

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

Notification No. FEMA.180/RB-2008

dated September 5, 2008

**Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2008**

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 6 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 (Notification No. [FEMA.120/RB-2004](#) dated July 7, 2004) namely:-

**1. Short Title & Commencement:-**

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2008.
- (ii) These Regulations shall be deemed to have come into effect from the 1<sup>st</sup> day of June 2007.

**2. Amendment of Regulation 6:-**

In the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 (Notification No.FEMA 120/RB-2004 dated July 7, 2004 (hereinafter referred to as the 'principal regulations' ) in Regulation 6,

- (i) in sub- regulation (2), for clause (iv), the following shall be substituted, namely:-

“(iv) The Indian Party has submitted its Annual Performance Report in respect of all its overseas investments in the format given in Part III of the Form ODI .”

(ii) in sub- regulation ( 2 ), for clause ( vi ), the following shall be substituted, namely:-

“(vi) the Indian Party submits Part I of the Form ODI, duly completed, to the designated branch of an authorised dealer.”

(iii) in sub-regulation (5), in the proviso, for clause (b), the following shall be substituted, namely:-

“(b) The Indian Party files with the designated authorised dealer in Parts I and II of the Form ODI full details of the investment proposed.”

**3. Amendment of Regulation 9:-**

In the principal Regulations, in Regulation 9, in sub-regulation (2), the following shall be substituted, namely:-

“(2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Part I of the Form ODI.”

**4. Amendment of Regulation 14:-**

In the principal Regulations, in Regulation 14, in sub-regulation (2), for clause (ii) of the following shall be substituted, namely:-

“(ii) The Indian Party shall submit through the designated authorised dealer concerned a report to the Reserve Bank in Parts I and II of the Form ODI within 30 days of effecting the final remittance.”

**5. Amendment of Regulation 15:-**

In the principal Regulations, in Regulation 15, for clause (iii) the following shall be substituted, namely:-

- “(iii) submit to the Reserve Bank through the Authorised Dealer every year within 60 days from the date of expiry of the statutory period as specified by the respective laws of the host country for finalization of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an Annual Performance Report in Form ODI Part III in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be specified by the Reserve Bank from time to time.”

**6. Substitution of Regulation 19:-**

In the principal Regulations, for Regulation 19, the following shall be substituted, namely:-

**“19. Prior permission of the Reserve Bank for a Proprietary Concern in India to accept shares**

A proprietary concern in India may apply to the Reserve Bank through the authorised dealer in Part I of the Form ODI for permission to accept shares of a company outside India in lieu of fees due to it for professional services rendered to the said company.

Provided that:-

- (a) the value of the shares accepted from each company outside India shall not exceed fifty per cent of the fees receivable by the Indian concern from that company; and,
- (b) the Indian concern's shareholding in any one company outside India by virtue of shares accepted as aforesaid shall not exceed ten per cent of the paid-up capital of the company outside India, whose shares are accepted.

## **7. Substitution of Form**

In the principal regulations, after Schedule II, at the end, for the Forms annexed, Form ODI annexed to these regulations shall be substituted.

**(Salim Gangadharan)**  
**Chief General Manager-in-Charge**

### **Foot Note:**

(i) The Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 were published in the Official Gazette vide G.S.R.No.757 (E) dated November 19, 2004 and subsequently amended vide:

G.S.R. No.220 (E) dated April 7, 2005

G.S.R. No.337 (E) dated May 27, 2005

G.S.R. No.552 (E) dated August 31, 2005

G.S.R.No. 535(E) dated September 6, 2006

G.S.R.No. 13(E) dated January 5, 2008

G.S.R.No. 209(E) dated March 25, 2008

G.S.R.No. ----- dated -----

(ii) It is clarified that no person will be adversely affected as a result of retrospective effect being given to these Regulations.

<p><b>Published in the Official Gazette of Government of India – Extraordinary – Part-II, Section 3, Sub-Section (i) dated 24.9.2008 - G.S.R.No.676 (E)</b></p>
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ANNEX

FORM OVERSEAS DIRECT INVESTMENT (ODI)

**FORM ODI**  
**PART I**

**For office use only**

Date of Receipt -----

Inward No. -----

**Section A: Details of Indian Party**

(I) Investment under (i) Automatic Route  (ii) Approval Route

(In case there is more than one Indian party, information may be given on separate sheets for each of the parties)

(II) Name of Indian Party

(III) Address of Indian Party

City  State  Pin

(IV) Contact Person  Designation

Tel No.  Fax

e-mail

(V) Status of Indian Party: (Please tick appropriate category)

(1) Public Ltd. Company  (2) Private Limited Company

(3) Public Sector Undertaking  (4) Registered Partnership

(5) Proprietorship  (6) Unregistered Partnership

(7) Trust  (8) Society

(9) Others

(VI) Activity code of Indian Party \*

\* NIC code at 3-digit level

**[If the Indian Party is engaged in Financial sector or falls under the category of Proprietorship, Unregistered Partnership or Financial sector, the details are to be furnished in Item VII below].**

(VII) Financial particulars of the Indian Party for the last 3 years

(Amt. in Rs. 000s)

Particulars	Year 1 31-3-	Year 2 31-3	Year 3 31-3
Foreign exchange earnings (excluding equity exports to JV/WOS)			
Net profit			
Paid-up Capital			
Net worth of (a) Indian Party (b) Group Company@			

@ In terms of Explanation to Regulation 6 (3) of Notification No. FEMA 120/ RB-2004 dated July 7, 2004

(VIII) Particulars of existing Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) already in operation or under implementation, of the Indian party and its group concerns:

Sr. No.	Name of Indian Party	Unique Identification Number allotted by Reserve Bank
1.		
2.		
3.		

(IX) Whether the proposed investment is (Tick the appropriate box)

(a) New Project  (Please furnish the details in Section B)

(b) Existing Project\*  (Please furnish the details in Section C)

\* Acquisition of stake in an already existing JV/WOS overseas promoted by an Indian party.

**Section B: Details of Investment in New Project**

<b>For Reserve Bank use only</b>												
<b>Unique Identification Number</b>												

(I) Purpose of investment (Please tick appropriate category)

- (a) Participation in JV  (b) Contribution in WOS   
 (c) Full acquisition of a foreign concern   
 (d) Partial acquisition of a foreign concern   
 (e) Investment in unincorporated entity   
 (f) Others

(II) Particulars of JV/WOS

- (a) Name of JV/WOS   
 (b) Address of JV/WOS   
  
 (c) Name of the country   
 (d) e-mail   
 (e) Accounting year followed by JV/WOS

(III) Activity code of JV/WOS

(IV) Whether JV/WOS is SPV (Y/N)? #

# If Y, Please furnish the details in Section D

Proposed Capital Structure

	[a] Indian Party (ies)	% stake		[b] Foreign partner(s)	% stake
(1)			(1)		
(2)			(2)		
(3)			(3)		

**Section C: Details of Investment in Existing Project**

<b>Indicate 13 digit Unique Identification Number issued by Reserve Bank</b>												

(I) Purpose of Supplementary Investment (Please tick appropriate category)

- (a) Enhancement of Equity in existing JV/WOS overseas
- (b) Enhancement of Preference Equity/ Convertible Debt
- (c) Grant/ Enhancement of Loan in existing JV/WOS
- (d) Extension/ Enhancement of Guarantees
- (e) Remittances to Unincorporated Entity
- (e) Others

(II) Capital Structure

	[a] Indian Party (ies)	% stake		[b] Foreign partner(s)	% stake
(1)			(1)		
(2)			(2)		
(3)			(3)		



**Section D - Funding for JV / WOS**

(Amount in FCY 000's)

- I Full Value of the Overseas Acquisition
- II Estimated cost of overseas acquisition for the Indian Party
- III Financial commitment \* (in applicable FCY): FYC  Amount

IV Method of Investment by Indian Party

- (i) Cash Remittance
    - (a) EEFC
    - (b) Market Purchase
  - (ii) Capitalization of
    - (a) Export of plant and machinery
    - (b) Others (please Specify)
  - (iii) ADRs /GDRs [raised overseas]
  - (iv) ECB/FCCB
  - (v) Swap of shares
  - (vi) Others (Please specify)
- Total A [Indian Party]

v. Whether JV/WOS is SPV (Y/N)

- (a) If Y, purpose of SPV:
- i) Full value of the overseas acquisition
  - ii) Direct / Indirect infusion by SPV
  - ii) Funds raised overseas with guarantee/  
counter guarantee from Indian party
  - iii) Funds raised overseas without guarantee/  
counter guarantee from Indian Party
  - iv) Funds contributed in the form of equity/  
preference equity/ shareholder's loans  
by foreign investors
  - v) Securitisation
  - vi) Any other mode (please specify)

Total B

VI. Guarantees/ Other Non fund based Commitments

**Note** \* : Financial Commitment as defined in FEMA 120/RB-2004 dated July 7, 2004 Sec 2(f)- Financial Commitment means amount of Direct Investment by way of contribution to equity, loan and 100 per cent of the amount of guarantee issued by Indian Party to or on behalf of its overseas Joint Venture company or Wholly Owned Subsidiary.

**Section E : Declaration by the Indian Party**

I (a) Whether the applicant party(ies), its promoters, directors, etc., are under any investigations by any investigative / enforcement agency or regulatory body. If yes, the brief details thereof, including present stage of investigation/ adjudication / manner of disposal of the case .

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(b) Whether the promoter Indian party(ies) is(are) presently on Exporters' Caution List of Reserve Bank for non-realization of export proceeds or on the list of defaulters to the Banking System circulated by Reserve Bank. If so, status of the Indian party (ies):

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(c) Any other information relevant to this proposal, including any special benefits/ incentives available in the host country for setting up / acquiring the proposed concern.

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I/ We hereby certify that the information furnished above are true and correct.

Place: \_\_\_\_\_

\_\_\_\_\_  
(Signature of authorised official)

Date : \_\_\_\_\_

**Stamp/Seal**

Name:-----

Designation-----

List of enclosures:

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

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**Section F: Certificate by the Statutory Auditors of the Indian Party**

It is certified that the terms and conditions contained in Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time (Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004) have been complied with by the Indian party in respect of the investment under report. In particular, it is 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 for all overseas investments already made and exports and other dues capitalized / swap of shares / investment from ECB / FCCB balances for investment abroad under the Automatic Route is within the limit stipulated by the Reserve Bank from time to time. This has been verified with reference to the net worth of the Indian party as on the date of last audited balance sheet, i.e. \_\_\_\_\_ (date)
- (iii) has complied with the valuation norms prescribed for the investment
- (iv) has complied with the ECB guidelines #
- (v) that the Indian party (a) has made net profits during the preceding three years from the financial services activity, (b) has fulfilled the prudential norms of capital adequacy as prescribed by the regulatory authority in India; (c) has been registered with the appropriate regulatory authority in India for conducting financial services activity and (d) has obtained approval for the investment in financial services sector activities from the regulatory authorities concerned in India and abroad \*.

Note : \*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 through ECB/FCCB balances.

(Signature of the Statutory Auditor of the Company)

Name of the firm, Stamp and Registration number

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**PART II**

**REPORTING OF REMITTANCES**

**For office use only**

**Date of Receipt** -----

**Inward No.** -----

In case investment is in the existing JV/WOS, please indicate Unique Identification No. already allotted :												
No.												

(I) Name of Indian Company:

(II) Is there any change in Company name since last reporting? (Y/N)

If Yes, specify Old Company Name

**DETAILS OF CURRENT REMITTANCES EFFECTED**

(Amount in 000's of FCY)

Code of Reporting AD <input style="width: 100px;" type="text"/>		foreign currency**: <input style="width: 100px;" type="text"/>	
<b>(a) From EEFC A/c.</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(b) By Market Purchases</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(c) From the ADR/GDR funds</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(d) By Swap of Shares</b>			
Equity	Loan	Guarantee (Invoked)	Date of Swap
		XXXX	

(e) From ECB/ FCCB balances parked in India/outside India			
Equity	Loan	Guarantee (Invoked)	Date of Transaction
(g) Capitalization of Exports/Other dues@			
Date of capitalization:		Amount:	
(h) Guarantee issued: Date (Fresh / Existing Guarantee Period Extended )		Amount:	
Validity Period			

Note : \*\* Please indicate name of the foreign currency (FCY) as per SWIFT code.

@ Please specify the other dues being capitalized viz., royalty, technical know-how fee, consultancy fees, etc.

We hereby confirm that the remittance  
(strike out whichever is not applicable)

i) has been allowed under the Automatic Route based on the certification given by the Statutory Auditors confirming compliance with the prescribed terms and conditions by the Indian party ;

ii) is in accordance with the terms and conditions of the approval letter issued by the Reserve Bank ; and

iii) in respect of the invoked guarantee remittance has been made after satisfying that the claim is in conformity with the terms and conditions of the guarantee issued to/on behalf of the JV/WOS abroad.

Place  
Date:

Stamp /Seal
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(Signature of authorised official of the bank)

Name :  
Designation :  
Tel. No. :

### **PART III**

#### **ANNUAL PERFORMANCE REPORT (APR)**

(To be submitted certified by a Chartered Accountant through the designated AD Category – I bank every year within 3 months of the closing of annual accounts of the JV / WOS as long as the JV/WOS is in existence)

I. Date of APR : \_\_\_\_\_

II. Unique Identification Number :

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(Please indicate 13 digit Unique Identification number issued by RBI)

III. Changes in capital structure since last reporting

	Amount (new)	% share (new)
Indian		
Foreign		

IV. Operational details of the JV/ WOS for the last two years

(Amount in 000's FCY)

	Previous Year	Current Year
i) Net Profit / (Loss)		
ii) Dividend		
iii) Net worth		

V. Repatriation from the JV/WOS

Foreign exchange earnings from Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS)

	During the last year ended	Since commencement of business
(i) Profit		
(ii) Dividend		
(iii) Retained Earnings*		
(iv) Investments into India		
(v)Others**(Please specify)		

\*(Represent part of the profits of the JV/WOS which is retained and reinvested in the JV/WOS).

\*\* (Royalties, technical know-how fees, consultancy fees, etc.)

**VI. Investment in step down subsidiaries since last reporting**

Country	
Name of JV/WOS	
Amount of Investment	

Place: \_\_\_\_\_

(Signature of authorised official )

Date : \_\_\_\_\_

**Stamp/Seal**

Name:-----

Designation-----

(Signature of the Statutory Auditor of the Company)

Name of the firm, Stamp and Registration number

**Signature of the Authorised Official of the bank:**

**Name :**

**Designation \_\_\_\_\_ :**

**PART IV**

**Report on Closure / Disinvestment / Voluntary Liquidation /Winding Up  
of JV / WOS**

To be submitted by the designated AD Category –I bank  
(All Amounts in FCY, in thousands)

Name and Address of the AD Category – I bank: \_\_\_\_\_

AD Code: \_\_\_\_\_

Unique Identification Number allotted by the Reserve Bank

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Whether APRs submitted regularly? (Y/N)

Date of submission and period to which last APR relates: \_\_\_\_\_

**Details of Investment**

Equity	Loan	Guarantees Issued

**Details of Remittances**

Equity	Loan	Guarantees Invoked

**Changes in the capital Structure since the last APR**

Equity	Loan	Guarantees Issued

**Amount Repatriated on disinvestments**

Equity	Loan

**It is certified that (Strike out whichever is not applicable)**

**I. (a) the sale is effected through a stock exchange where the shares of the overseas Joint Venture (JV) or Wholly Owned Subsidiary (WOS) are listed;**

**(b) 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 Joint Venture or Wholly Owned Subsidiary;**



**(c) 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 Joint Venture or Wholly Owned Subsidiary,**

**(d) The overseas concern has been in operation for at least one full year and the Annual Performance Report for that year has been submitted to the Reserve Bank;**

**(e) The Indian party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India.**

Place  
Date:

Stamp /Seal

(Signature of authorised official of the bank)

Name:  
Designation :  
Tel.No. :  
FAX No. :