

Investor Focus



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Key changes in Foreign Exchange laws in India

Overseas Direct Investments by Indian Party – Rationalisation

Notification No. FEMA 120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time.

To grant more flexibility to the Indian party, it has been decided to further liberalise various provisions / regulations of the Notification as detailed under.

Extant Provision	Revised Provision
Creation of charge on immovable / movable property and other financial assets	
The existing regulations of the Notification do not envisage creation of charge on the movable property and other financial assets of the Indian Party.	It has been decided that proposals from the Indian party for creation of charge in the form of pledge / mortgage / hypothecation on the immovable / movable property and other financial assets of the Indian Party and their group companies <i>may be considered by the Reserve Bank under the approval route</i> within the overall limit fixed (presently 400%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.
Reckoning bank guarantee issued on behalf of JV / WOS for computation of Financial Commitment	
Presently, the bank guarantee issued on behalf of JV / WOS is not reckoned for the purpose of computing the financial commitment of the Indian Party to its JV / WOS overseas.	It has been decided that the bank guarantee issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly.

Issuance of personal guarantee by the direct / indirect individual promoters of the Indian Party

Indian entities may offer any form of guarantee - corporate or personal / primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India

It has been decided that issuance of personal guarantee by the promoters of the Indian Party as presently allowed under the General Permission shall also be extended to the *indirect resident individual promoters* of the Indian Party with same stipulations as in the case of personal guarantee by the direct promoters.

Financial Commitment without equity contribution to JV / WOS

Presently, Regulation 6(4) of the Notification ibid prescribes that an Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture / Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian party has made investment by way of contribution to the equity capital of the Joint Venture.

Keeping in view the business requirement of the Indian party, particularly the legal requirement of the host country, it has now been decided that the proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route.

Submission of Annual Performance Report

Regulation 15(iii) of the Notification prescribes that Indian party needs to submit to the Reserve Bank through the designated Authorised Dealer bank every year an Annual Performance Report in Form ODI Part III in respect of each Joint Venture or Wholly Owned Subsidiary outside India, set up or acquired by the Indian party, after the finalization of the audited accounts of the Joint Venture / Wholly Owned Subsidiary outside India

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

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

Compulsorily Convertible Preference Shares (CCPS)

The extant provisions of Overseas Direct Investments envisage setting up / acquiring JV / WOS abroad by subscribing / contributing to the equity capital of the JV / WOS. Therefore, contribution to the preference share capital (whether convertible or non-convertible) of the JV / WOS abroad by the Indian party is treated as loan to them.

Keeping in view the nature of the Compulsorily Convertible Preference Shares (CCPS), it has been decided that Compulsorily Convertible Preference Shares shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the exposure to JV by way of CCPS.



Visit us at:

www.taxpertpro.com

Contact us at :

info@taxpertpro.com

vinay@taxpertpro.com

[9769134554](tel:9769134554)||[9769033172](tel:9769033172)