

**Indian Direct Investment in JVs/WOSs Abroad**  
**A. P (DIR Series) Circular No. 41 (Dec 06, 2003)**

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

A. P (DIR Series) Circular No. 41

December 6, 2003

To  
All Authorised Dealers in Foreign Exchange

Madam/ Sirs,

**Indian Direct Investment in JVs/WOSs Abroad**

Attention of Authorised Dealers is invited to the following Notifications on Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000 amending the provisions of the original Notification No. FEMA.19/RB-2000 dated May 3, 2000.

1. FEMA.40/RB-2000 dated March 2, 2001
2. FEMA.48/2002-RB dated January 1, 2002
3. FEMA.49/2002-RB dated January 19, 2002
4. FEMA.53/2002-RB dated March 1, 2002
5. FEMA.55/2002-RB dated March 5, 2002

2. With a view to simplifying and liberalising the present policy of overseas direct investment, the existing guidelines have been modified as under :

**2.1 Investment by Firms in India**

It has been decided to permit firms in India registered under the Indian Partnership Act, 1932 and having a good track record, to make direct investments outside India in an entity engaged in any bonafide business activity under the Automatic Route upto 100% of its net worth or USD 10 mn. or its equivalent, whichever is less, in one financial year. Firms intending to undertake financial services activities would, however, have to satisfy the additional requirements prescribed in Regulation 7 of Notification *ibid*.

**2.2 Investment through Special Purpose Vehicle (SPV) under the Automatic Route**

Attention of Authorised Dealers is also invited to AP (Dir Series) Circular No.23 dated February 19, 2002, in terms of which investments in JV/WOS abroad through the medium of a Special Purpose Vehicle (SPV) has been prohibited under the Automatic Route. On a review, it has been decided to cover such investments also under the Automatic Route in terms of Regulation 6 of Notification No. FEMA.19/ RB-2000 dated May 3, 2000 as amended subject to the following:

In terms of clause (v) of Sub-regulation (2) of Regulation 6, Indian parties included in the Reserve Bank's Caution List or under investigation by the Enforcement Directorate are not eligible to make overseas investments under the Automatic Route. It is clarified that this

restriction is also applicable to Indian parties which are defaulters to the banking system in India and whose names appear in the Defaulters' List published/circulated by the Reserve Bank. Authorised Dealers may, while allowing remittances under the Automatic Route, satisfy themselves that the Indian party proposing to make the investment is not included in the Defaulters' List. Indian parties whose names appear in the Defaulters' List may be advised to apply to the Reserve Bank for prior approval for the investment.

### 2.3 Investment by way of share swap

At present, all proposals for investment by way of swap of shares require prior approval of the Reserve Bank. It has now been decided to permit such investments also under the Auto Route as per the conditions specified in Regulation 6 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended. However, Authorised Dealers may note that all share swap transactions require prior approval of the Foreign Investment Promotion Board (FIPB) for the inward leg of investment.

Such swap transactions would have to be in accordance with the valuation norms prescribed vide Sub-Regulation 7(b) of Regulation 6 of Notification *ibid*, i.e., by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker/Merchant Banker outside India registered with the appropriate Regulatory Authority in the host country.

Authorised Dealers may accordingly obtain and consider the investment proposals from the Indian parties in respect of cases under 2.1, 2.2 and 2.3 above in Form ODA alongwith the prescribed enclosures and immediately after making the remittance, forward the report of remittance / transaction in form ODR to the Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Mumbai 400 001.

In the case of investment by way of share swap, Authorised Dealers are additionally required to submit to 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. Authorised Dealers may also obtain from the applicants an undertaking 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.

### 2.4 Direct Investment Abroad in Financial Services Sector Activities

At present only Indian companies engaged in financial sector activities in India and complying with additional norms prescribed in Regulation 7 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended are permitted to invest abroad in the financial sector. In partial modification of the said Regulation, the stipulation of the minimum net worth of Rs.15 crores prescribed therein has been dispensed with. However, henceforth any Indian entity engaged in the financial services sector and wishing to undertake financial sector activities abroad should also obtain approval for doing so **from the concerned Regulatory Authorities both in India and abroad** before venturing into such activity. All other conditions stipulated in the Regulation 7 remain unchanged. While forwarding the report of remittance in respect of the above category in form ODR to the Reserve Bank, Authorised Dealers may forward details of such regulatory approvals also.

3. **Diversification of activity/step down investments by JV/WOS established by an Indian party**

As Authorised Dealers are aware, in terms of Regulation 13 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended, an Indian party, which holds 50% or more of the paid up capital of the overseas entity, has to apply to the Reserve Bank for permission to

- (a) diversify activity
- (b) set up a step down subsidiary
- (c) alter the shareholding pattern in the overseas entity, if it does not satisfy the conditions stipulated therein.

These restrictions were not applicable in case the Indian party is a minority shareholder or the investment has been made entirely out of balances held in EEFC account or through ADR/GDR issue. It has now been decided to remove the existing restrictions and provide a level playing field for all.

Authorised Dealers may accordingly consider the proposals for diversifications /step down investments by the Indian parties having JV/WOS abroad and allow remittance within the limits applicable for investments under the automatic route.

The Indian Party shall report to the Reserve Bank the details of decisions taken by the JV/WOS within 30 days of the approval of those decisions by the share holders/promoters/directors of the JV/WOS in terms of the local laws of the host country and include the same in the Annual Performance Reports (APR) required to be forwarded annually to the Reserve Bank.

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

Hitherto, in terms of Regulation 16 of Notification No. FEMA.19/RB-2000 dated May 3, 2000 as amended, prior permission of Reserve Bank was required for transfer by way of sale of shares of a JV/WOS. It has now been decided to permit Indian party to transfer by way of sale to another Indian party, which complies with the provisions of Regulation 6 of the said Notification or to a person resident outside India, any share or security held by it in a joint venture or wholly owned subsidiary outside India subject to the conditions and reporting requirements indicated in the **Annexure** to this circular.

An Indian party, which does not satisfy the eligibility norms and proposals and seek “write-off” of the investment, shall have to apply to the Reserve Bank for prior permission.

Authorised Dealers may accordingly consider proposals for disinvestment which fulfill the said norms.

5. Necessary amendments to the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000 are being notified separately.

6. Authorised Dealers may bring the contents of this circular to the notice of their constituents concerned.

7. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999).

Yours faithfully,

**Grace Koshie**  
**Chief General Manager**

**Annexure**

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

I. Terms and conditions governing transfer by way of sale of shares of a JV /WOS outside India :

- (i) the sale is to be effected through a stock exchange where the shares of the overseas joint venture or wholly owned subsidiary are listed;
- (ii) if the shares are not listed on the stock exchange, and the disinvestment is by private arrangement, the sale price of the share is not less than the value certified by a Chartered Accountant/Certified Public Accountant/Category I Merchant Banker registered with SEBI;
- (iii) The Indian promoter 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 ;
- (iv) 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;
- (v) The Indian party is not under investigation by CBI/ED/ SEBI/IRDA or any other regulatory authority in India;

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.

II. Authorised Dealers may obtain following documents in order to process an application for disinvestment from an Indian party having JV/ WOS abroad.

- (i) Latest Annual Performance Report on the working of the JV/WOS including financial statements
- (ii) Certified true copy of the Board Resolution approving the disinvestment and indicating the amount of disinvestment approved
- (iii) Letter of offer from the purchaser
- (iv) Consent letter from the partners in case of disinvestment of share in a JV abroad
- (v) Valuation certificate

- (vi) Certificate from a Chartered Accountant certifying that no dues are outstanding to the Indian party or indicating the details of dues, if any, from the JV/WOS to the Indian party

III. Report regarding disinvestment to the Regional Office of the Reserve Bank, inter alia, should indicate the following:

- (i) Identification No.
- (ii) Name of Indian company
- (iii) Name of the country and amount of investment approved
- (iv) Amount of disinvestment
- (v) Date of repatriation of the disinvestment proceeds
- (vi) Certificate that all documents as above have been obtained