

March 27, 2006

To,

All Banks Authorised to Deal in Foreign Exchange

Madam /Sir,

Overseas Investment - Liberalisation

Attention of Authorised Dealer (AD) Banks is invited to Notification No. FEMA120/RB-2004 dated 7th July 2004, as amended, from time to time. With a view to grant more operational flexibility to the corporates in India it has been decided to further liberalise the various Regulations as under:

2. Guarantees

Presently, only promoter corporates are permitted to offer guarantees on behalf of their Wholly Owned Subsidiaries (WOSs) / Joint Ventures (JVs), under the Automatic Route and issue of personal, collateral and third party guarantees requires prior approval of Reserve Bank and is considered by RBI, on a case by case basis.

With a view to simplify the procedure, it has now been decided to enlarge the scope of guarantees covered under the Automatic Route. Accordingly, Indian entities may offer any forms of guarantee - corporate or personal / primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India, provided that :

a) All "financial commitments" including all forms of guarantees are within the overall prescribed ceiling for overseas investment of the Indian party i.e. currently within 200% of the networth of the investing company (Indian party).

b) No guarantee is 'open ended' i.e. the amount of the guarantee should be specified upfront, and

c) As in the case of corporate guarantees, all guarantees are required to be reported to RBI, in Form ODR.

It is clarified that **Guarantees issued by banks in India** in favour of WOSs / JVs outside India, would be outside this ceiling and would be subject to prudential norms issued by RBI from time to time.

3. General Permission for disinvestment

Currently, in terms of Regulation 16 of Notification No. FEMA120/RB-2004 dated 7th July 2004, as amended from time to time, all disinvestments that involve a 'write off' i.e. where the amount repatriated on disinvestment is less than the amount of the original investment, need prior approval of the Reserve Bank.

In order to enable companies to have operational flexibility according to their commercial judgment, it has been decided to further liberalise the Automatic Route of disinvestment. Accordingly, Indian parties may disinvest without prior approval of the Reserve Bank, in the undernoted categories.

- i) in cases where the JV / WOS is listed in the overseas stock exchange.
- ii) in cases where the Indian promoter company is listed on a stock exchange in India and has a networth of not less than Rs.100 crore.
- iii) where the Indian promoter is an unlisted company and the investment in overseas venture does not exceed USD 10 million.

The Indian party is required to submit details of the disinvestment through its designated Authorised Dealer bank **within 30 days** from the date of disinvestment.

4. **Overseas Investments - Proprietorship concerns**

In terms of Notification No.FEMA120/RB-2004 dated 7th July 2004, as amended from time to time, only a company incorporated in India, or a body created under an Act of Parliament or a partnership firm registered under Indian Partnership Act, 1932, or any other entity as may be notified by the Reserve Bank is eligible to invest in a JV/WOS abroad.

With a view to enabling recognised star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalisation, it has been decided to allow proprietary / unregistered partnership firms to set up a JV/WOS outside India with prior approval of Reserve Bank. Proprietary / unregistered partnership firms satisfying the eligibility criteria as detailed in Annexure may submit an application in form ODI to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Bhawan, 3rd floor, Fort, Mumbai 400 001, through their Authorised Dealer bank. Authorised Dealer banks may accordingly, forward such investment proposals from the eligible parties, with their comments / recommendations, to the Reserve Bank for

consideration. Approval of such investment would be subject to the usual reporting mechanism.

5. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security), Regulations, 2004 are being issued separately.

6. Authorised Dealer banks may bring the contents of this circular to the notice of their constituents and customers concerned.

7. The directions contained in this circular have been issued under Sections 10 (4) and 11 (1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

Yours faithfully,

Vinay Baijal
Chief General Manager

[Annex to A. P. DIR (Series) Circular No.29 dated March 27, 2006]

Criteria for considering investment proposals outside India by established proprietorship or unregistered partnership exporter firms

- i) The Partnership / Proprietorship firm is a DGFT recognised Star Export House (export exceeding Rs.15 crore) per annum.
- ii) The Authorised Dealer bank is satisfied that the exporter is KYC (Know Your Customer) compliant, is engaged in the proposed business and has turnover as indicated.
- iii) Exporter has proven track record i.e. export outstanding does not exceed 10 per cent of the average export realisation of preceding three years.
- iv) The exporter has not come under adverse notice of any Government agency like Enforcement Directorate, CBI 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.
- v) The amount of investment outside India does not exceed 10 per cent of the average of three year export realisation or 200 per cent of the net owned funds of the firm, whichever is lower.