FEMA (Transfer or Issue of Foreign Security) Regulations

As per the **FEMA (Transfer or Issue of Foreign Security) Regulations, 2004**, Indian companies as well as individuals can make overseas investments. The investment by companies is referred to as "**Corporate ODI**", while the investment by individual is referred as "**Individual ODI**". In light of your queries, the difference between Corporate ODI and Individual ODI is summarized as follows:

	Corporate ODI	**Individual ODI**
Limit on Investment	Of up to 400% of its net worth (paid up capital and free reserves) as per its last audited balance sheet. Limit applicable to overseas investment in any number of entities / in any form (including loans and guarantees). No limit applicable on investment through the EEFC Account (export earnings) of the Indian company.	up to USD 250,000 per financial year, under the LRS
Activities of overseas entity	Any activity other than the business of real estate or banking	Any activity other than the business of real estate, banking or financial services
Step down subsidiary	Allowed. No prior permission of RBI is required. Only reporting is required.	Not allowed (it should be an operating entity only)
Branches or other forms of business presence	No restriction, subject to applicable laws. No prior permission of RBI is required.	No restriction, subject to applicable laws. No prior permission of RBI is required.

Note: all the compliances applicable in case of Corporate ODI (eg., filing of Form A-2, ODI, APR, valuation of shares etc.) are applicable in case of Individual ODI as well.

Q1: a) The annual return to be filed by an Indian Company to RBI for their operations of their overseas subsidiary- I need information relating to annual filling plus, the forms to be filed & the deadline for their filling.

A: In terms of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, the Indian company shall have to submit an Annual Performance Report
(**APR**) to the RBI in Part II of Form ODI (as attached), on or before Dec 31st every year. The APR shall be based on the audited annual accounts of the overseas subsidiary for the preceding year, unless specifically exempted by the RBI.

Q1: b) Penalties for non-compliance and for the delay in submission.

A: Section 13(1) of FEMA prescribes the penalty for any contravention of the provisions of the FEMA or any rule, regulation, notification, direction or order issued thereunder, which, upon adjudication

- shall be up to thrice the sum involved where such amount is quantifiable, OR
- up to two lakh rupees where the amount is not quantifiable;
- In case of contravention is a continuing one, further penalty up to five thousand rupees for every day is prescribed.

Q2: a) Consolidation of overseas subsidiary to an Indian holding company, presently the requirement for consolidation is for only listed company, have they included for Private limited companies & when it is required to be done for private companies.

A: The requirement of consolidation of accounts of subsidiaries by an Indian Holding Company is prescribed under Section 129 of the Companies Act, 2013, which is applicable to all the companies, i.e., private as well as public companies. Section 129(3) requires an Indian company to consolidate Financial Statements (**FS**) of all of its subsidiaries, which includes overseas subsidiaries as well. The Listing Agreement, which applies only to the public companies listed on any stock exchange in India, additionally prescribes such requirement.

Q2 b) What is the deadline for consolidation of financial statements, filling requirements to the registrar of companies & the income tax department.

A: The audited consolidated FS are required to be laid before the shareholders at the annual general meeting of the company, to be held every year within 6 months of the closure of the financial year, i.e., by September 30th. As per section 137(1), the audited FS are thereafter

required to be filed with the Registrar of Companies, within 30 days of the date of annual general meeting.

As per the Income Tax Act, 1961, the Indian company shall be required to prepare its standalone financial statements and get them audited. The financial statements along with the audit report would have to be filed by the company to income tax department by furnishing a Return of Income before 30th September of the subsequent year. Thus, in most of the cases, the Indian companies would not be required to furnish the consolidated financial statements to the income tax department. However, where the corporate entity in India is the parent entity having subsidiaries outside India, then it may be required to report its consolidated financial statements to the income tax department, subject to certain conditions provided in section 286 of Income Tax Act, 1961 (Country by Country Reporting). The text of Section 286 is attached for ease of reference.

Q3: If an overseas citizen of Indian Origin buys a property/Land (not an agricultural land) what are the permission required from RBI before purchase & the requirements before the sale of the land/Property.

A: Regulation 4 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, provides that a Person of Indian Origin Resident Outside India (**PIO**) may acquire any immovable property in India other than any agricultural property, plantation, or a farm house without any prior approval of the RBI. The payment of purchase price can be made through normal banking channels by way of inward remittance from any place outside India or through funds held in any non-resident account, if any. The immovable property thus acquired can be transferred by way of sale without any prior approval of RBI, but only to a person resident in India. Such sale proceeds can be repatriated outside India subject to the following conditions:

- The amount to be repatriated does not exceed the amount paid for acquisition; and
- In case of residential property, repatriation is restricted to not more than 2 properties.

Q4 a) If an Indian citizen remits money under LRS (Liberalized Remittance Scheme), can he use the fund to subscribe for the shares of a private ltd overseas and are there any restrictions on controlling interest (Say holding 51% to 100%)

A: Under the LRS Scheme any resident individual of India is allowed to invest by way of subscription / acquisition of shares of overseas companies (listed as well as unlisted), within

the overall limit of USD 2,50,000 per financial year. No restriction is prescribed as regards the controlling interest of the Indian investor. However, the overseas company should be engaged in *bona fide* business activity and not in real estate / banking / financial services. Further, such entity must be an operating entity only and no step down subsidiary is allowed to be acquired or set up.

Q4 b) Any annual returns are to be filled about the investments to RBI under LRS scheme.

A: All remittances under the LRS can be made through an Authorized Dealer (Indian Bank). The remitter is required to furnish Form A2 (as attached) and Form ODI (Part I) to its Bank, at the time of each remittance. Thereafter, the APR shall have to be filed annually (Please refer to our response to Q # 1 above)