

**Indian Direct Investment outside India
A.P. (DIR Series) Circular No.32 (April 28,2001)**

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

A.P. (DIR Series) Circular No.32

April 28,2001

To

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Indian Direct Investment outside India

Attention of the authorised dealers is invited to Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2000, notified by the Reserve Bank vide Notification No. FEMA 19/RB-2000 dated 3rd May, 2000 dealing with Indian Investments outside India.

2. With a view to further liberalising overseas direct investment by Indian parties, the Reserve Bank has vide its Notification No.FEMA 40/2001-RB dated March 2, 2001 (copy enclosed) amended the said Regulations. The salient features of the amendments are given in the following paragraphs

**a) Investments by Corporates – Joint Ventures (JV)/
Wholly Owned Subsidiaries (WOS) -Limits and Eligibility**

- i) Under the Automatic Route as per Regulation 6 of the Notification dated 3rd May, 2000, Indian parties may now invest in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) outside India, an amount not exceeding US \$ 50 mn. or its equivalent **in a financial year**, (additional amount of US \$ 25 mn. for investments in Myanmar and SAARC countries, other than Nepal, Bhutan and Pakistan) as against existing limit of US \$ 50 mn. in a block of three years.
- ii) The profitability condition prescribed vide clause (iv) of Regulation 6 (2) under the Notification dated 3rd May 2000 has been dispensed with.
- iii) In respect of direct investment in Nepal and Bhutan in Indian Rupees, the total financial commitment by Indian parties can now be upto **Rs.350 crores in a financial year** as against the existing limit of Rs.120 crores in a block of three financial years.

b) ADR/GDR Issues-Utilisation

- i) Indian parties may henceforth utilise **upto 100 percent of proceeds of ADRs/GDRs for overseas investments** instead of the existing ceiling of 50 per cent allowed vide Regulations 6(3)(iii) and 6(6) of the Notification No.FEMA 19/RB-2000 dated 3rd May, 2000.
- ii) Indian parties engaged in any activity who have already made an ADR/GDR issue, may now acquire shares of foreign companies engaged in the same core activity, upto an amount of US \$ 100 mn., or an amount equivalent to 10 times of their export earnings in the preceding financial year, whichever is higher, by way of swap of fresh issues of ADRs/GDRs under Regulation 8 as amended vide Notification No.FEMA 40/2001-RB dated March 2, 2001 subject to compliance with conditions stipulated therein.

c) Block Allocation of Foreign Exchange by Reserve Bank

In terms of Regulation 9A of the Notification No.FEMA 40/2001-RB dated March 2, 2001, Reserve Bank may make a **block allocation of foreign exchange** to Indian parties with proven track record, who have exhausted the limits available to them under sub-regulation (2) of Regulation 6 of Notification No.FEMA 19/RB-2000 dated 3rd May, 2000, on an application submitted to it in form **ODI**, along with necessary documents/particulars.

d) Investments by Firms

Firms in India registered under the Indian Partnership Act, 1932, have also been permitted to make direct investments outside India in terms of Regulations 17A and 17B introduced through the Notification No.FEMA 40/2001-RB dated March 2, 2001. Investment proposals of the firms, in terms of Regulation 17A, will be considered by Reserve Bank, on application in form **ODI** (to the extent applicable), keeping in view factors, among others, prima facie viability of the overseas venture, benefits which will accrue to India through such investments, financial position and business track record of the Indian firm, the foreign collaborator and the expertise and experience of the Indian party in the same or related line of activity.

e) Acquisition of foreign securities by resident individuals

The limit of US \$ 10,000 or its equivalent in a block of five calendar years stipulated under Regulation 19(2) of the Notification under reference for purchase of equity shares offered by the foreign parent company to the employees/directors of its Indian office, branch, joint venture or subsidiary has been raised from US \$ 10,000 in a block of five calendar years to **US \$ 20,000 or its equivalent in any calendar year.**

3. In the light of the above amendments to the Regulations, the **procedural changes indicated in the Annexure** have been made in the procedure advised vide A.P.(DIR Series) Circular Nos.3 and 13 dated 22nd June, and 14th September, 2000, respectively.

4. Authorised dealers may bring the contents of this circular to the notice of their constituents concerned.

5. The directions contained in this circular have been 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,

K.J. UDESHI

Chief General Manager

Annexure

i) Authorised dealers may allow remittances under the automatic route, keeping in view the aforesaid revised guidelines and forward the form **ODA** along with the report of remittance in form **ODR** (in duplicate) to the Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Mumbai 400 001 immediately after the investments are made. Remittances may also be allowed for overseas investment by Indian parties on the basis of letter of approval issued by Reserve Bank, upto the amount of block allocation of foreign exchange, subject to terms and conditions stipulated therein. While allowing remittances in respect of individual overseas concerns under the scheme of block allocation, authorised dealers may obtain necessary information in form **ODA** and forward the same to the Reserve Bank along with the report of remittance in form **ODR** as is being done in case of investments under the existing automatic route.

ii) Indian parties making investments under Regulation 8 of Notification No.FEMA 19/2000-RB dated 3rd May, 2000 will continue to report their investments involving ADR/GDR stock swap in the existing form **ODG**, through their designated authorised dealer branches.

iii) Authorised dealers may allow remittance for overseas investments by registered partnership firms in accordance with the approval granted by the Reserve Bank under Regulation 17A and report the same to Reserve Bank of India, Exchange Control Department, Overseas Investment Division, Central Office, Mumbai 400 001 in form **ODR** with a superscription “Remittance by partnership firm under Regulation 17A”.

iv) In respect of investments by a registered partnership firm under Regulation 17B, authorised dealers may, after being satisfied that the firm is a member of their respective All India professional organisation/body [e.g. Institute of Chartered Accountants of India (ICAI) for Chartered Accountants; National Association of Software and Service Companies (NASSCOM)/Electronics Export and Computer Software Promotion Council

(ESC) for software firms; Indian Medical Council (IMC) for medical firms and Bar Council of India or respective State Bar Councils for legal firms, etc.] allow remittances upto US \$ 1 (one) mn. in one financial year. For this purpose, authorised dealers may obtain an application in form **ODA** (to be filled up to the extent applicable) from the partnership firm along with the documents indicated at clauses 1(b) and (c) of the proviso to Regulation 17B and a certificate from a Chartered Accountant showing the details of all investments made during the financial year. Authorised dealers, after effecting the remittance towards such investments, may forward the form **ODA** along with the particulars of remittance in form **ODR**, with superscription “Remittance by partnership firm under Regulation 17B”, to Reserve Bank of India, Exchange Control Department, Overseas Investment Division, Central Office, Mumbai 400 001.

v) As in the case of additional investment in an existing overseas concern by an Indian company, remittance towards subsequent investments by a firm may be allowed by the authorised dealer only after the Reserve Bank has allotted necessary Identification Number to the overseas project. The Identification Number will be allotted after receipt of report on remittance in respect of the original investment in form **ODR** from the authorised dealer.

vi) It may also be ensured that the investing Indian firms route their reports in respect of all their overseas investments, through the same designated branch of the authorised dealer.

vii) After making the investment, the investing firms are required to submit an Annual Performance Report in form **APR** in respect of their overseas ventures as prescribed under Regulation 15 of Notification FEMA 19/RB-2000 dated 3rd May, 2000. They may be specifically advised, in writing, about such requirement by the authorised dealer.

viii) Attention of authorised dealers is also drawn to paragraph 2 of A.P.(DIR Series) Circular No.13 dated September 14, 2000 advising that two copies each of forms **ODA** and **ODR** should be forwarded to the Reserve Bank immediately after investments are made under Regulations 6,9 and 11 of Notification FEMA 19/RB-2000 dated 3rd May 2000. It is clarified that form **ODA** is required to be sent along with form **ODR only in cases of investment made under the Automatic Route** in terms of Regulation 6 or under the scheme of block allocation of foreign exchange in terms of paragraph 2 (c) above. As such, where investments are made under the specific approval accorded by the Reserve Bank, **form ODA need not be obtained from the investor**; only report of investment may be forwarded to the Reserve Bank **in form ODR**.