

Independence Day Special – Slashed Limits in ODI and LRS

The Reserve Bank of India (“RBI”) has on August 14, 2013, vide a circular (A. P. (DIR Series) Circular No. 24) reduced the existing limit, under the Liberalized Remittance Scheme (“LRS”) for any permitted current or capital account transaction or a combination of both, from USD 200,000 per financial year to USD 75,000 per financial year. The RBI has also curtailed the limits for gift and loans in Rupees by resident individuals to NRI close relatives to USD 75,000 per financial year.

RBI has also clarified *inter alia* that:

- a) LRS should no longer be used for acquisition of immovable property, directly or indirectly, outside India; and
- b) Resident individuals will now be allowed to set up Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for *bona fide* business activities outside India within the limit of USD 75,000 with effect from August 5, 2013, subject to the provisions of the earlier RBI notifications in this regard.

Separately, RBI has on August 14, 2013, by virtue of a circular (A. P. (DIR Series) Circular No. 23) rationalized the regulations governing the overseas direct investments (“ODI”) as under:

- a) An Indian party may make any investment in overseas JV/WOS and in overseas unincorporated entities in the energy and natural resources sectors under the automatic route only up to 100 per cent of its net worth as on the date of its last audited balance sheet. This has been reduced from the existing limit of 400 per cent of the net worth of the Indian party; and
- b) Any ODI in excess of 100% of the net worth will now be considered under the Approval Route by the Reserve Bank of India.

The aforementioned reduction in limits will not apply in respect of ODI by Navratna PSUs, ONGC Videsh Limited and Oil India Ltd in overseas unincorporated entities and incorporated entities, in the oil sector.

The RBI has clarified that the revisions under the circular RBI/2013-14/180 A. P. (DIR Series) Circular No.23 will apply only to fresh ODI proposals on a prospective basis but will not apply to the existing Joint Venture/Wholly Owned Subsidiary set up under the extant regulations.

IndusLaw Quick View:

On the eve of Independence Day, the freedom provided under the LRS and the ODI have been slashed. Some relief has been given to individuals by permitting them to remit money through the ODI route. However, additional reporting burden has been placed on such individuals. The circular is also unclear about whether this route can be used to (a) further capitalize the JV/WOS and (b) acquire shares of other unlisted companies. Separately, clarifications would be welcome in scenarios where immovable property has been previously acquired by resident individuals, with the consideration being payable in tranches of less than USD 200,000 but greater than USD 75,000. These moves have been made in view of the rupee slide to prevent further outflow of foreign exchange, but will result in reducing the flexibility presently available in formulating business structures and business plans.



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