



RBI/FED/2015-16/10

FED Master Direction No. 15/2015-16

January 1, 2016

To,

All Authorised Dealer Category – I banks and Authorised banks

Madam / Dear Sir,

**Master Direction – Direct Investment by Residents in  
Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad**

Direct investments by residents in Joint Venture (JV) and Wholly Owned Subsidiary (WOS) abroad are being allowed, in terms of clause (a) of sub-section (3) of section 6 of the Foreign Exchange Management Act, 1999, (42 of 1999) read with [Notification No. FEMA.120/RB-2004 dated July 7, 2004](#), (GSR 757 (E) dated November 19, 2004), viz. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. These Regulations are amended from time to time to incorporate the changes in the regulatory framework and published through amendment notifications.

2. Within the contours of the Regulations, Reserve Bank of India also issues directions to Authorised Persons under Section 11 of the Foreign Exchange Management Act (FEMA), 1999. These directions lay down the modalities as to how the foreign exchange business has to be conducted by the Authorised Persons with their customers/ constituents with a view to implementing the regulations framed.

3. Instructions issued on Direct Investment by Residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) Abroad have been compiled in this Master Direction. The list of underlying circulars/ notifications which form the basis of this Master Direction is furnished in the Appendix. Reporting instructions can be found in Master Direction on Reporting (Master Direction No. 18 dated January 01, 2016)

4. It may be noted that, whenever necessary, Reserve Bank shall issue directions to Authorised Persons through A.P. (DIR Series) Circulars in regard to any change in the Regulations or the manner in which relative transactions are to be conducted by the Authorised Persons with their customers/ constituents. The Master Direction issued herewith shall be amended suitably simultaneously.

Yours faithfully,

(A K Pandey)  
Chief General Manager



## INDEX

SECTION A – GENERAL -----	3
A.1 INTRODUCTION-----	3
A.2 STATUTORY BASIS-----	3
A.4 PROHIBITIONS -----	7
A.5 GENERAL PERMISSION -----	7
SECTION B - DIRECT INVESTMENT (OR FINANCIAL COMMITMENT) OUTSIDE INDIA -----	8
B.1 AUTOMATIC ROUTE -----	8
B.1.1 INVESTMENT (OR FINANCIAL COMMITMENT) THROUGH SPECIAL PURPOSE VEHICLE (SPV) UNDER AUTOMATIC ROUTE-----	12
B.1.2 ISSUE OF GUARANTEE BY AN INDIAN PARTY TO STEP DOWN SUBSIDIARY OF JV / WOS -----	12
B.2 INVESTMENT (OR FINANCIAL COMMITMENT) IN UNINCORPORATED/ INCORPORATED ENTITIES OVERSEAS IN OIL SECTOR UNDER THE AUTOMATIC ROUTE-----	13
B.3 CONSTRUCTION AND MAINTENANCE OF SUBMARINE CABLE SYSTEMS UNDER THE AUTOMATIC ROUTE --	13
B.4 METHOD OF FUNDING -----	14
B.5 CAPITALISATION OF EXPORTS AND OTHER DUES -----	14
B.6 INVESTMENTS (OR FINANCIAL COMMITMENT) IN FINANCIAL SERVICES SECTOR-----	15
B.7 INVESTMENT IN EQUITY OF COMPANIES REGISTERED OVERSEAS / RATED DEBT INSTRUMENTS -----	16
B.8 APPROVAL OF THE RESERVE BANK-----	17
B.9 INVESTMENTS IN ENERGY AND NATURAL RESOURCES SECTOR -----	18
B.10 OVERSEAS INVESTMENTS BY PROPRIETORSHIP CONCERNS AND REGISTERED TRUST/ SOCIETY -----	18
B.11 POST INVESTMENT CHANGES / ADDITIONAL INVESTMENT (OR FINANCIAL COMMITMENT) IN EXISTING JV / WOS-----	20
B.12 RESTRUCTURING OF THE BALANCE SHEET OF THE OVERSEAS ENTITY INVOLVING WRITE OFF OF CAPITAL AND RECEIVABLES-----	20
B.13 ACQUISITION OF A FOREIGN COMPANY THROUGH BIDDING OR TENDER PROCEDURE -----	21
B.14 OBLIGATIONS OF INDIAN PARTY -----	21
B.15 TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS -----	23
B.16 TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS INVOLVING WRITE OFF OF THE INVESTMENT (OR FINANCIAL COMMITMENT)-----	24
B.17 PLEDGE OF SHARES OF JOINT VENTURE (JV), WHOLLY OWNED SUBSIDIARY (WOS) AND STEP DOWN SUBSIDIARY (SDS)-----	24
B.18 ROLLOVER OF GUARANTEES-----	25
B.19 CREATION OF CHARGE ON DOMESTIC AND FOREIGN ASSETS -----	25
B.20 OVERSEAS DIRECT INVESTMENTS BY RESIDENT INDIVIDUALS -----	26
B.21 HEDGING OF OVERSEAS DIRECT INVESTMENTS-----	26
B.22 OPENING OF FOREIGN CURRENCY ACCOUNT ABROAD BY AN INDIAN PARTY-----	26
SECTION C - OTHER INVESTMENTS IN FOREIGN SECURITIES -----	27
C.1 PERMISSION FOR PURCHASE/ ACQUISITION OF FOREIGN SECURITIES IN CERTAIN CASES-----	27
C.2 PLEDGE OF A FOREIGN SECURITY BY A PERSON RESIDENT IN INDIA-----	28



C.3	GENERAL PERMISSION IN CERTAIN CASES-----	28
C.4	ACQUIRING THE SHARES OF SWIFT BY A RESIDENT BANK -----	29
C.5	ISSUE OF INDIAN DEPOSITORY RECEIPTS	30
C.6	MAINTENANCE OF COLLATERAL BY FIIS FOR TRANSACTIONS IN DERIVATIVE SEGMENT - OPENING OF DEMAT ACCOUNTS BY CLEARING CORPORATIONS AND CLEARING MEMBERS	30
	<b>OPERATIONAL INSTRUCTIONS TO AUTHORISED DEALER BANKS-----</b>	<b>31</b>
1.	DESIGNATED BRANCHES -----	31
2.	INVESTMENTS UNDER REGULATION 6 OF NOTIFICATION NO. FEMA 120/2004-RB DATED JULY 7, 2004 -----	31
3.	GENERAL PROCEDURAL INSTRUCTIONS -----	32
4.	INVESTMENTS (OR FINANCIAL COMMITMENT) UNDER REGULATION 11 OF NOTIFICATION NO. FEMA.120/2004-RB DATED JULY 7, 2004-----	34
5.	ALLOTMENT OF UNIQUE IDENTIFICATION NUMBER (UIN) -----	35
6.	INVESTMENT BY WAY OF SHARE SWAP -----	35
7.	INVESTMENTS (OR FINANCIAL COMMITMENT) UNDER REGULATION 9 OF NOTIFICATION NO. FEMA.120/2004-RB DATED JULY 7, 2004-----	35
8.	PURCHASE OF FOREIGN SECURITIES UNDER ADR / GDR LINKED STOCK OPTION SCHEME -----	36
9.	REMITTANCE TOWARDS EARNEST MONEY DEPOSIT OR ISSUE OF BID BOND GUARANTEE -----	36
10.	TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS OUTSIDE INDIA -----	37
11.	VERIFICATION OF EVIDENCE OF INVESTMENT -----	37
12.	OPENING OF FOREIGN CURRENCY ACCOUNT ABROAD BY AN INDIAN PARTY -----	37
	<b>Appendix-----</b>	<b>38</b>



## **Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad**

### **PART - I**

#### **Section A – General**

##### **A.1 Introduction**

(1) Overseas investments (or financial commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries. Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments (or financial commitment). They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments (or financial commitment).

(2) In keeping with the spirit of liberalisation, which has become the hallmark of economic policy in general, and Foreign Exchange regulations in particular, the Reserve Bank has been progressively relaxing the rules and simplifying the procedures both for current account as well as capital account transactions.

##### **A.2 Statutory Basis**

(1) Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India the classes of permissible capital account transactions and limits up to which foreign exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

(2) In exercise of the above powers conferred under the Act, the Reserve Bank



has in supersession of the earlier [Notification No.FEMA19/RB-2000 dated 3rd May 2000](#) and subsequent amendments thereto, issued Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide [Notification No. FEMA.120/RB-2004 dated July 7, 2004](#). The Notification seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India. Overseas Investment (or financial commitment) can be made under two routes viz. (i) Automatic Route outlined in paragraph B.1 and (ii) Approval Route outlined in paragraph B.8.

### **A.3 Definitions**

In these Regulations, unless the context otherwise requires:

- (a) "Act" means Foreign Exchange Management Act, 1999 (42 of 1999);
- (b) "Authorised Dealer" means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act;
- (ba) "Alternative Investment Fund" means a fund as defined under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012;
- (c) "American Depository Receipt (ADR)" means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India;
- (d) "Core Activity" means an activity carried on by an Indian entity, turnover where from constitutes not less than 50% of its total turnover in the previous accounting year;
- (e) "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association 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, but does not include portfolio investment;
- [(ea) "Domestic Depository" shall have the same meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004;



(eb) "Eligible Company" means a Company eligible to issue Indian Depository Receipts under rule 4 of the Companies (Issue of Indian Depository Receipts) Rules, 2004;]

(f) "Financial Commitment" means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;

(g) "Foreign Currency Convertible Bond (FCCB)" means a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency;

(h) "Global Depository Receipt (GDR)" means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India;

(i) "Host country" means the country in which the foreign entity receiving the direct investment from an Indian Party is registered or incorporated;

(j) "Indian Depository Receipts" shall have the same meaning as assigned to it in the Companies (Issue of Indian Depository Receipts) Rules, 2004

(k) "Indian Party" means 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), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank:

**Provided** that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party";

(l) "Investment Banker" means an investment banker registered with the Securities and Exchange Commission in USA, or the Financial Services Authority in UK, or appropriate regulatory authority in Germany, France, Singapore or Japan;



- (m) "Joint Venture (JV)" 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;
- (n) "Mutual Fund" means a Mutual Fund referred to in clause (23D) of section 10 of the Income-tax Act, 1961;
- (o) "Net Worth" means paid up capital and free reserves;
- (p) "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;
- (q) "Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party;
- (qa) "Venture Capital Fund" means a fund as defined under the Securities and Exchange Board of India (Venture Capital Fund) Regulations, 1996;
- (qb) "Trust" means a Trust registered under the Indian Trust Act, 1882;
- (qc) "Society" means a society registered under the Societies Registration Act, 1860;]
- (r) "Agricultural operations" means agricultural operations as defined in the 'National Bank for Agriculture and Rural Development Act, 1981';
- (s) "Foreign Currency Exchangeable Bond" means a bond expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency, issued by an issuing company and subscribed to by a person who is a resident outside India in foreign currency and exchangeable into equity share of offered company, in any manner, either wholly, or partly or on the basis of any equity related warrants attached to debt instruments;
- (t) "Issuing company" means a company registered under the Companies Act, 1956 (1 of 1956) and eligible to issue Foreign Currency Exchangeable Bond under these regulations;



(u) "Offered company" means a company registered under the Companies Act, 1956 (1 of 1956) and whose equity share/s is/are offered in exchange of the Foreign Currency Exchangeable Bond;

(v) "Promoter group" has the same meaning as defined in the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000;]

(w) Words and expressions used but not defined in these Regulations shall have the meanings respectively assigned to them in the Act.

#### **A.4 Prohibitions**

(a) Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning 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) or banking business, without the prior approval of the Reserve Bank.

(b) An overseas entity, 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.

#### **A.5 General Permission**

General permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner:

- (a) out of the funds held in RFC account;
- (b) as bonus shares on existing holding of foreign currency shares; and
- (c) when not permanently resident in India, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.





## **Section B - Direct Investment (or financial commitment) outside India**

### **B.1 Automatic Route**

(1) In terms of Regulation 6 of the [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#), as amended from time to time, an Indian Party has been permitted to make investment / undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank from time to time.

With effect from July 03, 2014, it has been decided that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route (i.e., within 400% of the net worth as per the last audited balance sheet).

(2) For the purpose of making investment / undertaking financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), the Indian Party should approach an Authorised Dealer Category - I bank with an application in Form ODI (Master Document on Reporting) and prescribed enclosures / documents for effecting such remittances.

(3) The total financial commitment of the Indian Party in all the Joint Ventures / Wholly Owned Subsidiaries shall comprise of the following:

- a. 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- b. 100% of the amount of other preference shares;
- c. 100% of the amount of loan;
- d. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party;
- e. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party.
- f. 50% of the amount of performance guarantee issued by the Indian Party provided that if the outflow on account of invocation of performance



guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.

(4) The investments / financial commitments are subject to the following conditions:

a) The Indian Party / entity may extend loan / guarantee only to an overseas JV / WOS in which it has equity participation. 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. AD banks may forward the proposals from their constituents after ensuring that the laws of the host country permit incorporation of a company without equity participation by the Indian Party.

Indian entities may offer any form of guarantee - corporate or personal (including the personal guarantee by the indirect resident individual promoters of the Indian Party)/ primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India provided that:

- i) All the financial commitments, including all forms of guarantees and creation of charge are within the overall ceiling prescribed for the Indian Party.
- ii) No guarantee should be 'open ended' i.e. the amount and period of the guarantee should be specified upfront. In the case of performance guarantee, time specified for the completion of the contract shall be the validity period of the related performance guarantee.
- iii) In cases where invocation of the performance guarantee breaches the ceiling for the financial commitment, the Indian Party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.
- iv) In terms of Regulation 5 (b) of [Notification No. FEMA 8/2000-](#)



[RB dated May 3, 2000](#), an authorised dealer in India may also give a Bank guarantee/ issue SBLC to a joint venture company or a wholly-owned subsidiary of a company in India in connection with its business abroad provided that the terms and conditions stipulated in Foreign Exchange Management (Transfer and Issue of Foreign Security) Regulations, 2000 for promoting or setting up such company or subsidiary are continued to be complied with;

- v) As in the case of corporate guarantees, all guarantees (including performance guarantees and Bank Guarantees / SBLC) are required to be reported to the Reserve Bank in Form ODI-Part II. Guarantees issued by banks in India in favour of WOS / JV outside India would be subject to prudential norms issued by the Reserve Bank of India (Department of Banking Regulation) from time to time.
- b) The Indian Party should not be on the Reserve Bank's Exporters' caution list / list of defaulters to the banking system circulated by the Reserve Bank / Credit Information Bureau (India) Ltd. (CIBIL) / or any other credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body.
- c) All transactions relating to a JV / WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian Party.
- d) In case of partial / full acquisition of an existing foreign company, where the investment is more than USD 5 million, valuation of the shares of the company shall be made 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; and, in all other cases by a Chartered Accountant or a Certified Public Accountant.



- e) In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.
- f) In case of investment in overseas JV / WOS abroad by a registered Partnership firm, where the entire funding for such investment is done by the firm, it will be in order for individual partners to hold shares for and on behalf of the firm in the overseas JV / WOS if the host country regulations or operational requirements warrant such holdings.
- g) An Indian Party may acquire shares of a foreign company engaged in a bonafide business activity, in exchange of ADRs/GDRs issued to the latter 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 there under from time to time by the Government of India, provided:
- (i) ADRs/GDRs are listed on any stock exchange outside India;
  - (ii) The ADR and/or GDR issued for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;
  - (iii) The total holding in the Indian entity by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment under FDI;
  - (iv) Valuation of the shares of the foreign company shall be
    - (a) as per the recommendations of the Investment Banker if the shares are not listed on any recognized stock exchange; or
    - (b) based on the current market capitalisation of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three 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 in other cases.

(5) Investments / financial commitments in Nepal are permitted only in Indian Rupees. Investments / financial commitments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale / winding up proceeds are required to be repatriated to India in freely convertible currencies only. Investments / financial commitments in Pakistan by Indian Parties are permissible under the approval route.

#### **B.1.1 Investment (or financial commitment) through Special Purpose Vehicle (SPV) under Automatic Route**

Investments (or financial commitment) in JV/WOS abroad by Indian Parties through the medium of a Special Purpose Vehicle (SPV) are also permitted under the Automatic Route in terms of Regulation 6 of the Notification *ibid*, including the conditions that the Indian Party is not appearing in the Reserve Bank's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank. Indian Parties whose names appear in the defaulters' list require prior approval of the Reserve Bank for the investment (or financial commitment).

#### **B.1.2 Issue of guarantee by an Indian Party to step down subsidiary of JV / WOS**

(a) Indian Parties are permitted to issue corporate guarantees on behalf of their first level step down operating JV /WOS set up by their JV / WOS operating as either an operating unit or as a Special Purpose Vehicle (SPV) under the Automatic Route, subject to the condition that the financial commitment of the Indian Party is within the extant limit. Such guarantees will have to be reported to the Reserve Bank in Form ODI, as hitherto, through the designated AD Category – I bank concerned.

(b) Further, the issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries will be considered under the



Approval Route, provided the Indian Party indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

## **B.2 Investment (or financial commitment) in unincorporated/ incorporated entities overseas in oil sector under the Automatic Route**

(1) Investments (or financial commitment) in unincorporated / incorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) may be permitted by AD Category - I banks, without any limit, provided such investments are approved by the competent authority.

(2) Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to the limit prescribed provided the proposal has been approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment. Investment in excess of the prescribed limit shall require prior approval of the Reserve Bank.

## **B.3 Construction and maintenance of submarine cable systems under the Automatic Route**

(1) Indian Parties are also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route. Accordingly, AD Category - I banks may allow remittances by Indian companies for overseas direct investment, after ensuring that the Indian company has obtained necessary licence from the Department of Telecommunication, Ministry of Telecommunication & Information Technology, Government of India to establish, install, operate and maintain International Long Distance Services and also by obtaining a certified copy of the Board Resolution approving such investment.

(2) Accordingly, these transactions may be reported by the Indian Parties investing in the consortium to the AD Category-I banks in Form ODI for enabling online submission of the same by the AD Category-I banks to the Reserve Bank for allotment of Unique Identification Number.



#### **B.4 Method of Funding**

(1) Investment (or financial commitment) in an overseas JV / WOS may be funded out of one or more of the following sources:

- i) drawal of foreign exchange from an AD bank in India;
- ii) capitalisation of exports;
- iii) swap of shares (valuation as mentioned in para B.1 (e) above);
- iv) proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- 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 thereunder from time to time by the Government of India;
- vi) balances held in EEFC account of the Indian Party and
- vii) proceeds of foreign currency funds raised through ADR / GDR issues.

In respect of (vi) and (vii) above, the limit of financial commitment vis-à-vis the net worth will not apply. However, all investments (or financial commitment) made in the financial sector will be subject to compliance with Regulation 7 of the Notification *ibid*, irrespective of the method of funding.

(2) General permission has been granted to persons resident in India for purchase/ acquisition of securities in the following manner:

- (i) out of funds held in RFC account;
- (ii) as bonus shares on existing holding of foreign currency shares; and
- (iii) when not permanently resident in India, out of their foreign currency resources outside India (para A.4 above)

#### **B.5 Capitalisation of exports and other dues**

(1) Indian Party is permitted to capitalise the payments due from the foreign



entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realization will require prior approval of the Reserve Bank.

(2) Indian software exporters are permitted to receive 25 per cent 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 prior approval of the Reserve Bank.

### **B.6 Investments (or financial commitment) in Financial Services Sector**

(1) An Indian Party seeking to make investment (or financial commitment) in an entity outside India, which is engaged in the financial sector, should fulfill the following additional conditions:

- (i) be registered with the regulatory authority in India for conducting the financial sector activities;
- (ii) has earned net profit during the preceding three financial years from the financial services activities;
- (iii) has obtained approval from the regulatory authorities concerned both in India and abroad for venturing into such financial sector activity; and
- (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

(2) Any additional investment (or financial commitment) by an existing JV/WOS or its step down subsidiary in the financial services sector is also required to comply with the above conditions.

(3) Regulated entities in the financial sector making investments (or financial commitment) in any activity overseas are required to comply with the above guidelines. Unregulated entities in financial services sector in India may invest in non-financial sector activities subject to compliance with provisions of Regulation 6 of the Notification *ibid*. Trading in commodities exchanges overseas and setting up





JV/WOS for trading in overseas exchanges will be reckoned as financial services activity and require clearance from SEBI.

## **B.7 Investment in equity of companies registered overseas / rated debt instruments**

### (1) Portfolio investments by listed Indian companies

Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares and (ii) bonds / fixed income securities, rated not below investment grade by accredited / registered credit rating agencies, issued by listed overseas companies.

### (2) Investment by Mutual Funds

Indian Mutual Funds registered with SEBI are permitted to invest within an overall cap of USD 7 billion in:

- i) ADRs / GDRs of the Indian and foreign companies;
- ii) equity of overseas companies listed on recognized stock exchanges overseas
- iii) initial and follow on public offerings for listing at recognized stock exchanges overseas;
- iv) foreign debt securities in the countries with fully convertible currencies, short- term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;
- v) money market instruments rated not below investment grade;
- vi) repos in the form of investment, where the counter party is rated not below investment grade. The repos should not, however, involve any borrowing of funds by mutual funds;
- vii) government securities where the countries are rated not below investment grade;
- viii) derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;



- ix) short-term deposits with banks overseas where the issuer is rated not below investment grade; and
- x) units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators and investing in (a) aforesaid securities, (b) Real Estate Investment Trusts (REITS) listed on recognized stock exchanges overseas, or (c) unlisted overseas securities (not exceeding 10 per cent of their net assets).

Investments made by listed Indian companies and Mutual Funds in accordance with para (1) and (2) above, are to be reported online on a monthly basis by the AD banks in the format as prescribed by the Reserve Bank from time to time

(3) A limited number of qualified Indian Mutual Funds, are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds as may be permitted by SEBI.

(4) Domestic Venture Capital Funds / Alternative Investment Funds registered with SEBI may invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million.

Accordingly, Mutual Funds / Venture Capital Funds / Alternative Investment Funds desirous of availing of this facility may approach SEBI for necessary permission.

(5) General permission is available to the above categories of investors for sale of securities so acquired.

### **B.8 Approval of the Reserve Bank**

(1) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad. For this purpose, application together with necessary documents should be submitted in Form ODI through their Authorised Dealer Category – I banks.

(2) Reserve Bank would, inter alia, take into account the following factors while considering such applications:

- a) Prima facie viability of the JV / WOS outside India;
- b) Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);



- c) Financial position and business track record of the Indian Party and the foreign entity; and
- d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India.

### **B.9 Investments in energy and natural resources sector**

Reserve Bank will consider applications for investment (or financial commitment) in JV/WOS overseas in the energy and natural resources sectors (e.g. oil, gas, coal and mineral ores) in excess of the prescribed limit of financial commitment. AD Category - I banks may forward such applications from their constituents to the Reserve Bank as per the laid down procedure.

### **B.10 Overseas investments by proprietorship concerns and registered Trust/ Society**

(1) Keeping in view the changes in the definition / classification of the exporters as per the Foreign Trade Policy of the Ministry of Commerce and Industry, issued from time to time, the following revised terms and conditions are required to be complied with for considering the proposal of overseas direct investment (or financial commitment), by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the approval route:

- (a) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Govt. of India from time to time;
- (b) The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;
- (c) The Authorised Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;
- (d) The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the



Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and

- (e) The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.

(2) Registered Trusts and Societies engaged in manufacturing/ educational/ hospital sector are allowed to make investment (or financial commitment) in the same sector(s) in a JV/WOS outside India, with the prior approval of the Reserve Bank.

Eligibility Criteria:

(a) Trust

- i) The Trust should be registered under the Indian Trust Act, 1882;
- ii) The Trust deed permits the proposed investment overseas;
- iii) The proposed investment should be approved by the trustee/s;
- iv) The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- v) The Trust has been in existence at least for a period of three years;
- vi) The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

(b) Society

- i) The Society should be registered under the Societies Registration Act, 1860.
- ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee.



- iii) The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- iv) The Society has been in existence at least for a period of three years;
- v) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

In addition to the registration, the AD Category – I bank should ensure that the special license / permission has been obtained by the applicant in case the activities require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

(3) An application in form ODI may be made to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5<sup>th</sup> Floor, Fort, Mumbai 400 001, through the AD Category - I bank. AD Category - I banks may forward the application to the Reserve Bank, after ensuring the above terms and conditions along with their comments and recommendations, for consideration.

#### **B.11 Post investment changes / additional investment (or financial commitment) in existing JV / WOS**

A JV / WOS set up by the Indian Party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in the overseas entity (subject to compliance of Regulation 7 of the Notification *ibid*, in the case of financial services sector companies). The Indian Party should report to the Reserve Bank through the AD Category - I bank, the details of such decisions within 30 days of the approval of those decisions by the competent authority of the JV / WOS concerned in terms of local laws of the host country and include the same in the Annual Performance Report (APR - Part III of Form ODI) required to be forwarded to the AD Category-I bank.

#### **B.12 Restructuring of the balance sheet of the overseas entity involving write off of capital and receivables**

In order to provide more operational flexibility to the Indian corporates, the Indian promoters who have set up WOS abroad or have at least 51 per cent 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 continues to function as under:

- (i) Listed Indian companies are permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV /WOS under the Automatic Route; and
- (ii) Unlisted companies are permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV /WOS under the Approval Route.

The write-off / restructuring have to be reported to the Reserve Bank through the designated AD Category-I 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:

- a) A certified copy of the balance sheet showing the loss in the overseas WOS/JV set up by the Indian Party; and
- b) Projections for the next five years indicating benefit accruing to the Indian company consequent to such write off / restructuring.

### **B.13 Acquisition of a foreign company through bidding or tender procedure**

An Indian Party may remit earnest money deposit or issue a bid bond guarantee for acquisition of a foreign company through bidding and tender procedure and also make subsequent remittances through an AD Category - I bank in accordance with the provisions of Regulation 14 of the Notification *ibid*.

### **B.14 Obligations of Indian Party**

- (1) An Indian Party which has made direct investment abroad is under obligation to,
  - (i) receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or



the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised;

(ii) repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit: and

(iii) submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before June 30, an Annual Performance Report (APR) in Part III of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time. The APR, so required to be submitted, has to be based on the audited annual accounts of the JV/WOS for the preceding year, unless specifically exempted by the Reserve Bank;

AD Category - I bank is required to monitor the receipt of such documents and satisfy itself about the bonafides of the documents. A certificate to this effect should be submitted by the designated AD category – I bank to the Reserve Bank along with the APR (Part III of Form ODI).

(2) Reporting requirements including submission of Annual Performance Report are also applicable for investors in unincorporated entities in the oil sector.

(3) 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:

- a. The Statutory Auditors of the Indian Party certify that ‘the un-audited annual accounts of the JV / WOS reflect the true and fair picture of the affairs of the JV / WOS’ and
- b. That the un-audited annual accounts of the JV / WOS have been adopted and ratified by the Board of the Indian Party.

(4) An annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, to the Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of



India.

The Annual Return on FLA is available on the RBI website ([www.rbi.org.in](http://www.rbi.org.in) → Forms category → FEMA Forms) which can be duly filled-in, validated and sent by [e-mail](#), by July 15 every year.

### **B.15 Transfer by way of sale of shares of a JV / WOS**

(1) An Indian Party, without prior approval of the Reserve Bank, may transfer by way of sale to another Indian Party which complies with the provisions of Regulation 6 of [FEMA Notification 120/RB-2004 dated July 7, 2004](#) as amended from time to time, or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

- (i) the sale does not result in any write off of the investment (or financial commitment) made.
- (ii) the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) the Indian Party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

(2) The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.





### **B.16 Transfer by way of sale of shares of a JV / WOS involving write off of the investment (or financial commitment)**

(1) Indian Party may disinvest, without prior approval of the Reserve Bank, in any of the under noted cases where the amount repatriated after disinvestment is less than the original amount invested:

- i) in case where the JV / WOS is listed in the overseas stock exchange;
- ii) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- iii) where the Indian Party is an unlisted company and the investment (or financial commitment) in the overseas venture does not exceed USD 10 million. and
- iv) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment (or financial commitment) in an overseas JV/WOS does not exceed USD 10 million.

(2) Such disinvestments shall be subject to the conditions listed at B.15 (1) items (ii) to (vi) and B 15 (2)

(3) An Indian Party, which does not satisfy the conditions laid down above for undertaking any disinvestment in its JV/WOS abroad, shall have to apply to the Reserve Bank for prior permission.

### **B.17 Pledge of shares of Joint Venture (JV), Wholly Owned Subsidiary (WOS) and Step Down Subsidiary (SDS)**

An Indian Party may create charge, by way of pledge, on the shares of Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India as a security in favour of an Authorized Dealer or a public financial institution in India or an overseas lender, for availing of fund based or non-fund based facility for itself (i.e. the Indian Party) or for its JV / WOS / SDS whose shares have been pledged, or for any other JV / WOS / SDS of the Indian Party subject to the terms and conditions prescribed under Regulation 18 of the Notification and [A.P. \(DIR Series\) Circular No.54 dated December 29, 2014.](#)



### **B.18 Rollover of guarantees**

(1) It has been decided not to treat / reckon the renewal / rollover of an existing / original guarantee, which is part of the total financial commitment of the Indian Party in terms of Regulation 6 of the Notification *ibid*, as a fresh financial commitment, provided that:

- (a) the existing / original guarantee was issued in terms of the then extant / prevailing FEMA guidelines;
- (b) there is no change in the end use of the guarantee, i.e. the facilities availed by the JV / WOS / Step Down Subsidiary;
- (c) there is no change in any of the terms & conditions, including the amount of the guarantee except the validity period;
- (d) the reporting of the rolled over guarantee would be done as a fresh financial commitment in Part II of Form ODI, as hitherto; and
- (e) if the Indian Party is under investigation by any investigation / enforcement agency or regulatory body, the concerned agency / body shall be kept informed about the same.

(2) In case, however, the above conditions are not met, the Indian Party shall obtain prior approval of the Reserve Bank for rollover / renewal of the existing guarantee through the designated AD bank.

### **B.19 Creation of charge on domestic and foreign assets**

(1) An Indian Party may create charge (by way of mortgage, pledge, hypothecation or otherwise) on its assets [including the assets of its group company, sister concern or associate company in India, promoter and / or director] in favour of an overseas lender as security for availing of the fund based and/or non-fund based facility for its Joint Venture (JV) or Wholly Owned Subsidiary (WOS) or Step Down Subsidiary (SDS) outside India subject to the terms and conditions prescribed under Regulation 18A of the Notification and [A.P. \(DIR Series\) Circular No.54 dated December 29, 2014](#).

(2) An Indian Party may create charge (by way of mortgage, pledge, hypothecation or otherwise) on the assets of its overseas JV or WOS or SDS in favour of an AD bank in India as security for availing of the fund based and/or non-fund based



facility for itself or its JV or WOS or SDS outside India subject to the terms and conditions prescribed under Regulation 18A of the Notification and [A.P. \(DIR Series\) Circular No.54 dated December 29, 2014](#).

#### **B.20 Overseas Direct Investments by resident individuals**

With effect from August 05, 2013, a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification) satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme, as prescribed by the Reserve Bank from time to time.

#### **B.21 Hedging of overseas direct investments**

(1) Resident entities having overseas direct investments (or financial commitment) are permitted to hedge the foreign exchange rate risk arising out of such investments (or financial commitment). AD Category - I banks may enter into forward / option contracts with resident entities who wish to hedge their overseas direct investments (in equity and loan), subject to verification of such exposure.

(2) If a hedge becomes naked in part or full owing to shrinking of the market value of the overseas direct investment (or financial commitment), the hedge may continue to the original maturity. Rollovers on the due date are permitted up to the extent of market value as on that date.

#### **B.22 Opening of Foreign Currency Account abroad by an Indian Party**

In terms of the conditions stipulated under [A.P. \(DIR Series\) Circular No. 101 dated April 02, 2012](#), eligible Indian Party may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments subject to the following terms and conditions:

- I. The host country regulations stipulate that the investments into the country are required to be routed through a designated account.



- II. FCA shall be opened, held and maintained as per the regulation of the host country.
- III. The remittances sent to the FCA by the Indian party should be utilized only for making overseas direct investment into the JV / WOS abroad.
- IV. Any amount received in the account by way of dividend and / or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- V. The Indian Party should submit the details of debits and credits in the FCA on yearly basis to the designated AD bank with a certificate from the Statutory Auditors of the Indian party certifying that the FCA was maintained as per the host country laws and the extant FEMA regulations / provisions as applicable.

The FCA so opened shall be closed immediately or within 30 days from the date of disinvestment from JV / WOS or cessation thereof.

## **SECTION C - Other investments in foreign securities**

### **C.1 Permission for purchase/ acquisition of foreign securities in certain cases**

- (1) General permission has been granted to a person resident in India who is an individual –
  - (a) to acquire foreign securities as a gift from any person resident outside India;
  - (b) to acquire shares under cashless Employees Stock Option Programme (ESOP) issued by a company outside India, provided it does not involve any remittance from India;
  - (c) to acquire shares by way of inheritance from a person whether resident in or outside India;
  - (d) to purchase equity shares offered by a foreign company under its ESOP Schemes, if he is an employee, or, a director of an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle



(SPV) irrespective of the percentage of the direct or indirect equity stake in the Indian company. AD Category – I banks are permitted to allow remittances for purchase of shares by eligible persons under this provision irrespective of the method of operationalisation of the scheme i.e. where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / a Special Purpose Vehicle (SPV) / step down subsidiary, provided (i) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and (ii) an Annual Return is submitted by the Indian company to the Reserve Bank through the AD Category – I bank giving details of remittances / beneficiaries, etc.

(2) A person resident in India may transfer by way of sale the shares acquired as stated above provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.

(3) Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided (i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999, (ii) the shares are being repurchased in terms of the initial offer document, and (iii) an annual return is submitted through the AD Category – I bank giving details of remittances / beneficiaries, etc.

(4) In all other cases, not covered by general or special permission, approval of the Reserve Bank is required to be obtained before acquisition of a foreign security.

## **C.2 Pledge of a foreign security by a person resident in India**

The shares acquired by persons resident in India in accordance with the provisions of Foreign Exchange Management Act, 1999 or Rules or Regulations made thereunder are allowed to be pledged for obtaining credit facilities in India from an AD Category – I bank / Public Financial Institution.

## **C.3 General permission in certain cases**

Residents are permitted to acquire a foreign security, if it represents –

- a) qualification shares for becoming a director of a company outside India to



the extent prescribed as per the law of the host country where the company is located provided it does not exceed the limit prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition;

- b) part / full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value is restricted to the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition;
- c) rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force;
- d) purchase of shares of a JV / WOS abroad of the Indian promoter company by the employees/directors of Indian promoter company which is engaged in the field of software where the consideration for purchase does not exceed the ceiling as stipulated by Reserve Bank from time to time; the shares so acquired do not exceed 5 per cent of the paid-up capital of the JV / WOS outside India; and 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; and
- e) An Indian company in the knowledge based sector may allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes. The issue of employees' stock option by a listed company shall be governed by SEBI (Employees' Stock Option and Stock Purchase Scheme) Guidelines, 1999 and the issue of employees stock option by an unlisted company shall be governed by the guidelines issued by the Government of India for issue of ADR/GDR linked stock options. The consideration for the purchase should not exceed the ceiling as stipulated by the Reserve Bank from time to time.



#### **C.4 Acquiring the shares of SWIFT by a resident bank**

A bank in India, being licensed by the Reserve Bank under the provisions of the Banking Regulation Act, 1949, may acquire the shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT) as per the by-laws of SWIFT, provided the bank has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as member.

#### **C.5 Issue of Indian Depository Receipts (IDRs)**

Eligible companies resident outside India may issue Indian Depository Receipts (IDRs) through a Domestic Depository. The permission has been granted subject to compliance with the Companies (Issue of Depository Receipts) Rules, 2004 and subsequent amendments made thereto and the SEBI (DIP) Guidelines, 2000, as amended from time to time. In case of raising of funds through issuance of IDRs by financial/banking companies having presence in India, either through a branch or subsidiary, the approval of the sectoral regulator(s) should be obtained before the issuance of IDRs.

#### **C.6 Maintenance of collateral by FIIs for transactions in derivative segment- opening of demat accounts by Clearing Corporations and Clearing Members**

SEBI approved clearing corporations of stock exchanges and their clearing members may undertake the following transactions subject to the guidelines issued from time to time by SEBI in this regard :

- i) to open and maintain demat accounts with foreign depositories and to acquire, hold, pledge and transfer the foreign sovereign securities, offered as collateral by FIIs;
- ii) to remit the proceeds arising from corporate action, if any, on such foreign sovereign securities; and
- iii) to liquidate such foreign sovereign securities if the need arises.

Clearing Corporations shall report, on a monthly basis, the balances of foreign sovereign securities, held by them as non-cash collaterals of their clearing members to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Foreign Investment Division, Central Office, Mumbai. The report



should be submitted by the 10th of the following month to which it relates.

## PART - II

### Operational Instructions to Authorised Dealer Banks

#### 1. Designated branches

An eligible Indian Party making investment (or financial commitment) in a Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India is required to route all its transactions relating to the investment (or financial commitment) through one branch of an AD Category – I bank designated by it in terms of clause (v) of sub regulation 2 of Regulation 6 of the Notification *ibid*. All communication from the Indian Parties, to the Reserve Bank, relating to the investment (or financial commitment) outside India should be routed through the same branch of the AD Category – I bank that has been designated by the Indian investor for the investment (or financial commitment). The designated AD Category – I bank while forwarding the request from their customers to the Reserve Bank, should also forward its comments / recommendations on the request. However, the Indian Party may designate different AD Category – I banks / branches of AD Category – I banks for different JV / WOS outside India. For proper follow up, the AD Category – I bank is required to maintain party-wise record in respect of each JV/ WOS.

#### 2. Investments under Regulation 6 of [Notification No. FEMA 120/2004-RB dated July 7, 2004](#)

AD Category – I banks may allow investments (or financial commitment) up to the permissible limits on receipt of application in form ODI together with form A-2, duly filled in, from the Indian Party (ies) making investments (or financial commitment) in a JV/WOS abroad subject to their complying with the conditions specified in Regulation 6 of Notification FEMA No.120/RB-2004 dated July 7, 2004, as amended from time to time. Investment (or financial commitment) in financial services should also comply with the norms stipulated at Regulation 7 of Notification FEMA No.120/RB-2004 dated July 7, 2004, as amended from time to time. While forwarding the report of remittance in respect of investment (or financial commitment) in financial services sector, AD Category – I banks may certify that





prior approvals from the Regulatory Authorities concerned in India and abroad have been obtained. Before allowing the remittance (or financial commitment), AD Category – I banks are required to ensure that the necessary documents, as prescribed in form ODI, have been submitted and found to be in order.

### **3. General procedural instructions**

(1) With effect from June 01, 2007, reporting system for overseas investment (or financial commitment) has been revised. All the earlier forms have been subsumed into one form viz. ODI, comprising of four parts:

**Part I** - includes the following:

Section A – Details of the Indian Party

Section B – Details of Investment (or financial commitment) in New Project

Section C - Details of Investment (or financial commitment) in Existing Project

Section D – Funding for JV / WOS

Section E – Declaration by the Indian Party (to be retained by AD Category – I bank)

Section F - Certificate by the Statutory Auditors of the Indian Party (to be retained by AD Category – I bank)

**Part II** - Reporting of Remittances (or financial commitment)

**Part III** - Annual Performance Report (APR)

**Part IV** – Report on Closure/Disinvestment/Voluntary Liquidation/Winding up of JV / WOS.

(2) The revised form is only a rationalisation and simplification of the reporting procedure and there is no change or dilution in the existing eligibility criteria / documentation / limits.

(3) With effect from March 2, 2010 online reporting of the ODI forms has been operationalised in a phased manner. The system enables online generation of the Unique Identification Number (UIN), acknowledgment of remittance/s (or financial commitment) and filing of the Annual Performance Reports (APRs) and easy accessibility to data at the AD level for reference purposes.



- a) Initially, Part I (Sections A to D), II and III of form ODI should be filed online in the Overseas Investment Application for allotment of UIN, reporting of subsequent remittances (or financial commitment), filing of APRs, etc. AD Category – I banks would continue to receive the ODI forms in physical form, as stipulated in the [A. P. \(DIR Series\) Circular No. 68 dated June 1, 2007](#), which should be preserved, UIN wise, for onward submission to the Reserve Bank, if specifically required. Transactions in respect of Mutual Funds, Portfolio Investment Scheme (PIS) and Employees Stock Options Scheme (ESOPS) are also required to be reported online in the Overseas Investment Application.
- b) The online reporting would be required to be made by the Centralized Unit/Nodal Office of AD Category - I banks. The Overseas Investment Application is hosted on the Reserve Bank's Secured Internet Website (SIW) at <https://secweb.rbi.org.in> and a link has been made available for accessing the Application on the main page of the website. AD Category – I banks would be responsible for the validity of the information reported online.
- c) The application for overseas investment (or financial commitment) under the approval route would continue to be submitted to the Reserve Bank in physical form as hitherto, in addition to the online reporting of Part I as contemplated above, for approval purposes.
- d) In case of disinvestment by way of closure / winding up / voluntary liquidation / merger/ amalgamation of JV/ WOS under the Automatic Route, in terms of [A. P. \(Dir Series\) Circular No. 29 dated March 27, 2006/ A. P. \(Dir Series\) Circular No. 73 dated June 29, 2011](#), a report should continue to be submitted by the designated AD Category - I bank, in Part IV of form ODI, to Reserve Bank in the online application. In all other cases of disinvestment, an application along with the necessary supporting documents should be submitted to the Reserve Bank as per the existing procedure.
- e) As per the new reporting system, AD Category – I banks would be



able to generate the UIN online under the automatic route. However, subsequent remittances (or financial commitment) under the automatic route and remittances (or financial commitment) under the approval route should be made and reported online in Part II, only after receipt of auto generated e-mail from RBI confirming the UIN.

(4) In cases where the investment (or financial commitment) is being made jointly by more than one Indian Party, form ODI is required to be signed jointly by all the investing entities and submitted to the designated branch of the AD Category – I bank. AD Category – I banks should file online a consolidated form ODI indicating details of each Party. The same procedure should be followed where the investment (or financial commitment) is made out of the proceeds of ADR / GDR issues of an Indian Party in terms of Regulation 6(5) of the Notification *ibid*. The Reserve Bank would allot only one Unique Identification Number to the overseas project.

(5) AD Category – I banks should allow remittance towards loan to the JV / WOS and / or issue guarantee to / on behalf of the JV / WOS abroad only after ensuring that the Indian Party has an equity stake in the JV / WOS. However, as has been stated at para B 1 (4) (a) above, wherever the laws of the host country permit incorporation of a company without equity participation by the Indian Party, AD banks may obtain prior approval from the Reserve Bank before allowing the remittances towards the loan/issue of guarantee to/on behalf of the overseas JV/WOS.

#### **4. Investments (or financial commitment) under Regulation 11 of [Notification No. FEMA.120/2004-RB dated July 7, 2004](#)**

In terms of Regulation 11 of the Notification, Indian Parties are permitted to make direct investment (or financial commitment) in JV / WOS abroad by way of capitalisation of exports or other dues/entitlements like royalties, technical know-how fees, consultancy fees, etc. In such cases also, the Indian Party is required to submit details of the capitalisation in form ODI to the designated branch of the AD Category – I bank. Such investments (or financial commitment) by way of capitalisation are also to be reckoned while computing the limit of financial commitment prescribed in terms of Regulation 6 of the Notification *ibid*. Further, in



cases where the export proceeds are being capitalised in accordance with the provisions of Regulation 11, the AD Category – I banks are required to obtain a custom certified copy of the invoice as required under Regulation 12(2) and forward it to the Reserve Bank together with the revised form ODI. Capitalisation of export proceeds or other entitlements, which are overdue, would require prior approval of the Reserve Bank for which the Indian Parties should make an application in form ODI to the Reserve Bank for consideration.

#### **5. Allotment of Unique Identification Number (UIN)**

The Unique Identification Number allotted to each JV or WOS abroad, is required to be quoted in all correspondence with the Reserve Bank. AD Category – I banks may allow additional investment (or financial commitment) in an existing overseas concern set up by an Indian Party, in terms of Regulation 6 of [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#), as amended from time to time, only after the Reserve Bank has allotted necessary Unique Identification Number to the overseas project.

#### **6. Investment by way of share swap**

In the case of investment by way of share swap, AD Category – I banks are additionally required to submit to the Reserve Bank the details of transactions such as number of shares received / allotted, premium paid / received, brokerage paid / received, etc., and also confirmation to the effect that the inward leg of transaction has been approved by FIPB and the valuation has been done as per the laid-down procedure and that the overseas company's shares are issued / transferred in the name of the Indian investing company. AD Category – I bank may also obtain an undertaking from the applicants to the effect that future sale / transfer of shares so acquired by Non-Residents in the Indian company shall be in accordance with the provisions of [Notification No. FEMA 20/2000-RB dated May 3, 2000](#), as amended from time to time.

#### **7. Investments (or financial commitment) under Regulation 9 of [Notification No. FEMA.120/2004-RB dated July 7, 2004](#)**

In terms of Regulation 9, investment (or financial commitment) in JV / WOS in certain cases requires the prior approval of the Reserve Bank. AD Category – I



banks may allow remittances under these specific approvals granted by the Reserve Bank and report the same to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> floor, Mumbai 400 001 in form ODI.

#### **8. Purchase of foreign securities under ADR / GDR linked Stock Option Scheme**

AD Category – I banks may make remittances for purchase of foreign securities in the knowledge based sector under the ADR / GDR linked ESOPs, up to the ceiling as stipulated by the Reserve Bank from time to time after satisfying that the issuing company has followed the relevant guidelines of SEBI / Government.

#### **9. Remittance towards Earnest Money Deposit or Issue of Bid Bond Guarantee**

- (i) In terms of Regulation 14 of the Notification, AD Category – I banks may, on being approached by an Indian Party which is eligible for investment (or financial commitment) under Regulation 6 of the Notification *ibid*, allow remittance towards Earnest Money Deposit (EMD) to the extent eligible after obtaining Form A2 duly filled in or may issue bid bond guarantee on their behalf for participation in bidding or tender procedure for acquisition of a company incorporated outside India. On winning the bid, AD banks may remit the acquisition value after obtaining Form A2 duly filled in and report such remittance (including the amount initially remitted towards EMD) to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> floor, Mumbai 400 001 in form ODI. AD Category – I banks, while permitting remittance towards EMD should advise the Indian Party that in case they are not successful in the bid, they should ensure that the amount remitted is repatriated in accordance with Foreign Exchange Management (Realisation, Repatriation & Surrender of Foreign Exchange) Regulations, 2000 (cf. [Notification No. FEMA 9/2000-RB dated 3<sup>rd</sup> May 2000](#)), as amended from time to time
- (ii) In cases where an Indian Party, after being successful in the bid / tender



decides not to proceed further with the investment, AD banks should submit full details of remittance allowed towards EMD / invoked bid bond guarantee, to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> floor, Mumbai 400 001.

- (iii) In case the Indian Party is successful in the bid, but the terms and conditions of acquisition of a company outside India are not in conformity with the provisions of Regulations in Part I, or different from those for which approval under sub-regulation (3) was obtained, the Indian entity should obtain approval from the Reserve Bank by submitting form ODI.

#### **10. Transfer by way of sale of shares of a JV / WOS outside India**

The Indian Party should report details of the disinvestment in the online OID application through the AD Category – I bank within 30 days of disinvestment in Part IV of the Form ODI as indicated in para 3 (3) (d) above. 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.

#### **11. Verification of evidence of investment**

The share certificates or any other document as evidence of investment, where share certificates are not issued shall, henceforth, be submitted to and retained by the designated AD Category –I bank, who would be required to monitor the receipt of such documents and satisfy themselves about the bonafides of the documents so received. A certificate to this effect should be submitted by the designated AD Category –I bank to the Reserve Bank along with the APR (Part III of Form ODI).

#### **12. Opening of Foreign Currency Account abroad by an Indian Party**

Wherever, the host country Regulations stipulate that the investments (or financial commitment) into the country are required to be routed through a designated account, an Indian Party is allowed to open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments (or financial commitment) subject to certain terms and conditions stipulated under [A.P. \(DIR Series\) Circular No. 101 dated April 02, 2012](#).



## APPENDIX

### List of Notifications/ Circulars consolidated in the Master Directions on Direct Investment in Joint Ventures/ Wholly Owned Subsidiaries Abroad

#### **Notifications (published in the official gazette by the Government of India on various dates)**

1. <a href="#">Notification No. FEMA 120/2004-RB</a>	July 7, 2004
2. <a href="#">Notification No. FEMA 132/2005-RB</a>	March 31, 2005
3. <a href="#">Notification No. FEMA 135/2005-RB</a>	May 17, 2005
4. <a href="#">Notification No. FEMA 150/2006-RB</a>	August 21, 2006
5. <a href="#">Notification No. FEMA 164/2007-RB</a>	October 9, 2007
6. <a href="#">Notification No. FEMA 173/2007-RB</a>	December 19, 2007
7. <a href="#">Notification No. FEMA 180/2008-RB</a>	September 5, 2008
8. <a href="#">Notification No. FEMA 181/2008-RB</a>	October 1, 2008
9. <a href="#">Notification No. FEMA 184/2009-RB</a>	January 20, 2009
10. <a href="#">Notification No. FEMA 188/2009-RB</a>	February 3, 2009
11. <a href="#">Notification No. FEMA 196/2009-RB</a>	July 28, 2009
12. <a href="#">Notification No. FEMA 225/2012-RB</a>	March 7, 2012
13. <a href="#">Notification No. FEMA 231/2012-RB</a>	May 30, 2012
14. <a href="#">Notification No. FEMA 249/2012-RB</a>	November 22, 2012
15. <a href="#">Notification No. FEMA 263/2013-RB</a>	March 5, 2013
16. <a href="#">Notification No. FEMA 277/2013-RB</a>	May 8, 2013
17. <a href="#">Notification No. FEMA 283/2013-RB</a>	August 14, 2013
18. <a href="#">Notification No. FEMA 299/2014-RB</a>	March 24, 2014
19. <a href="#">Notification No. FEMA 314/2014-RB</a>	July 3, 2014
20. <a href="#">Notification No. FEMA 326/2014-RB</a>	November 12, 2014
21. <a href="#">Notification No. FEMA 322/2014-RB</a>	October 14, 2014
22. <a href="#">Notification No. FEMA 325/2014-RB</a>	November 12, 2014

#### **A.P. (DIR Series) Circulars**

1. <a href="#">A.P. (DIR Series) Circular No. 32</a>	February 9, 2005
2. <a href="#">A.P. (DIR Series) Circular No. 42</a>	May 12, 2005
3. <a href="#">A.P. (DIR Series) Circular No. 14</a>	October 1, 2004
4. <a href="#">A.P. (DIR Series) Circular No. 9</a>	August 29, 2005
5. <a href="#">A.P. (DIR Series) Circular No. 24</a>	January 25, 2006
6. <a href="#">A.P. (DIR Series) Circular No. 29</a>	March 27, 2006
7. <a href="#">A.P. (DIR Series) Circular No. 30</a>	April 5, 2006
8. <a href="#">A.P. (DIR Series) Circular No. 3</a>	July 26, 2006
9. <a href="#">A.P. (DIR Series) Circular No. 6</a>	September 6, 2006
10. <a href="#">A.P. (DIR Series) Circular No. 41</a>	April 20, 2007
11. <a href="#">A.P. (DIR Series) Circular No. 49</a>	April 30, 2007
12. <a href="#">A.P. (DIR Series) Circular No. 50</a>	May 4, 2007



13. <a href="#">A.P. (DIR Series) Circular No. 59</a>	May 18, 2007
14. <a href="#">A.P. (DIR Series) Circular No. 68</a>	June 1, 2007
15. <a href="#">A.P. (DIR Series) Circular No. 72</a>	June 8, 2007
16. <a href="#">A.P. (DIR Series) Circular No. 75</a>	June 14, 2007
17. <a href="#">A.P. (DIR Series) Circular No. 2</a>	July 19, 2007
18. <a href="#">A.P. (DIR Series) Circular No. 11</a>	September 26, 2007
19. <a href="#">A.P. (DIR Series) Circular No. 12</a>	September 26, 2007
20. <a href="#">A.P. (DIR Series) Circular No. 34</a>	April 3, 2008
21. <a href="#">A.P. (DIR Series) Circular No. 48</a>	June 3, 2008
22. <a href="#">A.P. (DIR Series) Circular No. 53</a>	June 27, 2008
23. <a href="#">A.P. (DIR Series) Circular No. 7</a>	August 13, 2008
24. <a href="#">A.P. (DIR Series) Circular No.14</a>	September 5, 2008
25. <a href="#">A.P. (DIR Series) Circular No. 5</a>	July 22, 2009
26. <a href="#">A.P. (DIR Series) Circular No. 36</a>	February 24, 2010
27. <a href="#">A.P. (DIR Series) Circular No. 45</a>	April 1, 2010
28. <a href="#">A.P. (DIR Series) Circular No. 69</a>	May 27, 2011
29. <a href="#">A.P. (DIR Series) Circular No. 73</a>	June 29, 2011
30. <a href="#">A.P. (DIR Series) Circular No. 96</a>	March 28, 2012
31. <a href="#">A.P. (DIR Series) Circular No. 97</a>	March 28, 2012
32. <a href="#">A.P. (DIR Series) Circular No. 101</a>	April 2, 2012
33. <a href="#">A.P. (DIR Series) Circular No. 131</a>	May 31, 2012
34. <a href="#">A.P. (DIR Series) Circular No. 133</a>	June 20, 2012
35. <a href="#">A.P. (DIR Series) Circular No.15</a>	August 21, 2012
36. <a href="#">A.P. (DIR Series) Circular No. 25</a>	September 7, 2012
37. <a href="#">A.P. (DIR Series) Circular No. 29</a>	September 12, 2012
38. <a href="#">A.P. (DIR Series) Circular No. 99</a>	April 23, 2013
39. <a href="#">A.P. (DIR Series) Circular No. 100</a>	April 25, 2013
40. <a href="#">A.P. (DIR Series) Circular No. 8</a>	July 11, 2013
41. <a href="#">A.P. (DIR Series) Circular No. 23</a>	August 14, 2013
42. <a href="#">A.P. (DIR Series) Circular No. 24</a>	August 14, 2013
43. <a href="#">A.P. (DIR Series) Circular No. 41</a>	September 10, 2013
44. <a href="#">A.P. (DIR Series) Circular No.83</a>	January 3, 2014
45. <a href="#">A.P. (DIR Series) Circular No. 131</a>	May 19, 2014
46. <a href="#">A.P. (DIR Series) Circular No. 1</a>	July 3, 2014
47. <a href="#">A.P. (DIR Series) Circular No. 48</a>	December 9, 2014
48. <a href="#">A.P. (DIR Series) Circular No. 54</a>	December 29, 2014
49. <a href="#">A.P. (DIR Series) Circular No. 59</a>	January 22, 2015