

## **Liberalised Remittance Scheme Investment in a foreign company by Resident Individuals**

Date: 27<sup>th</sup> March 2014

### **1. Background:**

In 2004, Reserve Bank of India had permitted individuals to remit upto US\$ 25,000 for almost any purpose. An individual could invest in shares of a company, acquire immovable property, etc. This limit was periodically raised to US\$ 2,00,000/-.

Several individuals have invested in shares of foreign companies under this scheme. Through the companies, they have undertaken business or acquired immovable property, etc.

Several RBI circulars after 2004 have repeatedly clarified that investment in shares was permitted under the scheme.

### **2. Change in view of RBI:**

After a few years (somewhere in 2007/2008), RBI changed its view and said:

“Investment for incorporation of a foreign company was not allowed to individuals under LRS. For investment in foreign companies, only Indian companies and firms are eligible under ODI. Portfolio investment is permitted under LRS”.

While this view was held by RBI managers, no such circular or notification was issued. In the year 2010, RBI said in FAQ that LRS was not available for incorporating companies abroad. Those who have invested in shares of foreign companies under LRS were asked to “unwind” and / or “divest” and go for Compounding.

### **3. Representation and RBI response:**

We along with other organisations represented the matter to RBI (copy available on our website). In short, we said that a Regulator cannot change its view without legal announcement. FAQ is not binding on anyone. All those who had incorporated companies under LRS have not violated FEMA.

Following prolonged and persistent representations, RBI has permitted individuals to invest in shares of foreign companies subject to conditions and

reporting from 5<sup>th</sup> August 2013<sup>1</sup>. The RBI circular and notification are attached herewith.

Further those who had made investments prior to 5<sup>th</sup> August 2013 have been allowed to continue the investment in shares. But for these old investments, RBI advises to go for compounding.

We have been representing that even for old investments, compounding should not be required. However RBI has so far not agreed.

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Individuals may go through the circular and invest after understanding the full provisions. Further for old investments, they may review their legal position.

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<sup>1</sup> Please note the notification is dated 5<sup>th</sup> March 2013. However, it was published in the gazette on 5<sup>th</sup> August 2013, which is its effective date.

**Attachment 1**

**Liberalised Remittance Scheme for Resident Individuals- Reduction of limit from USD 200,000 to USD 75,000**

**RBI/2013-14/181**

**A. P. (DIR Series) Circular No.24**

**August 14, 2013**

To

All Category-I Authorised Dealer Banks

Madam / Sir,

**Liberalised Remittance Scheme for Resident Individuals- Reduction of limit from USD 200,000 to USD 75,000**

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to the guidelines regarding the Liberalised Remittance Scheme (LRS) for Resident Individuals (the Scheme).

2. On a review of the scheme, it has now been decided to reduce the existing limit of USD 200,000 per financial year to USD 75,000 per financial year (April - March) with immediate effect. Accordingly, AD Category – I banks may now allow remittance up to USD 75,000 per financial year, under the scheme, for any permitted current or capital account transaction or a combination of both. Further, the following changes / clarifications in regard to the remittances under LRS will come into effect immediately :

(i). The scheme should no longer be used for acquisition of immovable property, directly or indirectly, outside India. Therefore, AD Category-I banks may henceforth not allow any remittances under the LRS Scheme for acquisition of immovable property outside India.

(ii). The scheme should not be used for making remittances for any prohibited or illegal activities such as margin trading, lottery etc., as hitherto.

(iii). Resident individuals have now been allowed to set up Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for bonafide business activities outside India within the limit of USD 75,000 with effect from August 5, 2013 and subject to the terms and conditions stipulated in [Notification No.FEMA 263/RB-2013 dated August 5, 2013](#).

3. Further, the limit for gift in Rupees by Resident Individuals to NRI close relatives and loans in Rupees by resident individuals to NRI close relatives in terms of [A.P. \(DIR Series\) Circular No.17](#) and [18](#) both dated September 16, 2011 shall accordingly stand modified to USD 75,000 per financial year.

4. All other terms and conditions mentioned in [A. P. \(DIR Series\) Circular No. 64 dated February 4, 2004](#), [A. P. \(DIR Series\) Circular No. 24 dated December 20, 2006](#), [A. P. \(DIR Series\) Circular No. 51 dated May 8, 2007](#), [A.P. \(DIR Series\) Circular No.36 dated April 4,](#)

[2008](#), A.P. (DIR Series) Circular No.17 and 18 both dated September 16, 2011 and [A.P.\(DIR Series\) Circular No. 106 dated May 23, 2013](#) shall remain unchanged.

5. Necessary amendments to the [Notification No. FEMA.1/2000-RB dated May 3, 2000](#), [Foreign Exchange Management (Permissible Capital Account Transactions) Regulations 2000] are being notified separately.

6. AD - Category I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

7. The directions contained in this Circular have been issued under Section 10 (4) and 11 (1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

**(C.D. Srinivasan)**  
**Chief General Manager**

**Attachment 2**

**Reserve Bank of India  
Foreign Exchange Department  
Central Office,  
Mumbai-400 001**

**Notification No. FEMA.263/RB-2013**

**Dated March 05, 2013**

**Foreign Exchange Management (Transfer or Issue of any  
Foreign Security) (Amendment) Regulations, 2013**

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations 2004 ([Notification No. FEMA 120/RB-2004 dated July 7, 2004](#)), as amended from time to time, (hereinafter called the Principal Regulations or the Notification) namely:-

**1. Short Title & Commencement:-**

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2013.
- (ii) They shall come into force from the date of publication in Official Gazette

**2. Insertion of New Regulation 20A**

In Part II, after Regulation 20, the following Regulation shall be inserted:

**“20A. Acquisition or Setting up of a JV or WOS abroad by resident individual**

A resident individual (single or in association with another resident individual or with an ‘Indian Party’ as defined in this Notification) satisfying the criteria as per Schedule V of this Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India.”

**3. Insertion of New Schedule V**

After Schedule IV, the following Schedule shall be inserted:  
“Schedule V [See Regulation 20A]

**A. Overseas Direct Investments by Resident Individuals**

- 1. Resident individual is prohibited from making direct investment in a JV or WOS abroad which is engaged in the real estate business or banking business or in the business of financial services activity.

2. The JV or WOS abroad shall be engaged in bonafide business activity.
  3. Resident individual is prohibited from making direct investment in a JV / WOS [set up or acquired abroad individually or in association with other resident individual and / or with an Indian party] located in the countries identified by the Financial Action Task Force (FATF) as "non co-operative countries and territories" as available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank.
  4. The resident individual shall not be on the Reserve Bank's Exporters Caution List or List of defaulters to the banking system or under investigation by any investigation / enforcement agency or regulatory body.
  5. At the time of investments, the permissible ceiling shall be within the overall ceiling prescribed for the resident individual under Liberalised Remittance Scheme as prescribed by the Reserve Bank from time to time.
- [Explanation: The investment made out of the balances held in EEFC / RFC account shall also be restricted to the limit prescribed under LRS.]
6. The JV or WOS, to be acquired / set up by a resident individual under this Schedule, shall be an operating entity only and no step down subsidiary is allowed to be acquired or set up by the JV or WOS.
  7. For the purpose of making investment under this Schedule, the valuation shall be as per Regulation 6(6)(a) of this Notification.
  8. The financial commitment by a resident individual to / on behalf of the JV or WOS, other than the overseas direct investments as defined under Regulation 2(e) read with Regulation 20A of this Notification, is prohibited.

#### B. Post Investment Changes

Any alteration in shareholding pattern of the JV or WOS may be reported to the designated AD within 30 days including reporting in the Annual Performance Report as required to be submitted in terms of Regulation 15 of this Notification.

#### C. Disinvestment by Resident Individuals

1. A resident individual, who has acquired / set up a JV or WOS under the provisions of this Schedule, may disinvest (partially or fully) by way of transfer / sale or by way of liquidation / merger of the JV or WOS.
2. Disinvestment by a resident individual shall be allowed after one year from the date of making first remittance for setting up or acquiring the JV or WOS abroad.
3. The disinvestment proceeds shall be repatriated to India immediately and in any case not later than 60 days from the date of disinvestment and the same may be reported to the designated AD.
4. No write off shall be allowed in case of disinvestments by the resident individuals.

#### D. Reporting Requirements

1. The resident individual, making overseas direct investments under the provisions of this Schedule, shall submit Part I of the Form ODI, duly completed, to the designated authorised dealer, within 30 days of making the remittance.

2. The investment, as made by a resident individual, shall be reported by the designated authorised dealer to the Reserve Bank in Form ODI Part I and II within 30 days of making the remittance.

3. The obligations as required in terms of Regulation 15 of this Notification shall also apply to the resident individuals who have set up or acquired a JV or WOS under the provisions of this Schedule.

4. The disinvestment by the resident individual may be reported by the designated AD to the Reserve Bank in Form ODI Part IV within 30 days of receipt of disinvestment proceeds.”

**(Rashmi Fauzdar)**  
**Chief General Manager**