

**Derecognition of Overseas Corporate Bodies (OCBs)
A.P (DIR Series) Circular No. 44 (Dec 8, 2003)**

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

A.P (DIR Series) Circular No. 44

December 8, 2003

To
All Authorised Dealers in Foreign Exchange

Madam/Sirs

Derecognition of Overseas Corporate Bodies (OCBs)

Attention of Authorised Dealers is invited to A.P.(DIR Series) Circular No. 14 dated September 16, 2003 conveying the decision to derecognise the Overseas Corporate Bodies (OCBs) in India as an eligible 'class of investor' under various routes/schemes available under extant Foreign Exchange Management Regulations.

2. In this connection, in exercise of the powers conferred under Section 6 read with Section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank has issued Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003 which are notified vide Notification No. FEMA 101/2003-RB dated October 3, 2003. The facilities for OCBs under various Foreign Exchange Management Regulations thus stand withdrawn. A copy of the said Notification is enclosed.

3. In order to address various operational issues associated with the exit arrangements for OCBs, FAQs to illustratively deal with these issues has been placed on RBI web-site for the information of all concerned (copy enclosed).

4. Authorised Dealers may bring the contents of this circular to the notice of their constituents and customers concerned.

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

Yours faithfully

**Grace Koshie
Chief General Manager**

**Exchange Control Department
Foreign Investment Division**

Overseas Corporate Bodies (OCBs) have been derecognised as a class of investor entity in India with effect from September 16, 2003. In this connection, Reserve Bank has issued directions to the Authorised Dealers in terms of A.P (DIR Series) Circular No. 14 dated 16th September 2003 and has made Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, which have been notified vide Notification No. FEMA 101/2003-RB dated October 3, 2003.

In order to address various operational issues associated with the transitional arrangements for OCBs, for the information of all concerned, FAQ has been prepared on the following topics:

- I. **General**
- II. **Investment in shares/convertible debentures and other securities**
- III. **Portfolio Investment Scheme**
- IV. **Deposits**
- V. **Borrowing or Lending in foreign currency or in Rupees**
- VI. **Hedging of certain transactions**

While these FAQs seek to cover the broad spectrum of operational issues, in case there are other issues to be resolved a reference may be made to the Chief General Manager, Foreign Investment Division, Exchange Control Department Reserve Bank of India Central Office Mumbai.

I. General

Q.1. What is meant by OCB?

A.1. Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least sixty per cent by Non-Resident Indians and includes overseas trust in which not less than sixty percent beneficial interest is held by Non-resident Indians directly or indirectly but irrevocably, which was in existence as on September 16, 2003 and was eligible to undertake transactions pursuant to the general permission granted under Foreign Exchange Management Regulations.

Q.2 Which OCBs are governed by the regulations notified under Notification No. FEMA 101/2003-RB dated October 3, 2003?

A.2. These regulations are applicable to those OCBs who as on September 16, 2003 were availing of facilities under various Foreign Exchange Management Regulations to invest in India under various schemes/routes. Illustratively, an OCB could have -

- a) invested in shares/convertible debentures of an Indian company under Foreign Direct Investment Scheme through Government Route/Automatic Route of RBI on repatriation and non-repatriation basis, or
- b) invested in shares/convertible debentures of an Indian company on repatriation and non-repatriation basis under Portfolio Investment Scheme, or
- c) invested in securities other than shares and convertible debentures of an Indian company on repatriation and non-repatriation basis, or

d) held Savings/Current/Recurring/Fixed Deposit account under NRO Account Scheme, NRE Scheme, FCNR(B) Account Scheme with authorised dealer/authorised bank, or

e) held in deposits with a company incorporated in India (including a non-banking finance company registered with RBI), or a proprietorship concern, or a partnership firm on non-repatriation basis, or

f) invested in Non Convertible Debentures (NCDs) on repatriation and non-repatriation basis of a company incorporated in India, or

g) lent in foreign currency to a person resident in India.

Q.3. A non-resident incorporated entity having major holdings by NRIs, as on September 16, 2003 did not avail of any of the facilities as indicated at (a) to (g) in answer (2) above. Can such an entity invest in Indian companies in terms of Regulation 5(1) of RBI Notification No.20/2000-RB dated May 3, 2000 under FDI Scheme through Government Route/Automatic Route of RBI?

A.3. Yes. Such non-resident incorporated entity is treated like any other foreign incorporated company. An eligible non-resident incorporated entity having major holdings by NRIs, which as on September 16, 2003 did not avail of any of the facilities as indicated at (a) to (g) in answer (2) above, may invest in Indian companies in terms of Regulation 5(1) of RBI Notification No.20/2000-RB dated May 3, 2000 under FDI Scheme through Government Route / Automatic Route of RBI.

Q. 4. Can unincorporated entities/ventures such as trusts, Mutual funds etc invest under FDI Scheme after September 16, 2003?

A. 4. No. Only those entities which are incorporated or registered under the relevant statutes, laws of the host country would be eligible for investment under FDI Scheme after September 16, 2003.

II. Investment in shares/convertible debentures and other securities

(A) Issue of shares/convertible debentures

Q.5 Are OCBs permitted to make fresh investments in Indian companies after September 16, 2003?

A.5. OCBs who as on September 16, 2003 availed of any of the facilities as indicated at (a) to (g) in answer no. 2 above are not permitted to make fresh investments in terms of Notification No. FEMA 101/2003-RB dated October 3, 2003. However, such of those entities which are incorporated and are not under adverse notice of RBI will be considered, for undertaking fresh investments, as incorporated non-resident entities in terms of Regulation 5(1) of RBI Notification No.20/2000-RB dated May 3, 2000 under FDI Scheme with the prior approval of Government if the investment is through Government Route and with the prior approval of Reserve Bank if the investment is through Automatic Route on case by case basis.

Q. 6. Under FDI Scheme (Automatic Route) if the advance remittance towards allotment of shares has been received by an Indian company from the OCBs prior to 16.9.2003 can the Indian company allot shares/convertible debentures to OCBs subsequent to 16.9.2003?

A. 6. Yes; as the amount has been received in the country prior to 16.9.2003 OCBs may be allotted the shares/convertible debentures but the matter should be reported to the RBI by the Indian company through a separate report. On a scrutiny if the RBI were to find that the entity is ineligible from the FDI angle or is in the adverse notice of RBI or SEBI or any other regulator, suitable action could be initiated by the RBI.

Q. 7. If the balance amount of the committed investment is received by the Indian company from the OCBs after 16.9.2003 can the shares be allotted?

A. 7. Yes and the matter reported to the RBI by the Indian company. On a scrutiny if the RBI were to find that the entity is ineligible from the FDI angle or is in the adverse notice of RBI or SEBI or any other regulator, suitable action could be initiated by the RBI.

Q. 8. If the percentage of share holding by the OCB in an Indian company has been approved by FIPB/SIA (Govt Route) prior to 16.9.2003 can the Indian company receive the remittance towards allotment of shares from the OCB after 16.9.2003?

A. 8. Yes, provided the Indian company obtains the FIPB/SIA specific approval for receiving the remittance from the OCB towards allotment of shares.

(B) Transfer of shares

Q. 9. Can the shares be transferred to OCBs against the
(i) permission granted by FIPB/SIA prior to 16.9.2003;
(ii) in-principle approval granted by RBI prior to 16.9.2003.

A. 9. Yes, with the specific approval of FIPB/SIA followed by RBI approval.

Q. 10. Can the shares held by an OCB, other than under Portfolio Investment Scheme be transferred by way of sale?

A. 10. OCB may transfer the shares held by it by way of sale to NRIs in terms of Regulation 5(2) (b)(i) of RBI Notification No. FEMA 101/2003-RB dated October 3, 2003. OCB may seek prior permission of FIPB/SIA and RBI for transfer of shares held by it by way of sale to a person resident outside India, other than a NRI. OCB may transfer the shares held by it by way of sale to a Resident in terms of Regulation 10 of RBI Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.

Q. 11. Can one OCB transfer shares by way of sale to another OCB after September 16, 2003?

A. 11. No. OCB cannot transfer shares by way of sale to another OCB.

Q. 12. Can OCB holding ADRs/ GDRs convert them into underlying shares?

A. 12. Yes. On conversion of the existing holdings of ADR/GDR into underlying shares, the same may be treated as continuance of OCB's existing right to hold the shares. (RBI has already prohibited OCBs from accessing the Two-way fungibility route).

Q. 13. Whether there can be a fresh issue of ADRs/GDRs to OCB?

A. 13. No fresh issue of ADRs/GDRs to OCB is permitted as they are derecognised as a class of investor.

(C) Shares issued on Rights basis prior to September 16, 2003

Q. 14. Can OCB renounce the shares offered on rights basis prior to September 16, 2003 in favour of a person resident in India?

A. 14. Yes.

Q. 15. Can existing shareholders including OCBs renounce the shares offered on rights basis prior to September 16, 2003 in favour of a person resident outside India who is otherwise eligible to invest an Indian company under the FDI policy?

A. 15. Yes. However, if the renounee is an entity reckoned as OCB (refer to Answer No.2) the Indian company may seek specific approval of the FIPB/SIA in case of investments under the Govt Route or specific approval of RBI in case of investments under Automatic route.

(D) Bonus issue

Q. 16. Whether Bonus issues to OCB after September 16, 2003 is prohibited?

A. 16. No. Bonus shares are deemed as deferred dividend and since OCBs are permitted to hold their existing investments; bonus shares accruing to them can be allotted, in terms of Regulation 6A of Notification No. FEMA20/2000-RB dated May 3, 2000, as amended from time to time.

(E) Securities other than shares/convertible debentures issued by an Indian company

Q. 17. Can OCBs continue to hold Government dated securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India or National Plan/Savings Certificates both on repatriation and non-repatriation basis?

A. 17. Yes. OCBs can continue to hold Government dated securities, treasury bills, units of domestic mutual funds, units of Money Market Mutual Funds in India or National Plan/Savings Certificates both on repatriation and non-repatriation basis till they are sold/redeemed. On redemption of the proceeds, the amounts may be repatriated abroad if the investments were held on repatriation basis while in case of investments held on non-repatriation basis, the amount may be credited to NRO current account.

(F) Mergers/de-mergers

Q. 18. Is issue of shares to OCBS consequent to mergers/de-mergers after September 16, 2003 prohibited?

A. 18. A merger or de-merger or restructuring proposal which impacts on the capital structure of a company could be on account of (a) merger of two companies, (b) de-merger of an existing company and (c) restructuring of the capital of company under rehabilitation scheme approved by BIFR/Court/under CDR mechanism.

These cases may lead to acquisition of fresh shares by the existing OCBs. In case of (a) and (b) there may not be fresh inward remittance and therefore such acquisition may be treated as existing holding which OCBs may continue to hold. In case of (c) there may be fresh inflows and therefore OCBs may seek approval of Govt./RBI (for investment as the non-resident company).

Q. 19. Under rehabilitation scheme approved by BIFR/Court/under CDR mechanism (i) if the advance remittance, with the approval of RBI, has been received in full by an Indian company from the OCBs prior to 16.9.2003 can the Indian company allot shares/convertible debentures to OCBs after 16.9.2003 and (ii) if the advance remittance, with the approval of RBI, has been received partly by an Indian company from the OCBs prior to 16.9.2003 can the Indian company receive the balance amount after 16.9.2003 and allot shares/convertible debentures to OCBs?

A. 19. Since the amount has already been received in full/partly in the country prior to 16.9.2003 OCBs may be allotted the shares/convertible debentures, subject to report to RBI.

III. Portfolio Investment Scheme (PIS)

Q. 20. What is the status of shares held by an OCB under PIS?

A. 20. An OCB may continue to hold the shares purchased under PIS till such time they are sold on a recognised stock exchange.

IV. Deposits

Q. 21. Whether banks should follow due process for closing the accounts i.e. issue of notice for closure of accounts etc?

A. 21. Due process should be followed in closing the accounts expeditiously. Some amount of time for clearing of cheques in transit especially for statutory payments would be required. However, no fresh transaction shall be permitted.

Q. 22. What is the status of existing NRE Term Deposit/Recurring Deposit /FCNR(B) /NRO Term Deposit accounts i.e. can they be held till maturity?

A. 22. Yes. The existing NRE Term Deposit/Recurring Deposit /FCNR(B) deposit accounts can be held till maturity. On maturity, the maturity proceeds shall be repatriated only to the OCB concerned. The existing NRO term deposit can be held till maturity and on maturity, the maturity proceeds should be transferred to NRO Current Account.

Q. 23. What will be the status of existing NRO (Savings) Accounts of OCBs?

A. 23. The existing NRO (Savings) Account of OCBs shall be converted into NRO (Current) Account.

Q. 24. Can ADs open a fresh NRO (Current) account in the name of an OCB for unwinding their existing investments?

A. 24. No. However, ADs may with the specific prior permission of RBI open a new NRO (Current) Account for OCBs for specific purpose of unwinding of the existing investments.

Q.25. Can any loan or other facility granted against the security of a Recurring/Fixed Deposit Account held in the name of an OCB be renewed?

A.25. No. Any loan or any other facility granted against the security of a Recurring/Fixed Deposit Account held in the name of an OCB cannot be renewed and shall be closed by adjustment of the proceeds on maturity of the deposit. If the balance of the deposit proceeds is inadequate to adjust the loan outstanding, a fresh inward remittance /local credits will be required to close the same

Q.26. Can a deposit accepted on non-repatriation basis by an Indian company (including NBFC registered with RBI), or a proprietorship concern, or a partnership firm in India from an OCB be renewed?

A. 26. No. A deposit accepted on non-repatriation basis by an Indian company (including NBFC registered with RBI), or a proprietorship concern, or a partnership firm in India from an OCB shall not be renewed on becoming due, and no interest thereon shall accrue after it falls due for repayment.

V. Borrowing or lending in foreign currency or in Rupees

Q. 27. Can a person resident in India borrow from or lend to an OCB in foreign currency or in Rupees?

A.27. No person resident in India shall borrow from or lend to an OCB in foreign currency or in Rupees. Further, where any borrowing from or loan to an OCB, whether in foreign exchange or in Rupees made in accordance with Foreign Exchange Management Regulations as applicable was outstanding on September 16, 2003, such borrowing or loan shall not be renewed on becoming due, and no interest thereon shall accrue after it falls due for repayment.

VI. Hedging of certain transactions

Q. 28. Can an OCB enter into a forward contract with rupee as one of the currencies with an AD in India to hedge (i) the amount of dividend due to it on an existing investment in the form of shares of an Indian company, (ii) the balances held in an existing FCNR(B) account or NRE (Term Deposit) account and (iii) the amount of existing investment made under Portfolio Investment Scheme?

A. 28. An OCB may enter into a forward contract with rupee as one of the currencies with an AD in India to hedge (i) the amount of dividend due to it on an existing investment in the form of shares of an Indian company, (ii) the balances held in an existing FCNR(B) account

or NRE (Term Deposit) account, (iii) the amount of existing investment made under Portfolio Investment Scheme and (iv) the amount of investments made under Foreign Direct Investment Scheme since January 1, 1993.

**Foreign Exchange Management [Withdrawal of General Permission to
Overseas Corporate Bodies (OCBs)] Regulations, 2003**

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

Notification No. FEMA 101 /2003-RB

Dated October 3rd , 2003

**Foreign Exchange Management [Withdrawal of General Permission to
Overseas Corporate Bodies (OCBs)] Regulations, 2003**

In exercise of the powers conferred by clauses (b), (d), (e) and (f) of sub-section (3) of Section 6 read with Section 47 of the FEMA, 1999 (42 of 1999) and all other powers available to it in this behalf, the Reserve Bank of India makes the following Regulations :-

Short title and commencement

1. (1) These Regulations may be called Foreign Exchange Management (Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)) Regulations, 2003.
(2) They shall come into force from the date of their publication in the Official Gazette.
2. For the purpose of these Regulations -
 - (i) "Act" means the Foreign Exchange Management Act 1999;
 - (ii) "Account" means Savings, Current, Recurring, Fixed Deposit opened and maintained under Non-Resident (External) Account Scheme (NRE Account), Foreign Currency (Non-Resident) Account Banks Scheme (FCNR-B Account) or Non-Resident (Ordinary) Account Scheme (NRO Account);
 - (iii) "Deposit" includes deposit of money with a bank, company, proprietary concern, partnership firm, corporate body, trust or any other person;
 - (iv) "Existing account" means an account maintained on the date of commencement of these Regulations;
 - (v) "Existing investment" means an investment made pursuant to the general permission granted under the Foreign Exchange Management (Transfer and Issue of Security by a Person Resident outside India) Regulations, 2000 provided that
 - a) in case of Portfolio Investment Scheme, the investment was held as on November 29, 2001 and
 - b) in other cases, held on the date of commencement of these Regulations;
 - (vi) "Overseas Corporate Body (OCB) " means and includes an entity defined in Clause (xi) of Regulation 2 of the Foreign Exchange Management (Deposit) Regulations, 2000 and which was in existence on the date of commencement of these Regulations and immediately prior to such commencement was eligible to undertake transactions pursuant to the general permission granted under the Regulations;
 - (vii) " Regulations" means the Regulations made under the Act;
 - (viii) "Schedule" means Schedule to these Regulations.

Object and construction of these Regulations

3. These Regulations seek to withdraw the general permission to Overseas Corporate Bodies (OCBs) to undertake transactions in terms of such permission granted under the Regulations and shall be construed accordingly.

Overriding effect

4. Notwithstanding anything contained in any other Regulations, these Regulations shall prevail.

Withdrawal of general permission and unwinding of investments and transactions

5. On the commencement of these Regulations -

- (1)
 - a) no fresh account by whatever name called shall be opened or maintained in the name of an OCB.
 - b) the Regulations specified in column 1 of the Schedule shall be amended as mentioned in Column 2.
 - c) an existing NRE (Saving and Current) Account held or maintained in the name of an OCB shall be closed and balances repatriated forthwith;
 - d) an existing NRO (Saving) Account held or maintained in the name of an OCB shall be closed and balances transferred to non-interest bearing NRO (Current) Account. The disposal of balances in such NRO (Current) account shall require specific approval of the Reserve Bank except in the following cases:
 - i) all local payments in rupees;
 - ii) remittance outside India of current income in India of the account holder net of applicable taxes;
 - e) an existing NRE (Recurring/Fixed Deposit) Account or FCNR (B) Account held in the name of an OCB, may be continued till original maturity and on maturity the proceeds shall be repatriated forthwith;
 - f) an existing NRO (Recurring/Fixed) Account held or maintained in the name of an OCB may be continued till original maturity and on maturity the proceeds shall be credited to NRO (Current) Account;
 - g) no facility of any nature whatsoever shall be granted on the security of an account held in the name of an OCB;
 - h) any loan or other facility granted against the security of a Recurring/Fixed Deposit Account held in the name of an OCB, shall not be renewed and shall be closed by adjustment of the proceeds on maturity of the deposit;
- (2)
 - a) no investment in any security shall be made by an OCB;
 - b) an OCB may -
 - i) transfer an existing investment in the form of shares or convertible debentures held by it, by sale or gift to any non-resident Indian (NRI);

- ii) dispose of the existing investment in the form of shares held by it, by sale at a rate not exceeding the prevailing market rate through a registered stock broker on a recognised stock exchange in India;
 - c) an OCB shall not be eligible to purchase equity or preference shares or convertible debentures offered on right basis by an Indian company, and no Indian company shall offer equity or preference shares or convertible debentures on right basis to an OCB;
 - d) where any offer on right basis made to an OCB before the date of commencement of these Regulations, is existing on that date, the OCB may renounce it in favour of any person resident in ~~India~~ ~~India~~ or a person resident outside India who is eligible to invest in a security of an Indian company under the Regulations ~~outside India~~;
3. a) no person resident in India shall borrow from, or lend to, an OCB either in foreign exchange or in Rupees;
- b) where any borrowing from or loan to an OCB, whether in foreign exchange or in Rupees made in accordance with the Regulations as applicable, is outstanding on the date of commencement of these Regulations, such borrowing or loan shall not be renewed on becoming due, and no interest thereon shall accrue after it falls due for repayment;

Permission to hedge certain transactions :-

6. An OCB may enter into a forward contract with rupee as one of the currencies with an Authorised Dealer (AD) in India to hedge -

- (i) the amount of dividend due to it on an existing investment in the form of shares of an Indian company;
- (ii) the balances held in an existing Foreign Currency Non-Resident (FCNR) account or Non-resident External Rupee (NRE- Rupee) Term Deposit account;
- (iii) the amount of existing investment made under Portfolio Investment Scheme in accordance with the provisions of the Foreign Exchange Regulation Act, 1973 or under the notifications issued there under or made in accordance with the provisions of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, and in both cases ~~subject~~ to the terms and conditions specified in the proviso to ~~pa~~ paragraph 1 of Schedule II to The Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000, as amended from time to time. -

(Usha Thorat)
Executive Director

Schedule

Amendments to the existing provisions of the FEMA Regulations ;

1	2
Foreign Exchange Management (Borrowing or Lending in Foreign	In the Schedule, in paragraph 3, the word 'OCB' shall be deleted.

Exchange) Regulations, 2000	
Foreign Exchange Management (Borrowing or Lending in Rupees) Regulations, 2000	In Regulation 5, the words ‘or an overseas corporate body (OCB),’ ‘/Overseas Corporate Bodies(OCBs)’ shall be deleted.
Foreign Exchange Management (Deposit) Regulations, 2000	In Regulation 5 (1)(i) and (ii), in Regulation 8(2), in Schedule 1, in Schedule 2, in Schedule 7, the words ‘or an overseas corporate body’, ‘and Overseas Corporate Bodies (OCBs)’, ‘and OCBs’, ‘/OCBs’ shall be deleted
Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000	In Regulation 5(3)(ii) and (4), in Regulation 9(2)(ii), in item Nos 2 and 6 of Annexure ‘B’ to Schedule 1, in Schedule 3 (paragraph 3), in Schedule 4, in Schedule 5 the words ‘/OCBs’, ‘or an Overseas Corporate Body’, ‘and Overseas Corporate Body’, ‘or OCB’ shall be deleted.
Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000	In Schedule II, the words ‘or Overseas Corporate Body’ shall be deleted.