
Foreign Exchange Management Act, 1999

FAQs

Compiled by Vivek Kurup

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COMPOUNDING OF CONTRAVENTIONS UNDER FEMA, 1999

(As on December 30, 2010)

Q.1. What is meant by contravention and compounding of contravention?

Ans. Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/ notification/ orders/ directions/ circulars issued there under. Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal. The Reserve Bank is empowered to compound any contraventions as defined under section 13¹ of FEMA, 1999 except the contravention under section 3(a)² *ibid*, for a specified sum after offering an opportunity of personal hearing to the contravener. It is a voluntary process in which an Indian citizen or a corporate seeks compounding of an admitted contravention. It provides comfort to any person who contravenes any provisions of FEMA, 1999 [except section 3(a) of the Act] by minimizing transaction costs. Willful, *malafide* and fraudulent transactions are, however, viewed seriously, which will not be compounded by the Reserve Bank.

Q.2. Who can apply for compounding?

Ans. Any person who contravenes any provision of the FEMA, 1999 [except section 3(a)] or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act or contravenes any condition subject to which an authorization is issued by the Reserve Bank, can apply for compounding to the Reserve Bank. Applications seeking compounding of contraventions under section 3(a) of FEMA, 1999 may be submitted to the Directorate of Enforcement.

Q.3 When should one apply for compounding?

Ans. When a person is made aware of the contravention of the provisions of FEMA, 1999 by the Reserve Bank or the Foreign Investment Promotion Board (FIPB) or any other statutory authority or the auditors or by any other means, she/he may apply for compounding. One can also make an application for compounding, *suo moto*, on becoming aware of the contravention.

Q.4. What is the procedure for applying for compounding?

Ans. The form given as Annex – I to the A.P.(DIR) Series Circular No. 56 dated June 28, 2010 issued by the Reserve Bank of India, can be used for applying for compounding. The same can also be downloaded from the Reserve Bank's website by clicking on the link below : http://www.rbi.org.in/Scripts/BS_ApCircularsDisplay.aspx

The completed application with all the relevant documents may be submitted to the Chief General Manager, CEFA, Reserve Bank of India, 5th floor, Amar Building, Sir P.M. Road, Mumbai 400 001.

Q.5. Are any fee required to be paid for seeking compounding?

Ans. Yes. The application in the prescribed format along with necessary documents and a demand draft for Rs. 5000/- (Rupees five thousand only) drawn in favour of the "Reserve Bank of India" should be sent to the Reserve Bank of India while sending the request for compounding.

Q.6. What are the details required to be filled in the application form?

Ans. Details regarding the applicant, date of incorporation of the company, nature of the company, nature of activity undertaken by the applicant, details of the contraventions supported by documents and specific reason/s for contravening the provisions and details of whether the case is under the investigation of the Directorate of Enforcement or the authority instituted under Prevention of Money Laundering Act, 2002 or any other authority, are required to be provided in the application form.

Q.7. Can an application for compounding be sent to the Reserve Bank pending fulfillment of certain obligations?

Ans. No. All requisite approvals should be obtained and compliances should be completed before seeking compounding of contravention. Compounding can be done only after rectifying the records by way of obtaining post-facto approvals or

unwinding the transactions in cases where such transactions are not permissible under FEMA, 1999. Copies of approvals and other compliances should be enclosed along with the application. CEFA (Cell for Effective Implementation of FEMA) is a Cell in the Foreign Exchange Department of the Reserve Bank of India, Central Office, Mumbai, attending to all matters relating to compounding. CEFA should be kept informed of the action taken.

Q.8. What action is taken by the Reserve Bank on receipt of the application?

Ans. The Reserve Bank (CEFA) makes a prima-facie scrutiny of the application to verify whether the required details and documents are furnished by the applicant. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If technical, the applicant will be issued a cautionary advice. If the contravention is material, it will be compounded by imposing a penalty after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DoE) for further investigation/ action.

Q.9. What are the sensitive contraventions ?

Ans. The contraventions, prima facie, involving money laundering, national and security concerns involving serious infringement of the regulatory framework, etc., are sensitive contraventions.

Q. 10. Who should classify the contravention as technical, material or sensitive?

Ans. Whether contravention under the Foreign Exchange Management Act (FEMA) is to be treated as technical and/ or minor or serious would be decided by the Reserve Bank on the merits of the case. The application will be disposed of keeping in view the procedure notified in this regard. Persons who have contravened the provisions of FEMA should not take upon themselves suo moto, or on the basis of external advice to decide whether a particular contravention is of a technical or minor in nature and, hence, no compounding application need be submitted to the Reserve Bank. If such applications for compounding are not made, the person concerned shall expose himself/herself to such action under the provisions of FEMA as the authorities may deem appropriate. The persons concerned should, therefore, in their own interest submit their applications for compounding of contravention under FEMA to the Reserve Bank at the earliest opportunity.

Q. 11. Is it mandatory to appear for the personal hearing?

Ans. It is not mandatory to attend the personal hearing. However, since this is an opportunity given to the applicant to present the facts and additional documents before the Compounding Authority, the applicant may like to avail of this facility. In case of any difficulty, the applicant may give in writing to the Compounding Authority, his consent to proceed with the disposal of the application based on the documents submitted with the application expressing his inability to appear in person.

Q.12. Can the applicant authorise another person to attend the personal hearing?

Ans. Yes, another person may be authorised by the applicant to attend the personal hearing on his behalf but only with proper written authority. It has to be ensured that the person appearing on behalf of the applicant is conversant with the nature of contravention and the related matters.

Q.13. How is the compounding process brought to the conclusion?

Ans. The Compounding Authority passes an order indicating details of the contravention and the provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the penalty imposed.

Q.14. When should the amount indicated in the order be paid?

Ans. The amount should be paid within 15 days from the date of the order by way of a demand draft drawn on "Reserve Bank of India" and payable at Mumbai.

Q. 15. How does the application for compounding finally get disposed of ?

Ans. On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority.

There cannot be a second adjudication by any authority on the contravention compounded. In terms of FEMA, 1999, where a contravention has been compounded, no proceeding or further proceeding, as the case may be, can be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention compounded.

Q. 16. What happens if the amount is not paid within 15 days of the order?

Ans. In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the Directorate of Enforcement for necessary action.

Q.17. Can there be an appeal against the order of the Compounding Authority?

Ans. As compounding is based on voluntary admissions and disclosures, there cannot be an appeal against the order of the Compounding Authority.

Q.18. What is the timeframe for completing the compounding process?

Ans. The compounding process is normally completed within 180 days from the date of receipt of the application complete in all aspects, by the Reserve Bank.

Q.19. Where can one get more details about compounding?

Ans. One can visit the Reserve Bank website www.rbi.org.in for more information regarding compounding.

¹Section 13 - Penalties.- (1) If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorization is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

Explanation.- For the purposes of this sub-section, "property" in respect of which contravention has taken place, shall include-

- (a) deposits in a bank, where the said property is converted into such deposits;
- (b) Indian currency, where the said property is converted into that currency; and
- (c) any other property which has resulted out of the conversion of that property.

² Section 3 - Dealing in foreign exchange, etc.- Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall- (a) deal in or transfer any foreign exchange or foreign security to any person not being an authorized person;

FEATURES OF VARIOUS DEPOSIT SCHEMES AVAILABLE TO NON-RESIDENT INDIANS (NRIS)

FREQUENTLY ASKED QUESTIONS On

Features of various Deposit Schemes available to Non-Resident Indians (NRIs)

(As on June 1, 2008)

Particulars	Foreign Currency (Non-Resident) Account (Banks) Scheme (FCNR(B) Account)	Non-Resident (External) Rupee Account Scheme (NRE Account)	Non-Resident Ordinary Rupee Account Scheme (NRO Account)
(1)	(2)	(3)	(4)
Who can open an account	NRIs (individuals / entities of Bangladesh/ Pakistan nationality/ownership require prior approval of RBI)	NRIs (individuals / entities of Bangladesh / Pakistan nationality/ownership require prior approval of RBI)	Any person resident outside India (other than a person resident in Nepal and Bhutan). (individuals / entities of Bangladesh / Pakistan nationality / ownership as well as erstwhile OCBs require prior approval of RBI)
Joint account	In the names of two or more non-resident individuals	In the names of two or more non-resident individuals	May be held jointly with residents
Nomination	Permitted	Permitted	Permitted
Currency in which account is denominated	Pound Sterling, US Dollar, Japanese Yen, Euro, Canadian Dollar and Australian Dollar	Indian Rupees	Indian Rupees
Repatriable	Repatriable	Repatriable	Not repatriable except for the following in the account - 1) current income 2) up to USD 1 million per financial year (April-March), for any bonafide purpose out of the balances in the account / sale proceeds of assets in India acquired by way of inheritance / legacy inclusive of assets acquired out of settlement subject to certain conditions.
Type of Account	Term Deposit only	Savings, Current, Recurring, Fixed Deposit	Savings, Current, Recurring, Fixed Deposit
Period for fixed deposits	For terms not less than 1 year and not more than 5 years.	At the discretion of the bank	As applicable to resident accounts.
Rate of Interest	Subject to cap : LIBOR / SWAP rates minus 75 basis points for the respective currency / corresponding maturities.	Subject to cap : <u>Fixed Deposits</u> : LIBOR / SWAP rates, as on the last working day of the previous month, for US Dollar of corresponding maturities with effect from close of business on April 24, 2007. <u>Savings Bank Account</u> Interest rate shall be at the rate	Banks are free to determine interest rates for term deposits.

		applicable to domestic savings account with effect from close of business in India on 17-11-2005.	
Operations by Power of Attorney in favour of a resident by the non-resident account holder	Operations on the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations on the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.	Operations on the account in terms of Power of Attorney is restricted to withdrawals for permissible local payments or remittance to the account holder himself through normal banking channels.
Loans a. In India i) to the Account holder ii) to Third Parties	Permitted up to Rs.20 lakhs Permitted up to Rs.20 lakhs	Permitted up to Rs.20 lakhs Permitted up to Rs.20 lakhs	Permitted Permitted
b. Abroad i) to the Account holder ii) to Third Parties	Permitted \$ Permitted \$	Permitted \$ Permitted \$	Not Permitted Not Permitted
c. Foreign Currency Loans in India i) to the Account holder ii) to Third Parties	Permitted up to Rs.20 lakhs Not Permitted	Not Permitted Not Permitted	Not Permitted Not Permitted
Purpose of Loan a. In India i) to the Account holder ii) to Third Party	i) Personal purposes or for carrying on business activities. * ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 9 of Sch. 2 to FEMA 5) Fund based and / or non-fund based facilities for personal purposes or for carrying on business activities *. (Please refer to para 9 of Sch. 2 to FEMA 5).	i) Personal purposes or for carrying on business activities. * ii) Direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms / companies iii) Acquisition of flat / house in India for his own residential use. (Please refer to para 6(a) of Sch.1 to FEMA 5) Fund based and / or non-fund based facilities for personal purposes or for carrying on business activities *. (Please refer to para 6(b) of Sch. 1 to FEMA 5)	Personal requirement and / or business purpose * Personal requirement and / or business purpose *
b. Abroad To the account holder and Third Party	Fund based and / or non-fund based facilities for bonafide purposes.	Fund based and / or non-fund based facilities for bonafide purposes.	Not permitted.

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

\$ Provided no funds are remitted to India and are used abroad only.

Note :

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

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

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

d. The regulations relating to the various deposit schemes available to Non-Resident Indians have been notified vide Notification No.FEMA.5 dated 3rd May 2000, as amended from time to time. The relevant Notifications and A P (DIR Series) Circulars have been placed on our website www.rbi.org.in and may please be referred to for full details.

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

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

HEDGING OF PRICE RISK IN COMMODITIES

A person resident in India is permitted to enter into a contract in a commodity exchange or market outside India to hedge price risk in commodities imported / exported, domestic transactions, freight risk, etc. There are two channels through which residents can undertake hedge i.e. .Authorised Dealers' Delegated Route and Reserve Bank's Approval Route. With a view to achieving greater clarity on the rules / guidelines governing hedging of commodity price risk, clarifications on process and various operational issues relating to commodity hedging are given below:

A. Commodity Hedging

1. Who can hedge?

A person resident in India, who has a commodity exposure and faces risks due to volatile commodity prices, can hedge the price risk in the International Commodity Exchanges/Markets, using hedging products, such as, futures and options, which are exchange traded and Over the Counter (OTC) derivatives as permitted by the Reserve Bank from time to time. Prior approval from the Reserve Bank / an authorised AD category - I bank is required.

2. What are the hedging facilities available to oil companies?

The Reserve Bank, through the approval/delegated routes, has permitted following facilities for oil price hedging:

a) Hedging of exposures arising from import of crude oil and export of petroleum products **based on underlying contracts**.

b) Hedging of exposures arising from import of crude oil **based on past performance** up to 50 per cent of the volume of actual imports during the previous year or 50 per cent of the average volume of imports during the previous three financial years, whichever is higher.

c) **Hedging of inventory** up to 50 per cent of the volumes in the quarter preceding the previous quarter.

d) Hedging of exposures arising from **domestic purchase of crude and sale of petro products** on the basis of underlying contracts.

e) Hedging of exposures on import / export of jet fuel and **domestic purchase of jet fuel by users** i.e., domestic airline companies.

3 Which are the entities permitted to hedge oil price risk?

Domestic oil refining and marketing companies are permitted to hedge their price risk on crude oil and petroleum products on overseas exchanges/ markets to modulate the impact of adverse price fluctuations. Domestic users of aviation turbine fuel (ATF) are also permitted to hedge their price risk on ATF in overseas exchanges / OTC markets.

4. What are the commodities, other than petroleum and petroleum products, purchased domestically which could be hedged in international exchanges?

The Reserve Bank has permitted companies listed on a recognised Stock Exchange to hedge the price risk in respect of domestic purchases and sales of aluminium, copper, lead, nickel and zinc under the delegated route. The eligible company interested in hedging price risk in respect of above commodities may apply to an AD Category-I bank authorized by Reserve Bank for such hedging.

5. What are the hedging facilities permitted for entities in Special Economic Zones (SEZs)?

Authorised Dealer Category I banks are permitted to allow entities in Special Economic Zones to undertake hedging transactions in the overseas commodity exchanges/markets to hedge their commodity price risk on import/export. Separate Reserve Bank approval is not necessary in this regard. Such transactions are permitted only when the unit in the SEZ is completely isolated from financial contacts with its parent or subsidiary in the mainland or within the SEZs as far as import/export transactions are concerned.

B. Freight Hedging

1. What is a freight derivative?

A freight derivative is a financial instrument whose value is derived on the future levels of freight rates, such as "dry bulk" carrying rates and oil tanker rates. Freight derivatives are used mainly by end users such as ship owners and large ware houses, suppliers such as oil refining and marketing companies to manage risk and hedge against price volatility in the supply chain.

2. Which are the entities permitted by RBI to hedge freight risk?

Oil refining and marketing companies, shipping companies and other companies which have substantial overheads on account of freight component, are permitted to hedge the freight risk in international exchanges/OTC markets on the basis of the underlying exposures. The oil and shipping companies are permitted to hedge through the delegated route i.e. through AD Category I banks and other corporates having freight exposures are permitted to hedge after obtaining prior approval from the Reserve Bank.

LIBERALISED REMITTANCE SCHEME

(updated up to September 17, 2010)

The Reserve Bank of India had announced a Liberalised Remittance Scheme (the Scheme) in February 2004 as a step towards further simplification and liberalization of the foreign exchange facilities available to resident individuals. As per the Scheme, resident individuals may remit up to USD 200,000 per financial year for any permitted capital and current account transactions or a combination of both. The Scheme was operationalised vide A.P. (DIR Series) Circular No. 64 dated February 4, 2004.

PART A :**Q.1. What is the Liberalised Remittance Scheme of USD 200,000?**

Ans. Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 200,000 per **financial** year (April – March) for any permissible current or capital account transaction or a combination of both.

Q.2. Please provide an illustrative list of capital account transactions permitted under the scheme.

Ans.. Under the Scheme, resident individuals can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the Scheme.

Q. 3. What are the prohibited items under the Scheme?

Ans. The remittance facility under the Scheme is not available for the following:

- i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000;
- ii) Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
- iii) Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;
- iv) Remittance for trading in foreign exchange abroad;
- v) Remittance by a resident individual for setting up a company abroad;
- vi) Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;
- vii) Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories”, from time to time; and
- viii) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Q.4. Whether LRS facility is in addition to existing facilities detailed in Schedule III under remittances?

Ans. The facility under the Scheme is **in addition** to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes.

However, remittances for gift and donation can not be made separately and have to be made under the Scheme only. Accordingly, resident individuals can remit towards gifts and donations up to USD 200,000 per financial year under the Scheme.

Q. 5. Are resident individuals under this Scheme required to repatriate the accrued interest/dividend on deposits/investments abroad, over and above the principal amount?

Ans. The resident individual investors can retain and re-invest the income earned on investments made under the Scheme. The residents are not required to repatriate the funds or income generated out of investments made under the Scheme.

Q.6. Are remittances under the Scheme on gross basis or net basis (net of repatriation from abroad)?

Ans. Remittance under this scheme is on a gross basis.

Q. 7. Can remittances under the facility be consolidated in respect of family members?

Ans. Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.

Q. 8. Can one use the Scheme for purchase of objects of art (paintings, etc.) either directly or through auction house?

Ans. Remittances under the Scheme can be used for purchasing objects of art subject to compliance with the extant Foreign Trade Policy of the Government of India and other applicable laws.

Q.9. Is the AD required to check permissibility of remittances based on nature of transaction or allow the same based on remitters declaration?

Ans. AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by the Reserve Bank, in this regard from time to time.

Q.10. Can remittance be made under this Scheme for acquisition of ESOPs?

Ans. The Scheme can also be used for remittance of funds for acquisition of ESOPs.

Q.11. Is this scheme in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000/- for a block of 5 calendar years)?

Ans. The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/GDR.

Q.12. Is this Scheme is in addition to acquisition of qualification shares (i.e. USD 20,000 or 1% of paid up capital of overseas company, whichever is lower)?

Ans. The remittance under the Scheme is in addition to acquisition of qualification shares.

Q.13. Can a resident individual invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?

Ans. A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc. under this Scheme. Further, the resident can invest in such securities through the bank account opened abroad for the purpose under the Scheme.

Q.14. Can an individual, who has availed of a loan abroad while as a non-resident Indian can repay the same on return to India, under this Scheme as a resident?

Ans. This is permissible.

Q. 15. Is it mandatory for resident individuals to have PAN number for sending outward remittances under the Scheme?

Ans. It is mandatory to have PAN number to make remittances under the Scheme.

Q. 16. In case a resident individual requests for an outward remittance by way of issuance of a demand draft (either in his own name or in the name of the beneficiary with whom he intends to putting through the permissible

transactions) at the time of his private visit abroad, whether the remitter can effect such an outward remittance against self-declaration?

Ans. Such outward remittance in the form of a DD can be effected against the declaration by the resident individual in the format prescribed under the Scheme.

Q. 17. Are there any restrictions on the frequency of the remittance?

Ans. There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 200,000.

Q.18. What are the requirements to be complied with by the remitter?

Ans. The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. He has to furnish an application-cum-declaration in the specified format regarding the purpose of the remittance and declare that the funds belong to him and will not be used for the purposes prohibited or regulated under the Scheme.

Q. 19. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

Ans. Once a remittance is made for an amount up to USD 200,000 during the **financial year**, he would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

Q.20. Can remittances be made only in US Dollars?

Ans. The remittances can be made in any freely convertible foreign currency equivalent to USD 200,000 in a **financial year**.

Q. 21. In the past resident individuals could invest in overseas companies listed on a recognised stock exchange abroad and which has the shareholding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India. Does this condition still exist?

Ans. Investment by resident individual in overseas companies is subsumed under the Scheme of USD 200,000. The requirement of 10 per cent reciprocal shareholding in the listed Indian companies by such overseas companies has since been dispensed with.

PART – B :

Guidelines for Financial Intermediaries

Q. 22. Are intermediaries expected to seek specific approval for making overseas investments available to clients?

Ans. Banks including those not having operational presence in India are required to obtain prior approval from the Department of Banking Operations and Development, Central Office, Reserve Bank of India, Central Office Building, Shahid Bhagat Singh Marg, Mumbai, for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

Q.23. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?

Ans. No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments under the Scheme.

Q. 24. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?

Ans. No. The Scheme does not envisage extension of credit facility against the security of the deposits. Further, the banks should not extend any kind of credit facilities to resident individuals to facilitate outward remittances under the Scheme.

Q. 25. Can bankers open foreign currency accounts in India for residents under the Scheme?

Ans. No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

Q. 26. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?

Ans. No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

General Information

For further details/guidance, please approach any bank authorised to deal in foreign exchange or contact Regional Offices of the Foreign Exchange Department of the Reserve Bank.

ACCOUNT OPENED BY FOREIGN NATIONALS AND FOREIGN TOURISTS

(UPDATED UP TO JUNE 15, 2010)

FOREIGN EXCHANGE DEPARTMENT

Q.1. Can foreign tourists open a bank account in India during their short visit?

A. Yes. Foreign tourists during their short visit to India can open a Non-Resident (Ordinary) Rupee (NRO) account (Current / Savings) with any Authorised Dealer bank dealing in foreign exchange. Such account can be opened up to a maximum period of 6 months.

Q.2 What are the documents required for opening such accounts?

A. Passports and other valid identification proofs are required for opening the accounts. Authorised Dealer banks are also required to follow the Know Your Customer norms while opening of the accounts.

Q.3. What credits can be made to such accounts?

A. Funds remitted from outside India through banking channel or those obtained by sale of foreign exchange brought by the tourists to India can be credited to the NRO account.

Q 4. Can the NRO account be used for making local payments?

A. Yes. Tourists can freely make local payments through the NRO account. All payments to residents exceeding INR 50,000 can be made only by means of cheques / pay orders / demand drafts.

Q.5. Can foreign tourists repatriate the balance held in their NRO account at the time of departure from India?

A. Authorised Dealer banks have been allowed to convert the balance in the account for payment to the account holder at the time of departure from India into foreign currency, provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

Q.6. What can be done to repatriate the proceeds of an account that has been maintained for more than six months?

A. In such cases, applications for repatriation of balance may be made on plain paper to the Foreign Exchange Department of the Regional Office concerned of the Reserve Bank through the Authorised Dealer bank maintaining the account.

Q.7.Can foreign nationals resident in India open resident account ?

A. Yes. Foreign nationals resident in India can open and maintain a resident Rupee account in India in terms of Notification No.5/2000-RB dated May 3, 2000 viz., Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time.

Q.8. Can AD Category-I banks remit proceeds of such accounts on closure?

A. Yes. But AD Category-I banks should ensure that the funds to be repatriated outside India were either received from abroad or they are repatriable in nature or permissible in terms of RBI notification No. FEMA 13/2000 dated 3rd May 2000, as amended from time to time.

ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY IN INDIA BY A PERSON RESIDENT OUTSIDE INDIA***Frequently Asked Questions (FAQs)*****Acquisition and Transfer of Immovable Property in India by a Person Resident outside India**

Acquiring immovable property in India by persons resident outside India is regulated in terms of Section 6(3) (i) of the Foreign Exchange Management Act (FEMA), 1999 as well as by the regulations contained in Notification issued by RBI viz Notification No FEMA. 21/2000-RB dated May 3, 2000, as amended from time to time. The persons resident outside India are categorized as Non- Resident Indians (NRIs) or a foreign national of Indian Origin (PIO) or a foreign national of non-Indian origin. A person resident in India who is not a citizen of India is also covered by the relevant Notifications.

2. Statutorily, under the provisions of Section 6(5) of FEMA 1999, a person resident outside India can hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was a resident in India or inherited from a person who was a resident in India.

3. The regulations under the Notification No FEMA 21 dated May 3, 2000 permit a NRI or a PIO to acquire immovable property in India other than agricultural land or, plantation property or farm house. Further, foreign companies who have been permitted to open an office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. This stipulation is not available to entities which are permitted to open liaison offices in India.

4. The relevant regulations covering the transactions in immovable property have been notified vide RBI Notification No.FEMA 21/2000-RB dated May 3, 2000 and this basic notification has been subsequently amended by the notifications detailed below:

1. Notification No.FEMA 64/2002-RB dated June 29, 2002;
2. Notification No.FEMA 65/2002-RB dated June 29, 2002;
3. Notification No.FEMA 93/2003-RB dated June 9, 2003; and
4. Notification No. FEMA 146/2006-RB dated February 10 2006 (available with A.P.(DIR Series) Circular No. 5 dated 16.8.2006on website)

All the above notifications are available on RBI website: www.fema.rbi.org.in.

5. The restrictions on acquiring immovable property in India by a person resident outside India would not apply where the immovable property is proposed to be acquired by way of a lease for a period not exceeding 5 years or where a person is deemed to be resident in India. In order to be deemed to be a person resident in India, from FEMA angle, the person would need to comply with the criterion for residency as defined in Section 2(v) of FEMA 1999. However, citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan cannot acquire or transfer immovable property in India, (other than on lease, not exceeding five years) without prior permission of the Reserve Bank.

6. NRIs/PIO are allowed to repatriate an amount up to USD one million, per financial year (April-March), out of the balances held in the NRO account subject to tax compliance. This amount includes sale proceeds of assets acquired by way of inheritance or settlement.

7. While the statutory and regulatory provisions are indicated above, we have been receiving several queries from individuals on operational procedures regarding acquisition, holding and transferring of immovable property in India and repatriating/remitting the proceeds arising from sale of such property. In order to clarify these issues, we have attempted a

set of FAQs on various issues relating to acquisition and transfer of immovable property in India by a person resident outside India and a person resident in India who is not a citizen of India.

In case there are other issues to be resolved, a reference may be made to the

Chief General Manager-in-Charge,
Foreign Exchange Department
Foreign Investment Division,
Reserve Bank of India,
Central Office
Mumbai- 400 001.

The FAQs cover the following topics:

(I) Acquisition of immovable property in India by a person resident outside India

i.e. by a NRI / PIO / foreign national of non-Indian origin through -

- i) purchase
- ii) gift
- iii) inheritance

(II) Transfer of immovable property in India by a person resident outside India by -

- i) sale
- ii) gift
- iii) mortgage

(III) Mode of payment for purchase of property in India.

(IV) Repatriation of sale proceeds of property

- i) purchased
- ii) received as gift
- iii) inherited

(V) Provisions for Foreign Embassies / Diplomats / Consulate Generals.

(VI) Other issues.

I Acquisition of Immovable Property in India

Q.1 Who can purchase immovable property in India?

A.1 Under the general permission available, the following categories can freely purchase immovable property in India:

- i) Non-Resident Indian (NRI)- that is a citizen of India resident outside India
- ii) Person of Indian Origin (PIO)- that is an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who

1. at any time, held Indian passport, or
2. who or either of whose father or grandfather was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955).

The general permission, however, covers only purchase of residential and commercial property and not for purchase of agricultural land / plantation property / farm house in India.

Q.2. Whether NRI/PIO can acquire agricultural land/ plantation property / farm house in India?

A.2. No. Since general permission is not available to NRI/PIO to acquire agricultural land/ plantation property / farm house in India, such proposals will require specific approval of Reserve Bank and the proposals are considered in consultation with the Government of India.

Q.3. Do any documents need to be filed with Reserve Bank of India after purchase?

A.3. No. An NRI / PIO who has purchased residential / commercial property under general permission, is not required to file any documents with the Reserve Bank.

Q.4. How many residential / commercial properties can NRI / PIO purchase under the general permission?

A.4. There are no restrictions on the number of residential / commercial properties that can be purchased.

Q.5. Can a foreign national of non-Indian origin be a second holder to immovable property purchased by NRI / PIO?

A.5. No.

Q.6. Can a foreign national of non-Indian origin resident outside India purchase immovable property in India?

A.6. No. A foreign national of non-Indian origin, resident outside India cannot purchase any immovable property in India. But, he/she may take residential accommodation on lease provided the period of lease does not exceed five years. In such cases, there is no requirement of taking any permission of or reporting to Reserve Bank

Q.7 Can a foreign national who is a person resident in India purchase immovable property in India?

A.7. Yes, but the person concerned would have to obtain the approvals, and fulfil the requirements if any, prescribed by other authorities, such as the concerned State Government, etc. However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank. Such requests are considered by Reserve Bank in consultation with the Government of India.

Q.8 Can an office of a foreign company purchase immovable property in India?

A.8. A foreign company which has established a Branch Office or other place of business in India, in accordance with FERA / FEMA regulations, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. The payment for acquiring such a property should be made by way of foreign inward remittance through proper banking channel. A declaration in form IPI should be filed with Reserve Bank within ninety days from the date of acquiring the property. Such a property can also be mortgaged with an Authorised Dealer as a security for other borrowings. On winding up of the business, the sale proceeds of such property can be repatriated only *with* the prior approval of Reserve Bank. Further, acquisition of immovable property by entities who had set up Branch Offices in India and incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of Reserve Bank to acquire such immovable property. However, if the foreign company has established a Liaison Office, it can not acquire immovable property. In such cases, Liaison Offices, can take property by way of lease not exceeding 5 years.

Q.9 Whether immovable property in India can be acquired by way of gift ?

A.9. (a) Yes, NRIs and PIOs can freely acquire immovable property by way of gift either from

- i) a person resident in India or
- ii) an NRI or
- iii) a PIO.

However, the property can only be commercial or residential. Agricultural land / plantation property / farm house in India **cannot** be acquired by way of gift.

(b) A foreign national of non-Indian origin resident outside India cannot acquire any immovable property in India through gift.

Q.10. Whether a non-resident can inherit immovable property in India?

A.10. Yes, a person resident outside India i.e.

- i) an NRI
- ii) a PIO and
- iii) a foreign national of non-Indian origin can inherit and hold immovable property in India from a person who was resident in India. However, a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan should seek specific approval of Reserve Bank.

Q.11. From whom can the non-resident inherit immovable property?

A.11. A person resident outside India (i.e. NRI or PIO or foreign national of non-Indian origin) can inherit immovable property from

- (a) a person resident in India.
- (b) a person resident outside India

However, the person from whom the property is inherited should have acquired the same in accordance with the foreign exchange regulations applicable at that point of time.

II. Transfer of immovable property in India

(i) Transfer by Sale

Q.12 Can an NRI/ PIO/foreign national sell his residential / commercial property?

A.12. (a) NRI can sell property in India to-

- i) a person resident in India or
- ii) an NRI or
- iii) a PIO.

(b) PIO can sell property in India to

- i) a person resident in India.
- ii) an NRI or
- iii) a PIO – *with the prior approval* of Reserve Bank

(c) Foreign national of non-Indian origin including a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan can sell property in India with prior approval of Reserve Bank to

- i) a person resident in India
- ii) an NRI
- iii) a PIO

Q.13. Can an agricultural land / plantation property / farm house in India owned / held by a non-resident be sold?

A.13. (a) NRI / PIO may sell agricultural land /plantation property/farm house to a person resident in India who is a citizen of India.

(b) Foreign national of non-Indian origin resident outside India would need *prior approval* of Reserve Bank to sell agricultural land/plantation property/ farm house in India

(ii) Transfer by gift

Q.14. Can a non-resident gift his residential / commercial property?

A.14. Yes.

(a) NRI / PIO may gift residential / commercial property to -

- (i) person resident in India or
- (ii) an NRI or
- (iii) PIO.

(b) foreign national of non-Indian origin needs prior approval of Reserve Bank.

Q.15. Can an NRI / PIO / Foreign national holding an agricultural land / plantation property / farm house in India gift the same?

- A.15. (a) NRI / PIO can gift but only to a person resident in India who is a citizen of India.
 (b) foreign national of non-Indian origin needs prior approval of Reserve Bank

(iii) Transfer through mortgage

Q.16. Can residential / commercial property be mortgaged?

- A.16. i) NRI / PIO can mortgage to:

- (a) an authorised dealer / housing finance institution in India – without the approval of Reserve Bank.
 (b) a party abroad - with prior approval of Reserve Bank.

ii) a foreign national of non-Indian origin can mortgage only with prior approval of Reserve Bank

iii) a foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an authorized dealer in India.

III. Mode of payment for purchase

Q.17. How can an NRI / PIO make payment for purchase of residential / commercial property in India ?

- A.17. Payment can be made by NRI / PIO out of

- (a) funds remitted to India through normal banking channel or
 (b) funds held in NRE / FCNR (B) / NRO account maintained in India
 No payment can be made either by traveller's cheque or by foreign currency notes.
 No payment can be made outside India.

Q.18 What shall be the option if there is refund of application money / payment made by the building agencies / seller because of non-allotment of flat / plot / cancellation of bookings / contracts ?

- A.18. The amount of refund, together with interest (net of income tax) can be credited to NRE account. This is subject to condition that the original payment was made by way of inward remittance or by debit to NRE / FCNR (B) account. (Please refer to A.P. (DIR) Series Circular No. 46 dated 12.11.2002)

Q.19. Can NRI / PIO avail of loan from an authorised dealer for acquiring flat / house in India for his own residential use against the security of funds held in his NRE Fixed Deposit account / FCNR (B) account?

- A.19. Yes, such loans are subject to the terms and conditions as laid down in Schedules 1 and 2 to Notification No. FEMA 5/2000-RB dated May 3, 2000 as amended from time to time. However, banks cannot grant fresh loans or renew existing loans in excess of Rupees 20 lakh against NRE and FCNR(B) deposits either to the depositors or to third parties [cf. A.P. (DIR Series) Circular No. 29 dated January 31, 2007].

Such loans can be repaid

- (a) by way of inward remittance through normal banking channel or
 (b) by debit to his NRE / FCNR (B) / NRO account or
 (c) out of rental income from such property.
 (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

Repatriation:

- (a). In case the amount has been received from inward remittance or debit to NRE/FCNR(B)/NRO account for acquiring the property or for repayment of the loan, the principal amount can be **repatriated outside India**.

For this purpose, **repatriation outside India** means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through normal banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency

(b) in case the property is acquired out of Rupee resources and/or the loan is repaid by close relatives in India (as defined in Section 6 of the Companies Act, 1956), the amount can be credited to the NRO account of the NRI/PIO. The amount of capital gains, if any, arising out of sale of the property can also be credited to the NRO account. NRI/PIO are also allowed by the Authorised Dealers to repatriate an amount up to USD 1 million per financial year out of the balance in the NRO account for all bonafide purposes to the satisfaction of the authorised dealers, subject to tax compliance.

Q.20. Can NRI / PIO, avail of housing loan in rupees from an authorised dealer or housing finance institution in India approved by the National Housing Bank for purchase of residential accommodation or for the purpose of repairs / renovation / improvement of residential accommodation ? How can such loan be repaid?

A.20. Yes, NRI/PIO can avail of **housing loan in rupees from an Authorised Dealer or housing finance institution** subject to certain terms and conditions. (Please refer to Regulation 8 of Notification No. FEMA 4/2000-RB dated 3.5.2000 and A.P. (DIR) Series Circular No. 95 dated April 26, 2003).

Such a loan can be repaid

- (a) by way of inward remittance through normal banking channel or
- (b) by debit to his NRE / FCNR (B) / NRO account or
- (c) out of rental income from such property.
- (d) by the borrower's close relatives, as defined in section 6 of the Companies Act, 1956, through their account in India by crediting the borrower's loan account.

Q.21. Can NRI/PIO avail of housing loan in rupees from his employer in India?

A.21. Yes, subject to certain terms and conditions (Please refer to Regulation 8A of Notification No. FEMA 4/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No.27 dated October 10, 2003).

IV Repatriation of sale proceeds of residential / commercial property purchased by NRI / PIO

Q.22. Can NRI / PIO repatriate the sale proceeds of immovable property? If so, what are the terms?

A.22. NRI / PIO may repatriate the sale proceeds of immovable property in India

- (a) If the property was acquired out of foreign exchange sources i.e. remitted through normal banking channels / by debit to NRE / FCNR (B) account

The amount to be repatriated **should not** exceed the amount paid for the property:

- 1. in foreign exchange received through normal banking channel or
- 2. by debit to NRE account (foreign currency equivalent, as on the date of payment) or debit to FCNR (B) account.

Repatriation of sale proceeds of residential property purchased by NRI / PIO out of foreign exchange is restricted to not more than two such properties.

Capital gains, if any, may be credited to the NRO account from where the NRI/PIO may repatriate an amount up to USD one million, per financial year, as discussed below.

- (b) If the property was acquired out of Rupee sources, NRI or PIO may remit an amount up to USD one million, per financial year, out of the balances held in the NRO account (inclusive of sale proceeds of assets acquired by way of inheritance or settlement), for all the bonafide purposes to the satisfaction of the Authorized Dealer bank and subject to tax compliance.

Q.23. Can an NRI/PIO repatriate the proceeds in case the sale proceed was deposited in NRO account?

A.23. From the NRO account, NRI/PIO may repatriate up to USD one million per financial year (April-March), which would also include the sale proceeds of immovable property.

Q.24. If a Rupee loan was taken by NRI/PIO from Authorised Dealer or housing finance institution for purchase of residential property can an NRI / PIO repatriate the sale proceeds of such property?

A.24. Yes, provided the loan has been subsequently repaid by remitting funds from abroad or by debit to NRE/FCNR(B) accounts (Please see A.P. (DIR) Series Circular No. 101 dated 5.5.2003)

Q.25. If the property was purchased from foreign inward remittance or from NRE / FCNR (B) account, can the sale proceeds of property be repatriated immediately?

A.25. Yes.

Q.26. Is there any restriction on number of residential properties in respect of which sale proceeds can be repatriated by NRI / PIO?

A.26. Yes, sale proceeds of not more than two residential properties can be repatriated.

Q.27. If the immovable property was acquired by way of gift by the NRI/PIO, can he repatriate abroad the funds from sale?

A.27. The sale proceeds of immovable property acquired by way of gift should be credited to NRO account only. From the balance in the NRO account, NRI/PIO may remit up to USD one million, per financial year, subject to the satisfaction of Authorised Dealer and payment of applicable taxes.

Q.28 If the immovable property was received as inheritance by the NRI/PIO can he repatriate the sale proceeds?

A.28. Yes, general permission is available to the NRIs/PIO to repatriate the sale proceeds of the immovable property inherited from a **person resident in India**. NRIs/PIO may repatriate an amount not exceeding USD one million, per financial year, on production of documentary evidence in support of acquisition / inheritance of assets, an undertaking by the remitter and certificate by a Chartered Accountant in the formats prescribed by the Central Board of Direct Taxes vide their Circular No.10/2002 dated October 9, 2002. [cf. A. P. (DIR Series) Circular No.56 dated November 26, 2002]. In case of a foreign national, sale proceeds can also be repatriated even if the property is inherited from a **person resident outside India**. But this is allowed only with prior approval of Reserve Bank. The foreign national has to approach Reserve Bank with documentary evidence in support of inheritance of the immovable property and the undertaking and the C.A. Certificate as mentioned above.

The general permission for repatriation of sale proceeds of immovable property is not available to a citizen of Pakistan, Bangladesh, Sri Lanka, China, Afghanistan and Iran and he has to seek specific approval of Reserve Bank.

As FEMA specifically permits transactions only in Indian Rupees with citizens of Nepal and Bhutan, the question of repatriation of the sale proceeds in foreign exchange to Nepal and Bhutan would not arise.

V. Provisions for Foreign Embassies / Diplomats / Consulate Generals

Q.29. Can Foreign Embassies / Diplomats / Consulate General purchase / sell immovable property in India ?

A.29. Yes, Foreign Embassies / Diplomats / Consulate Generals can purchase and sell any immovable property other than agricultural land / plantation property / farm house in India with prior clearance from the Government of India, Ministry of External Affairs. The payment should be made by foreign inward remittance through normal banking channel.

VI. Other issues

Q.30. Can NRI / PIO rent out the residential / commercial property purchased out of foreign exchange / rupee funds?

A.30. Yes, NRI/PIO can rent out the property without the approval of the Reserve Bank. **Rent received can be credited to NRO / NRE account or remitted abroad**. Powers have been delegated to the Authorised Dealers to allow repatriation of current income like rent, dividend, pension, interest, etc. of NRIs/PIO who do not maintain an NRO account in India based on an appropriate certification by a Chartered Accountant, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid/provided for.[cf. A.P. (DIR Series) Circular No. 45 dated May 14, 2002].

Q.31. Can a person who had bought immovable property when he was a resident, continue to hold such property even after becoming an NRI/PIO?

A. 31. Yes, he can continue to hold the residential / commercial property / agricultural land/ plantation property / farm house in India without the approval of the Reserve Bank.

Q. 32. In which account can the sale proceeds of such immovable property be credited ?

A.32. The sale proceeds may be credited to NRO account.

Q.33. Can the sale proceeds of the immovable property referred to in Q.No. 31 be remitted abroad ?

A.33. Yes, provided the amount to be remitted does not exceed USD one million per financial year, for all bonafide purposes to the satisfaction of Authorised Dealers and subject to tax compliance.

Q.34. Can foreign nationals of non-Indian origin resident in India or outside India who had earlier acquired immovable property under FERA with specific approval of Reserve Bank continue to hold the same? Can they transfer such property?

A.34. Yes, they may continue to hold the immovable property. However, they can transfer the property only with the prior approval of Reserve Bank.

Q.35. Is a resident in India governed by the provisions of Foreign Exchange Management (Acquisition and transfer of immovable property in India) Regulations, 2000?

A.35. A person resident in India who is a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan is governed by the provisions of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000 ie. he would require prior approval of Reserve Bank for acquisition and transfer of immovable property in India even though he is resident in India. Such requests are considered by Reserve Bank in consultation with the Government in India

Definitions

Q.36. Where are the terms a 'person resident in India' and a 'person resident outside India' defined ?

A.36. Section 2 (v) and Section 2 (w) of the FEMA, 1999 defines 'person resident in India' and a 'person resident outside India' respectively.

Q.37. What is meant by a person resident in India ?

A.37. Under FEMA, a person resident in India is defined as a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year (April-March) and who has come to or stays in India either for taking up employment, carrying on business or vocation in India or for any other purpose, that would indicate his intention to stay in India for an uncertain period. **In other words, to be treated as 'a person resident in India' under FEMA, a person has not only to satisfy the condition of the period of stay (being more than 182 days during the course of the preceding financial year) but has also to comply with the condition of the purpose / intention of stay.**

Q.38. What is meant by a person resident outside India ?

A.38. The Act defines a 'a person resident outside India' as a person who is not a person resident in India' (As defined in Q.No. 37 above)

Q.39. Who can determine whether a person is resident in India or not?

A.39. Reserve Bank does not determine the residential status. Under FEMA, residential status is determined by operation of law. The onus is on an individual to prove his / her residential status, if questioned by any authority.

Q.40. If a foreign national is a person resident in India as per the provisions of Section 2(v) (i)B of the FEMA, 1999, does he require approval of Reserve Bank to purchase any immovable property in India ?

A.40 A foreign national resident in India does not require approval from Reserve Bank from FEMA angle, but approvals if any required in terms of regulations prescribed by other authorities such as the concerned State Government etc. will have to be obtained by him / her. However, a foreign national resident in India who is a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan requires specific prior approval of Reserve Bank.

ASIAN CLEARING UNION

Q1. What is the Asian Clearing Union (ACU)?

A. The Asian Clearing Union (ACU) was established with its head quarters at Tehran, Iran, on December 9, 1974 at the initiative of the United Nations Economic and Social Commission for Asia and Pacific (ESCAP), for promoting regional co-operation. The main objectives of a clearing union are to facilitate payments among member countries for eligible transactions on a multilateral basis, thereby economizing on the use of foreign exchange reserves and transfer costs, as well as promoting trade among the participating countries.

Q2. Who are the members of the ACU?

A. The Central Banks and the Monetary Authorities of Iran, India, Bangladesh, Bhutan, Nepal, Pakistan, Sri Lanka, Myanmar and Maldives are currently the members of the ACU.

Q3. Where are the instructions, relating to the ACU, available?

A. The detailed procedural instructions issued by RBI are contained in the A.P. (DIR Series) Circular No.35 dated February 17, 2010.

Q4. How are the ACU transactions to be handled by Authorised Dealers (AD) in India?

A. All transactions to be settled through the ACU will be handled by AD Category-I banks in the same manner as other normal foreign exchange transactions, through correspondent arrangements.

Q5. What is the unit of settlement of ACU transactions?

A. The Asian Monetary Units (AMUs) is the common unit of account of ACU and is denominated as 'ACU Dollar' and 'ACU Euro', which is equivalent in value to one US Dollar and one Euro, respectively. All instruments of payment under ACU have to be denominated in AMUs. Settlement of such instruments may be made by AD Category-I banks through the ACU Dollar Accounts and ACU Euro Accounts, which should be distinct from the other U.S. Dollar and Euro accounts, respectively maintained for non ACU transactions.

Q6. What is the procedure for settlement of ACU transactions?

A. i) Large part of the transactions, as possible, should be settled directly through the accounts maintained by AD Category-I banks with banks in the other participating countries and vice versa; only the spill-overs in either direction are required to be settled by the Central Banks in the countries concerned through the Clearing Union. At all times, the balances maintained in the ACU Dollar and ACU Euro accounts should be commensurate with the requirements of the normal exchange business.

ii) AD Category-I banks are permitted to settle commercial and other eligible transactions in much the same manner as other normal foreign exchange transactions.

Q7. Can Authorized Dealer Category-I banks open ACU Dollar and ACU Euro Accounts in the names of all banks in all member countries including Pakistan without the prior approval of Reserve Bank of India?

A. Yes, this is permissible.

Q8. What is the mechanism for settlement through the ACU?

A. Reserve Bank receives and pays US Dollars / Euros, towards the funding requirements, as reflected in the respective Nostro / Vostro Accounts. Detailed operational guidelines have been issued vide A.P. (DIR Series) Circular No.35 dated February 17, 2010.

Q9. What are the transactions which are eligible to be settled through the ACU?

A. All permitted current account transactions including export / import transactions between ACU member countries on deferred payment terms are eligible to be settled through the ACU.

Q10. What are the payments that are not eligible to be settled through the ACU?

A. The following payments are not eligible to be settled through ACU:-

- i. payments between Nepal and India and Bhutan and India, exception being made in the case of goods imported from India by an importer resident in Nepal who has been permitted by the Nepal Rastra Bank to make payments in foreign exchange. Such payments may be settled through the ACU mechanism; and
- ii. payments which are not on account of current international transactions as defined by the International Monetary Fund, with the exception of such other transactions mutually accepted for settlement through ACU.

Q11. Are all eligible transactions between member countries required to be settled through the ACU?

A. Yes. However, trade transactions with Myanmar may be settled in any freely convertible currency, in addition to the ACU mechanism.

DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE (JV)/WHOLLY OWNED SUBSIDIARIES (WOS) ABROAD**Q.1. What is the significance of overseas investment for the country and for the investor ?**

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

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

A. The guidelines have been notified by Reserve Bank of India vide Notification No. FEMA 120/2004-RB dated July 7, 2004, as amended from time to time, which can be accessed at the Reserve Bank's website fema.rbi.org.in. A Master Circular entitled Direct Investment by Residents in JV/WOS Abroad dated July 1, 2009, which is a compendium of all notifications/circulars incorporating the developments, till that date, is also available at the website www.rbi.org.in.

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

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

Reserve Bank of India
Foreign Exchange Department
Overseas Investment Division
Central Office
Amar Building, 5th Floor
Mumbai 400 001
or
By e-mail

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

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

- a. Out of funds held in the RFC account;
- b. As bonus shares on existing holding of foreign currency shares;
- c. When not permanently resident in India, from the foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired. A resident Indian can remit up to USD 2,00,000, per financial year under the Liberalised Remittance Scheme (LRS), for permitted current and capital account transactions including purchase of securities.

Q.5. What is direct investment outside India?

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

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

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

A. An eligible entity is free to acquire either a partial stake (JV) or the entire equity (WOS) in an already existing company, provided the valuation is as per the laid down norms.

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

A. An Indian Party can make overseas direct investment in any bonafide activity (except those that are specifically prohibited as stated in answer to Q. 9). However, for undertaking activities in the financial services sector, certain additional conditions as specified in Regulation 7 of the Notification should be adhered to. (Please refer answer to Q.26).

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

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

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

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

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

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

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

Q.11. What is the Automatic Route?

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

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

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

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

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

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

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

A. Form ODI is available under Forms at the website www.fema.rbi.org.in.

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

Q.15. What is 'financial commitment'?

A. Financial commitment means the amount of direct investment outside India by way of contribution to equity, loans and 100% of the amount of guarantee issued by an Indian Party to or on behalf of its overseas JV/WOS (the amount and period of the guarantee should be specified upfront).

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

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

However, in the case of investment by acquisition of shares where the consideration is to be paid fully or partly by issue of the Indian Party's shares (swap of shares), irrespective of the amount, the valuation will have to be done by a Category I Merchant Banker registered with 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.

Q.17. Can one freely create a charge on immovable property or pledge shares of Indian party in favour of a non-resident entity ?

A. Prior permission of the Reserve Bank is required for creating such a charge on immovable property as also pledge of shares of the Indian parent / group companies.

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

A. Investment in Pakistan is not allowed under the Automatic route.

Investments in Nepal can be only in Indian Rupees. Investments in Bhutan are allowed in Indian Rupees and in freely convertible currencies.

All the dues receivable on investments made in freely convertible currencies as well as their sale / winding up proceeds are required to be repatriated to India in freely convertible currencies.

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

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

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

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

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

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

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

A. No. The allotment of a UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the JV/WOS. The issue of a UIN only signifies taking on record of the investment for maintaining the database.

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

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

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

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

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

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

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

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

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

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

- i. has earned net profit during the preceding three financial years from the financial services activities;
- ii. is registered with the appropriate regulatory authority in India for conducting financial services activities;
- iii. has obtained approval for undertaking such activities from the regulatory authorities concerned both in India and abroad before venturing into such financial activity;
- iv. has fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India; and
- v. Any additional investment by an existing JV / WOS or its step down subsidiary in the financial services sector is also required to comply with the above conditions.

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

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

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

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

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

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

1. Drawal of foreign exchange from an AD bank in India.
2. Swap of shares (refers to the acquisition of the shares of an overseas entity by way of exchange of the shares of the Indian entity).
3. Capitalization of exports.
4. Through the proceeds of External Commercial Borrowings / Foreign Currency Convertible Bonds .
5. In exchange of ADRs / GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.

6. Balances held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer.
7. Proceeds of foreign currency funds raised through ADR / GDR issues.

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

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

A. For the purpose of reckoning net worth of an Indian party, the net worth of 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. However, this facility is not available to partnership firms. Also the partnership firm's net worth cannot be taken into account by an incorporated entity.

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

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

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

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

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

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

Q.30. What is the requirement for direct investment in an overseas concern by way of share swap?

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

Q.31. What are the permitted activities that partnership firms can undertake through overseas direct investment route?

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

Q.32. Can the partners hold shares of the overseas concerns for and on behalf of the firm?

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

Q.33. Are there any restrictions for setting up of a second generation company? Can such step down subsidiaries be set up under the Automatic Route?

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

Q.34. Can an Indian Party have a JV/WOS through a Special Purpose Vehicle (SPV) under the Automatic Route?

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

Q.35. Can an Indian Party directly fund such step- down subsidiaries?

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

Q.36. Can the shares of a JV/WOS abroad be pledged for the purpose of financial assistance?

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

Q.37. What are the obligations of the Indian party, which has made direct investment outside India?

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

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

Q. 38. What are the penalties for non-submission of Annual Performance Reports (APRs)?

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

Q.39. Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?

A. Please see answer to Q.4.

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

- i. as a gift from a person outside India;
- ii. by way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;
- iii. by way of ESOPs issued to an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company in which foreign equity holding is not less than 51 per cent;

- iv. as inheritance from a person whether resident in or outside India;
- v. by purchase of foreign securities out of funds held in the Resident Foreign Currency Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Account) Regulations, 2000; and
- vi. by way of bonus/rights shares on the foreign securities already held by them.

Q.40. Can Indian corporates invest overseas other than by way of direct investment?

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

Q.41. Can a resident individual acquire shares of a foreign company in his capacity as director?

A. Yes, Reserve Bank has given general permission to a resident individual to acquire foreign securities to the extent of the minimum number of qualification shares required to be held for holding the post of Director provided such shares do not exceed 1% of the paid-up capital of the overseas company and the amount to be remitted for such shares does not exceed USD 20,000 in a calendar year.

Q.42. Can a resident individual subscribe to the rights issue of shares held by him?

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

Q.43. Are there any relaxations for individual employees/directors of an Indian company engaged in the field of software for acquisition of shares in their JV/WOS abroad?

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

- i. the consideration for purchase does not exceed USD 10,000 or its equivalent per employee in a block of five calendar years;
- ii. the shares acquired by all the employees/directors do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India; and
- iii. after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment.

Resident employees of Indian companies in the knowledge based sectors including working directors may purchase foreign securities under the ADR/GDR linked stock option scheme provided the consideration for purchase does not exceed USD 50,000 or its equivalent in a block of five calendar years.

Q.44. What are the avenues available to Indian Mutual Funds for investment abroad ?

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

- a) ADRs / GDRs of the Indian and foreign companies;
- b) equity of overseas companies listed on recognized overseas stock exchanges; initial and follow on public offerings for listing at recognized overseas stock exchanges ;
- c) foreign debt securities- short term as well as long term with rating not below investment grade - in the countries with fully convertible currencies ;
- d) money market investments not below investment grade; repos where the counter party is not below investment grade;
- e) government securities where countries are not rated below investment grade ;
- f) derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;

- g) short term deposits with banks overseas where the issuer is rated not below investment grade ;
- h) units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.

Q.45. What are the investment opportunities for Domestic Venture Capital Funds?

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

Q.46. Is investment in agriculture permitted?

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

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

EXCHANGE EARNER'S FOREIGN CURRENCY (EEFC) ACCOUNT

(updated as on February 09, 2011)

Q 1. What is an EEFC Account and what are its benefits?

Ans. Exchange Earners' Foreign Currency Account (EEFC) is an account maintained in foreign currency with an Authorised Dealer i.e. a bank dealing in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

Q 2. Who can open an EEFC account?

Ans. All categories of foreign exchange earners, such as individuals, companies, etc. who are resident in India, may open EEFC accounts.

Q 3. What are the different types of EEFC accounts? Can interest be paid on these accounts?

Ans. An EEFC account can be held only in the form of a current account. No interest is payable on EEFC accounts.

Q 4. How much of one's foreign exchange earnings can be credited into an EEFC account?

Ans. One can credit up to 100 per cent of his/ her foreign exchange earnings into the EEFC account, subject to permissible credits and debits.

Q 5. Whether EEFC Account can be opened by Special Economic Zone (SEZ) Units?

Ans. No, SEZ Units cannot open EEFC Accounts.

However, a unit located in a Special Economic Zone can open a Foreign Currency Account with an authorised dealer in India subject to certain conditions. SEZ Developers can open EEFC Accounts.

Q 6. Is there any Cheque facility available?

Ans. Yes; Cheque facility is available for operation of the EEFC account.

Q 7. What are the permissible credits into this account?**Ans.**

- i)** Inward remittance through normal banking channels, other than remittances received on account of foreign currency loan or investment received from abroad or received for meeting specific obligations by the account holder;
- ii)** Payments received in foreign exchange by a 100 per cent Export Oriented Unit or a unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park for supply of goods to similar such units or to a unit in Domestic Tariff Area;
- iii)** Payments received in foreign exchange by a unit in the Domestic Tariff Area for supply of goods to a unit in the Special Economic Zone (SEZ);
- iv)** Payment received by an exporter from an account maintained with an authorised dealer for the purpose of counter trade. (Counter trade is an arrangement involving adjustment of value of goods imported into India against value of goods exported from India in terms of the Reserve Bank guidelines);
- v)** Advance remittance received by an exporter towards export of goods or services;
- vi)** Payment received for export of goods and services from India, out of funds representing repayment of State Credit in U.S. Dollar held in the account of Bank for Foreign Economic Affairs, Moscow, with an authorised dealer in India;
- vii)** Professional earnings including directors fees, consultancy fees, lecture fees, honorarium and similar other earnings received by a professional by rendering services in his individual capacity;
- viii)** Re-credit of unutilised foreign currency earlier withdrawn from the account;
- ix)** Amount representing repayment by the account holder's importer customer, of loan/advances granted, to the exporter holding such account; and
- x)** The disinvestment proceeds received by the resident account holder on conversion of shares held by him to ADRs/GDRs under the Sponsored ADR/GDR Scheme approved by the Foreign Investment Promotion Board of the Government of India.

Q 8. Can foreign exchange earnings received through an international credit card be credited to the EEFC account?

Ans. Yes, foreign exchange earnings received through an international credit card for which reimbursement has been made in foreign exchange may be regarded as a remittance through normal banking channel and the same can be credited to the EEFC account.

Q 9. What are the permissible debits into this account?

- Ans. i)** Payment outside India towards a permissible current account transaction [in accordance to the provisions of the Foreign Exchange Management (Current Account Transactions) Rules, 2000] and permissible capital account transaction [in accordance to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000].
- ii)** Payment in foreign exchange towards cost of goods purchased from a 100 percent Export Oriented Unit or a Unit in (a) Export Processing Zone or (b) Software Technology Park or (c) Electronic Hardware Technology Park
- iii)** payment of customs duty in accordance with the provisions of the Foreign Trade Policy of the Central Government for the time being in force.
- iv)** Trade related loans/advances, extended by an exporter holding such account to his importer customer outside India, subject to compliance with the Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.
- v)** Payment in foreign exchange to a person resident in India for supply of goods/services including payments for airfare and hotel expenditure.

Q 10. Is there any restriction on withdrawal in rupees of funds held in an EEFC account?

Ans. No, there is no restriction on withdrawal in Rupees of funds held in an EEFC account. However, the amount withdrawn in Rupees shall not be eligible for conversion into foreign currency and for re-credit to the account.

Q. 11. Whether the EEFC balances can be covered against exchange risk?

Ans. Yes, the EEFC account balances can be hedged. The balances in the account sold forward by the account holders has to remain earmarked for delivery. However, the contracts can be rolled over.

FACILITIES AVAILABLE TO NRIS, PIO FOR INVESTMENT IN INDIA**I. Bank Accounts and Deposits****a) Non-Resident (External) Rupee (NRE) Accounts (Principal / Interest Repatriable)**

- **Savings** - The interest rates on NRE Savings deposits shall be at the rate applicable to domestic savings deposits. Currently the interest rate is 3.5%.
- **Term deposits** – For 1 year to 3 years, the interest rates on fresh repatriable Non-Resident (External) Rupee (NRE) Term deposits should not exceed the LIBOR/SWAP rates, as on the last working day of the previous month, for US dollar of corresponding maturity plus 50 basis points.

The interest rates as determined above for three year deposits should also be applicable in case the maturity period exceeds three years.

The changes in interest rates will also apply to NRE deposits renewed after their present maturity period.

b) FCNR (B) (Principal/Interest Repatriable)

Deposits of funds in the account may be accepted in such permissible currencies as may be designated by the Reserve Bank from time to time.

- Presently the term deposit can be placed with ADs in India in 6 specific foreign currencies (US Dollar, Pound Sterling, EURO, Japanese Yen, Australian Dollar and Canadian Dollar).
- **Rate of Interest** - Fixed or floating within the ceiling rate of LIBOR/SWAP rates for the respective currency/corresponding term minus 25 basis points.
- **Maturity of deposits:** 1-5 years.

c) NRO Accounts (Current earnings repatriable)

- **Savings** - Normally operated for crediting rupee earnings / income such as dividends, interest. Currently the interest rate is 3.5 per cent.
- **Term Deposits** - Banks are free to determine interest rates.

d) Repatriation from NRO balances

Authorised Dealers can allow remittance/s upto USD 1 million per financial year (April-March) for bonafide purposes, from balances in NRO accounts subject to payment of applicable taxes. The limit of USD 1 million per financial year includes sale proceeds of immovable properties held by NRIs/PIO.

II. Other Investments on repatriation basis

- Government dated securities/treasury bills.
- Units of domestic mutual funds.
- Bonds issued by a public sector undertaking (PSU) in India.
- Non-convertible debentures of a company incorporated in India.
- Shares in Public Sector Enterprises being dis-invested by the Government of India, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

- Shares and convertible debentures of Indian companies under FDI scheme (including automatic route & FIPB).
- Shares and convertible debentures of Indian companies through stock exchange under Portfolio Investment Scheme.
- Perpetual debt instruments and debt capital instruments issued by banks in India.

III. Other Investments on non-repatriation basis

- Government dated securities (other than bearer securities)/treasury bills.
- Units of domestic mutual funds.
- Units of Money Market Mutual Funds in India.
- Non-convertible debentures of a company incorporated in India.
- The capital of a firm or proprietary concern in India, not engaged in any agricultural or plantation activity or real estate business.
- Deposits with a company registered under the Companies Act, 1956 including NBFC registered with RBI, or a body corporate created under an Act of Parliament or State Legislature, a proprietorship concern or a firm out of rupee funds which do not represent inward remittances or transfer from NRE/FCNR(B) Accounts into the NRO Account.
- Commercial Paper issued by an Indian company.
- Shares and convertible debentures of Indian companies other than under Portfolio Investment Scheme.

IV. Investment in immovable Property

- May acquire immovable property in India other than agricultural land/ plantation property or a farm house out of repatriable and non-repatriable funds.

In respect of such investments NRIs are eligible to repatriate

- Sale proceeds of immovable property acquired in India to the extent of repatriable funds used for acquiring the property, up to two residential properties. The balance will be repatriable through NRO Account subject to conditions mentioned at item (I) (d).
- Refund of (a) application / earnest money / purchase consideration made by house-building agencies/seller on account of non-allotment of flats / plots and (b) cancellation of booking/deals for purchase of residential/commercial properties, together with interest, net of taxes, provided original payment is made out of NRE/FCNR(B) account/inward remittances.
- Housing Loan in rupees availed of by NRIs from ADs / Housing Financial Institutions can be repaid by the close relatives in India of the borrower.

V. Facilities to returning NRIs/PIO

Returning NRIs/ PIO

- May continue to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India, if such currency, security or property was acquired, held or owned when resident outside India.
- May open, hold and maintain with an authorised dealer in India a Resident Foreign Currency (RFC) Account to transfer balances held in NRE/FCNR(B) accounts. Proceeds of assets held outside India at the time of return, can be credited to RFC account. The funds in RFC accounts are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment in any form outside India.

FOREX FACILITIES FOR RESIDENTS (INDIVIDUALS)

Introduction :

1. The legal framework for administration of foreign exchange transactions in India is provided by the Foreign Exchange Management Act, 1999. Under the Foreign Exchange Management Act, 1999 (FEMA), which came into force with effect from June 1, 2000, all transactions involving foreign exchange have been classified either as capital or current account transactions. All transactions undertaken by a resident that do not alter his / her assets or liabilities, including contingent liabilities, outside India are current account transactions. In terms of Section 5 of the FEMA, persons resident in India¹ are free to buy or sell foreign exchange for any current account transaction except for those transactions for which drawal of

foreign exchange has been prohibited by Central Government, such as remittance out of lottery winnings, remittance of income from racing/riding, etc., or any other hobby, remittance for purchase of lottery tickets, banned / proscribed magazines, football pools, sweepstakes, etc., payment of commission on exports made towards equity investment in Joint Ventures/ Wholly Owned Subsidiaries abroad of Indian companies, remittance of dividend by any company to which the requirement of dividend balancing is applicable, payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco and payment related to “call back services” of telephones. Foreign Exchange Management (Current Account Transactions) Rules, 2000 - Notification [GSR No.381(E)] dated May 3, 2000, as amended from time to time, is available in the Official Gazette as well as, as an Annex to our Master Circular on Miscellaneous Remittances from India–Facilities for Residents available at our website www.mastercirculars.rbi.org.in.

I. Guidelines on Travel Related Matters

Q.1. Who are authorized by the Reserve Bank to sell foreign exchange for travel purposes?

Ans. Foreign exchange can be purchased from any authorised person, such as Authorised Dealer (AD) Category-I bank and AD Category II. Full-Fledged Money Changers (FFMCs) are also permitted to release exchange for business and private visits.

Q.2. Who is an Authorized Dealer?

Ans. An Authorised Dealer is normally a bank specifically authorized by the Reserve Bank under Section 10(1) of FEMA, 1999, to deal in foreign exchange or foreign securities (the list of ADs is available on www.rbi.org.in).

Q.3. How much foreign exchange can one buy when traveling abroad on private visits to a country outside India?

Ans. For private visits abroad, other than to Nepal and Bhutan, viz., for tourism purposes, etc., any resident can obtain foreign exchange up to an aggregate amount of USD 10,000, from an Authorised Dealer, in any one financial year, on self-declaration basis, irrespective of the number of visits undertaken during the year. This limit of USD 10,000 or its equivalent per financial year for private visits can also be availed of by a person who is availing of foreign exchange for travel abroad for any purposes, such as, for employment or immigration or studies.

No foreign exchange is available for visit to Nepal and/or Bhutan for any purpose.

A resident Indian is allowed to take INR of denomination of Rs.100 or lesser denomination to Nepal and Bhutan without limit.

Q. 4. How much foreign exchange is available for a business trip?

Ans. For business trips abroad to countries, other than to Nepal and Bhutan, a person can avail of foreign exchange up to USD 25,000 per visit. Visits in connection with attending of an international conference, seminar, specialised training, study tour, apprentice training, etc., are treated as business visits. Release of foreign exchange exceeding USD 25,000 for business travel abroad (other than to Nepal and Bhutan), irrespective of the period of stay, requires prior permission from the Reserve Bank.

No release of foreign exchange is admissible for any kind of travel to Nepal and Bhutan or for any transaction with persons resident in Nepal.

Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. If investment is made in freely convertible currency/ies, sale/winding up proceeds are required to be repatriated to India in freely convertible currencies.

Q. 5. How much foreign currency can be taken while buying foreign exchange for travel abroad?

Ans. Travellers going to all countries other than (a) and (b) below are allowed to purchase foreign currency notes / coins only up to USD 3000. Balance amount can be carried in the form of travellers cheque or banker's draft. Exceptions to this are (a) travellers proceeding to Iraq and Libya who can draw foreign exchange in the form of foreign currency notes and coins not exceeding USD 5000 or its equivalent; (b) travellers proceeding to the Islamic Republic of Iran, Russian

Federation and other Republics of Commonwealth of Independent States who can draw entire foreign exchange in the form of foreign currency notes or coins.

Q.6. How much foreign exchange can be drawn for medical treatment abroad?

Ans. AD Category I banks and AD Category II, may release foreign exchange up to USD 100,000 or its equivalent to resident Indians for medical treatment abroad on self declaration basis, without insisting on any estimate from a hospital/doctor in India/abroad. A person visiting abroad for medical treatment can obtain foreign exchange exceeding the above limit, provided the request is supported by an estimate from a hospital/doctor in India/abroad.

An amount up to USD 25,000 is allowed **for maintenance expenses** of a patient going abroad for medical treatment or check-up abroad, **or to a person for** accompanying as attendant to a patient going abroad for medical treatment/check-up.

The amount of USD 25,000 allowed to the patient going abroad is in addition to the limit of USD 100,000 mentioned above.

Q.7. What are the facilities available to students for pursuing their studies abroad?

Ans. For studies abroad the estimate received from the institution abroad or USD 100,000, per academic year, whichever is higher, may be availed of from an AD Category I bank and AD Category II. Students going abroad for studies are treated as Non-Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA, 1999. Educational and other loans availed of by students as residents in India can be allowed to continue. A student holding NRO account may withdraw and repatriate up to USD 1 million per financial year from his NRO account. The student may avail of an amount of USD 10,000 or its equivalent for incidental expenses out of which USD 3000 or its equivalent may be carried in the form of foreign currency while going for study abroad.

Q. 8. What are the documents required for withdrawal of Foreign Exchange for the above purpose?

Ans. Documentation may be done as advised by the Authorised Dealer.

Q. 9. How much foreign exchange is available to a person going abroad on employment?

Ans. A person going abroad for employment can draw foreign exchange up to USD 100,000 from any Authorised Dealer in India on the basis of self-declaration.

Q. 10. How much foreign exchange is available to a person going abroad on emigration?

Ans. A person going abroad on emigration can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 100,000. He can draw foreign exchange up to USD 100,000 on self- declaration basis from an Authorised Dealer in India This amount is only to meet the incidental expenses in the country of emigration. No amount of foreign exchange can be remitted outside India to become eligible or for earning points or credits for immigration. All such remittances require prior permission of the Reserve Bank. If requirement exceeds USD 100,000, the person requires to obtain the prior approval from the Reserve Bank.

Q.11. Is there any category of visit which requires prior approval from the Reserve Bank or the Government of India?

Ans. Dance troupes, artistes, etc., who wish to undertake cultural tours abroad, should obtain prior approval from the Ministry of Human Resources Development (Department of Education and Culture), Government of India, New Delhi.

Q.12. Whether permission is required for receiving grant/donation from abroad under the Foreign Contribution Regulation Act, 1976?

Ans. The Foreign Contribution Regulation Act, 1976 is administered and monitored by the Ministry of Home Affairs whose address is given below:

Foreigners Division,
Jaisalmer House,
26, Mansingh Road,
New Delhi-110 011

No specific approval from the Reserve Bank is required in this regard.

Q.13. How many days in advance one can buy foreign exchange for travel abroad?

Ans. Permissible foreign exchange can be drawn 60 days in advance. In case it is not possible to use the foreign exchange within the period of 60 days, it should be immediately surrendered to an authorised **person**. However, residents are free to retain foreign exchange up to USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their Resident Foreign Currency (Domestic) [RFC (Domestic)] Accounts.

Q. 14. Can one pay by cash full rupee equivalent of foreign exchange being purchased for travel abroad?

Ans. Foreign exchange for travel abroad can be purchased from an authorized **person** against rupee payment in cash only up to Rs.50,000/-. However, if the Rupee equivalent exceeds Rs.50,000/-, the entire payment should be made by way of a crossed cheque/ banker's cheque/ pay order/ demand draft/ debit card / credit card / prepaid card only.

Q.15. Is there any time-frame for a traveller who has returned to India to surrender foreign exchange?

Ans. On return from a foreign trip, travellers are required to surrender unspent foreign exchange held in the form of currency notes and travellers cheques within 180 days of return. However, they are free to retain foreign exchange up to USD 2,000, in the form of foreign currency notes or TCs for future use or credit to their Resident Foreign Currency (Domestic) [RFC (Domestic)] Accounts.

Q.16. Should foreign coins be surrendered to an Authorised Dealer on return from abroad?

Ans. The residents can hold foreign coins without any limit.

Q.17. How much foreign exchange can a resident individual send as gift / donation to a person resident outside India?

Ans. Any resident individual, if he so desires, may remit the entire limit of USD 200,000 in one financial year under LRS as gift to a person residing outside India or as donation to a charitable/educational/ religious/cultural organization outside India. Remittances exceeding the limit of USD 200,000 will require prior permission from the Reserve Bank.

Q.18. Is it permitted to use International Credit Card (ICC)/ATM/Debit card for undertaking foreign exchange transactions?

Ans. Use of International Credit Cards (ICCs) / ATMs/ Debit Cards can be made for travel abroad in connection with various purposes and for making personal payments like subscription to foreign journals, internet subscription, etc. The entitlement of foreign exchange on International Credit Cards (ICCs) is limited by the credit limit fixed by the card issuing authority only. With ICCs one can (i) meet expenses/make purchases while abroad (ii) make payments in foreign exchange for purchase of books and other items through internet in India. If the person has a foreign currency account in India or with a bank overseas, he/she can even obtain ICCs of overseas banks and reputed agencies.

Use of these instruments for payment in foreign exchange in Nepal and Bhutan is not permitted.

Q.19. How much Indian currency can a person carry while going abroad?

Ans. Residents are free to take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 7,500/- per person. They may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation : 'Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency.

Q. 20. How much Indian currency can be brought in while coming into India?

Ans. A resident of India, who has gone out of India on a temporary visit may bring into India at the time of his return from any place outside India (other than Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.7,500.

A person can take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank notes, in denominations not exceeding Rs.100.

Q. 21. How much foreign exchange can be brought in while visiting India?

Ans. A person coming into India from abroad can bring with him foreign exchange without any limit. However, if the aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in exceeds USD 10,000 or its equivalent and/or the value of foreign currency alone exceeds USD 5,000 or its equivalent, it should be declared to the Customs Authorities at the Airport in the Currency Declaration Form (CDF), on arrival in India.

Q. 22. Is it required to follow complete export procedure when a gift parcel is sent outside India?

Ans. A person resident in India is free to send (export) any gift article of value not exceeding Rs.5,00,000 provided export of that item is not prohibited under the extant Foreign Trade Policy and the exporter submits a declaration that goods of gift are not more than Rs.5,00,000 in value.

Export of goods or services up to Rs.5,00,000 may be made without furnishing the declaration in Form GR/ SDF/ PP/ SOFTEX, as the case may be.

Q.23. How much jewellery can be carried while going abroad?

Ans. Taking personal jewellery out of India is as per the Baggage Rules, governed and administered by Customs Department, Government of India. While no approval of the Reserve Bank is required in this case, approvals, if any, required from Customs Authorities may be obtained.

Q.24. Can a resident extend local hospitality to a non-resident?

Ans. A person resident in India is free to make any payment in Indian Rupees towards meeting expenses, on account of boarding, lodging and services related thereto or travel to and from and within India, of a person resident outside India, who is on a visit to India.

Q. 25. Can residents purchase air tickets in India for their travel not touching India?

Ans. Residents may book their tickets in India for their visit to any third country. For instance, residents can book their tickets for travel from London to New York, through domestic/foreign airlines in India itself.

Q. 26. Can a resident open a foreign currency denominated account in India?

Ans. Persons resident in India are permitted to maintain foreign currency accounts in India under the following three Schemes:

a. Exchange Earners Foreign Currency Accounts:-

All categories of resident foreign exchange earners can credit up to 100 per cent of their foreign exchange earnings, as specified in the paragraph 1 (A) of the Schedule to Notification No. FEMA 10/2000-RB dated 3rd May, 2000 and as amended from time to time, to their EEFC Account with an Authorised Dealer in India. Funds held in EEFC account can be utilised for all permissible current account transactions and also for approved capital account transactions as specified by the extant Rules/Regulations/ Notifications/ Directives issued by the Government/RBI from time to time. The account is maintained in the form of a non-interest bearing current account.

b. Resident Foreign Currency Accounts : -

A person resident in India may open, hold and maintain with an Authorised Dealer in India a Resident Foreign Currency (RFC) Account to keep their foreign currency assets which were held outside India at the time of return can be credited to

such accounts. The foreign exchange received as (i) pension of any other superannuation or other monetary benefits from the employer outside India; (ii) received or acquired as gift or inheritance from a person referred to sub-section (4) of section 6 of FEMA, 1999 or (iii) referred to in clause (c) of section 9 of the Act or acquired as gift or inheritance there from or (iv) received as the proceeds of life insurance policy claims/maturity/ surrender values settled in foreign currency from an insurance company in India permitted to undertake life insurance business by the Insurance Regulatory and Development Authority; may also be credited to this account.

RFC account can be maintained in the form of current or savings or term deposit accounts.

The funds in RFC account are free from all restrictions regarding utilisation of foreign currency balances including any restriction on investment outside India.

c. Resident Foreign Currency (Domestic) Account:-

A resident Individual may open, hold and maintain with an Authorized Dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques, from any of the sources like, payment for services rendered abroad, as honorarium, gift, services rendered or in settlement of any lawful obligation from any person not resident in India. The account may also be credited with/opened out of foreign exchange earned abroad like proceeds of export of goods and/or services, royalty, honorarium, etc., and/or gifts received from close relatives (as defined in the Companies Act) and repatriated to India through normal banking channels. The account shall be maintained in the form of Current Account and shall not bear any interest. There is no ceiling on the balances in the account. The account may be debited for payments made towards permissible current and capital account transactions.

Q.27. Can a person resident in India hold assets outside India?

Ans. In terms of sub-section 4, of Section (6) of the Foreign Exchange Management Act, 1999, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. (Please also refer to the Liberalised Remittance Scheme of USD 200,000 discussed below).

II. Liberalised Remittance Scheme (LRS) of USD 200,000

Q.28. What is the Liberalised Remittance Scheme of USD 200,000?

Ans. Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 200,000 per **financial** year (April – March) for any permissible current or capital account transaction or a combination of both.

Q.29. Please provide an illustrative list of capital account transactions permitted under the scheme.

Ans. Please refer to Q. 29. Under the Scheme, resident individuals can acquire and hold immovable property or shares or debt instruments or any other assets outside India, without prior approval of the Reserve Bank. Individuals can also open, maintain and hold foreign currency accounts with banks outside India for carrying out transactions permitted under the Scheme.

Q. 30. What are the prohibited items under the Scheme?

Ans. The remittance facility under the Scheme is not available for the following:

- i) Remittance for any purpose specifically prohibited under Schedule-I (like purchase of lottery tickets/sweep stakes, proscribed magazines, etc.) or any item restricted under Schedule II of Foreign Exchange Management (Current Account Transactions) Rules, 2000;
- ii) Remittance from India for margins or margin calls to overseas exchanges / overseas counterparty;
- iii) Remittances for purchase of FCCBs issued by Indian companies in the overseas secondary market;

- iv) Remittance for trading in foreign exchange abroad;
- v) Remittance by a resident individual for setting up a company abroad;
- vi) Remittances directly or indirectly to Bhutan, Nepal, Mauritius and Pakistan;
- vii) Remittances directly or indirectly to countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories”, from time to time; and
- viii) Remittances directly or indirectly to those individuals and entities identified as posing significant risk of committing acts of terrorism as advised separately by the Reserve Bank to the banks.

Q.31. Whether LRS facility is in addition to existing facilities detailed in Schedule III under remittances?

Ans. The facility under the Scheme is **in addition** to those already available for private travel, business travel, studies, medical treatment, etc., as described in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000. The Scheme can also be used for these purposes.

However, gift and donation remittances cannot be made separately and have to be made under the Scheme only. Accordingly, resident individuals can remit gifts and donations up to USD 200,000 per financial year under the Scheme.

Q. 32. Are resident individuals under this Scheme required to repatriate the accrued interest/dividend on deposits/investments abroad, over and above the principal amount?

Ans. The investor can retain and reinvest the income earned on investments made under the Scheme. At present, the residents are not required to repatriate the funds or income generated out of investments made under the Scheme.

Q.33. Are remittances under the Scheme on gross basis or net basis (net of repatriation from abroad)?

Ans. Remittance under this scheme is on a gross basis.

Q. 34. Can remittances under the facility be consolidated in respect of family members?

Ans. Remittances under the facility can be consolidated in respect of family members subject to the individual family members complying with the terms and conditions of the Scheme.

Q. 35. Can one use the Scheme for purchase of objects of art (paintings, etc.) either directly or through auction house?

Ans. Remittances under the Scheme can be used for purchasing objects of art subject to the provisions of other applicable laws such as the extant Foreign Trade Policy of the Government of India.

Q.36. Is the AD required to check permissibility of remittances based on nature of transaction or allow the same based on remitters declaration?

Ans. AD will be guided by the nature of transaction as declared by the remitter and will certify that the remittance is in conformity with the instructions issued by the Reserve Bank.

Q.37. Can remittance be made under this Scheme for acquisition of ESOPs?

Ans. The Scheme can also be used for remittance of funds for acquisition of ESOPs.

Q.38. Is this scheme in addition to acquisition of ESOPs linked to ADR/GDR (i.e USD 50,000/- for a block of 5 calendar years)?

Ans. The remittance under the Scheme is in addition to acquisition of ESOPs linked to ADR/GDR.

Q.39. Is this Scheme in addition to acquisition of qualification shares (i.e. USD 20,000 or 1% of paid up capital of overseas company, whichever is lower)?

Ans. The remittance under the Scheme is in addition to acquisition of qualification shares.

Q.40. Can a resident individual invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc., under this scheme?

Ans. A resident individual can invest in units of Mutual Funds, Venture Funds, unrated debt securities, promissory notes, etc. under this Scheme. Further, the resident can invest in such securities out of the bank account opened abroad under the Scheme.

Q.41. Can an individual, who has availed of a loan abroad while as a non-resident Indian can repay the same on return to India, under this Scheme as a resident?

Ans. This is permissible.

Q. 42. Is it mandatory for resident individuals to have PAN number for sending outward remittances under the Scheme?

Ans. It is mandatory to have PAN number to make remittances under the Scheme.

Q. 43. In case a resident individual requests for an outward remittance by way of issuance of a demand draft (either in his own name or in the name of the beneficiary with whom he intends putting through the permissible transactions) at the time of his private visit abroad, whether the remitter can effect such an outward remittance against self declaration?

Ans. Such outward remittance in the form of a DD can be effected against the declaration by the resident individual in the format prescribed under the Scheme.

Q. 44. Are there any restrictions on the frequency of the remittance?

Ans. There is no restriction on the frequency. However, the total amount of foreign exchange purchased from or remitted through, all sources in India during a financial year should be within the cumulative limit of USD 200,000.

Q.45. What are the requirements to be complied with by the remitter?

Ans. The individual will have to designate a branch of an AD through which all the remittances under the Scheme will be made. The applicants should have maintained the bank account with the bank for a minimum period of one year prior to the remittance. If the applicant seeking to make the remittance is a new customer of the bank, Authorised Dealers should carry out due diligence on the opening, operation and maintenance of the account. Further, the AD should obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by the applicant may be obtained. He has to furnish an application-cum-declaration in the specified format regarding the purpose of the remittance and declare that the funds belong to him and will not be used for purposes prohibited or regulated under the Scheme.

Q. 46. Can an individual, who has repatriated the amount remitted during the financial year, avail of the facility once again?

Ans. Once a remittance is made for an amount up to USD 200,000 during the **financial year**, he would not be eligible to make any further remittances under this scheme, even if the proceeds of the investments have been brought back into the country.

Q. 47. Can remittances be made only in US Dollars?

Ans. The remittances can be made in any freely convertible foreign currency equivalent to USD 200,000 in a **financial year**.

Q. 48. In the past resident individuals could invest in overseas companies listed on a recognised stock exchange abroad and which has the shareholding of at least 10 per cent in an Indian company listed on a recognised stock exchange in India. Does this condition still exist?

Ans. Investment by resident individual in overseas companies is subsumed under the Scheme of USD 200,000. The requirement of 10 per cent reciprocal shareholding in the listed Indian companies by such overseas companies has since been dispensed with.

III. Guidelines for Financial Intermediaries offering special schemes, protection under the Scheme.**Q. 49. Are intermediaries expected to seek specific approval for making overseas investments available to clients?**

Ans. Banks including those not having operational presence in India are required to obtain prior approval from Reserve Bank for soliciting deposits for their foreign/overseas branches or for acting as agents for overseas mutual funds or any other foreign financial services company.

Q.50. Are there any restrictions on the kind/quality of debt or equity instruments an individual can invest in?

Ans. No ratings or guidelines have been prescribed under the Liberalised Remittance Scheme of USD 200,000 on the quality of the investment an individual can make. However, the individual investor is expected to exercise due diligence while taking a decision regarding the investments which he or she proposes to make.

Q. 51. Whether credit facilities in Indian Rupees or foreign currency would be permissible against security of such deposits?

Ans. No. The Scheme does not envisage extension of credit facility against the security of the deposits. Further, the banks should not extend any kind of credit facilities to resident individuals to facilitate remittances under the Scheme.

Q. 52. Can bankers open foreign currency accounts in India for residents under the Scheme?

Ans. No. Banks in India cannot open foreign currency accounts in India for residents under the Scheme.

Q. 53. Can an Offshore Banking Unit (OBU) in India be treated on par with a branch of the bank outside India for the purpose of opening of foreign currency accounts by residents under the Scheme?

Ans. No. For the purpose of the Scheme, an OBU in India is not treated as an overseas branch of a bank in India.

General Information

For further details/guidance, please approach any bank authorised to deal in foreign exchange or contact Regional Offices of the Foreign Exchange Department of the Reserve Bank.

¹ A 'person resident in India' is defined in Section 2(v) of FEMA, 1999 as :

A person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include –

(A) a person who has gone out of India or who stays outside India, in either case -

for or on taking up employment outside India, or

for carrying on outside India a business or vocation outside India, or

for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than –
 for or on taking up employment in India, or
 for carrying on in India a business or vocation in India, or
 for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period
 any person or body corporate registered or incorporated in India,
 an office, branch or agency in India owned or controlled by a person resident outside India,
 an office, branch or agency outside India owned or controlled by a person resident in India;

SCHEME FOR AUTHORIZED DEALERS CATEGORY I (AD) BANKS, AUTHORIZED DEALERS CATEGORY-II AND FULL FLEDGED MONEY CHANGERS APPOINTING AGENTS/FRANCHISEES FOR UNDERTAKING RESTRICTED MONEY CHANGING

Objective

The objective of the Scheme is to provide easier conversion facilities for travellers and tourists, including NRIs, by enlarging the network of money changing facilities in the country. It is expected that the facility, given below, will enable Authorized Dealers Category-I (AD Cat-I) banks, Authorized Dealers Category-II (AD Cat-II) and full fledged money changers (FFMC) to provide such facilities at all tourist centers and major cities for extended hours and on holidays.

Present Money Changing facilities

At present, the conversion of currency notes, coins or travellers' cheques designated in foreign currency into Indian rupees is possible through AD Cat-I banks, AD Cat-II as also through (a) Full Fledged Money Changers (FFMCs) and (b) Restricted Money Changers (RMCs). Reserve Bank has stopped issue/renewal of RMC licenses except in certain specific cases. While FFMCs are allowed to, both, buy and sell foreign exchange against Indian rupees, the RMCs can only buy foreign exchange against Indian rupees.

The Scheme

Under the Scheme, RBI permits AD Cat-I banks, AD Cat-II and FFMCs to enter into agency/franchisee agreements at their option with entities for the purpose of carrying on Restricted Money Changing business i.e. conversion of foreign currency notes, coins or travellers' cheques into rupees.

Franchisee

A franchisee can be any entity who has a place of business and whose bonafides are acceptable to the AD Cat-I/ AD Cat-II/ FFMC. These franchisees would undertake only restricted money changing business.

Agency/Franchise Agreement

Franchisers are free to decide on the tenor of the arrangement as also the commission or fee through mutual agreement with the franchisee.

The Agency/Franchise agreement to be entered into by an AD Cat-I/ AD Cat-II/ FFMC should, however, include the following salient features :

(A) The display of exchange rates by the franchisee. Exchange Rate for conversion of foreign currency into rupees should be the same or close to the daily exchange rate charged by the AD Cat-I/ AD Cat-II / FFMC at its branches.

(B) The surrender of collections by the franchisee to the franchiser or other authorised persons, as may be agreed upon, within 7 days.

(C) The maintenance of proper record of transactions by the franchisee.

(D) The on-site inspection of premises and records of the franchisee by the franchiser at least once a year.

Procedure for application

The Franchiser i.e. an AD Cat-I, AD Cat-II or an FPMC would need to apply to the respective Regional Office of Reserve Bank under whose jurisdiction their H.O. is situated, in the enclosed format for putting in place arrangements under this Scheme. The application should be accompanied by a declaration that while selecting the franchisees adequate due diligence has been carried out and that such entities have undertaken to comply with all the provisions of the franchising agreement/prevailing RBI regulations regarding money changing. Approval would be issued by the Reserve Bank for the first franchisee arrangement. Thereafter, as and when new agency/franchisee agreements are entered into, these would have to be reported to the Reserve Bank on a post-facto basis along with similar declaration as indicated above.

Selection of Centers

Franchisers are free to select centers for operationalising the Scheme.

Training

Franchisers would be expected to impart training to the agents/franchisees as regards operations and maintenance of records. Reserve Bank would also be willing to provide the required support for organizing such training, subject to mutual convenience.

Reporting and Inspection

The franchisers i.e. ADs Cat-I / ADs Cat-II / FFMCs would be expected to put in place adequate arrangements for reporting of transactions by the franchisees to the franchisers (on a regular basis) in a simple format to be prescribed by them, say at monthly intervals.

As mentioned above, a system of inspection of the books of franchisees should be put in place. The purpose of such inspection, which should be done at least once a year, would be to ensure that the money changing business is being carried out by the franchisees in conformity with the terms of agreement/prevailing RBI guidelines and that, necessary records are being maintained by the franchisees.

AML/KYC Guidelines

Franchisees are required to strictly adhere to the AML/KYC guidelines issued by Reserve Bank to Authorized Money Changers vide A.P.(Dir Series) Circular No. 18 dated December 2, 2005 and A.P.(DIR Series) Circular No. 39 dated June 26, 2006.

FOREIGN INVESTMENTS IN INDIA

(Updated up to October 13, 2010)

I. Foreign Direct Investment (FDI)

Q. 1. What are the forms in which business can be conducted by a foreign company in India?

Ans. A foreign company planning to set up business operations in India may:

- Incorporate a company under the Companies Act, 1956, as a Joint Venture or a Wholly Owned Subsidiary.
- Set up a Liaison Office / Representative Office or a Project Office or a Branch Office of the foreign company which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000.

Q.2. What is the procedure for receiving Foreign Direct Investment in an Indian company?

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

i. Automatic Route

FDI up to 100 per cent is allowed under the automatic route in all activities/sectors except where the provisions of the consolidated FDI Policy, paragraph on '**Entry Routes for Investment**' issued by the Government of India from time to time, are attracted.

FDI in sectors /activities to the extent permitted under the automatic route does not require any prior approval either of the Government or the Reserve Bank of India.

ii. Government Route

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

Indian companies having foreign investment approval through FIPB route do not require any further clearance from the Reserve Bank of India for receiving inward remittance and for the issue of shares to the non-resident investors.

The Indian company having received FDI either under the **Automatic route** or the **Government route** is required to report in the Advance Reporting Form, the details of the receipt of the amount of consideration for issue of equity instrument viz. shares / fully and mandatorily convertible debentures / fully and mandatorily convertible preference shares through an AD Category –I Bank, together with copy/ies of the FIRC evidencing the receipt of inward remittances along with the Know Your Customer (KYC) report on the non-resident investors from the overseas bank remitting the amount, to the Regional Office concerned of the Reserve Bank of India within 30 days from the date of receipt of inward remittances.

Further, the Indian company is required to issue the equity instrument within 180 days, from the date of receipt of inward remittance or debit to NRE/FCNR (B) account in case of NRI/ PIO.

After issue of shares / fully and mandatorily convertible debentures / fully and mandatorily convertible preference shares, the Indian company has to file the required documents along with Form FC-GPR with the Regional Office concerned of the Reserve Bank of India within 30 days of issue of shares to the non-resident investors.

The form can also be downloaded from the Reserve Bank's website at the following address :
<http://www.rbi.org.in/Scripts/BSViewFemaForms.aspx>

Q.3. Which are the sectors where FDI is not allowed in India, both under the Automatic Route as well as under the Government Route?

Ans. FDI is prohibited under the Government Route as well as the Automatic Route in the following sectors:

- i) Retail Trading (except single brand product retailing)
- ii) Atomic Energy
- iii) Lottery Business
- iv) Gambling and Betting
- v) Business of Chit Fund
- vi) Nidhi Company
- vii) Agricultural (excluding Floriculture, Horticulture, Development of seeds, Animal Husbandry, Pisciculture and cultivation of vegetables, mushrooms, etc. under controlled conditions and services related to agro and allied sectors) and Plantations activities (other than Tea Plantations) (cf. Notification No. FEMA 94/2003-RB dated June 18, 2003).
- viii) Housing and Real Estate business (except development of townships, construction of residential/commercial premises, roads or bridges to the extent specified in Notification No. FEMA 136/2005-RB dated July 19, 2005).
- ix) Trading in Transferable Development Rights (TDRs).

x) Manufacture of cigars , cheroots, cigarillos and cigarettes , of tobacco or of tobacco substitutes.

Q.4. What is the procedure to be followed after investment is made under the Automatic Route or with Government approval?

Ans. A two-stage reporting procedure has to be followed .:

• On receipt of share application money :

Within 30 days of receipt of share application money/amount of consideration from the non-resident investor, the Indian company is required to report to the Regional Office concerned of the Reserve Bank of India, under whose jurisdiction its Registered Office is located, the Advance Reporting Form, containing the following details :

- Name and address of the foreign investor/s;
- Date of receipt of funds and the Rupee equivalent;
- Name and address of the authorised dealer through whom the funds have been received;
- Details of the Government approval, if any; and
- KYC report on the non-resident investor from the overseas bank remitting the amount of consideration.

• Upon issue of shares to non-resident investors :

Within 30 days from the date of issue of shares, a report in Form FC-GPR- PART A together with the following documents should be filed with the Regional Office concerned of the Reserve Bank of India.

- Certificate from the Company Secretary of the company accepting investment from persons resident outside India certifying that:

The company has complied with the procedure for issue of shares as laid down under the FDI scheme as indicated in the Notification No. FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

The investment is within the sectoral cap / statutory ceiling permissible under the Automatic Route of the Reserve Bank and it fulfills all the conditions laid down for investments under the Automatic Route, namely-

a) Non-resident entity/ies - (other than individuals), to whom it has issued shares have existing joint venture or technology transfer or trade mark agreement in India in the same field and Conditions stipulated at Paragraph 4.2 of the Consolidated FDI policy Circular of Government of India have been complied with.

OR

Non-resident entity/ies - (other than individuals), to whom it has issued shares do not have any existing joint venture or technology transfer or trade mark agreement in India in the same field.

Note – For the purpose of the 'same' field, 4 digit NIC 1987 code would be relevant.

b) The company is not an Industrial Undertaking manufacturing items reserved for small sector.

OR

The company is an Industrial Undertaking manufacturing items reserved for the small sector and the investment limit of 24 per cent of paid-up capital has been observed/ requisite approvals have been obtained.

c) Shares issued on rights basis to non-residents are in conformity with Regulation 6 of the RBI Notification No FEMA 20/2000-RB dated 3rd May 2000, as amended from time to time.

OR

Shares issued are bonus shares.

OR

Shares have been issued under a scheme of merger and amalgamation of two or more Indian companies or reconstruction by way of de-merger or otherwise of an Indian company, duly approved by a court in India.

OR

Shares are issued under ESOP and the conditions regarding this issue have been satisfied.

- Shares have been issued in terms of SIA/FIPB approval No. ----- dated -----
- Certificate from Statutory Auditors/ SEBI registered Category - I Merchant Banker / Chartered Accountant indicating the manner of arriving at the price of the shares issued to the persons resident outside India.

Q.5. What are the guidelines for transfer of existing shares from non-residents to residents or residents to non-residents?

Ans. A. Transfer of shares/ fully and mandatorily convertible debentures from Non-Resident to Resident:

The term 'transfer' is defined under FEMA as including "sale, purchase, acquisition, mortgage, pledge, gift, loan or any other form of transfer of right, possession or lien" {Section 2 (ze) of FEMA, 1999}.

The FEMA Regulations give specific permission covering the following forms of transfer i.e. transfer by way of sale and gift. These permissions are discussed below :

i. Transfer of shares/ fully and mandatorily convertible debentures by way of sale :

A person resident outside India can freely transfer shares/ fully and mandatorily convertible debenture by way of sale to a person resident in India as under :

- Any person resident outside India (not being a NRI or an erstwhile OCB), can transfer by way of sale the shares/ fully and mandatorily convertible debentures to any person resident outside India or an NRI may transfer by way of sale, the shares/ fully and mandatorily convertible debentures held by him to another NRI only provided that the person to whom the shares are being transferred has obtained prior permission of the Central Government to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.
- Any person resident outside India may sell shares/ fully and mandatorily convertible debenture acquired in accordance with the FEMA Regulations, on a recognized Stock Exchange in India through a registered broker.
- Any person resident outside India may also sell share or convertible debenture of an Indian company to a resident subject to adherence to pricing guidelines, documentation and reporting requirements as specified from time to time.
- Shares/convertible debentures of Indian companies purchased under Portfolio Investment Scheme by NRIs and erstwhile OCBs cannot be transferred, by way of sale under private arrangement.

ii. Transfer of shares/ fully and mandatorily convertible debentures by way of Gift :

A person resident outside India can freely transfer shares/ fully and mandatorily convertible debentures by way of gift to a person resident in India as under :

- Any person resident outside India, (not being a NRI or an erstwhile OCB), can transfer by way of gift the shares/ fully and mandatorily convertible debentures to any person resident outside India;
- a NRI may transfer by way of gift, the shares/convertible debentures held by him to another NRI only, provided that the person to whom the shares are being transferred has obtained prior permission of the Central Government

to acquire the shares if he has previous venture or tie up in India through investment in shares or debentures or a technical collaboration or a trade mark agreement or investment by whatever name called in the same field or allied field in which the Indian company whose shares are being transferred is engaged.

- Any person resident outside India may transfer share/ fully and mandatorily convertible debentures to a person resident in India by way of gift.

B. Transfer of shares/ fully and mandatorily convertible debentures from Resident to Non-Resident :

i. Transfer of shares/ fully and mandatorily convertible debentures by way of sale - General Permission under Regulation 10 of Notification No. FEMA 20/2000-RB dated May 3, 2000

A person resident in India may transfer by way of sale to a person resident outside India any shares/ fully and mandatorily convertible debenture of an Indian company whose activities (other than financial service sector activities¹) fall under the Automatic Route of the FDI Scheme provided the parties concerned comply with the FDI sectoral limits, pricing guidelines, documentation and reporting requirements for such transfers, as may be specified by the Reserve Bank of India, from time to time.

However, the above general permission is not available where :

- a) The transfer of shares/ fully and mandatorily convertible debentures falls within the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as amended from time to time.
- b) The transfer of shares/ fully and mandatorily convertible debentures is at a price which does not adhere to the pricing guidelines specified by the Reserve Bank of India from time to time
- c) The activity of the Indian investee company falls outside the automatic route and where FIPB approval has been obtained for the said transfer.

Q.6. Can a person resident in India transfer security by way of gift to a person resident outside India?

Ans. A person resident in India who proposes to transfer security by way of gift to a person resident outside India [other than an erstwhile OCBS] shall make an application to the Central Office of the Foreign Exchange Department, Reserve Bank of India furnishing the following information, namely:

- Name and address of the transferor and the proposed transferee
- Relationship between the transferor and the proposed transferee
- Reasons for making the gift.
- In case of Government dated securities, treasury bills and bonds, a certificate issued by a Chartered Accountant on the market value of such securities.
- In case of units of domestic mutual funds and units of Money Market Mutual Funds, a certificate from the issuer on the Net Asset Value of such security.
- In case of shares/ fully and mandatorily convertible debentures, a certificate from a Chartered Account on the value of such securities according to the guidelines issued by the Securities & Exchange Board of India or the Discount Free Cash Flow Cash (DCF) method with regard to listed companies and unlisted companies, respectively.
- Certificate from the Indian company concerned certifying that the proposed transfer of shares/convertible debentures, by way of gift, from resident to the non-resident shall not breach the applicable sectoral cap/ FDI limit in the company and that the proposed number of shares/convertible debentures to be held by the non-resident transferee shall not exceed 5 per cent of the paid up capital of the company.

The transfer of security by way of gift may be permitted by the Reserve bank provided :

- (i) The donee is eligible to hold such security under Schedules 1, 4 and 5 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.
- (ii) The gift does not exceed 5 per cent of the paid up capital of the Indian company/ each series of debentures/ each mutual fund scheme
- (iii) The applicable sectoral cap/ foreign direct investment limit in the Indian company is not breached

(iv) The donor and the donee are relatives as defined in section 6 of the Companies Act, 1956.

(v) The value of security to be transferred by the donor together with any security transferred to any person residing outside India as gift in the calendar year does not exceed the rupee equivalent of USD 25,000.

(vii) Such other conditions as considered necessary in public interest by the Reserve Bank.

Q.7. What if the transfer of shares from resident to non-resident does not fall under the above categories?

Ans. In case the transfer does not fit into any of the above categories, either the transferor (resident) or the transferee (non-resident) can make an application to the Reserve Bank for permission for the transfer of shares. The application has to be accompanied with the following documents:

- A copy of the FIPB approval (if required).
- Consent letter from transferor and transferee clearly indicating the number of shares, name of the investee company and the price at which the transfer is proposed to be effected.
- The present/post transfer shareholding pattern of the Indian investee company showing the equity participation by residents and non-residents category-wise.
- Copies of the Reserve Bank of India's approvals/ acknowledged copies of FC-GPR evidencing the existing holdings of the non-residents.
- If the sellers/ transferors are NRIs / OCBs, the copies of the Reserve Bank of India's approvals evidencing the shares held by them on repatriation / non-repatriation basis.
- Open Offer document filed with the SEBI if the acquisition of shares by non-resident is under SEBI Takeover Regulations.
- Fair Valuation Certificate from the SEBI registered Category-I-Merchant Banker or Chartered Accountant indicating the value of shares as per the following guidelines :

a) where shares of an Indian company are listed on a recognized stock exchange in India, the price of shares transferred by way of sale shall not be less than the price at which a preferential allotment of shares can be made under the SEBI Guidelines, as applicable, provided that the same is determined for such duration as specified therein, preceding the relevant date, which shall be the date of purchase or sale of shares.

(b) where the shares of an Indian company are not listed on a recognized stock exchange in India, the transfer of shares shall be at a price not less than the fair value to be determined by a SEBI registered Category – I - Merchant Banker or a Chartered Accountant as per the Discounted Free Cash Flow (DCF) method.

Q8. What are the reporting obligations in case of transfer of shares between resident and non-resident ?

Ans. The transaction should be reported by submission of form FC-TRS to the AD Category – I bank, within 60 days from the date of receipt/remittance of the amount of consideration. The onus of submission of the form FC-TRS within the given timeframe would be on the resident in India, the transferor or transferee, as the case may be.

Q.9. What is the method of payment and remittance/credit of sale proceeds in case of transfer of shares between resident and non-resident ?

Ans. The sale consideration in respect of the shares purchased by a person resident outside India shall be remitted to India through normal banking channels. In case the buyer is a Foreign Institutional Investor (FII), payment should be made by debit to its Special Non-Resident Rupee Account. In case the buyer is a NRI, the payment may be made by way of debit to his NRE/FCNR (B) accounts. However, if the shares are acquired on non-repatriation basis by NRI, the consideration shall be remitted to India through normal banking channel or paid out of funds held in NRE/FCNR (B)/NRO accounts.

The sale proceeds of shares (net of taxes) sold by a person resident outside India) may be remitted outside India. In case of FII the sale proceeds may be credited to its special Non-Resident Rupee Account. In case of NRI, if the shares sold were held on repatriation basis, the sale proceeds (net of taxes) may be credited to his NRE/FCNR(B) accounts and if the shares sold were held on non repatriation basis, the sale proceeds may be credited to his NRO account subject to payment of taxes. The sale proceeds of shares (net of taxes) sold by an erstwhile OCB may be remitted outside India directly if the shares were held on repatriation basis and if the shares sold were held on non-repatriation basis, the sale proceeds may be credited to its NRO (Current) Account subject to payment of taxes, except in the case of erstwhile OCBs whose accounts have been blocked by Reserve Bank.

Q. 10. Are the investments and profits earned in India repatriable?

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

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

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

Q.11. What are the guidelines on issue and valuation of shares in case of existing companies?

Ans. A. The price of shares issued to persons resident outside India under the FDI Scheme shall not be less than :

- i. the price worked out in accordance with the SEBI guidelines, as applicable, where the shares of the company is listed on any recognised stock exchange in India;
- ii. the fair valuation of shares done by a SEBI registered Category - I Merchant Banker or a Chartered Accountant as per the discounted free cash flow method, where the shares of the company is not listed on any recognised stock exchange in India; and
- iii. the price as applicable to transfer of shares from resident to non-resident as per the pricing guidelines laid down by the Reserve Bank from time to time, where the issue of shares is on preferential allotment.

B. The price of shares transferred from resident to a non-resident and vice versa should be determined as under:

i) Transfer of shares from a resident to a non-resident:

a) In case of listed shares, at a price which is not less than the price at which a preferential allotment of shares would be made under SEBI guidelines.

b) In case of unlisted shares at a price which is not less than the fair value as per the Discount Free Cash Flow (DCF) Method to be determined by a SEBI registered Category-I- Merchant Banker/Chartered Accountant.

ii) Transfer of shares from a non-resident to a resident - The price should not be more than the minimum price at which the transfer of shares would have been made from a resident to a non-resident.

In any case, the price per share arrived at as per the above method should be certified by a SEBI registered Category-I- Merchant Banker / Chartered Accountant.

Q. 12. What are the regulations pertaining to issue of ADRs/ GDRs by Indian companies?

Ans.

- Indian companies can raise foreign currency resources abroad through the issue of ADRs/ GDRs, in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India thereunder from time to time.
- A company can issue ADRs / GDRs, if it is eligible to issue shares to persons resident outside India under the FDI Scheme. However, an Indian listed company, which is not eligible to raise funds from the Indian Capital Market including a company which has been restrained from accessing the securities market by the Securities and Exchange Board of India (SEBI) will not be eligible to issue ADRs/GDRs.
- Unlisted companies, which have not yet accessed the ADR/GDR route for raising capital in the international market, would require prior or simultaneous listing in the domestic market, while seeking to issue such overseas instruments. Unlisted companies, which have already issued ADRs/GDRs in the international market, have to list in the domestic market on making profit or within three years of such issue of ADRs/GDRs, whichever is earlier.

- After the issue of ADRs/GDRs, the company has to file a return in Form DR as indicated in the RBI Notification No. FEMA.20/ 2000-RB dated May 3, 2000, as amended from time to time. The company is also required to file a quarterly return in Form DR- Quarterly as indicated in the RBI Notification ibid.
- There are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.
- Erstwhile OCBs which are not eligible to invest in India and entities prohibited to buy, sell or deal in securities by SEBI will not be eligible to subscribe to ADRs / GDRs issued by Indian companies.
- The pricing of ADR / GDR issues including sponsored ADRs / GDRs should be made at a price determined under the provisions of the Scheme of issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India and directions issued by the Reserve Bank, from time to time.

Q.13. What is meant by Sponsored ADR & Two-way fungibility Scheme of ADR/ GDR?

Ans. Sponsored ADR/GDR: An Indian company may sponsor an issue of ADR/ GDR with an overseas depository against shares held by its shareholders at a price to be determined by the Lead Manager. The operative guidelines for the same have been issued vide A.P. (DIR Series) Circular No.52 dated November 23, 2002.

Two-way fungibility Scheme : Under the limited Two-way fungibility Scheme, a registered broker in India can purchase shares of an Indian company on behalf of a person resident outside India for the purpose of converting the shares so purchased into ADRs/ GDRs. The operative guidelines for the same have been issued vide A.P. (DIR Series) Circular No.21 dated February 13, 2002. The Scheme provides for purchase and re-conversion of only as many shares into ADRs/ GDRs which are equal to or less than the number of shares emerging on surrender of ADRs/ GDRs which have been actually sold in the market. Thus, it is only a limited two-way fungibility wherein the headroom available for fresh purchase of shares from domestic market is restricted to the number of converted shares sold in the domestic market by non-resident investors. So long the ADRs/ GDRs are quoted at discount to the value of shares in domestic market, an investor will gain by converting the ADRs/ GDRs into underlying shares and selling them in the domestic market. In case of ADRs/ GDRs being quoted at premium, there will be demand for reverse fungibility, i.e. purchase of shares in domestic market for re-conversion into ADRs/ GDRs. The scheme is operationalised through the Custodians of securities and stock brokers under SEBI.

Q.14. Can Indian companies issue Foreign Currency Convertible Bonds (FCCBs)?

Ans. FCCBs can be issued by Indian companies in the overseas market in accordance with the Scheme for Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

The FCCB being a debt security, the issue needs to conform to the External Commercial Borrowing guidelines, issued by RBI vide Notification No. FEMA 3/2000-RB dated May 3, 2000, as amended from time to time.

Q.15. Can a foreign investor invest in Preference Shares? What are the regulations applicable in case of such investments?

Ans. Yes. Foreign investment through preference shares is treated as foreign direct investment. However, the preference shares should be fully and mandatorily convertible into equity shares within a specified time to be reckoned as part of share capital under FDI. Investment in other forms of preference shares requires to comply with the ECB norms.

Q.16. Can a company issue debentures as part of FDI ?

Ans. Yes. Debentures which are fully and mandatorily convertible into equity within a specified time would be reckoned as part of equity under the FDI Policy.

Q.17. Can shares be issued against Lumpsum Fee, Royalty and ECB?

Ans. An Indian company eligible to issue shares under the FDI policy and subject to pricing guidelines as specified by the Reserve Bank from time to time, may issue shares to a person resident outside India :

- i. being a provider of technology / technical know-how, against Royalty / Lumpsum fees due for payment; and
- ii. against External Commercial Borrowing (ECB) (other than import dues deemed as ECB or Trade Credit as per RBI Guidelines).

Provided, that the foreign equity in the company, after the conversion of royalty / lumpsum fee / ECB into equity, is within the sectoral cap notified, if any.

Q.18. What are the other modes of issues of shares for which general permission is available under RBI Notification No. FEMA 20 dated May 3, 2000?

Ans.

- Issue of shares under ESOP by Indian companies to its employees or employees of its joint venture or wholly owned subsidiary abroad who are resident outside India directly or through a Trust up to 5% of the paid up capital of the company.
- Issue and acquisition of shares by non-residents after merger or de-merger or amalgamation of Indian companies.
- Issue shares or preference shares or convertible debentures on rights basis by an Indian company to a person resident outside India.

Q.19. Can a foreign investor invest in shares issued by an unlisted company in India?

Ans. Yes. As per the regulations/guidelines issued by the Reserve Bank of India/Government of India, investment can be made in shares issued by an unlisted Indian company.

Q. 20. Can a foreigner set up a partnership/ proprietorship concern in India?

Ans. No. Only NRIs/PIOs are allowed to set up partnership/proprietorship concerns in India on non-repatriation basis.

Q.21. Can a foreign investor invest in Rights shares issued by an Indian company at a discount?

Ans. There are no restrictions under FEMA for investment in Rights shares issued at a discount by an Indian company, provided the rights shares so issued are being offered at the same price to residents and non-residents. The offer on right basis to the persons resident outside India shall be :

(a) in the case of shares of a company listed on a recognized stock exchange in India, at a price as determined by the company; and

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

II. Foreign Technology Collaboration Agreement

Whether the payment in terms of foreign technology collaboration agreement' can be made by an Authorised Dealer (AD) bank?

Ans. Yes, RBI has delegated the powers, to make payments for royalty, lumpsum fee for transfer of technology and payment for use of trademark/brand name in terms of the foreign technology collaboration agreement entered by the Indian company with its foreign partners, to the AD banks subject to compliance with the provisions of Foreign Exchange Management (Current Account Transactions) Rules, 2000. Further, the requirement of registration of the agreement with the Regional Office of Reserve Bank of India has also been done away with.

III. Foreign Portfolio Investment

Q.1. What are the regulations regarding Portfolio Investments by SEBI registered Foreign Institutional Investors (FIIs)?

Ans.

- Investment by SEBI registered FIIs is regulated under SEBI (FII) Regulations, 1995 and Regulation 5(2) of FEMA Notification No.20 dated May 3, 2000, as amended from time to time. FIIs include Asset Management Companies, Pension Funds, Mutual Funds, Investment Trusts as Nominee Companies, Incorporated / Institutional Portfolio Managers or their Power of Attorney holders, University Funds, Endowment Foundations, Charitable Trusts and Charitable Societies.
- SEBI acts as the nodal point in the registration of FIIs. The Reserve Bank of India has granted general permission to SEBI Registered FIIs to invest in India under the Portfolio Investment Scheme (PIS).
- Investment by SEBI registered FIIs and its sub accounts cannot exceed 10 per cent of the paid up capital of the Indian company. However, in case of foreign corporates or High Networth Individuals (HNIs) registered as sub accounts of an FII, their investment shall be restricted to 5 per cent of the paid up capital of the Indian company. All FIIs and their sub-accounts taken together cannot acquire more than 24 per cent of the paid up capital of an Indian Company. An Indian company can raise the 24 per cent ceiling to the sectoral cap / statutory ceiling, as applicable, by passing a resolution by its Board of Directors followed by passing a Special Resolution to that effect by their General Body. The Indian company has to intimate the raising of the FII limit to the Reserve Bank to enable the Bank to notify the same on its website for larger public dissemination.

Q.2. What are the regulations regarding Portfolio Investments by NRIs/PIOs?

Ans.

- Non- Resident Indian (NRIs) and Persons of Indian Origin (PIOs) can purchase or sell shares/ fully and mandatorily convertible debentures of Indian companies on the Stock Exchanges under the Portfolio Investment Scheme. For this purpose, the NRI/ PIO has to apply to a designated branch of a bank, which deals in Portfolio Investment. All sale/ purchase transactions are to be routed through the designated branch.
- An NRI or a PIO can purchase shares up to 5 per cent of the paid up capital of an Indian company. All NRIs/PIOs taken together cannot purchase more than 10 per cent of the paid up value of the company. This limit can be increased by the Indian company to 24 per cent by passing a General Body resolution. The Indian company has to intimate the raising of the FII limit to the Reserve Bank to enable the Bank to notify the same on its website for larger public dissemination.
- The sale proceeds of the repatriable investments can be credited to the NRE/ NRO, etc. accounts of the NRI/ PIO, whereas the sale proceeds of non-repatriable investment can be credited only to NRO accounts.
- The sale of shares will be subject to payment of applicable taxes.

IV. Investment in other securities

Q.1. Can a Non-resident Indian(NRI) and SEBI registered Foreign Institutional Investor (FII) invest in Government Securities/ Treasury bills and Corporate debt?

Ans. Under the FEMA Regulations, only NRIs and SEBI registered FIIs are permitted to purchase Government Securities/Treasury bills and Corporate debt. The details are as under :

A. A Non-resident Indian can purchase without limit,

(1) on repatriation basis

- Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- Bonds issued by a public sector undertaking (PSU) in India; and
- Shares in Public Sector Enterprises being disinvested by the Government of India.

(2) on non-repatriation basis

- i. Dated Government securities (other than bearer securities) or treasury bills or units of domestic mutual funds;
- ii. Units of Money Market Mutual Funds in India; and
- iii. National Plan/Savings Certificates.

B. A SEBI registered FII may purchase, on repatriation basis, dated Government securities/ treasury bills, listed non-convertible debentures/ bonds issued by an Indian company and units of domestic mutual funds either directly from the issuer of such securities or through a registered stock broker on a recognised stock exchange in India.

The FII investment in Government securities and Corporate debt is subject to a ceiling decided in consultation with the Government of India. Investment limit for the FIIs as a group in Government securities currently is USD 10 billion and in Corporate debt is USD 20 billion.

Q.2. Can a NRI and SEBI registered FII invest in Tier I and Tier II instruments issued by banks in India?

Ans . SEBI registered FIIs and NRIs have been permitted to subscribe to the Perpetual Debt instruments (eligible for inclusion as Tier I capital) and Debt Capital instruments (eligible for inclusion as upper Tier II capital), issued by banks in India and denominated in Indian Rupees, subject to the following conditions :

- a. Investment by all FIIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 49 per cent of each issue and investment by individual FII should not exceed the limit of 10 per cent of each issue.
- b. Investments by all NRIs in Rupee denominated Perpetual Debt instruments (Tier I) should not exceed an aggregate ceiling of 24 per cent of each issue and investments by a single NRI should not exceed 5 percent of each issue.
- c. Investment by FIIs in Rupee denominated Debt Capital instruments (Tier II) shall be within the limits stipulated by SEBI for FII investment in corporate debt instruments.
- d. Investment by NRIs in Rupee denominated Debt Capital instruments (Tier II) shall be in accordance with the extant policy for investment by NRIs in other debt instruments.
- e. Investment by FIIs in Rupee denominated Upper Tier II Instruments raised in Indian Rupees will be within the limit prescribed by the SEBI for investment in corporate debt instruments. However, investment by FIIs in these instruments will be subject to a separate ceiling of USD 500 million.
- f. The details of the secondary market sales / purchases by FIIs and the NRIs in these instruments on the floor of the stock exchange are to be reported by the custodians and designated Authorised Dealer banks respectively, to the Reserve Bank through the soft copy of the Forms LEC (FII) and LEC (NRI).

Q.3. Can a NRI and SEBI registered FII invest in Indian Depository Receipts (IDRs)?

Ans. NRI and SEBI registered FIIs have been permitted to invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the following conditions :

- (i) The purchase, hold and transfer of IDRs is in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 notified vide Notification No. FEMA 20 / 2000-RB dated May 3, 2000, as amended from time to time.
- (ii) Automatic fungibility of IDRs is not permitted.
- (iii) IDRs shall not be redeemable into underlying equity shares before the expiry of one year period from the date of issue of the IDRs.
- (iv) At the time of redemption / conversion of IDRs into the underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 notified vide Notification No. FEMA 120 / RB-2004 dated July 7 2004, as amended from time to time.

(v) The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs.

Q.4. Can a person resident in India invest in the Indian Depository Receipts (IDRs)? What is the procedure for redemption of IDRs held by persons resident in India?

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

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

V. Foreign Venture Capital Investment

Q.5. What are the regulations for Foreign Venture Capital Investment?

Ans.

- A SEBI registered Foreign Venture Capital Investor has general permission from the Reserve Bank of India to invest in a Venture Capital Fund (VCF) or an Indian Venture Capital Undertaking (IVCU), in the manner and subject to the terms and conditions specified in Schedule 6 of RBI Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time. These investments by SEBI registered FVCI, would be subject to the SEBI regulation and sector specific caps of FDI.
- FVCIs can purchase equity / equity linked instruments / debt / debt instruments, debentures of an IVCU or of a VCF through initial public offer or private placement in units of schemes / funds set up by a VCF. At the time of granting approval, the Reserve Bank permits the FVCI to open a Foreign Currency Account and/ or a Rupee Account with a designated branch of an AD Category – I bank.
- The purchase / sale of shares, debentures and units can be at a price that is mutually acceptable to the buyer and the seller.
- AD Category – I banks can offer forward cover to FVCIs to the extent of total inward remittance. In case the FVCI has made any remittance by liquidating some investments, original cost of the investments has to be deducted from the eligible cover to arrive at the actual cover that can be offered.

VI. Branch/ Project/ Liaison Office of a foreign company in India

Q.1. How can foreign companies open Liaison /Branch office in India?

Ans.

A. With effect from February 1, 2010, foreign companies/entities desirous of setting up of Liaison Office / Branch Office (LO/BO) are required to submit their application in Form FNC along with the documents mentioned therein to Foreign

Investment Division, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai through an Authorised Dealer bank. This form is available at www.rbi.org.in

B. The applications from such entities in Form FNC will be considered by the Reserve Bank under two routes:

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

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

• **Track Record**

- For Branch Office — a profit making track record during the immediately preceding five financial years in the home country.
- For Liaison Office — a profit making track record during the immediately preceding three financial years in the home country.

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

- For Branch Office — not less than USD 100,000 or its equivalent.
- For Liaison Office — not less than USD 50,000 or its equivalent.

D. Permission to set up such offices is initially granted for a period of 3 years and this may be extended from time to time by the Authorised Dealer in whose jurisdiction the office is set up. The Branch / Liaison offices established with the Reserve Bank's approval will be allotted a **Unique Identification Number** (UIN) (www.rbi.org.in/scripts/Fema.aspx). The BOs / LOs shall also obtain Permanent Account Number (PAN) from the Income Tax Authorities on setting up the offices in India.

E. Liaison/Branch offices have to file an Annual Activity Certificate (AACs) from the Auditors, as at end of March 31, along with the audited Balance Sheet on or before September 30 of that year, stating that the Liaison Office has undertaken only those activities permitted by Reserve Bank of India. In case the annual accounts of the LO/ BO are finalized with reference to a date other than March 31, the AAC along with the audited Balance Sheet may be submitted within six months from the due date of the Balance Sheet.

Q.2. What are the permitted activities of Liaison Office/ Representative Office?

Ans. A Liaison Office (also known as Representative Office) can undertake only liaison activities, i.e. it can act as a channel of communication between Head Office abroad and parties in India. It is not allowed to undertake any business activity in India and cannot earn any income in India. Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the Head Office outside India. The role of such offices is, therefore, limited to collecting information about possible market opportunities and providing information about the company and its products to the prospective Indian customers. A Liaison Office can undertake the following activities in India :

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

Q.3. Can Foreign Insurance Companies / Banks set up Liaison Office in India?

Ans. Foreign Insurance companies can establish Liaison Offices in India only after obtaining approval from the Insurance Regulatory and Development Authority (IRDA). Similarly, foreign banks can establish Liaison Offices in India only after obtaining approval from the Department of Banking Operations and Development (DBOD), Reserve Bank of India.

Q. 4. What is the procedure for setting up Branch office?

Ans. Permission for setting up branch offices is granted by the Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai. Reserve Bank of India considers the track record of the applicant company, existing trade relations with India, the activity of the company proposing to set up office in India as well as the financial position of the company while scrutinising the application. The application in Form FNC should be submitted to the Reserve Bank through the Authorised Dealer bank.

Q.5. What are the permitted activities of Branch Office?

Ans. Companies incorporated outside India and engaged in manufacturing or trading activities are allowed to set up Branch Offices in India with specific approval of the Reserve Bank. Such Branch Offices are permitted to represent the parent / group companies and undertake the following activities in India :

- i. Export / Import of goods².
- ii. Rendering professional or consultancy services.
- iii. Carrying out research work, in areas in which the parent company is engaged.
- iv. Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
- v. Representing the parent company in India and acting as buying / selling agent in India.
- vi. Rendering services in information technology and development of software in India.
- vii. Rendering technical support to the products supplied by parent/group companies.
- viii. Foreign airline / shipping company.

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

Note :

- a. Retail trading activities of any nature is not allowed for a Branch Office in India.
- b. A Branch Office is not allowed to carry out manufacturing or processing activities in India, directly or indirectly.
- c. Profits earned by the Branch Offices are freely remittable from India, subject to payment of applicable taxes.

Q.6. Whether Branch Offices are permitted to remit profit outside India?

Ans. Branch Offices are permitted to remit outside India profit of the branch net of applicable Indian taxes, on production of the following documents to the satisfaction of the Authorised Dealer through whom the remittance is effected :

- a. A Certified copy of the audited Balance Sheet and Profit and Loss account for the relevant year;
- b. A Chartered Accountant's certificate certifying -
 - i . the manner of arriving at the remittable profit
 - ii. that the entire remittable profit has been earned by undertaking the permitted activities
 - iii. that the profit does not include any profit on revaluation of the assets of the branch.

Q.7 What are the documents to be submitted to the AD bank at the time of closure of the Liaison/ Branch Office?

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

- a) Copy of the Reserve Bank's permission/ approval from the sectoral regulator(s) for establishing the BO / LO.

- b) Auditor's certificate - i) indicating the manner in which the remittable amount has been arrived at and supported by a statement of assets and liabilities of the applicant, and indicating the manner of disposal of assets;
- ii) confirming that all liabilities in India including arrears of gratuity and other benefits to employees, etc., of the Office have been either fully met or adequately provided for; and
- iii) confirming that no income accruing from sources outside India (including proceeds of exports) has remained un-repatriated to India.
- c) No-objection / Tax Clearance Certificate from Income-Tax authority for the remittance/s.
- d) Confirmation from the applicant/parent company that no legal proceedings in any Court in India are pending and there is no legal impediment to the remittance.
- e) A report from the Registrar of Companies regarding compliance with the provisions of the Companies Act, 1956, in case of winding up of the Office in India.
- f) Any other document/s, specified by the Reserve Bank while granting approval.

Q.8. What is the procedure for setting up Project Office?

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

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

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

Q.9. What are the bank accounts permitted to a Project Office?

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

- i. The Project Office has been established in India, with the general / specific permission of Reserve Bank, having the requisite approval from the concerned Project Sanctioning Authority concerned.
- ii. The contract, under which the project has been sanctioned, specifically provides for payment in foreign currency.
- iii. Each Project Office can open **two Foreign Currency Accounts**, usually one denominated in USD and other in home currency, provided both are maintained with the same AD category–I bank.
- iv. The permissible debits to the account shall be payment of project related expenditure and credits shall be foreign currency receipts from the Project Sanctioning Authority, and remittances from parent/ group company abroad or bilateral / multilateral international financing agency.
- v. The responsibility of ensuring that only the approved debits and credits are allowed in the Foreign Currency Account shall rest solely with the branch concerned of the AD. Further, the Accounts shall be subject to 100 per cent scrutiny by the Concurrent Auditor of the respective AD banks.
- vi. The Foreign Currency accounts have to be closed at the completion of the Project.

Q.10. What are the general conditions applicable to Liaison / Branch / Project Office of foreign entities in India?

Ans. The general conditions applicable to Liaison/Branch/Project Office of foreign entities in India are as under;

(i) Without prior permission of the Reserve Bank, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China can establish in India, a Branch or a Liaison Office or a Project Office or any other place of business.

(ii) Partnership / Proprietary concerns set up abroad are not allowed to establish Branch /Liaison/Project Offices in India.

(iii) Entities from Nepal are allowed to establish only Liaison Offices in India.

(iv) Branch/Project Offices of a foreign entity, excluding a Liaison Office are permitted to acquire property for their own use and to carry out permitted/incidental activities but not for leasing or renting out the property. However, entities from Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, Bhutan or China are not allowed to acquire immovable property in India even for a Branch Office. These entities are allowed to lease such property for a period not exceeding five years.

(v) Branch / Liaison / Project Offices are allowed to open non-interest bearing INR current accounts in India. Such Offices are required to approach their Authorised Dealers for opening the accounts.

(vi) Transfer of assets of Liaison / Branch Office to subsidiaries or other Liaison/Branch Offices is allowed with specific approval of the Central Office of the Reserve Bank.

(viii) Authorised Dealers can allow term deposit account for a period not exceeding 6 months in favor of a branch/office of a person resident outside India provided the bank is satisfied that the term deposit is out of temporary surplus funds and the branch / office furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity. However, such facility may not be extended to shipping/airline companies.

¹ financial services sector means service rendered by banking and non-banking finance companies regulated by the Reserve Bank of India, insurance companies regulated by the Insurance Regulatory and Development Authority (IRDA) and other companies regulated by any other financial regulator, as the case may be.

²Procurement of goods for export and sale of goods after import are allowed only on wholesale basis.

***** END *****