

AP (DIR Series) Circular No.3 (June 22, 2000)

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

June 22, 2000

AP (DIR Series) Circular No.3

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

**Indian Direct Investment in Joint Ventures(JV)/
Wholly Owned Subsidiaries(WOS) outside India**

Attention of authorised dealers is invited to the Reserve Bank Notification No. FEMA. 19/RB/2000 dated 3rd May,2000 making “Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000” under clause (a) of sub-section (3) of Section 6 read with Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999).

2. In terms of the Regulations 6 and 7 of the Notification , Indian parties are permitted to make direct investment in Joint Venture (JV) or Wholly Owned Subsidiary outside India, subject to their complying with the conditions specified therein. Authorised dealers may allow remittance upto the permissible limit on receipt of an application in form ODA, in triplicate, together with form A-2, duly filled in, from the investing company. Before allowing the remittance authorised dealer should ensure that the necessary documents, as prescribed in form ODA, have been submitted. Immediately after the remittance is made, the authorised dealer should forward to the Regional Office of the Exchange Control Department ,under whose jurisdiction it is functioning , two copies of form ODA along with a report on remittance in the form ODR, in duplicate (format enclosed). In cases where the investment is being made jointly by more than one Indian company, form ODA should be signed jointly by all the investing companies and submitted to the designated branch of the authorised dealer, who in turn should immediately forward the same to the Reserve Bank, together with a consolidated form ODR. The same procedure should also be followed where the investment is made out of the proceeds of ADR/GDR issues of Indian party in terms of Regulation 6(6) of the Notification.

3. Clause (vi) 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 branch of an authorised dealer designated by the Indian party. For proper follow-up, the authorised dealers are advised to maintain party-wise record in respect of each JV/WOS separately.

4. Authorised dealers may allow remittance towards loan to the JV/WOS and/or issue guarantee to/on behalf of the JV/WOS abroad provided the applicant has an equity stake in the JV/WOS.

5. In terms of Regulation 11 of the Notification dated 3rd May, 2000 under reference Indian parties are also 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 should be advised to submit details of the capitalisation in form ODA which should be forwarded by the designated branch of authorised dealer to the Regional Office of the Reserve Bank under whose jurisdiction it is functioning together with a report in form ODR. In this regard, it is clarified that the amount of investment by way of capitalisation of exports and other dues made in terms of Regulation 11 together with the investment made by way of market purchase of foreign exchange in terms of Regulation 6(3)(ii) should not exceed 25% of the net-worth of the Indian party as on the date of last audited balance sheet. In cases where the export proceeds are being capitalised in accordance with the provisions of Regulation 11, the authorised dealer should also obtain a custom certified copy of the invoice as required under regulation 12 (2) and forward it to the Reserve Bank together with forms ODA and ODR.

6. On receipt of the forms ODA and ODR from the authorised dealers, the Reserve Bank will allot a unique identification number to each JV or WOS abroad, which should be quoted in all future correspondence by the authorised dealer or Indian party with the Reserve Bank. Where investment is being made in an existing JV/WOS the unique identification number already allotted by the Reserve Bank should be cited in the forms and all the correspondence by the Indian party as well as authorised dealers.

7. In terms of Regulation 9 of the Notification under reference in certain cases investment in JV/WOS requires prior approval of the Reserve Bank. All investments made in terms of such approval obtained from the Reserve Bank are also required to be reported to the concerned Regional Office of the Reserve Bank in the form ODR by the designated authorised dealer. Before allowing remittance, authorised dealers should ensure that the terms and conditions stipulated by the Reserve Bank have been complied with.

8. In respect of approvals already issued by the Reserve Bank where the name of the designated branch of authorised dealer has not been indicated, the remittance may be allowed by the authorised dealer after satisfying itself that no remittance has been effected through any other authorised dealer against the relative approval letter and after obtaining an undertaking from the party that all its future foreign exchange transactions relating to the JV/WOS shall be effected through this authorised dealer only. The investment by way of capitalisation of exports and other entitlements made by the Indian party in accordance with the approval obtained from Reserve Bank should also be reported in form ODR based on the information furnished by the party.

9. Remittance towards Earnest Money Deposit or Issue of Bid Bond Guarantee

(a) In terms of Regulation 14 of the Notification dated 3rd May, 2000 cited above, authorised dealers may, on being approached by an Indian party which is eligible for investment under

Regulation 6 , allow remittance towards earnest money deposit (EMD) 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, authorised dealers 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 Regional Office of the Exchange Control Department under whose jurisdiction it is functioning, in form ODR, along with the details of the investment in form ODA, in duplicate, submitted by the Indian party. Authorised dealers 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).

(b) In cases where an Indian party, after being successful in the bid/tender decides not to proceed further with the investment, authorised dealers should submit details of remittance allowed towards EMD/invoked bid bond guarantee in form ODR to the concerned Regional Office of the Reserve Bank.

10. **Disposal of pending proposals**

Authorised dealers may dispose of the pending investment proposals received by them before 31st May 2000 under erstwhile EEFC Fast Track Route , in accordance with Regulation 6 of the Notification dated 3rd May,2000 under reference and report the details of remittance in the form ODR [instead of in form ODA-I prescribed under A.D.(M.A. Series) Circular No.33 dated 5th November, 1999] along with form ODA, in duplicate, in the existing format.

11. The directions contained in this Circular are issued under Section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999). Any contravention or non-observance of these directions is subject to the penalties prescribed under the Act.

Yours faithfully,
B. MAHESHWARAN
 Chief General Manager