

**RESERVE BANK OF INDIA
FOREIGN EXCHANGE DEPARTMENT
CENTRAL OFFICE
MUMBAI-400 001**

Notification No.277/2013-RB

May 08, 2013

**Foreign Exchange Management (Transfer or Issue of any
Foreign Security) (Fourth 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 of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations 2004 ([Notification No. FEMA 120/RB-2004 dated July 7, 2004](#)) namely:-

1. Short Title & Commencement:-

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Fourth Amendment) Regulations, 2013.
- (ii) Each amendment shall be deemed to have come into force from the dates specified in these Regulations.@

2. Amendment to Regulation 2

In Regulation 2, in clause (f), for the words “the amount of direct investment by way of contribution to equity and loan and 100 per cent of the amount of guarantees”, the following words, “the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees” shall be substituted and the same shall be deemed to have been substituted with effect from May 27, 2011.

3. Amendment to Regulation 6

A. In Regulation 6, in sub-regulation 2 (i)

(a) after sub-clause (e), the following shall be inserted and the same shall be deemed to have been inserted with effect from May 27, 2011:

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

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

(b) after sub-clause (f), the following shall be inserted and the same shall be deemed to have been inserted with effect from March 28, 2012:

“(g) hundred per cent of the value of the bank guarantee issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party.”

B. In Regulation 6, in sub-regulation (3), in clause (ii),

(a) after sub-clause (g) the following shall be inserted and the same shall be deemed to have been inserted with effect from May 27, 2011:

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

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

(b) after sub-clause (h) the following shall be inserted and the same shall be deemed to have been inserted with effect from March 28, 2012:

“(i) hundred per cent of the value of the bank guarantee issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party.”

C. In Regulation 6,

(a) the existing sub-regulation (4) shall be substituted with the following and the same shall be deemed to have been substituted with effect from May 27, 2011:

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

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

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

Explanation: Issue of corporate guarantee on behalf of second level or subsequent level step down operating subsidiaries will be considered under the Approval Route, provided the Indian Party indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.”

(b) in sub-regulation (4), after clause (ii), the following clauses (iii), (iv) and (v) shall be inserted and the same shall be deemed to have been inserted with effect from March 28, 2012:

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

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

- b) no guarantee is 'open ended'.
- (iv) With prior approval of the Reserve Bank, an Indian party may undertake financial commitment without equity contribution in JV / WOS provided it is as per the business requirement of the Indian party and also as per the legal requirement of the host country.
- (v) Compulsorily Convertible Preference Shares (CCPS) shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the contribution to JV by way of CCPS."

4. Amendment to Regulation 15

In Regulation 15, after sub-regulation (iii), the following sub-regulation (iv) shall be added and the same shall be deemed to have been added with effect from March 28, 2012:

- "(iv) 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) as referred to under sub-regulation (iii) may be submitted by the Indian party based on the un-audited annual accounts of the JV / WOS provided:
- a. The Statutory Auditors of the Indian party certify that 'The un-audited annual accounts of the JV / WOS reflect the true and fair picture of the affairs of the JV / WOS' and
 - b. That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party."

5. Amendment to Regulation 16

In Regulation 16, for the existing sub-regulation (1), the following sub-regulations (1) and (1A) shall be substituted and the same shall be deemed to have been substituted with effect from June 29, 2011:

- "(1) An Indian Party may transfer, by way of sale to another Indian Party which complies with the provisions of Regulation 6 above, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:
- (i) the sale does not result in any write off of the investment made;
 - (ii) the sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
 - (iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
 - (iv) the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
 - (v) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
 - (vi) the Indian party is not under investigation by CBI / DoE / SEBI / IRDA or any other regulatory authority in India.

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

- (a) where the JV / WOS is listed in the overseas stock exchange;
 - (b) where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
 - (c) where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million and
 - (d) where the Indian Party is a listed company having a net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.
- (ii) Such disinvestments shall be subject to the conditions listed in clause (ii) to (vi) of sub-regulation (1) of Regulation 16.

6. Insertion of new Regulation in Part I:-

After Regulation 16, the following Regulation shall be inserted and the same shall be deemed to have been inserted with effect from May 27, 2011:

“16A Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables

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

- (i) A certified copy of the balance sheet showing the loss in the overseas JV / WOS set up by the Indian Party; and
- (ii) Projections for next five years indicating benefit accruing to the Indian Party consequent to such write off / restructuring.

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

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

7. Insertion of Regulation 18A

After Regulation 18, a new Regulation viz. 18A shall be inserted as under and the same shall be deemed to have been inserted with effect from March 28, 2012:

“18A Creation of charge on immovable / movable property and other financial assets

An Indian Party, with prior approval of the Reserve Bank, may transfer, by way of mortgage / pledge / hypothecation, the immovable / movable property and other financial assets (except shares of JV / WOS) of the Indian party and its group companies as a security for availing of

fund based and/or non-fund based facilities for its JV or WOS from an authorised dealer bank or a public financial institution in India or to an overseas lender, provided the lender is regulated and supervised as a bank, the total financial commitment of the Indian Party remains within the limit stipulated by the Reserve Bank for overseas investments in JV/WOS and a 'No Objection' is submitted by the Indian party and its group companies from their resident lenders."

8. Amendment to Regulation 20:-

Regulation 20 shall be substituted with the following and the same shall be deemed to have been substituted with effect from March 28, 2012:

"20. Investment by Individuals

(1) A resident individual may acquire shares of a foreign entity in part / full consideration of the professional services rendered to the foreign entity or in lieu of director's remuneration, provided the limit of acquiring such shares in terms of value shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

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

(3) Reserve Bank may, after taking into account, inter alia, the following factors, grant permission subject to such terms and conditions as are considered necessary:

- (i) credentials and net worth of the individual and the nature of his/her profession;
- (ii) the extent of his/her forex earnings / balances in his EEFC and / or RFC account;
- (iii) financial and business track record of the foreign entity;
- (iv) potential for forex inflow to the country;
- (v) other likely benefits to the country."

9. Amendment to Regulation 22:-

In Regulation 22, the sub-regulation (2) shall be substituted with the following and the same shall be deemed to have been substituted with effect from March 28, 2012:

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

- (i) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and
- (ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the Authorised Dealer bank giving details of remittances / beneficiaries etc.,

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

10. Amendment to Regulation 24:-

In Regulation 24, in sub-regulation (1), the clause (a) shall be substituted with the following and the same shall be deemed to have been substituted with effect from March 28, 2012:

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

- (i) the extent of acquiring the qualification shares is as per the law of the host country where the entity is located and
- (ii) the limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.”

(Rashmi Fauzdar)
Chief General Manager

Foot Note:

(i) @It is clarified that no person will be adversely affected as a result of retrospective effect being given to these regulations.

(ii) The Principal Regulations were published in the Official Gazette of GOI vide G.S.R. No 757 (E) dated November 19, 2004 – in Part II, Section 3, Sub-section (i) and subsequently amended vide :

G.S.R. No. 220 (E) dated April 7, 2005,
G.S.R. No. 337 (E) dated May 27, 2005,
G.S.R. No. 552 (E) dated August 31, 2005,
G.S.R. No. 535 (E) dated September 6, 2006,
G.S.R. No.13 (E) dated January 5, 2008,
G.S.R. No. 209(E) dated March 25, 2008,
G.S.R. No.676 (E) dated September 24, 2008,
G.S.R. No.756 (E) dated September 31, 2008,
G.S.R. No.108 (E) dated February 20, 2009,
G.S.R. No. 301(E) dated May 1, 2009,
G.S.R. No. 441(E) dated June 23, 2009,
G.S.R. No. 609(E) dated August 28, 2009,
G.S.R. No. 607(E) dated August 3, 2012,
G.S.R. No. 609(E) dated August 3, 2012,
G.S.R. No.947(E) dated November 22, 2012,
G.S.R. No.345(E) dated May 25, 2013.

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 30.07.2013- G.S.R.No.516 (E)**