

Corpsec Hotline

December 08, 2003

INDIA RELAXES OUTBOUND INVESTMENT NORMS

The Reserve Bank of India ("RBI") on December 6, 2003 relaxed the provisions relating to overseas investments by Indian companies:

SPVs permitted under automatic route

Indian companies were not permitted to invest in joint ventures or wholly owned subsidiaries abroad through setting up overseas special purpose vehicles ("SPVs") without the prior approval of the RBI. The RBI has now permitted Indian companies to set up such SPVs without their prior approval, unless the Indian company is on the RBI's caution list or under investigation by the Enforcement Directorate or the name of the Indian company appears on the Defaulter's List of the RBI.

Share swap liberalized

The RBI has vide the same circular also permitted Indian companies to acquire foreign companies by way of a share swap under the automatic route (i.e without seeking the prior approval of the RBI). However the investment by the foreign company or its shareholders into the Indian company (pursuant to the share swap) would still require the prior approval of the Foreign Investment Promotion Board of the Ministry of Commerce and Industry of the Government of India.

Investment by partnership firms under automatic route

Partnership firms, which are registered as per the provisions of the Indian Partnership Act, 1932, having a good track record are now permitted to make direct investments outside India in a foreign entity up to the extent of 100% of the net worth of the firm or USD 10 million whichever is less, over a period of one financial year.

Down-line subsidiaries allowed

Any Indian company holding 50% or more of the shares of a foreign company, intending to diversify its business or set up a down line subsidiary or alter the shareholding pattern of the foreign company, is now permitted to do so under the automatic route. Earlier these activities required the prior approval of the RBI. However the remittances to be made by the Indian company for the purposes of such activities should not exceed the stipulated limits under the provisions of the Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulations, 2000 ("ODI Regulations").

Transfer of shareholding in foreign companies liberalized

Indian companies are now permitted to transfer their shares in a foreign company to another Indian resident (provided the transferee complies with the conditions mentioned in the ODI Regulations) or to a foreign party, provided the sale is in compliance with the conditions prescribed by the RBI which includes a condition that the foreign company (the shares of which are being sold) must be in operation for at least a year prior to the date of the sale of the shares.

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