

Master Circular - Indian Direct Investment in JVs/WOSs abroad

As on July 1, 2003

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

Master Circular No.2/2003-2004

July 1, 2003

To:

All Authorised Dealers in Foreign Exchange

Madam/Sirs,

Master Circular - Indian Direct Investment in JVs/WOSs abroad

As you are aware, Foreign Exchange Management Act, 1999 has become effective from June 1, 2000. In terms of Section 6 of the Act, Reserve Bank has been empowered to specify, in consultation with the Central Government, the classes of permissible capital account transactions and the limit up to which foreign exchange shall be admissible for such transactions. Section 6(3) of the Act provides the Reserve Bank with the powers to prohibit, restrict or regulate various transactions referred to in the sub-clauses of the said sub-section, by making regulations. Accordingly, Govt. of India issued Notification No. GSR 456 (E) dated May 3, 2000 and notified FEMA Notification 19/RB-2000 dated May 3, 2000. The above notification has been amended from time to time vide notification Nos.

- 1) FEMA 40/RB-2001 dated March 2, 2001,
- 2) FEMA 48/ RB 2002 dated January 1, 2002,
- 3) FEMA 49/RB-2002 dated January 19, 2002,
- 4) FEMA 53/RB-2002 dated March 1, 2002
- 5) FEMA 55/ RB -2002dated March 7, 2002
- 6) FEMA 59/ RB-2002 dated April 24, 2002
- 7) FEMA 88/ RB –2002 dated April 1, 2003

2. Reserve Bank has issued the following circulars containing the directions to Authorised Dealers (ADs) in foreign exchange relating to direct investment in JV/WOS abroad by the Indian parties :

- a) AP(DIR Series) Circular No.3 dated June 22, 2000
- b) AP(DIR Series) Circular No.13 dated September 14, 2000
- c) AP(DIR Series) Circular No.32 dated April 28, 2001
- d) AP(DIR Series) Circular No.16 dated December 15, 2001
- e) AP(DIR Series) Circular No.18 dated December 18, 2001

- f) AP(DIR Series) Circular No.23 dated February 19, 2002
- g) AP(DIR Series) Circular No.27 dated March 2, 2002
- h) AP(DIR Series) Circular No.43 dated April 30, 2002
- i) AP(DIR Series) Circular No.51 dated June 24, 2002
- j) AP(DIR Series) Circular No. 58 dated December 2, 2002
- k) AP(DIR Series) Circular No. 66 dated January 13,2003
- l) AP (DIR Series) circular No. 68 dated January 13,2003
- m) AP(DIR Series) Circular No. 83 dated March 1, 2003
- n) AP(DIR Series) Circular No. 96 dated April 28, 2003
- o) AP(DIR Series) Circular No. 97 dated April 29, 2003
- p) AP (DIR Series) circular No. 104 dated May 31, 2003
- q) AP (DIR Series) circular No. 107 dated June 19,2003

These directions read with AD(MA Series) Circular No.11 dated May 16, 2000 issued on the eve of the Act coming into force form the basis of the current guidelines on overseas investment in JVs/WOSs abroad by Indian parties.

3. In order to enable the Authorised Dealers to have all the existing instructions on the subject of Indian direct investment abroad as on July 1, 2003 at one place this master circular has been suitably updated.

Yours faithfully,

Grace Koshie
Chief General Manager

**Master Circular - Indian Direct Investment in
Joint Ventures/ Wholly Owned Subsidiaries abroad as on July 1, 2003**

INDEX

Section A - General

- A.1 Introduction
- A.2 Statutory basis
- A.3 Prohibitions
- A.4 General Permission

Section B: Direct Investment outside India

- B.1 Automatic Route
- B.2 Method of Funding
- B.3 Investment out of funds raised through ADR/GDR issues
- B.4 Investment under swap or exchange of shares arrangement

- B.5 Investment Abroad by a firm in India
- B.6 Investment in Equity of Companies Registered Overseas/ Rated Debt Instruments
- B.7 Approval of Reserve Bank
- B.8 Block Allocation
- B.9 Investment in the Financial Services Sector
- B.10 Capitalisation of exports and other dues
- B.11 Post investment changes/additional investment in existing JVs/WOSs
- B.12 Acquisition of a foreign company through bidding or tender procedure
- B.13 Obligations of Indian Party
- B.14 Transfer by way of sale of shares of a JV/WOS
- B.15 Pledge of Shares

SECTION C: Investment in Foreign Securities other than by way of Direct Investment

- C.1 Permission for purchase/acquisition of foreign securities in certain cases
- C.2 Transfer of a foreign security by a person resident in India
- C.3 General permission in certain cases

**Master Circular - Indian Direct Investment in
Joint Ventures/ Wholly Owned Subsidiaries abroad
as on July 1, 2003**

PART – I

Section A - General

A.1 Introduction

Overseas investments in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs in terms of foreign exchange earnings like dividend, royalty, technical know-how fee and other entitlements on such investments. They are also a major source of increased exports of plant and machinery and goods from India. Joint ventures have also been perceived as a medium of economic co-operation between India and other countries. Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments.

In keeping with the spirit of liberalisation, which has become the hallmark of economic policy in general and Exchange Control regulations in particular, Reserve Bank has been progressively relaxing its rules and simplifying the procedures both for current account as well as capital account transactions.

A.2 Statutory basis

Section 6 of the Foreign Exchange Management Act provides powers to the Reserve Bank to specify, in consultation with the Central Government the classes of permissible Capital Account transactions and limits upto which exchange is admissible for such transactions. Section 6(3) of the aforesaid Act provides powers to the Reserve Bank to prohibit, restrict or regulate various transactions referred to in the sub-clauses of that sub-section, by making Regulations.

In exercise of the above powers, Reserve Bank has issued Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2000 vide Notification No. FEMA 19/RB-2000 dated 3rd May 2000 (as amended vide Notification No. FEMA 40/RB-2001 dated 2nd March 2001, FEMA 48/ – RB 2002 dated 1st January 2002 and FEMA 49/2002-RB dated Jan. 19, 2002, FEMA 53/2002 –RB dated March 1,2002, FEMA 55/ 2002-RB dated March 7, 2002, FEMA 59/ RB-2002 dated 24th April 2002 and FEMA 88/RB-2003 dated April 01, 2003) (hereinafter referred to as ‘the Notification’). The Notification seeks to regulate acquisition and transfer of a foreign security by a person resident in India i.e. investment by Indian entities in overseas joint ventures and wholly owned subsidiaries, as also investment by a person resident in India in shares and securities issued outside India.

A.3 Prohibitions

Indian parties are prohibited from making investment in a foreign entity engaged in real estate business or banking business.

A.4 General Permission

- (i) In terms of Regulation 4 of the Notification, general permission has been granted to residents for purchase/acquisition of securities and sale of shares/securities so acquired -
 - (a) out of funds held in RFC account; and
 - (b) as bonus shares on existing holding of foreign currency shares.
- (ii) General permission has also been granted to a person resident in India for purchase of securities out of their foreign currency resources outside India as also for sale of securities so acquired.

Section B: Direct Investment outside India

B.1 Automatic Route

In terms of Regulation 6 of the Notification, any Indian party has been permitted to make investment in a overseas joint venture/wholly owned subsidiary by submitting form ODA, duly completed, to a designated branch of an authorised dealer, upto the amounts mentioned below:

- (a) USD 100 mn. or its equivalent in any one financial year. USD 150 million or its equivalent in case of investment in Myanmar and SAARC countries (excluding Pakistan).
- (b) Indian Rupees upto Rs.700 crores in Nepal and Bhutan in any one financial year.
- (c) Units located in SEZs are allowed to make overseas investments out of their balances in the foreign currency account. The ceiling applicable to other units under the automatic route will not be applicable to the investments by units located in SEZs. Such investments by SEZ units would be subject to an overall annual cap of USD 500 mn.

The above ceiling will include contribution to the capital of the overseas JV/WOS, loan granted to the JV/WOS and 50% of guarantees issued to or on behalf of the JV/WOS. Such investments are subject to the following conditions:

- a) This general permission does not include investment proposals, which envisage setting up a holding company, or a special purpose vehicle abroad, which would in turn, set up one or more step down subsidiaries as operating units. Such investment proposals through a two-tier structure as also investments by way of swap of a Indian company's shares would require prior approval of the Reserve Bank.
- b) The Indian party may extend loan /guarantee to an overseas concern in which it has equity participation.

- c) The Indian party should not be on the Reserve Bank's caution list or under investigation by the Enforcement Directorate or a defaulter to the banking system in India whose name appears in the defaulter's list published / circulated by the Reserve Bank.
- d) All transactions relating to a joint venture/wholly owned subsidiary should be routed through a branch of an authorised dealer to be designated by the Indian party.
- e) In case of partial /full acquisition of an existing foreign company, where the investment is more than USD 5.00 mn, valuation of the shares of the company shall be made by a Category I Merchant Banker registered with SEBI or an investment Banker/ Merchant Banker outside India registered with the appropriate regulatory authority in the host country and in all other cases by a CA/ CPA.

B.2 Method of Funding

Investment in an overseas JV/WOS may be funded out of one or more of the following sources: -

- i) Balances held in EEFC account of the Indian party;
- ii) Drawal of foreign exchange including capitalisation of exports from an authorised dealer in India upto the extent of 100 per cent of the Indian party's net worth as on the date of the last audited balance sheet;
- iii) Utilisation of proceeds of foreign currency funds raised through ADR/GDR issues.

However, when such investments are in the financial sector they will be subject to compliance of Regulation 7 of the Notification.

B.3 Investment out of funds raised through ADR/GDR issues

An Indian party is permitted to make direct investment without any monetary limit out of funds raised through ADRs/GDRs in terms of Regulation No.6 (6) of the Notification.

B.4 Investment under swap or exchange of shares arrangement

In terms of Regulation 8 of the Notification, Indian parties engaged in any activity who have already made an ADR/GDR issue, may acquire shares of foreign companies engaged in the same core 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, subject to compliance with the following conditions:

- a. ADRs/GDRs are listed on any stock exchange outside India;

- b. such investment by the Indian Party does not exceed the higher of the following amounts, namely:-
 - i. amount equivalent of USD 100 mn., or
 - ii. amount equivalent to 10 times the export earnings of the Indian Party during the preceding financial year as reflected in its audited financial statements. For the purpose of reckoning the limit, the investments already made under Regulation 6 in the same financial year are to be included.
- c. the ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian Party;
- d. the total holding in the Indian entity 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;
- e. valuation of the shares of the foreign company shall be
 - i. as per the recommendations of the Investment Banker if the shares are not listed on any stock exchange; or
 - ii. based on the current market capitalization 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.

The Indian party is required to report such acquisition in form ODG to the Reserve Bank within a period of 30 days from the date of the transaction.

B. 5 Investment Abroad by a firm in India

In terms of Regulation 17B of the Notification, partnership firms registered under the Indian Partnership Act, 1932 engaged in the field of chartered accountancy, legal practice and related services, information technology and entertainment software related services and medical and health care services are permitted to make investment in foreign concerns abroad engaged in similar activity without prior approval provided -

- a. such investment does not exceed USD 1 (one) million or its equivalent in one financial year,
- b. the investing firm is a member of the respective All India professional organization/body; and
- c. a report containing (i) name, full address, registration and membership particulars of the investing firm, (ii) full details of investment abroad, (iii) date and amount of remittance/amount of capitalization of fees/other entitlements due to the investing firm, (iv) name and address of the foreign concern together with its line of activity, (v) identification number, if already allotted by the Reserve Bank, is submitted to the Reserve Bank through the authorised dealer within 30 days of making such investments:

Subject to the firm being eligible for overseas investment and subject also to the condition that the entire funding for such investment is done by the firm, it will be in order for individual partners to hold shares for and on behalf of the firm in overseas JV/ WOS if the host country regulations or operational requirements warrant such holdings.

B. 6 Investment in Equity of Companies Registered Overseas / Rated Debt Instruments

(i) Corporates

Listed Indian companies are permitted to invest abroad in companies, (a) listed on a recognized stock exchange and (b) which has the share holding of at least 10 per cent in an Indian company listed on a recognized stock exchange in India (as on 1st January of the year of the investment). They are also permitted to invest in rated bonds / fixed income securities. Such investments shall not exceed 25 per cent of the Indian company's net worth as on the date of latest audited balance sheet.

(ii) Individuals

Resident individuals are permitted to invest in overseas companies indicated at (i) above and in rated bonds/fixed income securities without any monetary limit.

(iii) Investment by Mutual Funds

Mutual Funds are permitted to invest in ADRs/GDRs of the Indian companies, rated debt instruments and also invest in equity of overseas companies indicated at (i) above within an overall cap USD 1 billion. Accordingly, Mutual Funds desirous of availing of this facility may approach SEBI for necessary permission in the matter.

General permission is available to the above categories of investors for sale of securities so acquired.

B.7 Approval of the Reserve Bank

In all other cases of direct investment abroad which are not covered under the previous paragraphs including investment by Partnership firms not eligible under the automatic route and investment under swap or exchange of shares other than covered under B.4 above, prior approval of the Reserve Bank would be required. For this purpose, applications together with documents should be made in :

- a) Form ODB if the investment is for acquiring shares of foreign company engaged in the same core activity in exchange of ADR/GDRs issued to the latter in excess of USD 100 mn. or ten times the export earnings (whichever is higher)/Block Allocation / for acquisition of shares of a company outside India, in lieu of fees due to it for professional services rendered to the said company.
- b) Form ODI in all other cases.

Reserve Bank, inter alia, would take into account following factors while considering such applications:

- 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.

B.8 Block Allocation

An Indian party with a proven track record, which has exhausted the permissible limit outlined in Paragraph B.1 may make an application in form ODB along with necessary documents to the Reserve Bank for Block Allocation of foreign exchange for overseas investments. Such applications shall be approved by the Reserve Bank, subject to such terms and conditions as considered necessary after taking into account the factors outlined in Paragraph B.7 above.

B.9 Investment in the Financial Services Sector

In terms of Regulation 7 of the Notification, an Indian party seeking to make investment in an entity engaged in the financial sector should also fulfill the following additional conditions:

- (i) be registered with the appropriate regulatory authority in India for conducting the financial sector activities;
- (ii) has earned a net profit during the preceding three financial years from 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) fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

B.10 Capitalisation of exports and other dues

- a) Indian parties are also permitted to capitalise the payments due from the foreign entity towards exports made to it, fees, royalties or any other entitlements due from the foreign entity for supplying technical know-how, consultancy, managerial and other services within the ceilings applicable. Export proceeds remaining unrealised beyond a period of six months from the date of export will require the prior approval of Reserve Bank before capitalisation.
- b) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software company in the form of shares without entering into Joint Venture Agreements, with the approval of the Reserve Bank.

B.11 Post investment changes/additional investment in existing JVs/WOS

In terms of Regulation 13 of the Notification, an Indian party before giving consent to the decisions relating to :

- 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;

is required to obtain the prior permission of the Reserve Bank if it 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 above restrictions are not applicable in case the investment in the foreign entity is made entirely out of the balances held in the Indian party's EEFC account balances and/or out of the foreign currency resources raised by way of ADR/GDR issue.

B.12 Acquisition of a foreign company through bidding or tender procedure

An Indian party may remit earnest money deposit or issue a bid bond guarantee for acquisition of a foreign company through bidding and tender procedure and also make subsequent remittances through an authorised dealer in accordance with the provisions of Regulation 14 of the Notification.

B.13 Obligations of Indian Party

An Indian party which has made direct investment abroad is under obligation to (a) receive share certificates or any other document as an evidence of investment, (b) repatriate to India the dues receivable from foreign entity and (c) submit the documents/Annual Performance Report to the Reserve Bank, in accordance with the provisions specified in Regulation 15 of the Notification.

B.14 Transfer by way of sale of shares of a JV/WOS

Sale of shares of JV/WOS abroad held by an Indian party would require prior approval of the Reserve Bank.

B.15 Pledge of Shares

An Indian party may pledge the shares of JV/WOS to an authorised dealer or a financial institution in India for availing of any credit facility for itself or for the JV/WOS abroad in terms of Regulation 17 of the Notification.

SECTION C: Investment in Foreign Securities other than by way of Direct Investment**C.1 Permission for purchase/acquisition of foreign securities in certain cases**

General permission has been granted to a person resident in India who is an individual -

- a) to acquire foreign securities as a gift from any person resident outside India; or
- b) to acquire shares under Cashless Employees Stock Option Scheme issued by a company outside India, provided it does not involve any remittance from India, or
- c) to acquire shares by way of inheritance from a person whether resident in or outside India;
- d) to purchase equity shares offered by a foreign company if he is an employee or a director of an Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or an Indian company in which foreign equity holding is not less than 51 per cent provided that such shares are issued at a concessional price. Concession in the price of shares being offered may be borne by the foreign company issuing shares or by its branch / subsidiary or the company in India in which the foreign equity holding is not less than 51 per cent. Authorised dealers are permitted to allow remittances for purchase of shares by eligible persons under this provision.
- e) In all other cases, which are not covered by general or special permission, approval of the Reserve Bank is required to be obtained before acquisition of a foreign security.

C.2 Transfer of a foreign security by a person resident in India

The shares acquired by persons resident in India in accordance with the provisions of Foreign Exchange Management Act, 1999 or Rules or Regulations made thereunder are allowed to be pledged for obtaining credit facilities in India from an authorised dealer.

C.3 General permission in certain cases

Residents are permitted to acquire foreign securities, if it represents –

- a) qualification shares for becoming a director of a company outside India provided does not exceed 1% of the paid up capital of the overseas company and the consideration for acquisition does not exceed USD 20,000 in a calendar Year.
- b) rights shares * provided the consideration for acquisition does not exceed USD 10,000 in a block of five calendar years.
- c) purchase of shares of a JV/WOS abroad of the Indian promoter company by the employees/directors of an Indian promoter company which is engaged in the field of software where the (consideration for purchase does not exceed USD 10,000 or its equivalent per employee in a block of five calendar years; the shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India; and 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.
- d) purchase of foreign securities under ADR/GDR linked stock option schemes by resident employees of Indian software companies including working directors provided purchase consideration does not exceed USD 50,000 or its equivalent in a block of five calendar years.

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PART II

Operational Instructions to Authorised Dealers

A.1 Designating branches

Authorised dealers may designate select branches at different centers to undertake foreign exchange transactions in connection with overseas direct investment under Regulation 6 or 17B of the Notification.

Investments under Regulations 6 and 17B

Authorised dealers may allow investments upto the permissible limits on receipt of application in form ODA in duplicate together with form A-2, duly filled in, from the Indian party/parties making investments in a JV/WOS abroad subject to their complying with the conditions specified in Regulation 6 or 17B of Notification FEMA No.19/RB-2000 dated 3rd May 2000 as applicable. [Investment in financial services should however comply with additional norms stipulated at Regulation 7 *ibid.*] In case of investments by a registered partnership firm under Regulation 17B, authorised dealers may satisfy themselves 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.]. Before allowing the remittance authorised dealers are required to ensure that the necessary documents, as prescribed in form ODA, have been submitted. Form ODA and other documents need not be submitted to the Reserve Bank.

A.2 General procedural instructions

(i) Immediately after effecting the remittance, the authorised dealers are required to forward a report on remittance in the revised form ODR, in duplicate (format enclosed) to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Overseas Investment Division, 3rd floor, Amar Building., Mumbai - 400 001. Authorised Dealers may ensure that the remittances on account of investments by Partnership firms are reported with the superscription “Remittance by partnership firm under Regulation 17B”, in form ODR. In cases where the investment is being made jointly by more than one Indian party, form ODA is required to be signed jointly by all the investing parties and submitted to the designated branch of the Authorised Dealer. Authorised dealer may forward to the Reserve Bank a consolidated form ODR indicating details of each party. The same procedure may 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.

(ii) 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 designated branch of an authorised dealer designated by the Indian party. For proper follow-up, the authorised dealers are required to maintain party-wise records in respect of each JV/WOS separately.

(iii) Authorised Dealers may allow remittance towards loan to the JV/WOS and/or issue guarantee to/on behalf of the JV/WOS abroad.

A.3 Investments under Regulation 11

In terms of Regulation 11, Indian parties are 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 is required to submit details of the capitalisation in form ODA to the designated branch of authorised dealer. Such investments by way of capitalisation are also to be reckoned while computing the cap of 100 per cent prescribed in terms of Regulation 6. Further, in cases where the export proceeds are being capitalised in accordance with the provisions of Regulation 11, the authorised dealers are required to obtain a custom certified copy of the invoice as required under Regulation 12(2) and forward it to the Reserve Bank together with revised form ODR. Capitalisation of export proceeds or other entitlements, which are overdue, would require prior approval of RBI for which the Indian parties should file an application in form ODI to RBI for consideration.

A.4 Allotment of Identification Number

On receipt of the form ODR from the authorised dealers, the Reserve Bank will allot an unique identification number to each JV or WOS abroad, which is required to be quoted in all the future correspondence by the Authorised Dealer or the Indian party with the Reserve Bank. Authorised Dealers may allow additional investment in an existing overseas concern set up by an Indian party, in terms of Regulation 6 or 17B only after the Reserve Bank has allotted necessary identification number to the overseas project.

A.5 Investments under Regulation 9

In terms of Regulation 9, where investment in JV/WOS requires prior approval of the Reserve Bank, Authorised Dealers may allow remittances only under specific approvals granted by the Reserve Bank and the report the same to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building(3rd floor), Mumbai 400 001 in the form ODR.

A.6 Further, in terms of Regulation 9(A), Indian parties are eligible for block allocation of foreign exchange upto a specified limit under a specific approval obtained from the Reserve Bank. Authorised Dealer may allow remittances for overseas investment by Indian parties on the basis of such approvals issued by Reserve Bank, subject to the 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 ODI and forward the same to the Reserve Bank after superscription “Remittance under Block Allocation Approval No. _____ dated _____ along with the report of remittance in form ODR.

A.7 Investments by Partnership firms under Regulation 17A

In terms of Regulation 17A, partnership firms not eligible under Regulation 17B may make overseas investment by obtaining the specific approval of the Reserve Bank. Authorised Dealer may allow remittances for overseas investments by registered partnership firms in accordance with such approvals granted by the Reserve Bank and report the same to the Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building(3rd floor), Mumbai 400 001 in form ODR with a superscription “Remittance by partnership firm under Regulation 17A”.

A.8 Remittance towards Earnest Money Deposit or Issue of Bid Bond Guarantee

(i) In terms of Regulation 14 of the Notification 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) to the extent eligible 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 Chief

General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building (3rd floor), Mumbai 400 001 in form ODR. 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).

(ii) 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 Chief General Manager, Reserve Bank of India, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building (3rd floor), Mumbai 400 001.

(iii) In case the Indian Party is successful in the bid, but the terms and conditions of acquisition of a company outside India are 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 should obtain approval from Reserve Bank by submitting Form ODI.