

**Overseas Direct Investment – Amendments to Forms
A. P. (DIR Series) Circular No.107 (June 19, 2003)**

**Reserve Bank of India
Exchange Control Department
Central Office
Mumbai 400 001**

A. P. (DIR Series) Circular No.107

June 19, 2003

To

All Authorised Dealers in Foreign Exchange

Madam/ Sirs,

Overseas Direct Investment – Amendments to Forms

Attention of authorised dealers is invited to the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000 notified by the Reserve Bank vide notification No. FEMA 19/RB-2000 as amended from time to time.

In order to reflect the procedural modifications effected and liberalisation measures initiated in the sphere of overseas direct investment in the recent past, following amendments have been made to the Form ODA and detailed instructions are given for filling forms ODA, ODI, ODB & ODG :

- | | | |
|----|--|----------------------------------|
| a) | Form ODA Amendment to Declaration | Annexure I |
| b) | Form ODA Amendment to Certificate by the Statutory Auditor of the Investor Company | Annexure II |
| c) | Instructions for filling up the forms ODA, ODI, ODB and ODG | Annexures III to VI respectively |
2. Necessary amendments to the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations 2000 are being notified separately.
3. Authorised Dealers may bring the contents of this circular to the notice of their concerned constituents.
4. The directions contained in this circular have been issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Yours faithfully,

Grace Koshie
Chief General Manager

ANNEXURE I

DECLARATION

We hereby certify that

- (i) the information furnished above are true and correct,
- (ii) all the legal and other formalities in India and the host country for the above investment have been/will be complied with,
- (iii) the amount of investment by way of equity/loan and 50% of the guarantee, either out of market purchase of foreign exchange or the balances held in the EEFC account, utilisation of ADR/GDR proceeds, capitalisation of exports/other entitlements is within the limit of US\$ 100.00 mn. on an annual basis, as per extant regulations and
- (iv) no investigations by Directorate of Enforcement are pending against us
- (v) our name is not in the Exporters' Caution List of the Reserve Bank / list of defaulters to the Banking system circulated by the RBI, or under investigation by the Enforcement Directorate/ SEBI/IRDA etc.

(Signature of authorised official)

Place: _____

Date : _____

Stamp/Sea

Name:-----
Designation-----

List of enclosures :

- | | |
|----|----|
| 1. | 4. |
| 2. | 5. |
| 3. | 6. |

ANNEXURE-II

Certificate by the Statutory Auditors of the Indian party

It is certified that the terms and conditions contained in FEMA Notification 19/RB-2000 dated May 3, 2000 as amended from time to time (Foreign Exchange Management (Transfer or issue of any foreign securities) Regulations, 2000) have been complied with by the Indian party in respect of the investment under report. In particular, it is further certified that- (i) the investment is not in real estate oriented or banking business, and (ii)* the amount of foreign exchange proposed to be purchased for remittance towards the investment together with remittances already made and exports and other dues capitalised for investment abroad during the current financial year under the Automatic Route is/will be within 100 % of the net worth of the Indian party as on the date of last audited balance sheet, (iii)**that the Indian party has (a) a minimum networth of Rs.15 crores; (b)has made net profits during preceding three years, (c) has fulfilled the prudential norms of capital adequacy as prescribed by the concerned regulatory authority; and (d) has been registered with the appropriate regulatory authority in India for conducting financial services activity and (vi)*** proceeds of ADR/GDR being used for the investment is within 100 % of the amount raised abroad by way of ADR/GDR issues.

* Applicable if investment in part or full is funded out of purchase of foreign exchange from market and/or capitalisation of exports & other dues.

** Applicable only in cases where the investment is in the financial services sector (e.g. insurance, mutual fund , asset management, etc.)

*** Applicable where investment is funded, in part or full, out of ADR/GDR proceeds.

ANNEXURE-III

Instructions for filling up the Form ODA

1. The Form ODA, as specified in Regulation 6(2)(vii), in duplicate, should be submitted to the authorised dealer for the purpose of making remittance.
2. The form should be complete in all respects and accompanied by
 - (i) certificate from the statutory auditors in the format given in the form and
 - (ii) certified copy of the resolution of the Board of Directors approving the investment.

In respect of supplementary proposals involving additional equity, loan or guarantee, the particulars furnished in form **ODA** submitted earlier in respect of the same JV/WOS need not be insisted upon; however, revised particulars of the repatriable entitlements etc., to the extent applicable, may only be obtained.

3. Where there is more than one Indian party making investment in the same JV/WOS overseas, form ODA should be obtained by all the Indian parties jointly along with a certificate(s) from other ADs, if remittances are effected by the latter.
4. In case where the Indian party is successful in the bid for overseas acquisitions for which it has already made remittance towards Earnest Money Deposit or issued bid bond guarantee, under a bidding or tender procedure, while effecting the final remittance towards such acquisition, a report in the form ODA may be obtained.

ANNEXURE-IV

Instructions for filling up the Form ODI

(This part should be detached and retained by the applicant)

- (1) Application complete in all respects should be submitted in two sets together with the following documents to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division (OID), Amar Building, Mumbai - 400 001 :
 - (a) Draft Joint Venture Agreement (or Memorandum & Articles of Association in the case of a Wholly Owned Subsidiary) specifying the equity structure, management, rights and responsibilities of shareholders and also draft agreement(s) for supply of technical know-how, management and other services, if applicable.

- (b) A detailed project/feasibility report incorporating, inter alia, projected funds flow statement and balance sheets for five years, the information on various leverage and profitability ratios like debt-equity ratio, debt service coverage ratio, return on investments, etc. of the foreign concern accompanied by the statement from a Chartered Accountant certifying the ratios and projections, given in the application/report.
- (c) A report from the bankers of the Indian party in sealed/closed cover.
- (d) The latest Annual Accounts, i.e. Balance Sheet and Profit and Loss Account along with the Directors' Report of the Indian party and of the foreign collaborator in case of a joint venture.
- (e) Additional documents as under, if the application is made for partial/full take over of an existing foreign concern :-
 - (i) A copy of the certificate of incorporation of the foreign concern;
 - (ii) Latest Annual Accounts, i.e. the Balance Sheet and Profit and Loss Account along with Directors' report of the foreign concern ; and
 - (iii) A copy of the share valuation certificate from
 - (i) where the investment is more than US \$ 5 (five) million, by a Category I Merchant Banker registered with SEBI or an Investment Banker/Merchant Banker registered with the appropriate regulatory authority in the host country; and
 - (ii) in all other cases, by a Chartered Accountant or a Certified Public Accountant
- (f) A copy of the resolution of the Board of Directors of the Indian party/(ies) approving the proposed investment.
- (g) Where investment is in the financial services sector, a certificate from a Chartered Accountant/Auditor's firm to the effect that the Indian Party :
 - (i) has earned a net profit during the preceding three years from the financial services activity;
 - (ii) is registered with the appropriate regulatory authorities;
 - (iii) has a minimum net-worth (paid-up capital and free reserves) of not less than Rs.15 crores as on the date of last audited balance sheet; and
 - (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

2. Where there are more than one Indian promoter of the JV/WOS, only one application should be submitted on behalf of all the promoters.
- 3 (a) In case an Indian party is seeking approval for acquisition of overseas concern through bidding/tender procedure (with/without remittance of any earnest money deposit (EMD)/issue of bid bond guarantee), Indian Party should approach the Reserve Bank atleast one month in advance from the last date for submission of bid to the overseas authority with the following documents :
 - i) application in form ODI, to the extent applicable;
 - ii) certified relevant extracts of the terms and conditions of bid;
 - iii) Chartered Accountant's certificate indicating the valuation of shares and assets of the overseas concern justifying the acquisition price, where applicable; and
 - iv) a project/feasibility report.
- (b) In the case where the bid is won by the Indian Party but the terms and conditions of the acquisition are different from those furnished earlier to the Reserve Bank, the Indian Party should apply afresh to the Reserve Bank in form ODI for prior approval before putting through the transaction.

ANNEXURE-V

Instructions for filling up the form ODB

1. The form complete in all respects should be submitted in triplicate to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building, Mumbai-400 001.
2. For foreign currency SWIFT codes may be used.
3. If any specific acquisition deal has been negotiated, the details thereof including the name of the overseas company being acquired, its performance for the last three years, share exchange ratio, acquisition price, valuation report
4. A brief write-up incorporating, inter alia, the tentative business plan of overseas unit/s being acquired, country of location of such foreign companies and their line of activity and financial and operational particulars, rough estimates of acquisition cost and the basis thereof, likely benefits to the applicant company and the country from such acquisitions, such as, synergy between operations, dividend and other inflows, access to technology, incremental exports, etc. should be enclosed to this form. The information furnished will be kept confidential.

5. A note indicating likely benefits to the acquiring company may also be furnished as an Annexure.

ANNEXURE-VI

Instructions for filling up the form ODG

(This may be detached and retained by the Indian company)

1. ODG form complete in all respects should be submitted in triplicate to the Chief General Manager, Exchange Control Department, Reserve Bank of India, Central Office, Overseas Investment Division, Amar Building, Mumbai - 400 001.
2. The following documents should be enclosed to this form :-
 - (A) A statement from the Statutory Auditors of the Indian company certifying that
 - i) the Indian Party has already made an ADR and / or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India; such investment by the Indian Party does not exceed the higher of the following amounts, namely: -
 - i. amount equivalent of US\$ 100 mn. or
 - ii. amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited balance-sheet, inclusive of all investments made under Regulations in Part I, including under (i) of this clause, in the same financial year,
 - ii) the issued amount of the ADRs/GDRs exchanged for acquiring shares of the overseas (acquired) company is within the limit specified in the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations,2000
 - iii) the ADRs and/or GDRs issued for the purpose of acquisitions are backed by underlying fresh equity shares of the Indian party;
 - iv) after the new ADR and/or GDR issue, the total holding in the Indian party by persons resident outside India in the expanded capital base, does not exceed the sectoral cap prescribed under the relevant regulations for such investments in the activities in which the Indian party is engaged; and
 - v) where the shares of the foreign (acquired) company are not listed in any stock exchange, its valuation for acquisition is in accordance with the recommendations of the Investment Banker

or

where the shares of the foreign (acquired) company is listed on a stock exchange abroad, the valuation of its shares is based on current market capitalisation of the acquired company arrived at on the basis of monthly average price on any stock exchange abroad for the 3 months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report.

- (B) Copy of the report together with due diligence report, if any, from an Investment Banker in support of the valuation as indicated at above.
- (C) Other relevant documents as submitted to the Stock Exchange/Regulatory Authorities in the host country of the company acquired.