

Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000

Notification No.FEMA 19/RB -2000 dated 3rd May 2000

**RESERVE BANK OF INDIA
(EXCHANGE CONTROL DEPARTMENT)
CENTRAL OFFICE
MUMBAI 400 001**

In exercise of the powers conferred by clause (a) of sub-section (3) of section 6 and section 47 of the Foreign Exchange Management Act 1999, (42 of 1999), the Reserve Bank of India makes the following regulations relating to transfer or issue of any foreign security by a person resident in India, namely :

1. Short title and commencement

- i) These Regulations may be called the Foreign Exchange Management (Transfer or issue of any foreign security) Regulations, 2000.
- ii) They shall come in force on the 1st day of June , 2000.

2. Definitions

In these Regulations, unless the context otherwise requires:

- a) "Act" means Foreign Exchange Management Act, 1999, (42 of 1999);
- b) "authorised dealer" means a person authorised as an authorised dealer under sub section (1) of section 10 of the Act;
- c) "American Depository Receipt" (ADR) means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India;
- d) 'Core Activity' means activity carried on by an Indian entity which constitutes at least 50% of its average turnover in the previous accounting year;
- e) "Direct investment outside India" means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity, but does not include portfolio investment or investment through stock exchange or by private placement in that entity;
- f) "Financial commitment" means the amount of direct investment by way of contribution to equity and loan and 50 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;
- g) "Foreign Currency Convertible Bond" (FCCB) means a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency;
- h) "Form" means the form annexed to these Regulations;
- i) "Global Depository Receipt"(GDR) means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India;
- j) "Host country" means the country in which the foreign entity receiving the direct investment from an Indian party is registered or incorporated;
- k) "Indian party" means a company incorporated in India or body created under an Act of Parliament, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by Reserve Bank:-

Provided that when more than one such company incorporated or bodies under an Act of Parliament, makes a direct investment in the foreign entity, all such companies or bodies together shall constitute the "Indian party";

- l) "Investment banker" means an Investment banker registered with the Securities and Exchange Commission in USA, or the Financial Services Authority in UK, or appropriate regulatory authority in Germany, France, Singapore or Japan.;
- m) "Joint Venture (JV)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment;
- n) "Mutual Fund" means a Mutual Fund referred to in clause (23D) of section 10 of the Income tax Act, 1961;
- o) 'Net worth' means paid up capital and free reserves;
- p) "Real estate business" means buying and selling of real estate or trading in transferable development rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges;
- q) "Wholly Owned Subsidiary (WOS) " means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party;
- r) Words and expressions used but not defined in these Regulations shall have the meanings respectively assigned to them in the Act.

3. Prohibition on issue or transfer of foreign security

Save as otherwise provided in the Act or rules or regulations made or directions issued thereunder, no person resident in India shall issue or transfer any foreign security:-

Provided that the Reserve Bank may, on application made to it, permit any person resident in India to issue or transfer any foreign security.

4. Purchase and sale of foreign security by a person resident in India

A person resident in India

- a) may purchase a foreign security out of funds held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000;
- b) may acquire bonus shares on the foreign securities held in accordance with the provisions of the Act or rules or regulations made thereunder;
- c) when not permanently resident in India, may purchase a foreign security from out of his foreign currency resources outside India;
- d) may sell the foreign security purchased or acquired under clauses (a), (b) or (c).

Explanation:

For the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

Part I

Direct Investment outside India

5. Prohibition on Direct Investment outside India

Save as otherwise provided in the Act, rules or regulations made or directions issued thereunder, or with prior approval of Reserve Bank,

- (1) no person resident in India shall make any direct investment outside India; and
- (2) no Indian party shall make any direct investment in a foreign entity engaged in real estate business or banking business.

6. Permission for Direct Investment in certain cases

- (1) Subject to the conditions specified in sub-regulation (2), an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India.
- (2)
 - (i) The total financial commitment of the Indian party shall not exceed US\$ 50 million or its equivalent in a block of three financial years including the year in which the investment is made, except investment in a Joint Venture/Wholly Owned Subsidiary in Nepal and Bhutan.
 - (ii) In respect of direct investment in Nepal or Bhutan, in Indian rupees the total financial commitment shall not exceed Indian Rupees 120 crores in a block of three financial years including the year in which the investment is made;
 - (iii) The direct investment is made in a foreign entity engaged in the same core activity carried on by the Indian party;
 - (iv) The Indian Party has earned net profit during the preceding three accounting years;
 - (v) The Indian Party is not on the Reserve Bank's caution list or under investigation by the Enforcement Directorate;
 - (vi) The Indian Party routes all transactions relating to the investment in a Joint Venture /Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

Explanation:-

The Indian Party may designate different branches of authorised dealers for different Joint Ventures/Wholly Owned Subsidiaries outside India.

- (vii) The Indian Party submits form ODA, duly completed, to the designated branch of an authorised dealer for onward transmission to Reserve Bank
- (3) Investment under this Regulation may be funded out of one or more of the following sources, namely:-
 - i) out of balance held in the Exchange Earners Foreign Currency account of the Indian party maintained with an authorised dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000;
 - ii) drawal of foreign exchange from an authorised dealer in India not exceeding 25% of the networth of the Indian Party as on the date of last audited balance sheet;
 - iii) utilisation of the proceeds of ADR/GDR issues, not exceeding 50 per cent of the amount so raised by the Indian Party:-

Provided that where the investment is entirely funded out of the source mentioned in clause (i), the conditions specified in clauses (iii) and (iv) of sub-regulation (2) shall not apply.

- (4) For the purpose of reckoning net worth of an Indian party, the net worth of its holding company (which holds at least 51% stake in the Indian Party) or its subsidiary company (in which the Indian Party holds at least 51% stake) may be taken into account provided such holding company or, as the case may be, subsidiary company, has not availed of the facility of direct investment abroad during the relevant block of three years and has furnished a letter of disclaimer in favour of the Indian Party.
- (5) An Indian Party may extend a loan or a guarantee to or on behalf of the Joint Venture/Wholly Owned Subsidiary abroad, within the permissible financial commitment, provided that the Indian Party has made investment by way of contribution to the equity capital of the Joint Venture.
- (6) An Indian Party may make direct investment without any limit in any foreign security out of the proceeds of its international offering of shares through the mechanism of ADR and/or GDR:-

Provided that:

- a) the ADR/GDR issue has been made 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 thereunder from time to time by the Central Government;
- b) the proposed investment together with investments already made in terms of clause (iii) of sub-regulation (3) does not exceed 50% of the proceeds of GDR and/or ADR issued; and
- c) the Indian Party files with Reserve Bank, in form ODA full details of the investment made, within 30 days of such investment.

7. Investment in Financial Services Sector

Subject to the Regulations in Part I, an Indian party engaged in the financial services activities, may make investment in an entity outside India also engaged in financial services activities:-

Provided that the Indian party -

- (i) has earned net profit during the preceding three financial years from the financial services activities;
- (ii) is registered with the appropriate regulatory authority in India for conducting the financial services activities;
- (iii) has a minimum net worth of Rs.15 crores as on the date of the last audited balance sheet; and
- (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

8. Investment in a foreign security by swap or exchange of shares of an Indian company

- (1) An Indian Party engaged in any sector included in Schedule may acquire shares of a foreign company engaged in similar 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 thereunder from time to time by the Central Government, for the shares so acquired:-

Provided that -

- (a) the Indian Party has already made an ADR and/or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India;

- (b) such investment by the Indian Party does not exceed,-
 - (i) an amount equivalent of US\$ 100 mn., or
 - (ii) an amount equivalent to 10 times the export earnings of the Indian Party during preceding financial year as reflected in its audited balance-sheet, inclusive of all investments made under Regulations in Part I, including under (i) of this clause, in the same financial year,"
- (c) at least 80% of the average turnover of the Indian Party in the previous three financial years is from the activities/sectors included in Schedule or the Indian Party has an annual average export earnings of at least Rs.100 crores in the previous three financial years from the activities/sectors included in Schedule;
- (d) the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;
- (e) the total holding in the Indian Party 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,
- (f) the valuation of the shares of the foreign company is made,-
 - (A) as per the recommendations of the Investment Banker if the shares are not listed on any stock exchange; or
 - (B) 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.
- (2) Within 30 days from the date of issue of ADRs and/or GDRs in exchange for acquisition of shares of the foreign company under sub-regulation (1), the Indian Party shall submit a report in form ODG to the Reserve Bank

9. Approval of Reserve Bank in certain cases

- (1) An Indian Party which does not satisfy the eligibility norms under Regulations 6 or 7 or 8, may apply to the Reserve Bank for approval.
- (2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Form ODI, or in Form ODB, respectively.
- (3) Reserve Bank may, inter alia, take into account following factors while considering the application made under sub-regulation (2) :
 - a) Prima facie viability of the Joint Venture/Wholly Owned Subsidiary 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 Joint Venture or Wholly Owned Subsidiary outside India.

10. Unique Identification Number

Reserve Bank will allot a unique Identification Number for each Joint Venture or Wholly Owned Subsidiary outside India and the Indian Party shall quote such number in all its communications and reports to the Reserve Bank and the authorised dealer.

11. Method of Investment by capitalisation

An Indian Party may also make direct investment outside India in accordance with the Regulations in Part I by way of capitalisation in full or part of the amount due to the Indian Party from the foreign entity as follows:-

- (i) payment for export of plant, machinery, equipment and other goods/software to the foreign entity;
- (ii) fees, royalties, commissions or other entitlements of the Indian Party due from the foreign entity for the supply of technical know-how, consultancy, managerial or other services:-

Provided that where the export proceeds have remained unrealised beyond a period of six months from the date of export, such proceeds shall not be capitalised without the prior permission of Reserve Bank.

12. Export of Goods towards Equity

- (1) An Indian Party exporting goods/software/plant and machinery from India towards equity contribution in a Joint Venture or Wholly Owned Subsidiary outside India shall declare it on GR/SDF/SOFTEX form, as the case may be, which shall be superscribed as "Exports against equity participation in the JV/WOS abroad", and also quoting Identification Number, if already allotted by Reserve Bank.
- (2) Notwithstanding anything contained in Regulation 11 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, the Indian Party shall, within 15 days of effecting the shipment of the goods, submit to the Reserve Bank a custom certified copy of the invoice through the branch of an authorised dealer designated by it.
- (3) An Indian Party capitalising exports under Regulation 10 shall, within six months from the date of export, or any further time as allowed by Reserve Bank, submit to Reserve Bank copy/ies of the share certificate/s or any document issued by the Joint Venture or Wholly Owned Subsidiary outside India to the satisfaction of Reserve Bank evidencing the investment from the Indian Party together with the duplicate of GR/SDF/SOFTEX form through the branch of an authorised dealer designated by it.

13. Submission of Information to Reserve Bank

- (1) Where the Indian Party holds 50% or more of the paid-up capital of the foreign entity and
 - (i) the foreign entity has been in operation for a period of less than two years; or
 - (ii) the Indian Party has not repatriated the amount of dividends, fees and royalties due to it from the foreign entity; or
 - (iii) proceeds of exports to the foreign entity have not been realised in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000, or
 - (iv) additional capital contribution will be required from India; or
 - (v) the percentage of equity shareholding of the Indian Party in the foreign entity is being reduced otherwise than in pursuance of the laws of the host country,

the Indian Party shall not consent to the decision relating to the following subject matters, without prior approval of the Reserve Bank -

- a) undertaking any activity other than the activity in which the foreign entity was engaged/or proposed to be engaged at the time of investment by the Indian party; or
 - b) participation in the capital of another foreign entity; or
 - c) alteration of the company's capital structure, authorised or issued, or its shareholding pattern.
- (2) The restriction contained in sub-regulation(1) shall not apply where the investment in the foreign entity is entirely made out of balances held in Exchange Earners Foreign Currency account of the Indian Party and/or out of foreign currency resources raised by the Indian Party through ADR/GDR issue.

14. Acquisition of a foreign company through bidding or tender procedure.

- (1) On being approached by an Indian Party, which is eligible under the Regulations in Part I to make investment outside India, an authorised dealer may allow remittance towards earnest money deposit or issue a bid bond guarantee on its behalf for participation in bidding or tender procedure for acquisition of a company incorporated outside India,
- (2) On the Indian Party winning the bid,
 - (i) the authorised dealer may allow further remittances towards acquisition of the foreign company, subject to the ceilings specified in Regulation 6; and
 - (ii) the Indian Party shall submit through the authorised dealer concerned a report to the Reserve Bank in form ODA within 30 days of effecting the final remittance.
- (3) For participation in bidding or tender procedure for acquisition of a company incorporated outside India which does not fall within the provisions of sub-regulation (1), the Reserve Bank may, on application in Form ODI, allow remittance of foreign exchange towards earnest money deposit or permit the authorised dealer in India to issue a bid bond guarantee, subject to such terms and conditions as Reserve Bank may stipulate.
- (4) In case the Indian Party is successful in the bid but the terms and conditions of acquisition of a company outside India are,-
 - (a) 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 Party shall submit application in form ODI to Reserve Bank for obtaining approval for the foreign direct investment in the manner specified in Regulation 9, or
 - (b) in conformity with the provisions of the Regulations in Part I or are same as those for which approval under sub-regulation (3) was obtained, the Indian Party shall submit a report to the Reserve Bank, giving details of the remittances made, within 30 days of effecting the final remittance.

15. Obligations of the Indian Party

An Indian Party which has acquired foreign security in terms of the Regulations in Part I shall -

- (i) receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalised became due to the Indian Party or the date on which the amount due was allowed to be capitalised ;

- (ii) repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit;
- (iii) submit to the Reserve Bank every year within 60 days from the date of expiry of the statutory period as prescribed by the respective laws of the host country for finalisation of the audited accounts of the Joint Venture/Wholly Owned Subsidiary outside India or such further period as may be allowed by Reserve Bank, an annual performance report in form APR in respect of each Joint Venture or Wholly Owned Subsidiary outside India set up or acquired by the Indian Party and other reports or documents as may be stipulated by the Reserve Bank.

16. Transfer by way of sale of shares of a JV/WOS

Save as otherwise provided in the Act or rules or regulations made or directions issued thereunder or with the permission of the Reserve Bank, no Indian Party shall transfer by way of sale to any person whether resident in India or outside India, any share or security held by him in a Joint Venture or Wholly Owned Subsidiary outside India.

17. Pledge of Shares of Joint Ventures and Wholly Owned Subsidiaries

An Indian Party may transfer, by way of pledge, shares held in a Joint Venture or Wholly Owned Subsidiary outside India as a security for availing of fund based or non-fund based facilities for itself or for the Joint Venture or Wholly Owned Subsidiary from an authorised dealer or a public financial institution in India.

Part II

Investments in Foreign Securities other than by way of Direct Investment

18. Prohibition on issue of foreign security by a person resident in India.

- (1) Save as otherwise provided in the Act or in sub- regulation (2), no person resident in India shall issue or transfer a foreign security.
- (2) A person resident in India, being an Indian company or a body corporate created by an Act of Parliament, which has obtained an approval of Government of India, Ministry of Finance (Department of Economic Affairs), may issue Foreign Currency Convertible Bonds (FCCBs) to a person resident outside India.
- (3) The company/body corporate referred to in sub-regulation (2), issuing the FCCBs shall, within 30 days from the date of issue, furnish a report to the Reserve Bank giving the details and documents as under:
 - a) A copy of Government's approval for issue of FCCBs
 - b) Total amount for which FCCBs have been issued,
 - c) Names of the investors resident outside India and number of FCCBs issued to each of them.
 - d) The amount repatriated to India through normal banking channels and/or the amount received by debit to NRE/FCNR accounts in India of the investors (duly supported by bank certificate).

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

- (1) A person resident in India being an individual may acquire foreign securities:-
 - i) by way of gift from a person resident outside India; or
 - ii) issued by a company incorporated outside India under Cashless Employees Stock Option Scheme:-

Provided it does not involve any remittance from India, or
 - iii) by way of inheritance from a person whether resident in or outside India.
- (2) A person resident in India, being an individual, who is an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company in which foreign equity holding is not less than 51 per cent, may purchase the equity shares offered by the said foreign company:-

Provided that -

 - a) the shares are offered at a concessional price; and
 - b) the consideration for purchase does not exceed U.S.\$ 10,000 or its equivalent in a block of five calendar years.
- (3) An authorised dealer may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2):-

Provided that the conditions specified in that sub-regulation are fulfilled.

20. Transfer of a foreign security by a person resident in India

A person resident in India, who has acquired or holds foreign securities in accordance with the provisions of the Act, rules or regulations made thereunder, may transfer them by way of pledge for obtaining fund based or non-fund based facilities in India from an authorised dealer.

21. Prior Permission from Reserve Bank in certain cases

(1) Reserve Bank, on an application, may permit a person resident in India to acquire foreign securities :-

- a) being the minimum number of qualification shares issued by a company incorporated outside India for holding a post of a director in the company;
- b) by way of right shares issued by a company incorporated outside India:-

Provided that the consideration for acquisition of such shares does not exceed US\$10,000 in a block of five calendar years:

Further provided that the right shares are being issued by virtue of holding shares in accordance with the provisions of the law for the time being in force;

- c) by way of purchase by the employees/directors of an Indian promoter company of shares of a Joint Venture or Wholly Owned Subsidiary outside India of the Indian promoter company, in the field of software:-

Provided that -

- (i) the consideration for purchase does not exceed US\$10,000 or its equivalent per employee in a block of five calendar years,
- (ii) the shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India, and
- (iii) 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.

(2) Reserve Bank may, on an application made to it by the Indian software company allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes:-

Provided that the consideration for purchase does not exceed US \$ 50,000/- or its equivalent in a block of five calendar years.

22. Investment by Mutual Funds

Reserve Bank may, on application, permit a Mutual Fund, to purchase foreign securities subject to such terms and conditions as it may stipulate.

(P.R. GOPALA RAO)
Executive Director

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Schedule I
(See Regulation 8)

List of Sectors for which swap or exchange of shares route is available

1. Information Technology and Entertainment software.
2. Pharmaceutical Sector
3. Biotechnology

ANNEXURE

Instructions for filling up the Form ODI

(This part should be detached and retained by the applicant)

- (1) Application complete in all respects must be submitted in three sets together with the following documents to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division (OID), Amar Building, Mumbai -400 001 :
 - (a) Draft Joint Venture Agreement (or Memorandum & Articles of Association in the case of a Wholly Owned Subsidiary) specifying the equity structure, management, rights and responsibilities of shareholders and also draft agreement(s) for supply of technical knowhow, management and other services, if applicable.
 - (b) A detailed project/feasibility report incorporating, inter alia, projected funds flow statement and balance sheets for five years, the information on various leverage and profitability ratios like debt-equity ratio, debt service coverage ratio, return on investments, etc. of the foreign concern accompanied by the statement from a Chartered Accountant certifying the ratios and projections, given in the application/report.
 - (c) A report from the bankers of the Indian party in sealed/closed cover.
 - (d) The latest Annual Accounts, i.e. Balance Sheet and Profit and Loss Account alongwith Directors' Report of the Indian party.
 - (e) Additional documents as under, if the application is made for partial/full take over of an existing foreign concern :-
 - (i) A copy of the certificate of incorporation of the foreign concern;
 - (ii) Latest Annual Accounts, i.e. the Balance Sheet and Profit and Loss Account alongwith Directors' report of the foreign concern ; and
 - (iii) A copy of the share valuation certificate from a Chartered Accountant/Auditors' firm.
 - (f) A copy of the resolution of the Board of Directors of the Indian party/(ies) approving the proposed investment.
 - (g) Where investment is in the financial services sector, a certificate from a Chartered Accountant/Auditor's firm to the effect that the Indian Party :
 - (i) has earned a net profit during the preceding three years from the financial services activity;
 - (ii) is registered with the appropriate regulatory authorities;
 - (iii) has a minimum net-worth (paid-up capital and free reserves) of not less than Rs.15 crores as on the date of last audited balance sheet; and
 - (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

2. Where there are more than one Indian promoter of the JV/WOS, only one application should be submitted on behalf of all the promoters.
- 3(a) In case an Indian party is seeking approval for acquisition of overseas concern through bidding/tender procedure (with/without remittance of any earnest money deposit (EMD)/issue of bid bond guarantee), Indian Party should approach the Reserve Bank atleast one month in advance from the last date for submission of bid to the overseas authority with the following documents :
 - (i) application in form ODI, to the extent applicable;
 - (ii) certified relevant extracts of the terms and conditions of bid;
 - (iii) Chartered Accountant's certificate indicating the valuation of shares and assets of the overseas concern justifying the acquisition price, where applicable; and
 - (iv) a project/feasibility report.
- (b). In the case where the bid is won by the Indian Party but the terms and conditions of the acquisition are different from those furnished earlier to the Reserve Bank, the Indian Party should apply afresh to the Reserve Bank in form ODI for prior approval before putting through the transaction.

Instructions for filling up the form ODB

1. The form complete in all respects should be submitted in triplicate to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Department, Amar Building, Mumbai – 400 001.
2. For foreign currency, SWIFT codes may be used.
3. The application should be accompanied by a statement from a Chartered Accountant certifying that at least 80% of the average turn-over of the applicant company in the previous three financial years is from the specified activities/sectors (viz Information Technology and Entertainment software, Pharmaceuticals and Biotechnology and other sectors as may be notified from time to time) or the applicant company has an annual export earnings of at least Rs.100 crores in the three previous financial years from these activities/sectors.
4. If any specific acquisition deal has been negotiated, the details thereof including the name of the overseas company being acquired, its performance for the last three years, share exchange ratio, acquisition price, valuation report from the Investment Banker and the likely benefits to the acquiring company may also be furnished as an Annexure.
5. A brief write-up incorporating, inter alia, the tentative business plan of overseas acquisitions, country of location of such foreign companies and their line of activity and financial and operational particulars, rough estimates of acquisition cost and the basis thereof, likely benefits to the applicant company and the country from such acquisitions, such as, synergy between operations, dividend and other inflows, access to technology, incremental exports, etc. should be enclosed to this form. The information furnished will be kept confidential.