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PART – I

Section A - General

A.1 Introduction

Overseas investments 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 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. They are also important drivers of foreign trade through increased exports of plant and machinery and goods 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.

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 its rules and simplifying the procedures both for current account as well as capital account transactions.

A.2 Statutory basis Section 6 of the Foreign Exchange Management Act provides powers to the Reserve Bank to specify, in consultation with the Central Government the classes of permissible Capital Account transactions and limits upto which 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.

In exercise of the above powers, the Reserve Bank has in super session of earlier Notification No.FEMA19/RB-2000 dated 3rd May 2000 and 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 (as amended vide Notification No. FEMA 132/2005-RB dated 31st March 2005, Notification No. FEMA 135/2005-RB dated 17th May 2005, Notification No. FEMA 139/2005-RB dated 11th August 2005 and Notification No. FEMA 150/2006-RB dated 21st August 2006) (hereinafter referred to as 'the Notification'). The Notification seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment 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.

A.3 Prohibitions Indian parties are prohibited from making investment in a foreign entity engaged in real estate (as defined in Reg 2(p) of FEMA120) or banking business.

A.4 General Permission In terms of Regulation 4 of the Notification, general permission has been granted to residents for purchase / acquisition of securities in the following manner:

- (a) out of funds held in RFC account; and
- (b) as bonus shares on existing holding of foreign

currency shares.

- (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.

B.1 Automatic Route

Section B - Direct Investment Outside India

In terms of Regulation 6 of the Notification, an Indian party has been permitted to make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as under:

- not exceeding 300 per cent of the net worth of the Indian party (corporates) as on the date of the last audited balance sheet.

- not exceeding 200 per cent of the net worth of the Indian party (registered partnership firms) as on the date of the last audited balance sheet.

This ceiling will not be applicable where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or out of funds raised through ADRs/GDRs. The Indian party should approach an Authorised Dealer Category - I bank with an application in Form ODI and prescribed enclosures / documents for effecting remittances towards such investments.

The above ceiling will include contribution to the capital of the overseas JV / WOS, loan granted to the JV / WOS, and 100 per cent of guarantees issued to or on behalf of the JV/WOS. Such investments are subject to the following conditions:

- a) The Indian entity may extend loan / guarantee to an overseas concern only in which it has equity participation. Indian entities may offer any form 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
 - i) All financial commitments including all forms of guarantees are within the overall ceiling prescribed for overseas investment by the Indian party i.e. currently within 300/200 per cent of the net worth of the Indian party, as the case may be.
 - ii) No guarantee is 'open ended' i.e. the amount of the guarantee should be specified upfront, and
 - iii) As in the case of corporate guarantees, all guarantees are

required to be reported to Reserve Bank, in Form ODI Part II. 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 Reserve Bank 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 / The Credit Information Bureau (India) Ltd (CIBIL) 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 5.00 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. However, in cases of investment by way of swap of shares, in all cases irrespective of the amount, valuation of the shares will have to be 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 precondition.

In case of investment in overseas JV / WOS abroad by a registered Partnership firm, where 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.

An Indian party is also permitted to 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 Central Government, provided:

- (a) ADRs/GDRs are listed on any stock exchange outside India;
- (b) The ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian party;
- (c) 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;
- (d) Valuation of the shares of the foreign company shall be
 - (i) as per the recommendations of the Investment Banker if the shares are not listed on any recognized stock exchange; or
 - (ii) 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.

The Indian Party is required to report such acquisition in form ODI to the AD Bank for report to the Reserve Bank within a

period of 30 days from the date of the transaction.

Note: *Investments in Nepal are permitted only in Indian rupees. Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. All dues receivable on investments 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. **The automatic route facility is not available for investment in Pakistan.***

B.2 Method of Funding

Investment 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 (d) above);
- iv) utilisation of 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 there under from time to time by the Central Government
- vi) balances held in EEFC account of the Indian party; and
- vii) utilisation of proceeds of foreign currency funds raised through ADR / GDR issues

In respect of (vi) and (vii) above, the ceiling of 300/200 per cent (as applicable), of net worth will not apply. However, in respect of investments in the financial sector, they will be subject to compliance of Regulation 7 of the Notification *ibid*, irrespective of the method of funding.

B.3 Capitalisation of exports and other dues

- a) Indian parties are also permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other entitlements due from the foreign entity for supplying technical know-how, consultancy, managerial and other services within the ceilings applicable. Export proceeds remaining unrealised beyond a period of six months from the

date of export will require the prior approval of the Reserve Bank before capitalisation.

- b) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software startup company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank.

**B. 4. Investments
in Financial
Services Sector**

In terms of Regulation 7 of the Notification, an Indian party seeking to make investment in an entity engaged in the financial sector should also fulfill the following additional conditions:

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

A step down subsidiary of JV / WOS investing in a financial services sector is also required to comply with the above conditions.

Regulated entities in the financial sector making investments in any activity overseas are required to comply with the above guidelines. It is clarified that unregulated entities in the financial services sector in India may invest in non financial sector activities subject to compliance with the provisions of Regulation 6 of the Notification. It is further clarified that 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 the Forward Markets Commission.

**B. 5 Investment in
Equity of
Companies
Registered
Overseas / Rated
Debt Instruments**

(i) Corporates

Listed Indian companies are permitted to invest abroad in companies, (a) listed on a recognized stock exchange and (b) which has the share holding of at least 10 per cent in an Indian company listed on a recognized stock exchange in India (as on 1st January of the year of the investment). They are also permitted to invest in rated bonds / fixed income securities of such companies. Such investments shall not exceed 35 per cent of the Indian company's net worth as on the date of the latest audited balance sheet.

(ii) Individuals

Resident individuals are permitted to invest in equity and in rated bonds / fixed income securities of overseas companies as permitted in terms of the limits and conditions specified under the Liberalised Remittance Scheme.

(iii) Investment by Mutual Funds

Mutual Funds are permitted to invest in ADRs / GDRs of the Indian and foreign companies, rated debt instruments, equity of listed overseas companies, ETFs and overseas mutual funds that make nominal investments (say, to the extent of 10 per cent of net asset value) in unlisted overseas securities, within an overall cap USD 4 billion. Domestic Venture Capital 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 desirous of availing of this facility may approach SEBI for necessary permission.

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

**B.6 Approval of
the Reserve Bank**

Prior approval of the Reserve Bank would be required in all other cases of direct investment abroad. For this purpose, application together with necessary documents should be made in Form ODI

submitted through their Authorised Dealer.

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

B.7 Overseas Investments by Proprietorship Concerns

With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietorship concerns and unregistered partnership firms are allowed to set up a JV / WOS outside India with prior approval of the Reserve Bank subject to satisfying certain eligibility criteria. 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 3rd Floor, Fort, Mumbai 400 001, through the AD Banks. AD Banks may forward such investment proposals, with their comments and recommendations, to the Reserve Bank for consideration.

Investments by established proprietorship or unregistered partnership exporter firms will be subject to the following criteria:

- i) The Partnership / Proprietorship firm is a DGFT recognized Star Export House (export exceeding Rs.15 crore) per annum.
- ii) The AD 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 realization of preceding three financial 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 financial years export realization or 200 per cent of the net owned funds of the firm, whichever is lower.

B. 8 Post investment changes/additional investment 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 in the case of financial services sector companies) subject to the Indian party reporting to the AD Bank for onward reporting to the Reserve Bank, the details of such decisions taken by the JV / WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV / WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report (APR—Part III of ODI) required to be forwarded annually to the AD Bank.

B.9 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 Bank in accordance with the provisions of Regulation 14 of the Notification.

B.10 Obligations of Indian Entity

An Indian party which has made direct investment abroad is under obligation to (a) receive share certificate or any other document as an evidence of investment, (b) repatriate to India the dues receivable from foreign entity and (c) submit the documents / Annual Performance Report to the Reserve Bank, in accordance with the provisions specified in Regulation 15 of the Notification.

B.11 Transfer by way of sale of shares of a JV / WOS

Indian parties may also disinvest without prior approval of the Reserve Bank, in the under noted categories:

- i) in case 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 net worth 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 entity is required to submit details of the disinvestment through its designated Authorised Dealer bank within 30 days from the date of investment. An Indian party, which does not satisfy the conditions laid down, shall have to apply to the Reserve Bank for prior permission.

B.12 Pledge of Shares

An Indian party may pledge the shares of JV / WOS to an AD Bank or a public financial institution in India for availing of any credit facility for itself or for the JV / WOS abroad in terms of Regulation 18 of the Notification. Indian Parties may also transfer by way of pledge, the shares held in overseas JV/WOS, to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian Parties remain within the limit stipulated by Reserve Bank for overseas investments, from time to time.

B.13 Hedging of Overseas Direct Investments

Resident entities having overseas direct investments are permitted to hedge the exchange risk arising out of such investments. AD 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. Cancellation of such forward contracts may be permitted by AD – Category I banks and 50% of such cancelled contracts may be allowed to be rebooked.

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

SECTION C - Other Investments in Foreign Securities

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

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; or
- b) to acquire shares under Cashless Employees Stock Option Scheme issued by a company outside India, provided it does not involve any remittance from India; or
- 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), is not less than 51 per cent. AD 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 company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees / directors are being offered shares, not less than 51 per cent of its equity, (ii) the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and (iii) An Annual Return (Annex A, Part II, item 11) is submitted by the

Indian company to the Reserve Bank through the AD Bank giving details of remittances / beneficiaries /etc.

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.

- e) 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 Bank giving details of remittances / beneficiaries, etc.
- f) 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 Transfer 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 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 provided it does not exceed 1 per cent of the paid up capital of the overseas company and the consideration for the acquisition does not exceed USD 20,000/- in a calendar year;
- b) 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;
- c) 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 USD 10,000 or its equivalent per employee in a block of five calendar years; 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;
- d) purchase of foreign securities under ADR / GDR linked stock option schemes by resident employees of Indian companies in the knowledge based sectors, including working directors provided purchase consideration does not exceed USD 50,000 or its equivalent in a block of five calendar years.

PART - II

Operational Instructions to Authorised Dealer Banks

Designated branches

AD Banks are required to designate select branches at different centres to undertake foreign exchange transactions in connection with overseas direct investment under Regulation 6 of the Notification. An eligible Indian party making investment in a Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India, is required to route all its transactions relating to the investment through only one branch of an AD Bank designated by it. All communications from the Indian parties, to the Reserve Bank, relating to the investment outside India should also be routed through the same branch of the AD Bank that has been designated by the Indian investor for the investment. The designated AD Bank while forwarding the request from their customers to the Reserve Bank, shall also forward its comments / recommendations on the request. However, the Indian party may designate different AD Banks / branches of AD Banks for different JV / WOS outside India promoted by them.

Investments under Regulation 6 of Notification No. FEMA 120/2004-RB dated July 7, 2004

AD Banks may allow investments up to the permissible limits on receipt of application in form ODI together with form A-2, duly filled in, from the Indian party / parties making investments 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 in financial services should, however, comply with additional norms stipulated at Regulation 7 *ibid*. While forwarding the report of remittance in respect of investment in Financial Services Sector, AD Banks may certify that approval from the concerned Regulatory Authorities in India and abroad have been obtained. Before allowing the remittance AD banks are required to ensure that the necessary documents, as prescribed in form ODI, have been submitted.

**General
procedural
instructions**

As per the revised reporting system, all the earlier forms have been subsumed into one form viz. ODI, comprising of four parts:

Part I - which includes the following:

Section A – Details of the Indian Party

Section B – Details of Investment in New Project

Section C - Details of Investment in Existing Project

Section D – Funding for JV / WOS

Section E – Declaration by the Indian Party

Section F - Certificate by the Statutory Auditors of the Indian Party

Part II - Reporting of Remittances

Part III - Annual Performance Report (APR)

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

A new system has also been introduced for reporting Closure / Disinvestment / Winding up / Voluntary Liquidation of the overseas JV / WOS under general permission (Part IV of form ODI). Reporting in the revised form ODI has **come into effect from June 1, 2007**. The form can also be downloaded from Reserve Bank's website www.rbi.org.in.

It is reiterated that the revised form is only a rationalisation of the reporting procedure and there is no change or dilution in the existing eligibility criteria / documentation / limits. Eventually, these reports will be received on line by Reserve Bank.

Accordingly, AD Category - I banks may take action as under:
a) In cases of Automatic Route – Parts I and II of form ODI should be submitted to The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Amar Bldg. 3rd floor, Sir P. M. Road, Fort, Mumbai 400001.

b) In case of Approval Route – Part I of form ODI, along with the supporting documents, is required to be submitted after scrutiny and with specific recommendations by the designated AD

Category - I bank, at the address mentioned above. In case the proposal is approved, Part I will be returned by the Reserve Bank to the AD Category - I bank. After effecting the remittance, the AD Category – I bank should resubmit the same to the Reserve Bank along with Part II of form ODI.

c) In case of disinvestment / closure / winding up / voluntary liquidation under the Automatic Route, in terms of A. P. (Dir Series) Circular No. 29 dated March 27, 2006, a report should be submitted by the designated AD Category - I bank, in Part IV of form ODI. 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.

In cases where the investment 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 bank. AD banks should forward to the Reserve Bank a consolidated form ODI indicating details of each party. The same procedure should be followed where the investment is made out of the proceeds of ADR / GDR issues of an Indian party in terms of Regulation 6(5) of the Notification. The Reserve Bank would allot only one Unique Identification number to the overseas project.

(ii) Clause (v) of sub-regulation (2) of Regulation 6 provides that all transactions relating to investment in a JV / WOS are to be routed through only one designated branch of an AD bank designated by the Indian party. For proper follow-up, the AD bank is required to maintain party-wise record in respect of each JV / WOS separately.

(iii) AD 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.

Investments under Regulation 11 of Notification No. FEMA 120/2004-RB dated July 7, 2004

In terms of Regulation 11, Indian parties are permitted to make direct investment 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 bank. Such investments by way of capitalisation are also to be reckoned while computing the cap of 300 per cent (200 per cent in case of registered partnership firms) prescribed in terms of Regulation 6. Further, in cases where the export proceeds are being capitalised in accordance with the provisions of Regulation 11, the AD 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 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.

Allotment of Unique Identification Number

On receipt of the form ODI from the AD Bank, the Reserve Bank will allot a unique identification number to each JV or WOS abroad, which is required to be quoted in all correspondences with the Reserve Bank. AD Banks may allow additional investment in an existing overseas concern set up by an Indian party, in terms of Regulation 6 only after the Reserve Bank has allotted necessary identification number to the overseas project.

Investment by way of share swap

In the case of investment by way of share swap, AD 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 laid-down procedure and that the overseas company's shares

are issued / transferred in the name of the Indian investing company. AD 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.

Investments under Regulation 9 of Notification No. FEMA 120/2004-RB dated July 7, 2004

In terms of Regulation 9, investment in JV / WOS in certain cases requires prior approval of the Reserve Bank. AD 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, 3rd floor, Mumbai 400 001 in form OD I.

Purchase of foreign securities under ADR / GDR linked Stock Option Scheme

AD banks may make remittances upto USD 50,000 or its equivalent in a block of five calendar years, without the prior approval of the Reserve Bank, for purchase of foreign securities under the ADR / GDR linked ESOPs, after satisfying that the issuing company has followed the relevant guidelines of SEBI / Government.

Remittance towards Earnest Money Deposit or Issue of Bid Bond Guarantee

(i) In terms of Regulation 14 of the Notification, AD banks may, on being approached by an Indian party which is eligible for investment under Regulation 6, 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, 3rd floor, Mumbai 400 001 in form ODI. AD 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 3rd May 2000).

(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, 3rd 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.

Transfer by way of sale of shares of a JV / WOS outside India

The Indian party should report details of the disinvestment through the AD bank within 30 days of disinvestment in Part IV of the Form ODI as indicated in para 2 (c) 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.

Annex – A
ESOP Reporting
Statement of shares allotted to Indian employees / directors under ESOP
Schemes for the year ended March _____
(to be submitted on the letterhead of the company through their AD bank)

We, M/s....., (Indian company) hereby declare that :

a) M/s (foreign company) has issued shares to our employees under ESOP Scheme during the year as under

(i) No. of shares allotted :

(ii) Number of employees/directors who accepted shares :

(iii) Amount remitted :

b) effective holding of the foreign company M/s in the Indian company, as on March 31, _____, is not less than 51% and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official :

Name :

Designation :

Date :

To,

The Chief General Manager
Reserve Bank of India
Foreign Exchange Department,
Overseas Investment Division,
Central Office, Amar Bldg., 3rd Floor,
Sir. P.M. Road, Fort, Mumbai 400 001.

Annex –B

**Statement of shares repurchased by the issuing company from
Indian employees / directors under ESOP Schemes
for the year ended March _____**

(to be submitted on the letterhead of the company through their AD bank)

We, M/s (Indian company) hereby declare that :

a) M/s (foreign company) has repurchased shares issued to our employees under ESOP Scheme during the year,

(i) Number of shares allotted :

(ii) Number of employees/directors who sold shares :

(iii) Amount of remittance (inward) :

b) effective holding of the foreign company M/s in the Indian company, as on March 31, _____, is not less than 51% and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official :

Name :

Designation :

Date :

To,

The Chief General Manager
Reserve Bank of India
Foreign Exchange Department,
Overseas Investment Division,
Central Office, Amar Bldg., 3rd Floor,
Sir. P.M. Road, Fort,
Mumbai 400 001.

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, please furnish the details 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

For Reserve Bank use only

Unique Identification Number

(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

Indicate 13 digit Unique Identification Number issued by Reserve Bank												

(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		
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 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.

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: 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, (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 *.

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

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		foreign currency**:	
(a) From EEFC A/c.			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
(b) By Market Purchases			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
(c) From the ADR/GDR funds			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
(d) By Swap of Shares			
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:

(Signature of authorised official of the bank)

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

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PART III

ANNUAL PERFORMANCE REPORT (APR)

(To be submitted certified by 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 :

--	--	--	--	--	--	--	--	--	--	--	--	--

(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: _____

Date : _____

(Signature of authorised official)

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

--	--	--	--	--	--	--	--	--	--	--	--	--

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 together with the audited accounts 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:

(Signature of authorised official of the bank)

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



**List of Circulars/Notifications consolidated in the Master Circular
Direct Investment in Joint Ventures/ Wholly Owned Subsidiaries Abroad**

Notifications issued

Sl. No.	Notification No.	Date
1.	FEMA.120/RB-2004	July 07, 2004
2.	FEMA.132/RB-2005	March 31, 2005
3.	FEMA.135/RB-2005	May 17, 2005
4.	FEMA.139/RB-2005	August 11, 2005
5.	FEMA.150/RB-2006	August 21, 2006

Sl. No.	Circular No.	Date
1.	AP (DIR Series) Circular No.14	October 01, 2004
2.	AP (DIR Series) Circular No.32	February 09, 2005
3.	AP (DIR Series) Circular No.42	May 12, 2005
4..	AP (DIR Series) Circular No.9	August 29, 2005
5.	AP (DIR Series) Circular No.29	March 27, 2006
6.	AP (DIR Series) Circular No.30	April 05, 2006
7	AP (DIR Series) Circular No. 3	July 03, 2006
8	AP (DIR Series) Circular No.6	September 06, 2006
9	AP (DIR Series) Circular No. 11	November 16, 2006
10.	AP (DIR Series) Circular No. 41	April 20, 2007
11.	AP (DIR Series) Circular No. 49	April 30, 2007
12.	AP (DIR Series) Circular No. 50	May 04, 2007
13.	AP (DIR Series) Circular No.53	May 08, 2007
14.	AP (DIR Series) Circular No.68	June 01, 2007
15.	AP (DIR Series) Circular No. 72	June 08, 2007
16.	AP (DIR Series) Circular No.75	June 14, 2007
17	AP (DIR Series) Circular No.76	June 19, 2007