

'DRAFT DIRECTIONS'

May , 2012

All Core Investment Companies

Dear Sirs,

Core Investment Companies -Overseas Investment (Reserve Bank) Directions, 2012

Short title and commencement of the Directions

- (a) These Directions shall be known as the Core Investment Companies - Overseas Investment (Reserve Bank) Directions, 2012.
- (b) These Directions shall come into force with immediate effect.

2. Prior Approval of RBI in cases of Overseas investment by CICs

- (a) These directions will be only applicable to CICs registered with the Reserve Bank.
- (b) CICs desirous of making overseas investment in financial sector shall hold a Certificate of Registration (CoR) from RBI and shall comply with all the regulations applicable to registered CICs. Therefore, CICs that are presently exempted from the regulatory framework of RBI, would be required to be registered with the Bank, for the purpose of overseas investment in financial sector. Investment in non-financial sector by such exempted CICs however does not require CoR and these Directions are not applicable to them.
- (c) These directions are in addition to those prescribed by Foreign Exchange Department for overseas investment.

- (d) The eligibility criterion for investments abroad and other conditions prescribed for CICs are described in following paragraphs

3.1 Eligibility Criteria

- (a) The adjusted net worth of the CIC shall be not less than 30% of its aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items as on the date of the last audited balance sheet as at the end of the financial year. The CIC shall continue to meet the requirement of adjusted net worth not being less than 30% of its aggregate risk weighted assets post overseas investment. For this purpose the risk weights are as laid down in the Notification No.219 dated January 05, 2011.
- (b) The level of Net Non-Performing Assets of the CIC should not be more than 1% of the net advances;
- (c) The CIC should be earning profit continuously for the last three years and its performance in general should be satisfactory during the period of its existence.

3.2 General conditions

- (a) Direct investment in activities prohibited under FEMA or in sectoral funds will not be permitted;
- (b) The aggregate overseas investment should not exceed 400% of the owned funds of the CIC. The aggregate overseas investment in financial sector should not exceed 200% of its owned funds;
- (c) A registered CIC need not obtain prior approval from Department of Non-Banking Supervision (DNBS), RBI for overseas investment in non-financial sector. However it should report to the Regional Office of DNBS where it is registered within 30 days of such investment in the stipulated format of quarterly return and also continue to submit the return quarterly;
- (d) Investment in financial sector shall be only in regulated entities abroad;
- (e) Overseas investments by a CIC in financial /non-financial sector would be restricted to its fund based commitment;

- (f) Non-fund commitments entered by CIC prior to the Directions, on behalf of overseas subsidiaries and joint ventures, shall not be reviewed. These will have to be reported to the Bank in the quarterly return prescribed;
- (g) CICs must ensure that investments made abroad do not result in creation of complex structures. Further, all subsidiaries and joint ventures set up abroad must be operating entities. CIC which already have non-operating holding companies in existence overseas will need to report the same to the Reserve Bank for a review. (Note: As far as possible there shall be no cross share-holdings between the holding companies within the group);
- (h) CICs shall comply with the regulations issued under FEMA, 1999 from time to time;
- (i) SPVs set up abroad or acquisition abroad shall be treated as subsidiary(ies)/joint venture(s) abroad, depending upon percentage of investment in overseas entity;
- (j) An annual certificate from statutory auditors shall be submitted by the CIC to the Regional Office of DNBS where it is registered, certifying that it has fully complied with all the conditions stipulated under these Guidelines for overseas investment;
- (k) A quarterly return in the enclosed format shall be submitted by the CIC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM), RBI within 15 days of the close of the quarter.
- (l) If any serious adverse features come to the notice of the Bank, the permission granted shall be withdrawn. All approvals for investment abroad shall be subject to this condition.

3.2 Specific Conditions.

(A) Opening of Branch

As CICs are non-operating entities, they will not, in the normal course, be allowed to open branches overseas. Hence CICs which have already set up branch(es) abroad for undertaking investment business should approach RBI within 3 months from the date of these Directions for a review.

(B) Opening of Subsidiary Abroad by CICs

In case of opening of a subsidiary abroad by a CIC, all the conditions as stipulated above shall be applicable. The NoC to be issued by the Bank is independent of the overseas regulators' approval process. In addition, the following conditions shall apply to all CICs:

- (a) The subsidiary being established abroad should not be a shell company i.e "a company that is incorporated, but has no significant assets or operations." However companies undertaking activities such as financial consultancy and advisory services, shall not be considered as shell companies, as they will have significant operations.
- (b) The subsidiary being established abroad by the CIC should not be used as a vehicle for raising resources for creating assets in India for the Indian operations;
- (c) In order to ensure compliance of the provisions, the parent CIC shall obtain periodical reports/audit reports about the business undertaken by the subsidiary abroad and shall make them available to Reserve Bank and inspecting officials of the Bank;
- (d) If the subsidiary has not undertaken any activity or such reports are not forthcoming, the approvals given for setting up a subsidiary abroad shall be reviewed/ recalled;
- (e) The permission granted to any CIC for setting up of overseas subsidiary shall be subject to the condition that the subsidiary shall make disclosure in its Balance Sheet to the effect that liability of the parent entity in the proposed overseas entity shall be limited to its either equity or fund based commitment to the subsidiary;

(f) All the operations of the subsidiary abroad shall be subject to regulatory prescriptions of the host country.

(C) Joint Ventures Abroad

Investments abroad, other than in subsidiaries also shall be governed by the same guidelines as those applicable to subsidiaries.

(D) Opening of Representative Offices Abroad by CICs

CICs will need prior approval from the Department of Non-Banking Supervision (DNBS), RBI for opening representative offices abroad. The representative offices can be set up abroad for the purpose of liaison work, undertaking market study and research but not undertaking any activity which involves outlay of funds. The representative offices shall also comply with regulations, if any, in this regard stipulated by a regulator in the host country. As it is not envisaged that such offices would be carrying on any activity other than liaison work, no line of credit should be extended.

The parent CICs shall obtain periodical reports about the business undertaken by the representative offices abroad. If the representative offices have not undertaken any activity or such reports are not forthcoming, the Bank may advise the CIC to wind up the establishment.

4. Violation of these directions shall invite penal action under the provisions of Reserve Bank of India Act, 1934.

(Uma Subramaniam)
Chief General Manager-in-Charge

Quarterly Return to be submitted by CICs having overseas investment

Sr. No.	Name of the WOS/JV (for JV, indicate names of partners)	Country and date of incorporation	Date of NoC from DNBS	Business undertaken
Sr. no.	Key Indicators			
a)	Adjusted net worth as a percentage of aggregate risk weighted assets on balance sheet and risk adjusted value of off-balance sheet items:			
b)	Net Profit of the CIC as per the last audited balance sheet:			
c)	Amount of remittance made to the WOS/JV during the quarter:			
	Name of the WOS/JV		Amount remitted	
d)	Cumulative investment (fund based and *non-fund based commitment) in the WOS/JV at the end of the quarter(amount and as percentage of owned funds of the CIC):			
	Name of the WOS/JV	Amount remitted and as % of owned funds including step down subsidiaries if any	*Non fund based commitment and value(also specifying the nature for eg: performance guarantee)	
	<i>*Only in the case of investments existing prior to these Directions.</i>			
e)	Aggregate overseas investment of the CIC as percentage			

	of owned funds of the CIC:				
f)	Whether the overseas WOS/JV is regulated in the host country. If yes:				
	Name of the regulator:	Any regulatory visits made during the reporting period:	Concerns expressed by the regulator:	Any regulatory changes during the period which would impact the business of the subsidiary:	Fines / penalties levied by the overseas regulator, if any:
g)	Returns obtained from the WOS/JV during the quarter:				
	Name of the WOS/JV		Returns obtained		
h)	Financial details of JV/WOS				
	Name of the WOS/JV		Net profit		Size of Balance Sheet (Details of significant items of assets and liabilities may be attached)