[(ja) "Indian Depository Receipts" shall have the same meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004;]

(k) "Indian party" means 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 making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank :

Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian party";

(l) "Investment banker" means an Investment banker registered with the Securities and Exchange Commission in USA, or the Financial Services Authority in UK, or appropriate regulatory authority in Germany, France, Singapore or Japan;

(m) "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;

(n) "Mutual Fund" means a Mutual Fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961;

(o) "Net worth" means paid up capital and free reserves;

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

(q) "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;

³[(qa) "Venture Capital Fund" means a fund as defined under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996;]

⁴[(qb) "Trust" means a Trust registered under the Indian Trust Act, 1882;

(qc) "Society" means a society registered under the Societies Registration Act, 1860;]

(r) "Agricultural Operations" means agricultural operations as defined in the 'National Bank for Agriculture and Rural Development Act, 1981';

¹[(s) "Foreign Currency Exchangeable Bond" 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 offered company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments;

(t) "issuing company" means a company registered under the Companies Act, 1956 (1 of 1956) and eligible to issue Foreign Currency Exchangeable Bond under these regulations;

(u) "offered company" means a company registered under the Companies Act, 1956 (1 of 1956) and whose equity share/s is/are offered in exchange of the Foreign Currency Exchangeable Bond;

(v) "promoter group" has the same meaning as defined in the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;]

²[(w)] words and expressions used but not defined in these Regulations shall have the meanings respectively assigned to them in the Act.

Prohibition on issue or transfer of foreign security

3. Save as otherwise provided in the Act or rules or regulations made or directions issued thereunder, no person resident in India shall issue or transfer any foreign security :

Provided that the Reserve Bank may, on application made to it, permit any person resident in India to issue or transfer any foreign security.

Purchase and sale of foreign security by a person resident in India

4. A person resident in India

(a) may purchase a foreign security out of funds held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000;

(b) may acquire bonus shares on the foreign securities held in accordance with the provisions of the Act or rules or regulations made thereunder;

(c) when not permanently resident in India, may purchase a foreign security from out of his foreign currency resources outside India;

(d) may sell the foreign security purchased or acquired under clause (a), (b) or (c).

Explanation:- For the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

PART I

DIRECT INVESTMENT OUTSIDE INDIA

Prohibition on Direct Investment outside India

5. Save as otherwise provided in the Act, rules or regulations made or directions issued thereunder, or with prior approval of the Reserve Bank,

(1) no person resident in India shall make any direct investment outside India; and

(2) no Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business.

Permission for Direct Investment in certain cases

6. (1) Subject to the conditions specified in sub-regulation (2), (and Regulation 7 in case investment ³[by an Indian Party engaged] in financial services sector) an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India.

(2) ¹[(i) *The total financial commitment of the Indian Party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian Party as on the date of the last audited balance sheet.*

Explanation: For the purpose of determining the 'total financial commitment' within the limit of 100%, or as decided by the Reserve Bank from time to time, of the net worth, the following shall be reckoned, namely:

(a) *Remittance by market purchases, namely in freely convertible currencies; in case of Bhutan, investment made in freely convertible currencies or equivalent Indian Rupees, in case of Nepal investment made only in Indian Rupees;*

(b) *Capitalization of export proceeds and other dues and entitlements as mentioned in Regulation 11;*

(c) *Hundred per cent of the value of guarantees issued by the Indian party to or on behalf of the joint venture company or wholly owned subsidiary;*

(d) *Investment in agricultural operations through overseas offices or directly;*

(e) *External Commercial Borrowing in conformity with other parameters of the ECB guidelines;*

(f) *Fifty per cent of the value of performance guarantee issued by the Indian party to or on behalf of the JV/WOS.*

Explanation: *In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 100 per cent, or as decided by the Reserve Bank from time to time, of the net worth of the Indian party, the Indian party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation;*

(g) *Hundred per cent of the value of the 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.*

Overseas direct investment by an Indian party in Pakistan shall henceforth be considered under the approval route under regulation 9 of this Notification.]

(ii) The direct investment is made in an overseas JV or WOS engaged in a *bona fide* business activity.

(iii) The Indian Party is not on the Reserve Bank's Exporters caution list/list of defaulters to the banking system circulated by the Reserve Bank or under investigation by any investigation/enforcement agency or regulatory body.

¹[(iv) The Indian Party has submitted its Annual Performance Report in respect of all its overseas investments in the format given in Part III of Form ODI]

(v) The Indian Party routes all transactions relating to the investment in a Joint Venture /Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

Explanation:-The Indian Party may designate different branches of authorised dealers for different Joint Ventures/Wholly Owned Subsidiaries outside India.

²[(vi) The Indian Party submits Part I of Form ODI, duly completed, to the designated branch of an authorised dealer.]

(3) Investment under this Regulation may be funded out of one or more of the following sources, namely :-

(i) out of balance held in the Exchange Earners' Foreign Currency Account of the Indian party maintained with an authorised dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) ³[drawal] of foreign exchange from an authorised dealer in India shall not exceed 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian Party as on the date of last audited balance sheet.

Explanation: *For the purpose of the limit of 100%, or as decided by the Reserve Bank from time to time, of the net worth, the following shall be reckoned, namely:-]*

(a) cash remittance by market purchase;

(b) capitalisation of export proceeds and other dues and entitlements as mentioned in Regulations 11 and 12;

(c) ¹[hundred] per cent of the value of guarantees issued by the Indian party to or on behalf of the Joint Venture Company or Wholly Owned Subsidiary.

²[Explanation:- An Indian Party may offer to a person resident outside India any form of guarantees, that is corporate or personal/primary or collateral/guarantee by promoter company in India/guarantee by group company, sister concern or associate company in India, provided that:

(a) total "financial commitment" including all forms of guarantees remains within the overall ceiling stipulated for overseas investment by an Indian Party; and

(b) no guarantee is "open ended";]

(d) utilisation of the amount raised by issue of ADRs/GDRs by the Indian party;

(e) External Commercial Borrowing in conformity with other parameters of the ECB guidelines;

³[(f) swap of shares;]

⁴[(g) ADR/GDR stock swap subject to the valuation norms and sectoral cap;]

⁵[(h) fifty per cent of the value of performance guarantee issued by Indian party to or on behalf of the JV/WOS.

Explanation : *In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 100%, or as decided by the Reserve Bank from time to time, of the net worth of the Indian party, the Indian party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation;]*

⁶[(i) hundred per cent of the value of the 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.]

Explanation :-For the purpose of reckoning net worth of an Indian party, the net worth of its holding company (which holds at least 51 % stake in the Indian Party) or its subsidiary company (in which the Indian party holds at least 51% 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 :

Provided that the ceiling mentioned in sub-clause (2)(i) shall not apply where the investment is made out of balances held in its EEFC account, maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000, as amended from time to time.

¹[(4) (i) *An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.*

Notwithstanding the above regulation, the following shall also be permitted.

(ii) *An Indian Party may extend corporate guarantee on behalf of its first generation step down operating company within the prevailing limit for overseas direct investment.*

Explanation: *Issue of corporate guarantee on behalf of second level or subsequent level step down operating subsidiaries will be 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]*

²[(iii) *The indirect resident individual promoters of the Indian party may issue personal guarantee on behalf of the overseas JV/WOS of the Indian party provided the provisions under Regulation 6 are fulfilled by the Indian party and further provided that:*

(a) *total 'financial' commitment including all forms of guarantees remains within the overall ceiling stipulated for overseas investment by an Indian Party, and*

(b) *no guarantee is 'open ended'.*

(iv) *With prior approval of the Reserve Bank, an Indian party may undertake financial commitment without equity contribution in JV/WOS provided it is as per the business requirement of the Indian party and also as per the legal requirement of the host country.*

(v) *Compulsorily Convertible Preference Shares (CCPS) shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the contribution to JV by way of CCPS.]*

(5) *An Indian Party may make direct investment without any limit in any foreign security out of the proceeds of its international offering of shares through the mechanism of ADR and/or GDR :*

Provided that

(a) the ADR/GDR issue has been made 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 thereunder from time to time by the Central Government;

³[(b) the Indian Party files with the designated authorised dealer in Parts I and II of Form ODI full details of the investment proposed.]

(6)(a) For the purposes of investment under this Regulation by way of remittance from India in an existing company outside India, the valuation of shares of the company outside India shall be made -

(i) where the investment is more than USD 5 (five) million, by a Category I Merchant Banker Registered with 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

(ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant.

(b) For the purposes of investment under this Regulation by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the Indian party's shares, the valuation of shares of the company outside India shall in all cases, be carried out 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.

General Permission for Investment in Agricultural Operations Overseas Directly or through Overseas Offices

6A. A person resident in India being a company incorporated in India or a partnership firm registered under Indian Partnership Act, 1932, may undertake agricultural operations including purchase of land incidental to such activity either directly or through their overseas offices :

Provided that-

(a) the Indian party is otherwise eligible to make investment under Regulation 6 and that such investment is within the overall limits as specified in Regulation 6;

(b) for the purposes of investment under this regulation by acquisition of land overseas the valuation of the land is certified by a certified valuer registered with the appropriate valuation authority in the host country.

General Permission for Investment in Equity of a Company Registered Overseas

6B. ¹[A person resident in India, being ²[***] a listed Indian Company], may invest in:

(a) the shares of an overseas company which is listed on a recognised stock exchange ³[***];

(b) the rated bonds/fixed income securities issued by companies at (a) above:

Provided that-

(i) in the case of investment by a listed Indian company, the investment shall not exceed ⁴[50%] of its net worth as on the date of its last audited balance sheet;

¹[***]

²[(ii)] every transaction relating to purchase and sale of shares of the overseas company or bonds/securities shall be routed through the designated branch of an authorised dealer in India.

³[Investment by mutual funds

6C. (1) Mutual funds registered with the Securities and Exchange Board of India, may invest within specified limits, in the shares on the rated bonds/fixed income securities of an overseas company listed on a recognised stock exchange or in Exchange Traded Funds, or other securities as may be stipulated by the Reserve Bank of India from time to time.

(2) Every transaction relating to purchase and sale of foreign security by Mutual Funds shall be routed through the designated branch of an authorised dealer in India.]

⁴[General Permission for Acquiring Equity of SWIFT

6D. *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 Society for Worldwide Interbank Financial Telecommunication (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.]*

Investment ⁵[by Indian Party engaged] in Financial Services Sector

7. ⁶(1) Subject to the Regulations in Part I, an Indian Party engaged in financial services sector in India may make investment in an entity outside India :

Provided that the Indian party

- (i) has earned net profit during the preceding three financial years from the financial services activities;
- (ii) is registered with the regulatory authority in India for conducting the financial services activities;
- (iii) has obtained approval from the concerned regulatory authorities both in India and abroad, for venturing into such financial sector activity;
- (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.]

(2) Any additional investment by an existing JV/WOS or its step down company in the Financial Services Sector shall be made only after complying with the conditions stipulated in sub-clause (1).

Investment in a foreign security by swap or exchange of shares of an Indian company

8. ¹[*]**

Approval of the Reserve Bank in certain cases

9. (1) An Indian Party, which does not satisfy the eligibility norms under Regulation 6 or 7 or 8, may apply to the Reserve Bank for approval.

²(2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Part I of Form ODI]

(2A) An application made under sub-regulation (2) in Form ODI

(a) for the purpose of investment by way of remittance from India, in an existing company outside India, shall be accompanied, by the valuation of shares of the company outside India, made-

- (i) where the investment is more than USD 5 (five) million, by a Category I Merchant Banker registered with SEBI or an Investment Banker/Merchant Banker registered with the appropriate regulatory authority in the host country; and
- (ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant;

(b) for the purposes of investment by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the Indian party's shares, shall be accompanied by the valuation carried out by a Category I Merchant Banker registered with the SEBI or an Investment Banker/ Merchant Banker registered with the appropriate regulatory authority in the host country.

(3) The Reserve Bank may, *inter alia*, take into account following factors while considering the application made under sub-regulation (2):

- (a) *Prima facie* viability of the Joint Venture/Wholly Owned Subsidiary outside India;
- (b) Contribution to external trade and other benefits which will accrue to India through such investment;
- (c) Financial position and business track record of the Indian Party and the foreign entity;
- (d) Expertise and experience of the Indian Party in the same or related line of activity of the Joint Venture or Wholly Owned Subsidiary outside India.

¹[Overseas Investments by Registered Trust/Society

9A. Registered Trusts and Societies engaged in the manufacturing/ educational sector ²[and which have set up hospital(s) in India] satisfying the criteria as per Schedule III of the Notification may invest in the same sector(s) in a Joint Venture/Wholly Owned Subsidiary outside India with the prior approval of the Reserve Bank.]

Unique Identification Number

10. Reserve Bank will allot a Unique Identification Number for each Joint Venture or Wholly Owned Subsidiary outside India and the Indian Party shall quote such number in all its communications and reports to the Reserve Bank and the authorized dealer.

Investment by capitalization

11. (1) An Indian Party may make direct investment outside India in accordance with the Regulations in Part I by way of capitalisation in full or part of the amount due to the Indian Party from the foreign entity towards:-

- (i) payment for export of plant, machinery, equipment and other goods/software to the foreign entity;
- (ii) fees, royalties, commissions or other entitlements due to the Indian Party from the foreign entity for the supply of technical know-how, consultancy, managerial or other services :

Provided that where the export proceeds have remained unrealised beyond ³[the prescribed period of realization], and fees, royalties, commissions or other entitlements of the Indian party have remained unrealised from the date on which such payment is due, such proceeds shall not be capitalised without the prior permission of the Reserve Bank.

(2) An Indian Software exporter may receive in the form of shares upto 25% of the value of exports to an overseas software start up company without entering into JV agreement by filing an application with the Reserve Bank through the Authorised Dealer.

Export of Goods towards Equity - Procedure

12. (1) An Indian Party exporting goods/software/plant and machinery from India towards equity contribution in a Joint Venture or Wholly Owned Subsidiary outside India shall declare it on GR/SDF/SOFTEX form, as the case may be, which shall be superscribed as "Exports against equity participation in the JV/WOS abroad", and also quoting Identification Number, if already allotted by Reserve Bank.

(2) Notwithstanding anything contained in Regulation 11 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, the Indian Party shall, within 15 days of effecting the shipment of the goods, submit to the Reserve Bank a custom certified copy of the invoice through the branch of an authorised dealer designated by it.

(3) An Indian Party capitalising exports under Regulation 11 shall, within six months from the date of export, or any further time as allowed by Reserve Bank, submit to Reserve Bank copy/ies of the share certificate/s or any document issued by the Joint Venture or Wholly Owned Subsidiary outside India to the satisfaction of Reserve Bank evidencing the investment from the Indian Party together with the duplicate of GR/SDF/SOFTEX form through the branch of an authorised dealer designated by it.

Post investment changes/additional investment in existing JV/WOS

13. A JV/WOS set up by the Indian party as per the Regulations may diversify its activities/set up step down subsidiary/alter the shareholding pattern in the overseas entity :

Provided the Indian party reports to the Reserve Bank, the details of such decisions taken by the JV/ WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV/WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report required to be forwarded annually to the Reserve Bank in terms of Regulation 15.

Acquisition of a foreign company through bidding or tender procedure

14. (1) 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.

(2) On the Indian Party winning the bid,

(i) the authorised dealer may allow further remittances towards acquisition of the foreign company, subject to the ceilings specified in Regulation 6; and

¹[(ii) the Indian Party shall submit through the designated authorised dealer concerned a report to the Reserve Bank in Parts I and II of Form ODI within 30 days of effecting the final remittance.]

(3) For participation in bidding or tender procedure for acquisition of a company incorporated outside India which does not fall within the provisions of sub-regulation (1), the Reserve Bank may, on application in Form ODI, allow remittance of foreign exchange towards earnest money deposit or permit the authorised dealer in India to issue a bid bond guarantee, subject to such terms and conditions as the Reserve Bank may stipulate.

(4) In case the Indian Party is successful in the bid but the terms and conditions of acquisition of a company outside India are,-

(a) not in conformity with the provisions of Regulations in Part I, or different from those for which approval under sub-regulation (3) was obtained, the Indian Party shall submit application in Form ODI to Reserve Bank for obtaining approval for the foreign direct investment in the manner specified in Regulation 9, or

(b) in conformity with the provisions of the Regulations in Part I or are same as those for which approval under sub-regulation (3) was obtained, the Indian Party shall submit a report to the Reserve Bank, giving details of the remittances made, within 30 days of effecting the final remittance.

Obligations of the Indian Party

15. An Indian Party, which has acquired foreign security in terms of the Regulations in Part I, shall-

(i) receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised;

(ii) repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit:

¹**Provided** that in the case of investment in securities in Bhutan made in freely convertible currency, all dues receivable thereon as are repatriable, including those on account of disinvestment/dissolution/winding up, shall be realised and repatriated in freely convertible currency only;]

²[(iii) submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, an Annual Performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the

Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV/WOS for the preceding year, unless specifically exempted by the Reserve Bank;]

³[(iv) where the law of the host country does not mandatorily require auditing of the books of account of JV/WOS, the Annual Performance Report (APR) as referred to under sub-regulation (iii) may be submitted by the Indian party based on the un-audited annual accounts of the JV/WOS provided:

- (a) The Statutory Auditors of the Indian party certify that 'The un-audited annual accounts of the JV/WOS reflect the true and fair picture of the affairs of the JV/WOS'; and
- (b) That the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party.]

Explanation.-It will be in order for individual partners to hold shares for and on behalf of the firm in an overseas JV/WOS in the individual name if the host country regulations or operational requirements warrant such holdings, subject to the condition that the entire funding for such investment is done by the firm.

Transfer by way of sale of shares of a JV/WOS outside India

16. ¹[(1) An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

- (i) the sale does not result in any write off of the investment made;
- (ii) the sale is to be effected through a stock exchange where the shares of the overseas JV/WOS are listed;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) the Indian party is not under investigation by CBI/DoE/SEBI/IRDA or any other regulatory authority in India.

(1A) (i) in the following cases, an Indian Party may disinvest, if the amount to be repatriated on disinvestment is less than the amount of the original investment:

- (a) where the JV/WOS is listed in the overseas stock exchange;
- (b) where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs. 100 crore;
- (c) where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million, and
- (d) where the Indian Party is a listed company having a net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

(ii) Such disinvestments shall be subject to the conditions listed in clauses (ii) to (vi) of sub-regulation (1) of Regulation 16.]

(2) 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 Regional office of the Reserve Bank through the designated authorized dealer.

(3) An Indian party, which does not satisfy the criteria specified at sub-regulation (1) above, shall apply to the Reserve Bank for permission to transfer by way of sale of shares of a JV/WOS outside India which may be granted subject to such conditions as the Reserve Bank may consider appropriate.

1[**Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables 16A.** (1) *A listed Indian Party, who has set up WOS abroad or have at least 51 per cent stake in an overseas JV, may write off capital (equity/preference shares) and other receivables, such as loans, royalty, technical know-how fees and management fees in respect of the JV/WOS up to 25 per cent of the equity investment in the JV/WOS subject to condition that the Indian Party should submit the following documents for scrutiny along with the applications to the designated AD Category-I bank:*

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

(ii) Projections for next five years indicating benefit accruing to the Indian Party consequent to such write off/restructuring.

(2) The write-off/restructuring allowed under sub-regulation (1) has to be reported to the Reserve Bank through the designated AD Category-I bank within 30 days of write-off/restructuring.

(3) An unlisted Indian Party, who has set up WOS abroad or have at least 51 per cent stake in an overseas JV, is permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV/WOS under the Approval Route.]

Transfer by way of Sale of Shares involving Write-off

17. Where the transfer by way of sale of shares or security referred to in sub-regulation (1) of Regulation 16 by any Indian party listed on any stock exchange in India, is for a price less than the amount invested in the share or the security transferred,-

1. where the difference between the said value and the sale price does not exceed the percentage approved by the Reserve Bank, from time to time, of the Indian party's actual export realisation of the previous year, the Indian party may write off to the extent of the difference, the capital invested in the overseas JV/WOS;

2. where such difference is more than the percentage approved by the Reserve Bank, from time to time, of the Indian party's actual export realisation of the previous year, the Indian party shall apply to the Reserve Bank for permission to write-off the capital invested, which permission may be granted subject to such conditions as the Reserve Bank considers appropriate.

Pledge of Shares of Joint Ventures and Wholly Owned Subsidiaries

18. An Indian Party may transfer, by way of pledge, shares held in a Joint Venture or Wholly Owned Subsidiary outside India as a security for availing of fund based or non-fund based facilities for itself or for the Joint Venture or Wholly Owned Subsidiary from an authorised dealer or a public financial institution in India ¹[or to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitment of the Indian Party remains within the limit stipulated by the Reserve Bank for overseas investments in JV/WOS].

2[**Creation of charge on immovable/movable property and other financial assets**

18A. *An Indian Party, with prior approval of the Reserve Bank, may transfer, by way of mortgage/pledge/hypothecation, the immovable/movable property and other financial assets (except shares of JV/WOS) of the Indian party and its group companies as a security for availing of fund based and/or non-fund based facilities for its JV or WOS from an authorised dealer bank or a public financial institution in India or to an overseas lender; provided the lender is regulated and supervised as a bank, the total financial commitment of the Indian Party remains within the limit stipulated by the Reserve Bank for overseas investments in JV/WOS and a 'No Objection' is submitted by the Indian party and its group companies from their resident lenders.]*

PART II*INVESTMENTS ABROAD BY INDIVIDUALS IN INDIA***3[Prior permission of the Reserve Bank for a Proprietary concern in India to accept shares**

19. A proprietary concern in India may apply to the Reserve Bank through the authorised dealer in Part I of Form ODI for permission to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company :

Provided that,-

- (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.]

1[Overseas Investments - Proprietorship Concerns

19A. 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 the Notification may set up a JV/WOS outside India with the prior approval of the Reserve Bank.]

2[Investment by Individuals

20. (1) *A resident individual may acquire shares of a foreign entity in part/full consideration of the professional services rendered to the foreign entity or in lieu of director's remuneration, provided 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.*

(2) *A resident individual may apply to the Reserve Bank for permission to acquire shares of a foreign entity in part/full consideration of the professional services rendered to the foreign entity or in lieu of director's remuneration in case the limit prescribed under the Liberalized Remittance Scheme (LRS) exceeds.*

(3) *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/her profession;*
- (ii) *the extent of his/her 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.]*

3[Acquisition or setting up of a JV or WOS abroad by resident individual

20A. *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.]*

PART III*INVESTMENTS IN FOREIGN SECURITIES OTHER THAN
BY WAY OF DIRECT INVESTMENT***Prohibition on issue of foreign security by a person resident in India**

21. (1) Save as otherwise provided in the Act or in sub-regulation (2), no person resident in India shall issue or transfer a foreign security.

(2) A person resident in India, being an Indian Company or a Body Corporate created by an Act of Parliament,-

(i) may issue FCCBs not exceeding USD ¹[750] million to a person resident outside India in accordance with and subject to the conditions stipulated in Schedule I;

(ii) may issue FCCBs beyond US \$ ¹[750] million with the specific approval of the Reserve Bank;

²[(iii) may issue Foreign Currency Exchangeable Bonds to a person resident outside India in accordance with and subject to the conditions specified in Schedule IV with the specific approval of the Reserve Bank.]

(3) The company/body corporate referred to in sub-regulation (2), issuing the FCCBs shall, within 30 days from the date of issue, furnish a report to the Reserve Bank giving the details and documents as under:

(a) Total amount for which FCCBs have been issued;

(b) Names of the investors resident outside India and number of FCCBs issued to each of them;

(c) The amount repatriated to India through normal banking channels and/or the amount received by debit to NRE/FCNR accounts in India of the investors (duly supported by bank certificate).

Permission for purchase/acquisition of foreign securities in certain cases

22. (1) A person resident in India being an Individual may acquire foreign securities:-

(i) by way of gift from a person resident outside India; or

(ii) issued by a company incorporated outside India under Cashless Employees Stock Option Scheme :

Provided it does not involve any remittance from India; or

(iii) by way of inheritance from a person whether resident in or outside India.

³[(2)] *A person resident in India, being an individual, who is an employee or a director of Indian office or branch of a foreign entity or of a subsidiary in India of a foreign entity or of an Indian company in which foreign entity has direct or indirect equity holding, may accept the shares offered by such foreign entity provided that:*

(i) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and

(ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer bank giving details of remittances /beneficiaries etc.

Explanation: - *For the purpose of this sub-regulation, 'indirect' means 'indirect foreign equity holding through a trust/special purpose vehicle/a step down subsidiary'.*

¹[(3) An authorised dealer bank may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2) for acquiring shares under ESOP Schemes, irrespective of the method of the operationalisation of the scheme:

Provided that the conditions specified in that sub-regulation are fulfilled.

(4) A person resident in India may transfer by way of sale, the shares acquired in terms of sub-regulations (2) and (3) 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.]

²[(5) A foreign company, who has issued the shares in terms of sub-regulation (2) of this regulation may repurchase the same provided that:

(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 Authorised Dealer bank giving details of remittances/ beneficiaries, etc.

(6) An Authorised Dealer bank may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2).]

³[(7) (i) A Domestic Depository may acquire, hold and transfer equity shares of eligible company resident outside India, being the underlying shares for the purpose of issuing IDRs as may be authorized by such company or its Overseas Custodian Bank.

(ii) A person resident in India may redeem IDRs issued by an eligible company resident outside India through a Domestic Depository, subject to compliance of the following conditions with respect to the underlying shares on redemption :

(a) 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 the Notification No. FEMA 120/RB-2004, dated July 7, 2004, as amended from time to time.

(b) 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 the Notification No. FEMA 120/RB-2004, dated July 7, 2004, as amended from time to time.

(c) Other persons resident in India including resident individuals may 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.]

Transfer of a foreign security by a person resident in India

23. A person resident in India, who has acquired or holds foreign securities in accordance with the provisions of the Act, rules or regulations made thereunder, may transfer them by way of pledge for obtaining fund based or non-fund based facilities in India from an authorised dealer.

General Permission for Acquisition of foreign securities as qualification/rights shares

24. (1) A person resident in India being an individual may

¹[(a) *acquire foreign security as qualification shares issued by an entity incorporated outside India for holding the post of a director in the entity provided that:*

(i) *the extent of acquiring the qualification shares is as per the law of the host country where the entity is located, and*

(ii) *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.

¹[(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:

Provided that the issue of employees stock option by a listed company shall be governed by SEBI (Employees Stock Option and Stock Purchase Scheme) Guidelines, 1999 and the issue of employees stock option by an unlisted company shall be governed by the guidelines issued by the Government of India for issue of ADR/GDR linked stock options:

Provided further that the consideration for the purchase does not exceed the ceiling as stipulated by the Reserve Bank from time to time.

Explanation.-For the purpose of this clause "knowledge based sector" means such sectors as have been notified by the Government of India from time to time in terms of its guidelines for the issue of ADR/GDR linked Employees Stock Options by the Indian Companies, dated 15th September, 2000.]

Prior permission of Reserve Bank in certain cases

25. A person resident in India being an individual seeking to acquire qualification shares in a company outside India beyond the limits laid down in the proviso to clause (a) of sub-regulation (1) of Regulation 24 shall apply to the Reserve Bank for prior approval.

Investment by Mutual Funds ²[and Venture Capital Funds]

26. ³[The purchase of foreign securities by Mutual Funds ²[and Venture Capital Funds] shall be subject to these regulations, and such other terms and conditions as may be notified by the SEBI from time to time.]

⁴[Opening of Demat Accounts by Clearing Corporations of Stock Exchanges and Clearing Members

27. A person resident in India being a Securities and Exchange Board of India approved clearing corporation of stock exchanges and their clearing members may, subject to the guidelines, issued by the SEBI from time to time:-

- (i) open and maintain demat accounts with foreign depositories and acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIs;
- (ii) remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and
- (iii) liquidate such foreign sovereign securities and repatriate the proceeds thereof to India.]

SCHEDULE I

[See Regulation 21 (2)(i)]

Automatic Route for Issue of Foreign Currency Convertible Bonds (FCCBs)

(i) The FCCBs to be issued will have to conform to the Foreign Direct Investment Policy (including Sectoral Cap and Sectors where FDI is permissible) of the Government of India as announced from time to time and the Reserve Bank's Regulations/directions issued from time to time.

(ii) The issue of FCCBs shall be subject to a ceiling of USD ¹[750] million in any one financial year.

(iii) Public issue of FCCBs shall be only through reputed lead managers in the international capital market. In case of private placement, the placement shall be with banks, or with multilateral and bilateral financial institutions, or foreign collaborators, or foreign equity holder having a minimum holding of 5% of the paid up equity capital of the issuing company. Private placement with unrecognized sources is prohibited.

(iv) The maturity of the FCCB shall not be less than 5 years. The call and put option, if any, shall not be exercisable prior to 5 years.

- (v) Issue of FCCBs with attached warrants is not permitted.
- (vi) The "all in cost" will be on par with those prescribed for External Commercial Borrowing (ECB) schemes specified in the Schedule to Notification No. FEMA 3/2000-RB, dated 3rd May, 2000. The "all in cost" shall include coupon rate, redemption premium, default payments, commitment fees, and fronting fees, if any, but shall not include the issue related expenses such as legal fees, lead managers fees, out of pocket expenses.
- (vii) The FCCB proceeds shall not be used for investment in Stock Market, and may be used for such purposes for which ECB proceeds are permitted to be utilized under the ECB schemes.
- (viii) FCCBs are allowed for corporate investments in industrial sector, especially infrastructure sector. Funds raised through the mechanism may be parked abroad unless actually required.
- (ix) FCCBs for meeting rupee expenditure under automatic route to be hedged unless there is a natural hedge in the form of uncovered foreign exchange receivables, which will be ensured by Authorised Dealers.
- (x) Financial intermediaries (*viz*, a bank, DFI, or NBFC) shall not be allowed access to FCCBs, except those Banks and financial intermediaries that have participated in the Textile or Steel Sector restructuring package of the Government/RBI subject to the limit of their investment in the package.
- (xi) Banks, FIs, NBFCs shall not provide guarantee/letter of comfort etc. for the FCCB issue.
- (xii) The issue related expenses shall not exceed 4% of issue size and in case of private placement, shall not exceed 2% of the issue size.
- (xiii) The issuing entity shall, within 30 days from the date of completion of the issue, furnish a report to the concerned Regional Office of the Reserve Bank of India through a designated branch of an Authorized Dealer giving the details and documents as under :

- (a) The total amount of the FCCBs issued,
- (b) Names of the investors resident outside India and number of FCCBs issued to each of them.

1[SCHEDULE II

(See Regulation 19A)

Overseas Investments - Proprietorship concerns

Criteria for considering investment proposals outside India by established proprietorship or unregistered partnership exporter firms:

- (i) The Partnership/Proprietorship firm is a DGFT recognised Star Export House (export exceeding Rs. 15 crore per annum).
- (ii) The Authorised Dealer bank is satisfied that the exporter is KYC (Know Your Customer) compliant, is engaged in the proposed business and has turnover as indicated.
- (iii) Exporter has proven track record, *i.e.*, export outstanding does not exceed 10 per cent of the average export realisation of the preceding three years.
- (iv) The exporter has not come under the adverse notice of any Government agency like Directorate of Enforcement, Central Bureau of Investigation 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 of three years export realisation or 200 per cent of the net owned funds of the firm, whichever is lower.]

2[SCHEDULE III

(See Regulation 9A)

Overseas Investments by Registered Trust/Society

Criteria for overseas investment by Registered Trust/Society

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 Authorised Dealer bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a *bona fide* 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, CBI etc.

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 Authorised Dealer bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a *bona fide* 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 activities which 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, the Authorised Dealer Category-I bank should ensure that such special license/permission has been obtained by the applicant.]

1[SCHEDULE IV

[See Regulation 21(2)]

Foreign Currency Exchangeable Bonds (FCEBs)

Currency.

1. The FCEB may be denominated in any freely convertible foreign currency.

Eligible Issuer.

2. 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.

The Offered Company.

3. 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 FCCB or External Commercial Borrowings (ECB).

Entities not eligible to issue FCEB.

4. 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.

Eligible subscriber.

5. 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 Foreign Investment Promotion Board, wherever required under the Foreign Direct Investment policy, should be obtained.

Entities not eligible to subscribe to FCEB.

6. Entities prohibited to buy, sell or deal in securities by the SEBI will not be eligible to subscribe to FCEB.

7. End-use of FCEB proceeds: Issuing Company.

- (i) The proceeds of FCEB may be invested by the issuing company outside India 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 or Wholly Owned Subsidiaries (abroad).

(ii) The proceeds of FCEB may be invested by the issuing company in the promoter group companies.

Promoter Group Companies.

8. Promoter Group Companies receiving investments out of the FCEB proceeds may utilise the FCEB proceeds in accordance with end-uses prescribed under the External Commercial Borrowings policy.

End-uses not permitted.

9. The promoter group companies receiving such investments will not be permitted to utilise the proceeds for investments in the capital market or in real estate in India.

All-in-cost.

10. The rate of interest payable on FCEB and the issue expenses incurred in foreign currency shall be within the all-in-cost ceiling as provided in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (Notification No. FEMA 3/2000-RB, dated May 3, 2000), and the directions issued in that behalf by the Reserve Bank of India.

Pricing of FCEB.

11. 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:

- (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
- (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.

Explanation to clauses (i) and (ii): "Relevant date" means the date on which the Board of directors of the issuing company passes the resolution authorizing the issue of FCEB.

Average Maturity.

12. 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.

The proceeds of FCEB shall be retained and/or deployed overseas by the issuing/Group Companies in accordance with the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (FEMA 3/2000-RB, dated May 3,2000), and the directions issued in that behalf by the Reserve Bank from time to time.

Parking of FCEB proceeds abroad.

13. The proceeds of FCEB shall be retained and/or deployed overseas by the issuing/promoter group companies in accordance with the policy for the ECB. 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 Authorised Dealer Bank.

Operational Procedure.

14. Issuance of FCEB shall require prior approval of the Reserve Bank of India as specified in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (Notification No. FEMA 3/2000-RB, dated May 3, 2000).

Reporting.

15. The provisions of the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (Notification No. FEMA 3/2000-RB, dated May 3, 2000), with regard to reporting of external commercial borrowings shall apply to FCEB.]

1[**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 *bona fide* 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 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.
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 Parts 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.]

<u>ODA</u>
Direct investment in joint venture (JV)/wholly owned subsidiary (WOS) abroad under automatic route
<u>ODI</u>
Application to Reserve Bank of India for Direct Investment in a Joint Venture/Wholly Owned Subsidiary Abroad
<u>APR</u>
<u>AMENDMENTS IN FORMS ODA, ODI, ODB AND ODG - A.P. (DIR SERIES) (2002-2003) CIRCULAR NO. 107, DATED 19-6-2003</u>

1. Superseding earlier FEMA Notification No. 19/2000-RB, dated 3-5-2000.

MASTER CIRCULAR : No. 11/2013-14, dated 1-7-2013.

LATEST CLARIFICATIONS : See AP (DIR Series) (2004-05) Circular No. 42, dated 12-5-2005 and Circular No. 32, dated 9-2-2005.

See also AP (DIR Series) (2005-06), Circular No. 9, dated 29-8-2005, No. 10, dated 30-8-2005, No. 29, dated 27-3-2006 and No. 30, dated 5-4-2006.

See AP (DIR Series) (2006-07), Circular No. 3, dated 26-7-2006; Circular No. 4, dated 28-7-2006 and Circular No. 6, dated 6-9-2006.

See AP (DIR Series) (2006-07) Circular No. 24, dated 20-12-2006; Circular No. 41, dated 20-4-2007; Circular No. 49, dated 30-4-2007; Circular No. 53, dated 8-5-2007; Circular No. 68, dated 1-6-2007; Circular No. 72, dated 8-6-2007 and Circular No. 75, dated 14-6-2007.

See AP (DIR Series) (2007-08) Circular No. 2, dated 19-7-2007; Circular No. 12, dated 26-9-2007; Circular No. 11, dated 26-9-2007; Circular No. 34, dated 3-4-2008 and Circular No. 48, dated 3-6-2008.

See AP (DIR Series) (2008-09) Circular No. 7, dated 13-8-2008; No. 14, dated 5-9-2008 and No. 39, dated 8-12-2008.

See AP (DIR Series) (2009-10) Circular No. 5, dated 22-7-2009; No. 45, dated 1-4-2010 and No. 47, dated 12-4-2010.

See AP (DIR Series) (2010-11) Circular Nos. 45, dated 15-3-2011, 69, dated 27-5-2011 and 73, dated 29-6-2011.

See AP (DIR Series) (2011-12) Circular No. 64, dated 5-1-2012, No. 66, dated 13-1-2012, No. 96, dated 28-3-2012, No. 97, dated 28-3-2012, No. 101, dated 2-4-2012 and No. 131, dated 31-5-2012.

See also AP (DIR Series) (2012-13) Circular No. 15, dated 21-8-2012, Circular No. 25, dated 7-9-2012, Circular No. 29, dated 12-9-2012, Circular No. 76, dated 17-1-2013, Circular No. 99, dated 23-4-2013 and Circular No. 100, dated 25-4-2013.

See also AP (DIR Series) (2013-14) Circular No. 8, dated 11-7-2013, Circular No. 23, dated 14-8-2013, Circular No. 30, dated 4-9-2013 and Circular No. 41, dated 10-9-2013.

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.
2. Substituted for "the amount of direct investment by way of contribution to equity and loan and 100 per cent of the amount of guarantees" by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **27-5-2011**. Earlier the italicised figure was substituted for "50" by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 14-6-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).
3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 30-4-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).
4. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2008, w.r.e.f. 27-6-2008.
1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2009, w.r.e.f. 23-9-2008.
2. Clause (s) renumbered as clause (w) by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2009, w.r.e.f. 23-9-2008.
3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2009, w.r.e.f. 6-9-2006.
1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2013, w.e.f. **14-8-2013**. Prior to its substitution, clause (i), as amended by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **27-5-2011/28-3-2012**, FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2012, w.r.e.f. 7-9-2012, FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 14-6-2007 (as corrected *vide* Corrigendum No. G.S.R. 610(E), dated 28-8-2009), FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2008, w.r.e f. 26-9-2007 (as corrected *vide* Corrigendum No. GSR 611(E), dated 28-8-2009), FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2005, w.e.f. 17-5-2005 and FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2005, w.e.f. 12-5-2005, read as under :

"(i) The total financial commitment of the Indian Party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed 400 per cent of the net worth of the Indian Party as on the date of the last audited balance sheet.

Explanation.-For the purpose of determining 'total financial commitment' within the limit of 400 per cent of the net worth, the following shall be reckoned, namely :-

- (a) remittance by market purchases, namely in freely convertible currencies; in case of Bhutan, investment made in freely convertible currencies or equivalent Indian rupees; in case of Nepal investment made only in Indian rupees;
- (b) capitalisation of export proceeds and other dues and entitlements as mentioned in Regulation 11;
- (c) hundred per cent of the value of guarantees issued by the Indian party to or on behalf of the joint venture company or wholly owned subsidiary;
- (d) investment in agricultural operations through overseas offices or directly;
- (e) External Commercial Borrowing in conformity with other parameters of the ECB guidelines;
- (f) fifty per cent of the value of performance guarantee issued by Indian Party to or on behalf of the JV/wos.

Explanation : In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 400 per cent of the net worth of the Indian Party, the Indian Party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.

(g) hundred per cent of the value of the 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.

Overseas direct investment by an Indian Party in Pakistan shall henceforth be considered under the approval route under regulation 9 of this Notification."

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, clause (iv) read as under :

"(iv) The Indian party has submitted up to date returns in Form APR in respect of all its overseas investments."

2. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, clause (vi) read as under :

"(vi) The Indian Party submits Form ODA, duly completed, to the designated branch of an authorised dealer."

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2013, w.e.f. **14-8-2013**. Prior to its substitution, clause (ii), as amended by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2008, w.r.e.f. 26-9-2007 (as corrected *vide* Corrigendum No. GSR 611(E), dated 28-8-2009), FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 14-6-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009) and FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 12-5-2005, read as under :

"(ii) drawal of foreign exchange from an authorised dealer in India shall not exceed 400% of the net worth of the Indian Party as on the date of last audited balance sheet.

Explanation : For the purpose of the limit of 400% of the net worth the following shall be reckoned, namely:-"

1. Substituted for "fifty" by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 14-6-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 27-3-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 7-7-2004 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

4. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 20-4-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

5. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fifth Amendment) Regulations, 2013, w.e.f. **14-8-2013**. Prior to its substitution sub-clause (h), as inserted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **27-5-2011** , read as under :

"(h) fifty per cent of the value of performance guarantee issued by Indian Party to or on behalf of the JV/WOS.

Explanation : In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 400 per cent of the net worth of the Indian Party, the Indian Party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation."

6. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**.

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **27-5-2011**. Prior to its substitution, sub-regulation (4) read as under :

"(4) An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment,

provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture."

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**.

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, clause (b) read as under :

"(b) the Indian Party files with the designated authorised dealer in Form ODA full details of the investment proposed."

1. Substituted for "A person resident in India, being an individual or a listed Indian company or a mutual fund registered in India" by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2006, w.r.e.f. 26-7-2006.

2. Words "an individual or" omitted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 20-12-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

3. Words "and has in its name shareholding of not less than 10% in any listed Indian company as on 1st January of the year of investment" omitted by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2008, w.r.e.f. 26-9-2007 (as corrected *vide* Corrigendum No. GSR 611(E), dated 28-8-2009).

4. Substituted for "35%" by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2008, w.r.e.f. 26-9-2007 (as corrected *vide* Corrigendum No. GSR 611(E), dated 28-8-2009). Earlier "35%" was substituted for "25%" by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 14-6-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

1. Omitted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2006, w.r.e.f. 26-7-2006.

2. Clause (iii) renumbered as clause (ii) by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2006, w.r.e.f. 26-7-2006.

3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2006, w.r.e.f. 26-7-2006.

4. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2013, w.e.f. **19-3-2013**.

5. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2009, w.r.e.f. 6-9-2006.

6. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2009, w.r.e.f. 6-9-2006. Prior to its substitution, sub-regulation (1) was amended by the FEM (Transfer or Issue of any Foreign Security) (Third Amendment) Regulations, 2009, w.r.e.f. 6-9-2006, read as under :

"(1) Subject to the Regulations in Part I, an Indian Party engaged in financial services sector in India may make investment in an entity outside India.

1. Omitted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 20-4-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009). Prior to its omission, regulation 8 read as under :

"8. *Investment in a foreign security by swap or exchange of shares of an Indian company.*-(1) An Indian Party may acquire shares of a foreign company, engaged in *bona fide* 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 thereunder from time to time by the Central Government:

Provided that-

a. the Indian Party has already made an ADR and/or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India; such investment by the Indian Party does

not exceed amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited balance-sheet, inclusive of all investments made under Regulations in Part I;

b. the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;

c. the total holding in the Indian Party 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;

d. the valuation of the shares of the foreign company is made-

(i) as per the recommendations of the Investment Banker if the shares are not listed on any stock exchange; or

(ii) based on the current market capitalization 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.

(2) Within 30 days from the date of issue of ADRs and/or GDRs in exchange for acquisition of shares of the foreign company under sub-regulation (1), the Indian Party shall submit a report in Form ODG to the Reserve Bank."

2. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, sub-regulation (2) read as under :

"(2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Form ODI, or in Form ODB, as applicable."

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2008, w.r.e.f. 27-6-2008.

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2008, w.r.e.f. 13-8-2008.

3. Substituted for "a period of six months from the date of export" by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2008, w.r.e.f. 3-6-2008.

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, clause (ii) read as under :

"(ii) the Indian Party shall submit through the authorised dealer concerned a report to the Reserve Bank in Form ODA within 30 days of effecting the final remittance."

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2005, w.e.f. 17-5-2005.

2. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2012, w.r.e.f. 12-9-2012. Prior to its substitution, sub-regulation (iii), as substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007, read as under :

"(iii) submit to the Reserve Bank through the Authorised Dealer every year within 60 days from the date of expiry of the statutory period as specified by the respective laws of the host country for finalization of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, 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 and other reports or documents as may be specified by the Reserve Bank from time to time."

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**. Prior to its substitution, sub-regulation (iv), as inserted by the FEM (Transfer or

Issue of any Foreign Security) (Fourth Amendment) Regulations, 2012, w.r.e.f. 15-3-2011, read as under :

"(iv) Indian companies, which have made overseas direct investments under the provisions of this Notification, shall submit an Annual Return on Foreign Liabilities and Assets' in the format and by a specified dates prescribed by the Reserve Bank from time to time, 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."

1. Sub-regulations (1) and (1A) substituted for sub-regulation (1) by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **29-6-2011**. Prior to its substitution, sub-regulation (1), as inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 27-3-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009), read as under :

"(1) An Indian party may transfer by way of sale to another Indian party who complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by him in a Joint Venture or Wholly Owned Subsidiary outside India without prior approval of the Reserve Bank, in the undernoted categories:

- (i) in cases where the JV/WOS is listed in the overseas stock exchange;
- (ii) in cases where the Indian promoter company, is listed on a stock exchange in India and has a net worth of not less than Rs. 100 crores;
- (iii) where the Indian promoter is an unlisted company and the investment in overseas venture does not exceed USD 10 million:

Provided that-

- (i) the sale does not result in any write off of the investment made;
- (ii) the sale is effected through a stock exchange where the shares of the overseas Joint Venture or Wholly Owned Subsidiary are listed;
- (iii) 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 Joint Venture or Wholly Owned Subsidiary;
- (iv) 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 Joint Venture or Wholly Owned Subsidiary;
- (v) 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;
- (vi) the Indian party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India."

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **27-5-2011**

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 20-4-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**.

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 1-6-2007. Prior to its substitution, regulation 19 read as under :

"19. Prior permission of the Reserve Bank for Direct Investment by a Proprietary Concern in India.-A proprietary concern in India may apply to the Reserve Bank in Form ODB for permission to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company:

Provided that-

(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."

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amdt.) Regulations, 2008, w.r.e.f. 27-3-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

2. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**.

"20. *Investment by Individuals.*-(1) A resident individual may apply to the Reserve Bank for permission to acquire shares in a foreign entity offered as consideration for professional services rendered to the foreign entity.

(2) 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."

3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2013, w.e.f. **5-3-2013**.

1. Substituted for "500" by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2012, w.r.e.f. 23-9-2011.

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amdt.) Regulations, 2009, w.r.e.f. 23-9-2008.

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**. Prior to its substitution, sub-regulation (2), as substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 5-4-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009) and amended by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2005, w.r.e.f. 9-2-2005, read as under :

'(2) A person resident in India, being an individual, who is 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 in which foreign equity holding effectively, directly or indirectly, is not less than 51 per cent, may accept the shares offered by such foreign company:

Provided that,-

(i) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and

(ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer bank giving details of remittances/beneficiaries, etc.

Explanation.-For the purpose of this sub-regulation, "indirectly" means "indirect foreign equity holding through a trust/special purpose vehicle or a step down subsidiary".'

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2008, w.r.e.f. 5-4-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009). Prior to its substitution, sub-regulations (3) and (4), read as under :

"(3) An authorised dealer may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2) :

Provided that the condition specified in that sub-regulation is fulfilled.

(4) A person resident in India may transfer by way of sale the shares acquired in terms of sub-regulations (1) and (2) 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."

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amdt.) Regulations, 2008, w.r.e.f. 5-4-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

3. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2012, w.r.e.f. 22-7-2009.

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2013, w.r.e.f. **28-3-2012**. Prior to its substitution, clause (a) read as under :

"(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,"

1. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2005, w.r.e.f. 1-10-2004. Prior to its substitution, sub-regulation (3) read as under:

"(3) An Indian software company may allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes:

Provided that the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time."

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amdt.) Regulations, 2008, w.r.e.f. 30-4-2007 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

3. Substituted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2006, w.r.e.f. 26-7-2006. Prior to its substitution, regulation 26 read as under:

"Mutual Funds may purchase foreign securities subject to such terms and conditions as it may be notified by SEBI from time to time."

4. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amdt.) Regulations, 2009, w.r.e.f. 19-7-2007.

1. Substituted for "500" by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2012, w.r.e.f. 23-9-2011.

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amdt.) Regulations, 2008, w.r.e.f. 27-3-2006 (as corrected *vide* Corrigendum No. GSR 610(E), dated 28-8-2009).

2. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2008, w.r.e.f. 27-6-2008.

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Second Amendment) Regulations, 2009, w.r.e.f. 23-9-2008.

1. Inserted by the FEM (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2013, w.e.f. **5-3-2013.**

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