

## Overseas Direct Investments

**(Updated as on September 01, 2017)**

1.	Where are the guidelines pertaining to overseas direct investments available and how to get clarifications pertaining to the guidelines on overseas investment?
2.	What is direct investment outside India?
3.	What are the general permissions available to persons (individual) resident in India for purchase / acquisition of securities abroad?
4.	Can overseas direct investment be made in any activity? What are the prohibited activities for overseas direct investment?
5.	What is JV and WOS?
6.	What is Automatic Route and Approval Route?
7.	How to forward the proposal for making Overseas Direct Investment (ODI) under approval route?
8.	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? What if one Indian promoter has more than one JV in either the same country or in different countries?
9.	What are the other ODI transactions that require RBI approval?
10.	Who are eligible to make overseas direct investment under the Automatic Route? Who is an "Indian Party"?
11.	What are the limits and requirements for overseas direct investment to be made under the Automatic Route?
12.	Are overseas investments freely allowed in all the countries and are there any restrictions regarding the currency of investment?
13.	What is the procedure to be followed by an Indian party to make overseas direct investment in a JV/WOS under the Automatic Route?
14.	Is prior registration with the Reserve Bank necessary for direct investments under the Automatic Route?
15.	Where does one find the Form ODI?
16.	Does the allotment of UIN by the Reserve Bank for direct investments under the automatic route constitute an approval from the Reserve Bank?
17.	Does the definition of Overseas Direct Investment also mean that one can acquire an existing company either partially or wholly?
18.	What is 'financial commitment'?
19.	What are the permissible sources for funding overseas direct investment?
20.	Can an Indian party issue performance guarantee in favour of overseas JV/WOS?
21.	Can an Indian party issue corporate guarantee on behalf of its second generation subsidiary abroad?
22.	Can individual indirect promoters of the Indian Party issue personal guarantee to an overseas lender on behalf of the JV/WOS under general permission?
23.	Can open ended corporate guarantees be extended by an India party on behalf of its overseas subsidiary?
24.	Whether the rollover of guarantee, which has already been issued on behalf of the overseas JV / WOS / step down subsidiary, may be allowed under the automatic route wherein there is change in the end use of the facility or the overseas lender or the coupon (interest) rate or the amount?
25.	Whether such rollover of guarantee is to be reported to RBI afresh or existing reporting will suffice?
26.	What are the obligations of the Indian party, which has made direct investment outside India?
27.	Is it mandatory to furnish Annual Performance Reports (APR) of the overseas JV/WOS based on its audited financial statements?
28.	What are the penalties for non-submission of Annual Performance Reports (APRs)?
29.	Can one freely create a pledge/mortgage/hypothecation/charge on immovable/moveable property or other financial assets of Indian party/group companies in favour of a non- resident?

30.	Can the shares of a JV/WOS abroad be pledged for the purpose of financial assistance?
31.	What are the valuation norms referred to in Q. 17 and Q. 13?
32.	(a) Can any Indian company make investment in a JV/WOS abroad in the financial services sector? b) Can an Indian company in the financial services sector make investment in a JV/WOS abroad in the non-financial services sector? c) Can an Indian company set up JV / WOS for trading in Overseas Commodities Exchanges?
33.	Can an Indian Party utilise the net worth of its Indian subsidiary / holding company for investing in a JV/WOS abroad?
34.	Can an Indian Party capitalise the proceeds of the exports to its overseas JV / WOS?
35.	Can an Indian Party extend loan or guarantee to an overseas entity without any equity participation in that entity?
36.	How are Compulsorily Convertible Preference Shares (CCPS) to be treated for the purpose of Overseas Direct Investment?
37.	What is the requirement for direct investment in an overseas concern by way of share swap?
38.	What are the permitted activities that partnership firms can undertake through overseas direct investment route?
39.	Can the partners of a partnership firm hold shares of the overseas JV / WOS for and on behalf of the firm?
40.	Are there any restrictions for setting up of a second generation company? Can such step down subsidiaries be set up under the Automatic Route?
41.	Can an Indian Party have a JV/WOS through a Special Purpose Vehicle (SPV) under the Automatic Route?
42.	Can an Indian Party directly fund such step- down subsidiaries?
43.	Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?
44.	Can Indian corporates invest overseas other than by way of direct investment?
45.	Can a resident individual acquire shares of a foreign company in his capacity as Director?
46.	Can resident individuals acquire shares of a foreign entity in lieu of the professional services rendered by them or in lieu of Director's remuneration under the General Permission?
47.	Can a resident individual subscribe to the rights issue of shares held by him?
48.	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?
49.	What are the avenues available to Indian Mutual Funds for investment abroad?
50.	What are the investment opportunities for Domestic Venture Capital Funds?
51.	Is investment in agriculture permitted?
52.	(a) What are the different modes of disinvestments from the JV / WOS abroad ? (b) Can an Indian Party disinvest from JV / WOS without write off? (c) Can an Indian Party disinvest from JV / WOS involving write off? (d) Are there any additional pre-conditions/compliances subject to which such write off at the time of disinvestment is permitted?
53.	Whether restructuring of the balance sheet of the JV / WOS abroad involving write-off of capital and receivables is allowed ?
54.	Can an Indian Party open/maintain an account in Foreign currency abroad?
55.	How the preference shares, other than the compulsorily convertible preference shares (CCPS), are to be treated for the purpose of ODI?
56.	Can a loan given to an overseas venture be converted into equity? If yes what are the reporting requirements?
57.	Whether equity exposures can be converted into loan or other forms of funded exposure like preference capital, debentures, etc.?

58.	Whether foreclosure / closure of an existing guarantee is to be reported to RBI by the AD bank / Indian party?
59.	Whether the provisions of Regulation 4 (1) (iii) of Notification No. FEMA 3/2000-RB dated May 03, 2000 as amended, is applicable to the Authorised Dealer bank branch situated outside India for extending credit facilities in foreign currency to a wholly owned subsidiary abroad or a joint venture abroad of an Indian entity?
60.	If the group company of an Indian Party is under investigation whether that Indian Party can undertake ODI transaction under automatic route?
61.	Whether Notification No. FEMA.382/2016-RB dated January 02, 2017 prohibiting overseas direct investment (ODI) in a JV/ WoS set up/ acquired by Indian party under automatic route in FATF non-cooperative countries and jurisdictions is applicable only on countries identified by Financial Action Task Force (FATF) as "Call for action"?
62.	Is development/construction (and thereafter, sale) of residential /commercial premises by an overseas Joint Venture (JV) or Wholly Owned Subsidiary (WOS) treated as real estate business under ODI regulations (FEMA Notification No. FEMA 120/RB-2004 dated July 7, 2004 as amended from time to time)?

  

1.	<b>Q</b>	<b>Where are the guidelines pertaining to overseas direct investments available and how to get clarifications pertaining to the guidelines on overseas investment?</b>
	<b>Ans</b>	<p>The guidelines have been notified by the Reserve Bank of India vide <a href="#">Notification No. FEMA 120/RB-2004 dated July 7, 2004</a>, as amended from time to time, which can be accessed at the Reserve Bank's website <a href="http://www.rbi.org.in/scripts/Fema.aspx">http://www.rbi.org.in/scripts/Fema.aspx</a>. A Master Direction titled 'Master Direction on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad'. The Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions and is available at 'Notification' Section on RBI's website <a href="https://www.rbi.org.in">https://www.rbi.org.in</a>.</p> <p>Any further clarifications in respect of cases not covered by the instructions may be obtained, giving full details of the case, from the Central Office of the Reserve Bank at the following address:</p> <p>The Chief General Manager Reserve Bank of India Foreign Exchange Department Overseas Investment Division Central Office, Amar Building, 5th Floor Mumbai 400 001. or by <a href="#">e-mail</a></p>
2.	<b>Q</b>	<b>What is direct investment outside India?</b>
	<b>Ans</b>	<p>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 a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS).</p> <p>This is different from portfolio investment which is explained in answer to <a href="#">Q. 44</a>.</p>
3.	<b>Q</b>	<b>What are the general permissions available to persons (individual) resident in India for purchase / acquisition of securities abroad?</b>
	<b>Ans</b>	<p>General permission has been granted to persons (individual) resident in India for purchase / acquisition of securities as under:</p> <ul style="list-style-type: none"> <li>a) Out of funds held in the RFC account;</li> <li>b) As bonus shares on existing holding of foreign currency shares;</li> <li>c) When not permanently resident in India, from the foreign currency resources outside India.</li> </ul> <p>General permission is also available to sell the shares so purchased or acquired.</p> <p>A resident Indian can remit, up to the limit prescribed by the Reserve Bank from time to time, per financial year under the Liberalised Remittance Scheme (LRS), for permitted current and</p>

		capital account transactions including purchase of securities and also setting up/acquisition of JV/WOS overseas with effect from August 5, 2013 (vide Notification No. 263).
4.	<b>Q</b>	<b>Can overseas direct investment be made in any activity? What are the prohibited activities for overseas direct investment?</b>
	<b>Ans</b>	<p>An Indian Party can make overseas direct investment in any bonafide activity.</p> <p>Real estate as defined in <a href="#">Notification No. FEMA 120/RB-2004 dated July 7, 2004</a> and banking business are the prohibited sectors for overseas direct investment. 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.</p> <p>However, Indian banks operating in India can set up JVs/WOSs abroad provided they obtain clearance under the Banking Regulation Act, 1949, from the Department of Banking Regulation (DBR), CO, RBI.</p> <p>An overseas JV / WOS, having direct or indirect equity participation by an Indian party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.</p> <p>It may be noted that, for undertaking activities in the financial services sector, certain additional conditions as specified in Regulation 7 of the Notification <i>ibid</i> should be adhered to. Please refer answer to <a href="#">Q.32</a>.</p>
5.	<b>Q</b>	<b>What is JV and WOS?</b>
	<b>Ans</b>	<p>"Joint Venture (JV)" / "Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment;</p> <p>A foreign entity is termed as JV of the Indian Party when there are other foreign promoters holding the stake along with the Indian Party. In case of WOS entire capital is held by the one or more Indian Company</p>
6.	<b>Q</b>	<b>What is Automatic Route and Approval Route?</b>
	<b>Ans</b>	<p>Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investments in 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.</p> <p>Form ODI is available as an Annex to the Master Direction titled ‘Master Direction on Reporting under Foreign Exchange Management Act’.</p> <p>Proposals not covered by the conditions under the automatic route require 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.</p>
7.	<b>Q</b>	<b>How to forward the proposal for making Overseas Direct Investment (ODI) under approval route?</b>

	<p><b>Ans</b></p> <p>The applicant should approach their designated Authorized Dealer (AD) with the proposal which shall be submitted to Reserve Bank after due scrutiny and with the specific recommendations of the designated AD bank along with supporting documents (as mentioned below) to the following address:</p> <p>The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Amar Building, 5th Floor, Sir P. M. Road, Fort, Mumbai 400001.</p> <p>The designated AD before forwarding the proposal should submit the Form ODI in the on-line OID application under approval route and the transaction number generated by the application should be mentioned in the letter.</p> <p>In case the proposal is approved, the AD bank should effect the remittance under advice to Reserve Bank so that the UIN is allotted.</p> <p>For approval by Reserve Bank, following documents need to be submitted along with Section D and Section E of Form ODI - Part I by the designated Authorized Dealer:</p> <p>a) A letter from the designated AD of the IP in a sealed cover mentioning the following details:</p> <ul style="list-style-type: none"> <li>• Transaction number generated by the OID application.</li> <li>• Brief details of the Indian entity.</li> <li>• Brief details of the overseas entity.</li> <li>• Background of the proposal, if any.</li> <li>• Brief details of the transaction.</li> <li>• Reason/s for seeking approval mentioning the extant FEMA provisions.</li> <li>• Observations of the designated AD bank with respect to the following: <ul style="list-style-type: none"> <li>• Prima facie viability of the JV/ WOS outside India;</li> <li>• Contribution to external trade and other benefits which will accrue to India through such investment;</li> <li>• Financial position and business track record of the IP and the foreign entity;</li> <li>• Expertise and experience of the IP in the same or related line of activity of the JV/ WOS outside India.</li> </ul> </li> <li>• Recommendations of the designated AD bank.</li> </ul> <p>b) A letter from the IP addressed to the designated AD bank.</p> <p>c) Board resolution for the proposed transaction/s.</p> <p>d) Diagrammatic representation of the organisational structure indicating all the subsidiaries of the IP horizontally and vertically with their stake (direct &amp; indirect) and status (whether operating company or SPV).</p> <p>e) Incorporation certificate and the valuation certificate for the overseas entity (if applicable).</p> <p>f) Other relevant documents properly numbered, indexed and flagged.</p>
8.	<p><b>Q</b> <b>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? What if one Indian promoter has more than one JV in either the same country or in different countries?</b></p> <p><b>Ans</b></p> <p>The Indian party/ Resident Individual is required 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 and the Resident Individual, would be required to route all transactions in respect of that JV/WOS only through one ‘designated Authorised Dealer’. In case the Indian Party/ Resident Individual 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.</p>

		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 route all its transactions.
9.	<b>Q</b>	<b>What are the other ODI transactions that require RBI approval?</b>
	<b>Ans</b>	<p>Some of the proposals which require prior approval are:</p> <ul style="list-style-type: none"> <li>i) Overseas Investments in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet;</li> <li>ii) Investments in Overseas Unincorporated entities in the oil sector by resident corporates exceeding the prescribed limit 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 / incorporated 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;</li> <li>iii) Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;</li> <li>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;</li> <li>v) Corporate guarantee by the Indian Party to second and subsequent level of Step Down Subsidiary (SDS);</li> <li>vi) All other forms of guarantee which is offered by the Indian Party to its first and subsequent level of SDS;</li> <li>vii) Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables in the books of listed/ unlisted Indian Company satisfying certain eligibility criteria mentioned under Regulation 16A of notification <i>ibid</i>;</li> <li>viii) Capitalization of export proceeds remaining unrealized beyond the prescribed period of realization will require the prior approval of the Reserve Bank; and</li> <li>ix) 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 based on the business requirement of the Indian Party and legal requirement of the host country in which JV/WOS is located.</li> </ul>
10.	<b>Q</b>	<b>Who are eligible to make overseas direct investment under the Automatic Route? Who is an "Indian Party"?</b>
	<b>Ans</b>	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 or a Limited Liability Partnership (LLP) incorporated under the LLP Act, 2008 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 JV / WOS, such combination will also form an "Indian Party".
11.	<b>Q</b>	<b>What are the limits and requirements for overseas direct investment to be made under the Automatic Route?</b>



	<b>Ans</b>	<p>The criteria for overseas direct investment under the Automatic Route is as under:</p> <p>i. The Indian Party can invest up to the prescribed limit of its net worth (as per the last audited Balance Sheet) in JV / WOS for any bonafide activity permitted as per the law of the host country. The prescribed limit vis-a-vis the 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;</p> <p>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</p> <p>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.</p>
12.	<b>Q</b>	<b>Are overseas investments freely allowed in all the countries and are there any restrictions regarding the currency of investment?</b>
	<b>Ans</b>	Investment in Pakistan is allowed under the approval route. Investments in Nepal can be only in Indian Rupees. Investments in Bhutan are allowed in Indian Rupees and in freely convertible currencies.
13.	<b>Q</b>	<b>What is the procedure to be followed by an Indian party to make overseas direct investment in a JV/WOS under the Automatic Route?</b>
	<b>Ans</b>	The Indian Party intending to make overseas 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 <a href="#">Q.31</a> and approach an Authorized Dealer (designated Authorized Dealer) for making the investment/remittance.
14.	<b>Q</b>	<b>Is prior registration with the Reserve Bank necessary for direct investments under the Automatic Route?</b>
	<b>Ans</b>	Per se no prior registration with the Reserve Bank is necessary for making direct investments under the automatic route. After the online report of the first remittance / investment in Form ODI for a JV / WOS in terms of <a href="#">A.P. (DIR Series) Circular No.62 dated April 13, 2016</a> , a Unique Identification Number (UIN) for that particular JV/WOS is generated automatically and instantaneously. Subsequent investments in the same JV / WOS can be made only after allotment of the UIN.
15.	<b>Q</b>	<b>Where does one find the Form ODI?</b>
	<b>Ans</b>	<p>Form ODI is available as an Annex to the Master Direction titled 'Master Direction on Reporting under Foreign Exchange Management Act'.</p> <p>With effect from April 13, 2016 Authorized Dealers Category – I banks have to file the revised ODI forms on-line in the Overseas Direct Investment Application with the Reserve Bank for allotment of UIN, reporting of subsequent remittances, filing of APRs, etc.. The revised procedure for submission of ODI forms has been issued vide <a href="#">A.P. (DIR Series) Circular No.62 dated April 13, 2016</a>.</p> <p>AD Category –I banks would continue to receive the ODI forms as also documents related to the post investment changes in the physical form from the Indian Party. These should be preserved UIN wise, for submission to the Reserve Bank, if and when specifically required.</p>
16.	<b>Q</b>	<b>Does the allotment of UIN by the Reserve Bank for direct investments under the automatic route constitute an approval from the Reserve Bank?</b>
	<b>Ans</b>	<p>No, the allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the JV/WOS. The issue of UIN only signifies taking on record of the investment for maintaining the database. The onus of complying with the provisions of FEMA regulations rests with the AD bank and / or the Indian party.</p> <p>Further, with effect from June 01, 2012 an auto generated e-mail, giving the details of UIN allotted to the JV / WOS under the automatic route, is forwarded to the AD / Indian party as confirmation of allotment of UIN, and no separate letter is issued by the Reserve Bank to the Indian party and AD Category - I bank confirming the allotment of UIN.</p>



17.	<b>Q</b>	<b>Does the definition of Overseas Direct Investment also mean that one can acquire an existing company either partially or wholly?</b>
	<b>Ans</b>	An eligible Indian party is free to acquire either a partial stake (JV) or the entire stake (WOS) in an already existing entity overseas, provided the valuation is as per the laid down norms. Please also see <a href="#">Q No. 31</a> .
18.	<b>Q</b>	<b>What is ‘financial commitment’?</b>
	<b>Ans</b>	<p>Financial commitment means the amount of direct investments outside India by an Indian Party -</p> <ul style="list-style-type: none"> <li>i. by way of contribution to equity shares or CCPS of the JV / WOS abroad</li> <li>ii. contribution to the JV / WOS as preference shares (for reporting purpose to be treated as loan)</li> <li>iii. as loans to its the JV / WOS abroad</li> <li>iv. 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS and</li> <li>v. 50% of the amount of performance guarantee issued on behalf of its overseas JV/WOS.</li> <li>vi. bank guarantee/standby letter of credit 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</li> <li>vii. amount of fund/ non fund based credit facility availed by creation of charge (pledge / mortgage / hypothecation) on the movable / immovable property or other financial assets of the Indian party / its group companies</li> </ul> <p>(Note: The amount and period of the guarantee should be specified upfront).</p>
19.	<b>Q</b>	<b>What are the permissible sources for funding overseas direct investment?</b>
	<b>Ans</b>	<p>Funding for overseas direct investment can be made by one or more of the following sources:</p> <ul style="list-style-type: none"> <li>i. Drawal of foreign exchange from an AD bank in India.</li> <li>ii. Swap of shares (refers to the acquisition of the shares of an overseas JV / WOS by way of exchange of the shares of the Indian party).</li> <li>iii. Capitalization of exports and other dues and entitlements.</li> <li>iv. Proceeds of External Commercial Borrowings / Foreign Currency Convertible Bonds.</li> <li>v. 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.</li> <li>vi. Balances held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer.</li> <li>vii. Proceeds of foreign currency funds raised through ADR / GDR issues.</li> </ul>
20.	<b>Q</b>	<b>Can an Indian party issue performance guarantee in favour of overseas JV/WOS?</b>
	<b>Ans</b>	Yes, the Indian party is permitted to issue performance guarantee and 50 per cent of the amount of the performance guarantees will be reckoned for the purpose of computing financial commitment to its JV/WOS overseas which should be within the limit prescribed by the Reserve Bank from time to time. Further, the time specified for the completion of the contract will be the validity period of the related performance guarantee. In cases where invocation of the performance guarantee breach the limit of the prescribed financial commitment, the Indian Party is required to seek prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.
21.	<b>Q</b>	<b>Can an Indian party issue corporate guarantee on behalf of its second generation subsidiary abroad?</b>
	<b>Ans</b>	Under the Approval Route the Indian party is permitted, to issue corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries, provided the Indian Party indirectly holds 51 per cent or more stake in the overseas second level step down operating subsidiary for which such guarantee is intended to be issued.
22.	<b>Q</b>	<b>Can individual indirect promoters of the Indian Party issue personal guarantee to an overseas lender on behalf of the JV/WOS under general permission?</b>

	<b>Ans</b>	With effect from March 28, 2012, issuance of personal guarantee by the promoters of the Indian Party currently allowed under the General Permission has also been 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.
23.	<b>Q</b>	<b>Can open ended corporate guarantees be extended by an India party on behalf of its overseas subsidiary?</b>
	<b>Ans</b>	As per <a href="#">A.P. (DIR Series) Circular No. 29 dated March 27, 2006</a> , no guarantee can be open ended.
24.	<b>Q</b>	<b>Whether the rollover of guarantee, which has already been issued on behalf of the overseas JV / WOS / step down subsidiary, may be allowed under the automatic route wherein there is change in the end use of the facility or the overseas lender or the coupon (interest) rate or the amount?</b>
	<b>Ans</b>	No, as on date, a guarantee, which has been issued on behalf of the overseas JV / WOS / step down subsidiary, may be allowed to be rolled over under the automatic route without subjecting the rollover to FEMA compliance afresh, provided only the validity period of the existing guarantee is undergoing change. Any change in the end use of guarantee or overseas lender or rate of interest or amount or any other terms and conditions of the guarantee shall subject the rollover of guarantee to the extant FEMA compliance afresh.
25.	<b>Q</b>	<b>Whether such rollover of guarantee is to be reported to RBI afresh or existing reporting will suffice?</b>
	<b>Ans</b>	No, the rollover of existing guarantee is to be reported online afresh by the AD bank with the revised validity date.
26.	<b>Q</b>	<b>What are the obligations of the Indian party, which has made direct investment outside India?</b>
	<b>Ans</b>	<p>An Indian Party will have to comply with the following: -</p> <ul style="list-style-type: none"> <li>i. receive share certificates or any other documentary evidence of investment in the foreign JV / WOS as an evidence of investment and submit the same to the designated AD within 6 months;</li> <li>ii. repatriate to India, all dues receivable from the foreign JV / WOS, like dividend, royalty, technical fees etc.;</li> <li>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. Revised Instructions for APR filing has been issued vide <a href="#">A.P. (DIR Series) Circular No.61 dated April 13, 2016</a>.</li> <li>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</li> <li>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.</li> </ul>
27.	<b>Q</b>	<b>Is it mandatory to furnish Annual Performance Reports (APR) of the overseas JV/WOS based on its audited financial statements?</b>

	<b>Ans</b>	<p>An Indian Party (IP) / Resident Individual (RI) which has made an Overseas Direct Investment (ODI) has to submit an Annual Performance Report (APR) in Form ODI Part III to the Reserve Bank by 30th of June every year in respect of each Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India set up or acquired by the IP / RI (as prescribed under Regulation 15 of FEMA Notification, <i>ibid</i>).</p> <p>With effect from April 13, 2006, the AD bank, before undertaking / facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all the JV / WOS of the applicant have been submitted. Further, certification of APRs by the Statutory Auditor or Chartered Accountant may not be insisted upon in the case of Resident Individuals. Self-certification may be accepted.</p> <p>With effect from April 13, 2016, where multiple IPs / RIs have invested in the same overseas JV / WOS, the obligation to submit APR shall lie with the IP / RI having maximum stake in the JV / WOS. Alternatively, the IPs / RIs holding stake in the overseas JV / WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, <i>ibid</i>, by furnishing an appropriate undertaking to the AD bank.</p> <p>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:</p> <p>a) The Statutory Auditor 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</p> <p>b) That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party.</p>
28.	<b>Q</b>	<b>What are the penalties for non-submission of Annual Performance Reports (APRs)?</b>
	<b>Ans</b>	Delayed submission/ non-submission of APRs entail penal measures, as prescribed under FEMA 1999, against the defaulting Indian Party.
29.	<b>Q</b>	<b>Can one freely create a pledge/mortgage/hypothecation/charge on immovable/moveable property or other financial assets of Indian party/group companies in favour of a non- resident?</b>
	<b>Ans</b>	Creation of charge on domestic/ overseas assets in favor of overseas / domestic lender shall be undertaken as per <a href="#">A.P. (DIR Series) Circular No.54 dated December 29, 2014</a> .
30.	<b>Q</b>	<b>Can the shares of a JV/WOS abroad be pledged for the purpose of financial assistance?</b>
	<b>Ans</b>	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 party remains within the limit stipulated by the Reserve Bank for overseas investment from time to time.
31.	<b>Q</b>	<b>What are the valuation norms referred to in Q. 17 and Q. 13?</b>
	<b>Ans</b>	<p>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.</p> <p>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 SEBI or an Investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country.</p> <p>In case of additional overseas direct investments by the Indian party in it’s JV / WOS, whether at premium or discount or face value, the concept of valuation, as indicated above, shall be applicable.</p>
32.	<b>Q</b>	<b>(a) Can any Indian company make investment in a JV/WOS abroad in the financial services sector?</b>

	<b>Ans</b>	<p>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:</p> <ul style="list-style-type: none"> <li>i. has earned net profit during the preceding three financial years from the financial services activities;</li> <li>ii. is registered with the appropriate regulatory authority in India for conducting financial services activities;</li> <li>iii. has obtained approval for undertaking such activities from the regulatory authorities concerned both in India and abroad before venturing into such financial activity;</li> <li>iv. has fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India; and</li> </ul> <p>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.</p> <p><b>b) Can an Indian company in the financial services sector make investment in a JV/WOS abroad in the non-financial services sector?</b></p> <p>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 above.</p> <p><b>c) Can an Indian company set up JV / WOS for trading in Overseas Commodities Exchanges?</b></p> <p>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.</p>
33.	<b>Q</b>	<b>Can an Indian Party utilise the net worth of its Indian subsidiary / holding company for investing in a JV/WOS abroad?</b>
	<b>Ans</b>	<p>An Indian Party can utilize the networth of its Indian subsidiary/holding company to the extent not availed of by the holding company or the subsidiary company independently subject to :</p> <ul style="list-style-type: none"> <li>a) Holding company holds at least 51% direct stake in the Indian Party.</li> <li>b) The Indian party holds at least 51% direct stake in its subsidiary company</li> <li>c) The holding or subsidiary company furnishes a letter of disclaimer for the same in favour of the Indian Party.</li> </ul> <p>This facility is not available to / from partnership firms.</p>
34.	<b>Q</b>	<b>Can an Indian Party capitalise the proceeds of the exports to its overseas JV / WOS?</b>
	<b>Ans</b>	<p>Yes, an Indian Party is permitted to capitalise the payments due from the foreign JV / WOS towards exports, fees, royalties or any other dues from the foreign JV / WOS for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable.</p> <p>Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realisation will require the prior approval of the Reserve Bank.</p> <p>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.</p>
35.	<b>Q</b>	<b>Can an Indian Party extend loan or guarantee to an overseas entity without any equity participation in that entity?</b>

	<b>Ans</b>	<p>No.</p> <p>(i) Loan and guarantee can be extended to an overseas entity only if there is already an existing equity / CCPS participation by way of direct investment.</p> <p>However, based on the business requirement of the Indian Party and legal requirement of the host country in which JV/WOS is located, 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.</p> <p>In case, however, the overseas entity is a first level step down operating subsidiary of the Indian party, guarantee may be issued by the Indian party on behalf of such step down operating subsidiary provided such guarantee is reckoned for the purpose of computing the total financial commitment of the Indian party.</p> <p>In case, the overseas entity is a second or subsequent level step down operating subsidiary of the Indian party, guarantee may be issued by the Indian party on behalf of such step down operating subsidiary with prior approval of the Reserve Bank provided such Indian party holds indirect stake of not less 51% in the step down operating subsidiary and guarantee is reckoned for the purpose of computing the financial commitment of the Indian party.</p> <p>ii) Eligible Indian companies are allowed to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route.</p>
36.	<b>Q</b>	<b>How are Compulsorily Convertible Preference Shares (CCPS) to be treated for the purpose of Overseas Direct Investment?</b>
	<b>Ans</b>	With effect from March 28, 2012, Compulsorily Convertible Preference Shares (CCPS) are 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.
37.	<b>Q</b>	<b>What is the requirement for direct investment in an overseas concern by way of share swap?</b>
	<b>Ans</b>	Direct investment outside India in a JV/WOS can be made by way of share swap arrangement. The share swap should be undertaken as per the regulation prescribed under <a href="#">FEMA Notification No 20 dated May 3, 2000</a> .
38.	<b>Q</b>	<b>What are the permitted activities that partnership firms can undertake through overseas direct investment route?</b>
	<b>Ans</b>	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.
39.	<b>Q</b>	<b>Can the partners of a partnership firm hold shares of the overseas JV / WOS for and on behalf of the firm?</b>
	<b>Ans</b>	Individual partners can hold shares for and on behalf of the partnership firm in an overseas JV/WOS, where the entire funding for the investments has been done by the firm and further provided that the host country regulations or operational requirements warrant such holding.
40.	<b>Q</b>	<b>Are there any restrictions for setting up of a second generation company? Can such step down subsidiaries be set up under the Automatic Route?</b>
	<b>Ans</b>	There are no restrictions on entities having JVs/WOSs abroad setting up second generation operating companies (step-down subsidiaries) within the overall limits applicable for investments under the Automatic Route. However, companies wishing to set up step-down operating 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 <a href="#">Q 32</a> .
41.	<b>Q</b>	<b>Can an Indian Party have a JV/WOS through a Special Purpose Vehicle (SPV) under the Automatic Route?</b>
	<b>Ans</b>	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.
42.	<b>Q</b>	<b>Can an Indian Party directly fund such step- down subsidiaries?</b>
	<b>Ans</b>	Where the JV/WOS has been established through a SPV, all funding to the operating step down subsidiary should be routed through the SPV only. However, in the case of guarantees to be given on behalf of the first level step down operating subsidiary, these can be given directly by the Indian Party provided such exposures are within the permissible financial commitment of the Indian Party.

43.	<b>Q</b>	<b>Can a resident individual in India acquire/sell foreign securities without prior approval of the Reserve Bank?</b>
	<b>Ans</b>	<p>Please see answer to <a href="#">Q.3</a> also.</p> <p>Resident individuals can acquire/sell foreign securities without prior approval in the following cases: -</p> <ul style="list-style-type: none"> <li>i. as a gift from a person resident outside India;</li> <li>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;</li> <li>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 irrespective of the percentage of the direct or indirect equity stake in the Indian company;</li> <li>iv. as inheritance from a person whether resident in or outside India;</li> <li>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</li> <li>vi. by way of bonus/rights shares on the foreign securities already held by them.</li> </ul>
44.	<b>Q</b>	<b>Can Indian corporates invest overseas other than by way of direct investment?</b>
	<b>Ans</b>	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 in the rated debt securities issued by such companies.
45.	<b>Q</b>	<b>Can a resident individual acquire shares of a foreign company in his capacity as Director?</b>
	<b>Ans</b>	<p>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. Accordingly, resident individuals are permitted to remit funds under general permission for acquiring qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located and 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.</p> <p>The qualification shares held by the resident director should be reported in the capital structure of the JV/ WOS. The type of the Indian entity should be selected as "other Indian entity".</p>
46.	<b>Q</b>	<b>Can resident individuals acquire shares of a foreign entity in lieu of the professional services rendered by them or in lieu of Director's remuneration under the General Permission?</b>
	<b>Ans</b>	Resident individuals are allowed under General Permission to acquire shares of a foreign entity in part / full consideration of professional services rendered to the foreign entity or in lieu of Director's remuneration. 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.
47.	<b>Q</b>	<b>Can a resident individual subscribe to the rights issue of shares held by him?</b>
	<b>Ans</b>	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 FEMA.
48.	<b>Q</b>	<b>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?</b>



	<b>Ans</b>	<p>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:</p> <p>i. the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time. 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</p> <p>ii. 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.</p> <p>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 that the consideration for purchase does not exceed the ceiling as stipulated by RBI from time to time.</p>
<b>49.</b>	<b>Q</b>	<b>What are the avenues available to Indian Mutual Funds for investment abroad?</b>
	<b>Ans</b>	<p>Indian Mutual Funds registered with SEBI are permitted to invest within the overall cap of USD 7 billion in:</p> <p>a. ADRs / GDRs of the Indian and foreign companies;</p> <p>b. equity of overseas companies listed on recognized overseas stock exchanges; initial and follow on public offerings for listing at recognized overseas stock exchanges;</p> <p>c. foreign debt securities- short term as well as long term with rating not below investment grade - in the countries with fully convertible currencies;</p> <p>d. money market investments not below investment grade; repos where the counter party is not below investment grade;</p> <p>e. government securities where countries are not rated below investment grade;</p> <p>f. derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;</p> <p>g. short term deposits with banks overseas where the issuer is rated not below investment grade; and</p> <p>h. units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.</p>
<b>50.</b>	<b>Q</b>	<b>What are the investment opportunities for Domestic Venture Capital Funds?</b>
	<b>Ans</b>	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.
<b>51.</b>	<b>Q</b>	<b>Is investment in agriculture permitted?</b>
	<b>Ans</b>	<p>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:</p> <p>a) 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</p> <p>b) 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.</p>
<b>52.</b>	<b>Q</b>	<b>(a) What are the different modes of disinvestments from the JV / WOS abroad ?</b>



	<p><b>Ans</b></p>	<p>Disinvestment by the Indian party from its JV / WOS abroad may be by way of transfer / sale of equity shares to a non-resident / resident or by way of liquidation / merger / amalgamation of the JV / WOS abroad.</p> <p><b>(b) Can an Indian Party disinvest from JV / WOS without write off?</b></p> <p>Yes, the Indian Party may disinvest without write off under the automatic route subject to the following:</p> <ul style="list-style-type: none"> <li>i. the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;</li> <li>ii. 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;</li> <li>iii. 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;</li> <li>iv. 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;</li> <li>v. the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India; and</li> <li>vi. other terms and conditions prescribed under Regulation 16 of the Notification ibid.</li> </ul> <p><b>(c) Can an Indian Party disinvest from JV / WOS involving write off?</b></p> <p>Yes, an Indian Party may disinvest, under the automatic route, involving write off in the under noted cases:</p> <ul style="list-style-type: none"> <li>a. where the JV / WOS is listed in the overseas stock exchange;</li> <li>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;</li> <li>c. where the Indian Party is an unlisted company and the investment in the overseas JV / WOS does not exceed USD 10 million; and</li> <li>d. where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.</li> </ul> <p><b>(d) Are there any additional pre-conditions/compliances subject to which such write off at the time of disinvestment is permitted?</b></p> <p>Yes. Item (i) to (vi) under part (b) of this question.</p>
53.	<p><b>Q</b></p> <p><b>Ans</b></p>	<p><b>Whether restructuring of the balance sheet of the JV / WOS abroad involving write-off of capital and receivables is allowed?</b></p> <p>Indian company which has set up WOS abroad or has at least 51% stake in an overseas JV may write off capital (equity / preference shares) or other receivables (such as loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS) even while such JV / WOS continue to function subject to the following:</p> <ul style="list-style-type: none"> <li>i. Listed Indian companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS under the Automatic Route; and</li> <li>ii. Unlisted companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS with prior approval of the Reserve Bank.</li> </ul> <p>The write-off / restructuring have to be reported to the Reserve Bank through the designated AD bank within 30 days of write-off / restructuring. The write-off / restructuring is subject to the condition that the Indian Party should submit the following documents for scrutiny along with the applications to the designated AD Category – I bank under the Automatic as well as the Approval Routes:</p> <ul style="list-style-type: none"> <li>a. A certified copy of the balance sheet showing the loss in the overseas WOS/JV set up by the Indian Party; and</li> </ul>

		b. Projections for the next five years indicating benefit accruing to the Indian company consequent to such write off / restructuring.
54.	<b>Q</b>	<b>Can an Indian Party open/maintain an account in Foreign currency abroad?</b>
	<b>Ans</b>	With effect from April 2, 2012, an Indian party is allowed to open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments wherever the host country regulation stipulate the same subject to certain terms and conditions.
55.	<b>Q</b>	<b>How the preference shares, other than the compulsorily convertible preference shares (CCPS), are to be treated for the purpose of ODI?</b>
	<b>Ans</b>	All types of preference shares, other than CCPS, are to be treated as loan extended by the Indian party to its JV / WOS abroad and compliance to the provisions inter alia under Regulation 6(4) of the <a href="#">Notification No. FEMA.120/RB-2004 dated July 07, 2004</a> , as amended from time to time, is to be ensured. The AD banks shall report funded exposure like preference capital, debentures, notes, bonds, etc. under the head 'Loan' in terms of instructions issued for filling Form ODI vide <a href="#">A.P. (DIR Series) Circular No.62 dated April 13, 2016</a> .
56.	<b>Q</b>	<b>Can a loan given to an overseas venture be converted into equity? If yes what are the reporting requirements?</b>
	<b>Ans</b>	Yes, a loan may be converted into equity / CCPS under the automatic route and reported to RBI through the designated AD bank by way of a letter. Conversion of loan into preference shares (other than CCPS) need not be reported to RBI.
57.	<b>Q</b>	<b>Whether equity exposures can be converted into loan or other forms of funded exposure like preference capital, debentures, etc.?</b>
	<b>Ans</b>	In terms of the extant provisions under Regulation 16(2) of the <a href="#">Notification No. FEMA.120/RB-2004 dated July 07, 2004</a> , as amended from time to time, the disinvestment proceeds are to be repatriated to India within the prescribed time limit. Therefore, conversion of equity based exposure into loan or other form of funded exposures like preference capital, debenture, etc., without repatriating the disinvestment proceeds to India, shall require prior approval of RBI.
58.	<b>Q</b>	<b>Whether foreclosure / closure of an existing guarantee is to be reported to RBI by the AD bank / Indian party?</b>
	<b>Ans</b>	Yes, as per <a href="#">A.P. (DIR Series) Circular No.62 dated April 13, 2016</a> reporting of the foreclosure / closure of an existing guarantee by an Indian party on behalf of its JV / WOS / step down subsidiary is to be reported. Further, any alteration in the amount and validity of an existing guarantee (issued on behalf of the JV / WOS / step down subsidiary in accordance with the extant FEMA provisions) may also be online accordingly.
59.	<b>Q</b>	<b>Whether the provisions of Regulation 4 (1) (iii) of Notification No. FEMA 3/2000-RB dated May 03, 2000 as amended, is applicable to the Authorised Dealer bank branch situated outside India for extending credit facilities in foreign currency to a wholly owned subsidiary abroad or a joint venture abroad of an Indian entity?</b>
	<b>Ans</b>	No, the provisions of Regulation 4 (1) (iii) of <a href="#">Notification No. FEMA 3/2000-RB dated May 03, 2000</a> are applicable only to the credit facilities extended to a Wholly Owned Subsidiary abroad or a Joint Venture abroad of an Indian entity, by an Authorised Dealer bank in India. A branch outside India of an Authorised Dealer being a bank incorporated or constituted in India, may extend foreign currency loans in the normal course of its banking business outside India.
60.	<b>Q</b>	<b>If the group company of an Indian Party is under investigation whether that Indian Party can undertake ODI transaction under automatic route?</b>
	<b>Ans</b>	The Indian Party can undertake ODI under automatic route if they are in compliance with Regulation 6 of <a href="#">Notification No FEMA 120 dated July 7, 2004</a> as amended from time to time and other applicable FEMA Regulation/guidelines. However, such investigation needs to be declared in Form ODI.

61.	<b>Q</b>	<b>Whether <a href="#">Notification No. FEMA.382/2016-RB dated January 02, 2017</a> prohibiting overseas direct investment (ODI) in a JV/ WoS set up/ acquired by Indian party under automatic route in FATF non-cooperative countries and jurisdictions is applicable only on countries identified by Financial Action Task Force (FATF) as "Call for action"?</b>
	<b>Ans</b>	Yes, the prohibition on ODI in terms of <a href="#">Notification No. FEMA.382/2016-RB dated January 02, 2017</a> is applicable only on countries identified by Financial Action Task Force (FATF) as "Call for action".
62.	<b>Q</b>	Is development/construction (and thereafter, sale) of residential /commercial premises by an overseas Joint Venture (JV) or Wholly Owned Subsidiary (WOS) treated as real estate business under ODI regulations ( <a href="#">FEMA Notification No. FEMA 120/RB-2004 dated July 7, 2004</a> as amended from time to time)?
	<b>Ans</b>	No. In terms of regulation 5(2) read with Regulation 2 (p) of <a href="#">FEMA Notification No. FEMA 120/RB-2004 dated July 7, 2004</a> , as amended from time to time, buying land for construction/development of residential/commercial premises (before selling) - as one integrated core activity, is not treated as real estate business activity.



