



news flash

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CURBS ON OVERSEAS INVESTMENTS – RBI CLARIFIES

(SUPPLEMENTARY NEWS FLASH)

The RBI had issued circulars dated 14 August 2013 (**the Circulars**) imposing curbs on overseas direct investments (**ODI**) as well as under the liberalized remittance scheme (**LRS**) as set in our earlier news flash dated 22 August 2013 (please see <http://almtlegal.com/articles-pdf/ALMT%20Newsflash%20-%20Curbs%20on%20overseas%20investments.pdf>).

In response to the queries raised by various stakeholders with respect to the above Circulars, the RBI has issued additional clarifications vide two circulars dated 4 September 2013 on ODI and LRS respectively. The RBI has also partially amended circular no. 69 dated 27 May 2011 in relation to issue of corporate guarantee by the Indian party on behalf of second generation or subsequent level step down subsidiaries overseas.

A brief summary of the important clarifications and amendment is as follows:

A. CLARIFICATIONS ON ODI

- **Financial commitments on or before 14 August 2013**

All financial commitments made towards ODI on or before 14 August 2013 in compliance with the earlier limit of 400% of the net worth of the Indian Party under the automatic route will continue to be allowed and will not be subject to any unwinding or approval from the RBI.

- **ECB limit retained to 400%**

It has been decided to retain the limit of 400% of the net worth of the Indian Party for the financial commitments funded by way of External Commercial Borrowings (ECB) raised by an Indian Party.

- **Fresh financial commitment after 14 August 2013**

Where a joint venture (**JV**)/ wholly owned subsidiary (**WOS**) has already been set up/ acquired on or before 14 August 2013, the Indian party can make fresh financial commitments (including for the purpose of setting up of/ acquiring step down subsidiaries outside India) only upto the revised limit of 100% under the automatic route. Any financial commitment beyond 100% cap shall require the prior approval of the RBI.

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However, if such fresh financial commitment was contracted on or before 14 August 2013 then the earlier limit of 400% under the automatic route would apply. AD bank is required to ensure the veracity/authenticity of such contracts before permitting the remittances and report the case to RBI post facto.

Setting up of/ acquiring new JV /WOS pursuant to a contract entered into on or before 14 August 2013 will also be governed under the earlier limit of 400% under the automatic route.

For the purpose of calculating the total financial commitment for the year towards new JV/WOS under the 100% limit, earlier investments made by the Indian Party will also be reckoned.

B. AMENDMENT TO RBI CIRCULAR DATED 27 MAY 2011

- Paragraph 2(iv)(b) of Circular No. 69 dated May 27, 2011 has been amended pursuant to circular no. 41 dated 10 September 2013 to state that the issue of corporate guarantee on behalf of second generation/subsequent level step down operating subsidiaries would be considered under the Approval Route, provided the Indian Party indirectly holds 51% or more stake in the overseas subsidiary for which such guarantee is intended to be issued, as against the earlier position where such 51% or more stake was to be held either directly or indirectly in the second generation overseas subsidiary.

C. CLARIFICATIONS ON LRS

- In terms of the current FEMA provisions, LRS can be used to acquire both listed and unlisted shares of overseas companies.
- At present, only gift and donation from the list of items under Schedule III of Foreign Exchange Management (Current Account Transaction) Rules, 2000 (**CAT Rules**) by a resident individual have been subsumed under the LRS limit. For all other purposes such as educational or medical expenses, the limits of LRS and Schedule III of CAT Rules are separate, distinct and mutually exclusive and over and above each other respectively.
- The effective date of the notification allowing resident individuals to set up JV/ WOS outside India for bonafide business activities within the revised LRS limit of USD 75,000 is 5 August 2013.
- Resident individuals can make remittances for acquiring immovable property outside India, within the annual limit of USD 75,000 for those contracts which were entered into on or before the August 14, 2013 subject to the satisfaction of the genuineness of the transactions by the AD bank. The AD bank is to immediately report such cases to the RBI post facto.

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D. CONCLUSION

- It may be noted that any fresh financial commitment contracted after 14 August 2013 even though it may be in respect of an existing JV/ WOS, will be subject to the reduced limit of 100% of the net worth of the Indian party, under the automatic route. Provided that if the contract was entered into prior to 14 August 2013 then earlier limit of 400% of the net worth will apply.
- Resident individuals who acquired immovable property outside India prior to 14 August 2013 on an installment basis can continue to make remittances however upto the reduced LRS limit of USD 75,000. This may adversely affect those whose annual installments are greater than USD 75,000.

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