



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

Notification No. FEMA.249/RB-2012

Dated November 22, 2012

Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Fourth Amendment) Regulations, 2012

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 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](#)), as amended from time to time, (hereinafter called the Principal Regulations or the Notification) namely:-

1. Short Title & Commencement:-

- (i) These Regulations shall be called the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Fourth Amendment) Regulations, 2012.
- (ii) Each amendment shall be deemed to have come into force from the dates specified in these Regulations.

2. Amendment to Regulation 6

In Regulation 6, in sub-regulation (2), in clause (i), after sub-clause(e), for the words “Notwithstanding anything contained in these Regulations, investment in Pakistan shall not be permitted.”, the following shall be substituted and the same shall be deemed to have come into effect from September 7, 2012:

“Overseas direct investment by an Indian Party in Pakistan shall henceforth be considered under the approval route under Regulation 9 of this Notification.”

3. Amendment to Regulation 15

- (a) In Regulation 15, in sub-regulation (iii), for the words, “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.”, the following shall be substituted and the same shall be deemed to have substituted from September 12, 2012:

“submit to the Reserve Bank, through the designated Authorised Dealer, every year on or before a specified date, 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.”

(b) In Regulation 15, after the sub-regulation (iii), the following shall be added and the same shall be deemed to have been added with effect from March 15, 2011:

“(iv) Indian companies, which have made overseas direct investments under the provisions of this Notification, shall submit an ‘Annual Return on Foreign Liabilities and Assets’ in the format and by a specified dates prescribed by the Reserve Bank from time to time, to the Director, Balance of Payment Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India, C-9, 8th Floor, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

4. Amendment to Part I of Form ODI

The Section ‘E’ and Section ‘F’ under Part I of the Form ODI, as notified vide [Notification No. FEMA.180/RB-2008 dated September 5, 2008](#), shall be substituted with the revised Section ‘E’ and Section ‘F’ as per the Annexure I



of this amendment Notification and this substitution shall be deemed to have come into effect from August 21, 2012.

(Rudra Narayan Kar)
Chief General Manager

Foot Note:

- i) Certified that no person shall be adversely affected by the retrospective effect given to such regulations.
- ii) The Principal Regulations were published in the Official Gazette of GOI vide G.S.R. No 757 (E) dated November 19, 2004 – in Part II, Section 3, Sub-section (i) 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.676 (E) dated September 24, 2008,
G.S.R. No.756 (E) dated September 31, 2008,
G.S.R. No.108 (E) dated February 20, 2009,
G.S.R. No. 301(E) dated May 1, 2009,
G.S.R. No. 441(E) dated June 23, 2009,
G.S.R. No. 609(E) dated August 28, 2009,
G.S.R. No. 607(E) dated August 3, 2012,
G.S.R. No. 609(E) dated August 3, 2012 and
G.S.R. No. dated.

**Published in the Official Gazette of Government
of India – Extraordinary – Part-II, Section 3,
Sub-Section (i) dated 31.12.2012- G.S.R.No.947(E)**



Annexure I

Form ODI Part I – Revised Section ‘E’ and ‘F’

Section E (Revised) : Declaration by the Indian Party

(a) Whether the applicant party (ies), its promoters, directors, etc., are under 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.

(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):

(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.

(d) Wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification No. FEMA 120 / RB - 2004 dated July 07, 2004, as amended from time to time, in respect of all the existing JV / WOS of the Indian party has been submitted.

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. |



Section F (Revised) : 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 (Name of 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 (Name 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, (b) has fulfilled the prudential norms of capital adequacy as prescribed by the regulatory authority concerned; (c) has been registered with the appropriate regulatory authority in India and (d) has obtained approval for the investment in financial services sector activities from the regulatory authorities concerned in India and abroad*.

Further, certified that, wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification *ibid*, in respect of all the existing JV / WOS of the Indian party has been submitted.

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 Auditors of the Indian Party)
Name of the firm, Stamp and Registration number**