



भारतीय रिज़र्व बैंक  
RESERVE BANK OF INDIA  
www.rbi.org.in

RBI/2011-12/11  
Master Circular No.11/2011-12  
(Updated as on May 23, 2012)

July 1, 2011

To,

All Banks Authorised to Deal in Foreign Exchange

Madam / Sir,

**Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad**

Direct investments by residents in Joint Venture (JV) and Wholly Owned Subsidiary (WOS) abroad are being allowed, in terms of clause (a) of sub-section (3) of section 6 of the Foreign Exchange Management Act 1999, (42 of 1999) read with [FEMA Notification 120/RB-2004 dated July 7, 2004](#), (GSR 757 (E) dated November 19, 2004), viz. Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004, as amended from time to time.

2. This Master Circular consolidates the existing instructions on the subject of **“Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad”** at one place. The list of underlying circulars/notifications is furnished in the Appendix.

3. This Master Circular is issued with a sunset clause of one year. This circular will stand withdrawn on July 01, 2012 and be replaced by an updated Master Circular on the subject.

Yours faithfully

(Dr. Sujatha Elizabeth Prasad)  
Chief General Manager



## INDEX

PART - I-----	3
SECTION A – GENERAL -----	3
A.1 INTRODUCTION-----	3
A.2 STATUTORY BASIS -----	3
A.3 PROHIBITIONS -----	4
A.4 GENERAL PERMISSION -----	4
SECTION B - DIRECT INVESTMENT OUTSIDE INDIA -----	5
B.1 AUTOMATIC ROUTE -----	5
B.2 INVESTMENT IN UNINCORPORATED ENTITIES OVERSEAS UNDER THE AUTOMATIC ROUTE-----	11
B.3 METHOD OF FUNDING -----	12
B.4 CAPITALISATION OF EXPORTS AND OTHER DUES -----	13
B.5. INVESTMENTS IN FINANCIAL SERVICES SECTOR-----	13
B.6 INVESTMENT IN EQUITY OF COMPANIES REGISTERED OVERSEAS / RATED DEBT INSTRUMENTS -----	14
B.7 APPROVAL OF THE RESERVE BANK-----	16
B.8 INVESTMENTS IN ENERGY AND NATURAL RESOURCES SECTOR -----	17
B.9 OVERSEAS INVESTMENTS BY PROPRIETORSHIP CONCERNS -----	17
B.10 OVERSEAS INVESTMENT BY REGISTERED TRUST / SOCIETY-----	18
B.11 POST INVESTMENT CHANGES / ADDITIONAL INVESTMENT IN EXISTING JV / WOS -----	19
B.12 RESTRUCTURING OF THE BALANCE SHEET OF THE OVERSEAS ENTITY INVOLVING WRITE- OFF OF CAPITAL AND RECEIVABLES -----	20
B.13 ACQUISITION OF A FOREIGN COMPANY THROUGH BIDDING OR TENDER PROCEDURE -----	21
B.14 OBLIGATIONS OF INDIAN ENTITY-----	21
B.15 TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS -----	22
B.16 TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS INVOLVING WRITE OFF OF THE INVESTMENT -----	23
B.17 PLEDGE OF SHARES OF JV/WOS -----	23
B.18 HEDGING OF OVERSEAS DIRECT INVESTMENTS -----	24
SECTION C - OTHER INVESTMENTS IN FOREIGN SECURITIES -----	25
C.1 PERMISSION FOR PURCHASE/ ACQUISITION OF FOREIGN SECURITIES ----- IN CERTAIN CASES-----	25
C.2 PLEDGE OF A FOREIGN SECURITY BY A PERSON RESIDENT IN INDIA-----	26
C.3 GENERAL PERMISSION IN CERTAIN CASES-----	26
PART - II-----	28
OPERATIONAL INSTRUCTIONS TO AUTHORISED DEALER BANKS-----	28
1. DESIGNATED BRANCHES -----	28
2. INVESTMENTS UNDER REGULATION 6 OF NOTIFICATION NO. FEMA 120/2004-RB DATED JULY 7, 2004 -----	28
3. GENERAL PROCEDURAL INSTRUCTIONS -----	29
4. INVESTMENTS UNDER REGULATION 11 OF NOTIFICATION NO. FEMA 120/2004-RB DATED JULY 7, 2004-----	31
5. ALLOTMENT OF UNIQUE IDENTIFICATION NUMBER (UIN) -----	32
6. INVESTMENT BY WAY OF SHARE SWAP -----	32
7. INVESTMENTS UNDER REGULATION 9 OF NOTIFICATION NO. FEMA 120/2004-RB DATED JULY 7, 2004 -----	33
8. PURCHASE OF FOREIGN SECURITIES UNDER ADR / GDR LINKED STOCK OPTION SCHEME -----	33



9. REMITTANCE TOWARDS EARNEST MONEY DEPOSIT OR ISSUE OF BID BOND GUARANTEE -----	33
10. TRANSFER BY WAY OF SALE OF SHARES OF A JV / WOS OUTSIDE INDIA -----	34
11. VERIFICATION OF EVIDENCE OF INVESTMENT -----	34
ANNEX - A-----	36
ANNEX – B -----	52
ANNEX –C-----	53
APPENDIX-----	54



## PART - I

### Section A – General

#### A.1 Introduction

(1) Overseas investments in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business 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. They are also important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments.

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

#### A.2 Statutory basis

(1) Section 6 of the Foreign Exchange Management Act, 1999 provides powers to the Reserve Bank to specify, in consultation with the Government of India the classes of permissible capital account transactions and limits up to which foreign 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.



(2) In exercise of the above powers conferred under the Act, the Reserve Bank has in supersession of the earlier Notification No.FEMA19/RB-2000 dated 3rd May 2000 and subsequent amendments thereto, issued Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#)<sup>1</sup>. 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. Overseas Investment can be made under two routes viz. (i) Automatic Route outlined in paragraph B.1 and (ii) Approval Route outlined in paragraph B.7.

### **A.3 Prohibitions**

Indian parties are prohibited from making investment in a foreign entity engaged in real estate (meaning 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) or banking business, without the prior approval of the Reserve Bank.

### **A.4 General Permission**

In terms of Regulation 4 of the Notification, general permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner :

- (a) out of the funds held in RFC account;
- (b) as bonus shares on existing holding of foreign currency shares; and
- (c) when not permanently resident in India, out of their foreign currency

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<sup>1</sup> as amended vide [Notification No. FEMA 132/2005-RB dated 31st March 2005](#), [Notification No. FEMA 135/2005-RB dated 17<sup>th</sup> May 2005](#), [Notification No. FEMA 139/2005-RB dated 11<sup>th</sup> August 2005](#), [Notification No. FEMA 150/2006-RB dated 21<sup>st</sup> August 2006](#), [Notification No. FEMA 164/2007-RB dated 9<sup>th</sup> October 2007](#), [Notification No. FEMA173/2007-RB dated 19<sup>th</sup> December 2007](#), [Notification No. FEMA 180/2008-RB](#)



resources outside India.

General permission is also available to sell the shares so purchased or acquired.

## **Section B - Direct Investment Outside India**

### **B.1 Automatic Route**

(1) In terms of Regulation 6 of the Notification, an Indian party has been permitted to make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), not exceeding 400 per cent of the net worth<sup>2</sup> as on the date of last audited balance sheet of the Indian party, i.e. a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, making investment in a JV/WOS abroad and includes any other entity in India excluding individuals as may be notified by the Reserve Bank.

(2) The ceiling of 400 per cent of net worth will not be applicable where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or out of funds raised through ADRs/GDRs. The Indian party should approach an Authorised Dealer Category - I bank with an application in Form ODI (Annex A) and prescribed enclosures / documents for effecting remittances towards such investments.

(3) The total financial commitment of the Indian party, in all the Joint Ventures / Wholly Owned Subsidiaries put together, shall not exceed 400% of the net worth of the Indian party as on the date of the last audited balance sheet. For the purpose of determining the 'total financial commitment' within the limit of 400% as specified above, the following shall be reckoned, namely:

- a. 100% of the amount of equity shares;

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[dated 5<sup>th</sup> September 2008](#), [Notification No. FEMA181/2008-RB dated 1st October 2008](#) and Notification No. FEMA196/2009-RB dated 30th September 2009 (hereinafter referred to as 'the Notification')

<sup>2</sup> networth means paid up capital and free reserves



- b. <sup>3</sup>100% of the amount of compulsorily and mandatorily convertible preference shares;
- c. 100% of the amount of other preference shares;
- d. 100% of the amount of loan;
- e. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian party;
- f. <sup>4</sup>100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian party.
- g. 50% of the amount of performance guarantee issued by the Indian party provided that the outflow on account of invocation of performance guarantee results in the breach of the limit of the financial commitment in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the financial commitment.

The investments are subject to the following conditions:

- a) The Indian party / entity may extend loan / guarantee only to an overseas JV/ WOS in which it has equity participation. <sup>5</sup>Proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route. AD banks may forward the proposals from their constituents after ensuring that the laws of the host country permit incorporation of a company without equity participation by the Indian party.

Indian entities may offer any form of guarantee - corporate or personal (<sup>6</sup> including the personal guarantee by the indirect resident individual promoters of the Indian Party)/ primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India provided that:

<sup>3</sup> [A.P. \(DIR Series\) Circular No. 96 dated March 28, 2012](#)

<sup>4</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012

<sup>5</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012

<sup>6</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012



- i) All financial commitments including all forms of guarantees are within the overall ceiling prescribed for overseas investment by the Indian party i.e. currently within 400 per cent of the net worth as on the date of the last audited balance sheet of the Indian party.
- ii) No guarantee should be 'open ended' i.e. the amount and period of the guarantee should be specified upfront. In the case of performance guarantee, time specified for the completion of the contract shall be the validity period of the related performance guarantee.
- iii) In cases where invocation of the performance guarantees breach the ceiling for the financial exposure of 400 per cent of the net worth of the Indian Party, the Indian Party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account of such invocation.
- iv) As in the case of corporate guarantees, all guarantees (including performance guarantees and Bank Guarantees/SBLC) are required to be reported to the Reserve Bank, in Form ODI-Part II. Guarantees issued by banks in India in favour of WOSs / JVs outside India, and would be subject to prudential norms, issued by the Reserve Bank (DBOD) from time to time.

**Foot note:** <sup>7</sup>Compulsorily Convertible Preference Shares (CCPS) shall be treated at par with equity shares

**Note:** <sup>8</sup>Specific approval of the Reserve Bank will be required for creating charge on immovable/moveable property and other financial assets (except pledge of shares of overseas JV/WOS) of the Indian parent/ group companies in favour of a non- resident entity within the overall limit fixed (presently 400%) for financial

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<sup>7</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012

<sup>8</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012





commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.

- b) The Indian party should not be on the Reserve Bank's Exporters' caution list / list of defaulters to the banking system circulated by the Reserve Bank / Credit Information Bureau (India) Ltd. (CIBIL) / or any other credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body.
- c) All transactions relating to a JV / WOS should be routed through one branch of an Authorised Dealer bank to be designated by the Indian party.
- d) In case of partial / full acquisition of an existing foreign company, where the investment is more than USD 5 million, 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 Chartered Accountant or a Certified Public Accountant.
- e) In cases of investment by way of swap of shares, irrespective of the amount, valuation of the shares will have to be made by a Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Foreign Investment Promotion Board (FIPB) will also be a prerequisite for investment by swap of shares.
- f) In case of investment in overseas JV / WOS abroad by a registered Partnership firm, where 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 the overseas JV / WOS if the



host country regulations or operational requirements warrant such holdings.

g) An Indian party may acquire shares of a foreign company engaged in a bonafide business 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 there under from time to time by the Government of India, provided:

- (i) ADRs/GDRs are listed on any stock exchange outside India;
- (ii) The ADR and/or GDR issued for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian party;
- (iii) 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 under FDI;
- (iv) Valuation of the shares of the foreign company shall be
  - (a) as per the recommendations of the Investment Banker if the shares are not listed on any recognized 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.



(4) The Indian Party is required to report such acquisition in form ODI to the AD Bank for submission to the Reserve Bank within a period of 30 days from the date of the transaction.

**Note:** Investments in Nepal are permitted only in Indian Rupees. Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. All dues receivable on investments made in freely convertible currencies, as well as their sale / winding up proceeds are required to be repatriated to India in freely convertible currencies only. The automatic route facility is not available for investment in Pakistan.

### **B 1.1 Issue of guarantee by an Indian Party to step down subsidiary of JV /WOS**

(a) Indian Parties are permitted to issue corporate guarantees on behalf of their first level step down operating JV /WOS set up by their JV / WOS operating as a Special Purpose Vehicle (SPV) under the Automatic Route, subject to the condition that the financial commitment of the Indian Party is within the extant limit for overseas direct investment. It has been decided that irrespective of whether the direct subsidiary is an operating company or a SPV, the Indian promoter entity may extend corporate guarantee on behalf of the first generation step down operating company under the Automatic Route, within the prevailing limit for overseas direct investment. Such guarantees will have to be reported to the Reserve Bank in Form ODI, as hitherto, through the designated AD Category – I bank concerned.

(b) Further, the issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries will be considered under the Approval Route, provided the Indian Party directly or indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

### **B.1.2 Investment through Special Purpose Vehicle (SPV) under Automatic Route**



- (i) Investments in JV/WOS abroad by Indian parties through the medium of a Special Purpose Vehicle (SPV) are also permitted under the Automatic Route in terms of Regulation 6 of the Notification, subject to the conditions that the Indian party is not included in the Reserve Bank's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank. Indian parties whose names appear in the Defaulters' list require prior approval of the Reserve Bank for the investment.
- (ii) Setting up of an SPV under the Automatic Route is permitted for the purpose of making a investment in JV/WOS overseas.

## **B.2 Investment in unincorporated entities overseas under the Automatic Route**

- (1) Investments in unincorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd.(OVL) and Oil India Ltd.(OIL) may be permitted by AD Category - I banks, without any limit, provided such investments are approved by the competent authority.
- (2) Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to 400 per cent of their net worth provided the proposal has been approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment. Investment in excess of 400 per cent of the net worth of an Indian company shall require prior approval of the Reserve Bank.
- (3) Indian companies are also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route. Accordingly, AD Category - I banks may allow remittances by Indian companies for overseas direct investment, after ensuring that the Indian company has obtained necessary licence from the



Department of Telecommunication, Ministry of Telecommunication & Information Technology, Government of India to establish, install, operate and maintain International Long Distance Services and also by obtaining a certified copy of the Board Resolution approving such investment.

Accordingly, these transactions may be reported by the Indian entities investing in the consortium to the AD Category - I banks in form ODI for enabling on-line submission of the same by the AD Category –I banks to the Reserve Bank for allotment of Unique Identification Number.

### **B.3 Method of Funding**

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

- i) drawal of foreign exchange from an AD bank in India;
- ii) capitalisation of exports;
- iii) swap of shares (valuation as mentioned in para B.1 (e) above);
- iv) proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- v) in exchange of ADRs/GDRs issued 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 Government of India;
- vi) balances held in EEFC account of the Indian party; and
- vii) proceeds of foreign currency funds raised through ADR / GDR issues.

In respect of (vi) and (vii) above, the ceiling of 400 per cent of the net worth will not apply. However, all investments made in the financial sector will be subject to compliance with Regulation 7 of the Notification, irrespective of the method of funding.



<sup>9</sup>Wherever, the host country Regulations stipulate that the investments into the country is required to be routed through a designated account, an Indian party will be allowed to open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments subject to certain terms and conditions.

(2) General permission has been granted to persons resident in India for purchase / acquisition of securities in the following manner :

- (i) out of funds held in RFC account;
- (ii) as bonus shares on existing holding of foreign currency shares; and
- (iii) when not permanently resident in India, out of their foreign currency resources outside India (para A.4 above)

#### **B.4 Capitalisation of exports and other dues**

(1) Indian party is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realization will require prior approval of the Reserve Bank.

(2) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software start-up company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank.

#### **B. 5. Investments in Financial Services Sector**

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<sup>9</sup> [A.P. \(DIR Series\) Circular No. 101 dated April 2, 2012](#)



(1) In terms of Regulation 7 of the Notification, an Indian party seeking to make investment in an entity outside India, which is engaged in the financial sector, should fulfill the following additional conditions:

- (i) be registered with the regulatory authority in India for conducting the financial sector activities;
- (ii) has earned net profit during the preceding three financial years from the financial services activities;
- (iii) has obtained approval from the regulatory authorities concerned both in India and abroad for venturing into such financial sector activity; and
- (iv) has fulfilled the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authority in India.

(2) Any additional investment by an existing JV/WOS or its step down subsidiary in the financial services sector is also required to comply with the above conditions.

(3) Regulated entities in the financial sector making investments in any activity overseas are required to comply with the above guidelines. Unregulated entities in the financial services sector in India may invest in non financial sector activities subject to compliance with the provisions of Regulation 6 of the Notification. Trading in Commodities Exchanges overseas and setting up JV/WOS for trading in overseas exchanges will be reckoned as financial services activity and require clearance from the Forward Markets Commission.

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

(1)(i) Portfolio Investments by listed Indian companies

Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares and (ii) bonds / fixed income securities, rated not below investment grade by accredited /



registered credit rating agencies, issued by listed overseas companies.

(ii) Investment by Mutual Funds

Indian Mutual Funds registered with SEBI are permitted to invest within an overall cap of USD 7 billion in :

- i) ADRs / GDRs of the Indian and foreign companies;
- ii) equity of overseas companies listed on recognised stock exchanges overseas ;
- iii) initial and follow on public offerings for listing at recognized stock exchanges overseas;
- iv) foreign debt securities in the countries with fully convertible currencies, short- term as well as long-term debt instruments with rating not below investment grade by accredited/registered credit agencies;
- v) money market instruments rated not below investment grade;
- vi) repos in the form of investment, where the counterparty is rated not below investment grade. The repos should not, however, involve any borrowing of funds by mutual funds;
- vii) government securities where the countries are rated not below investment grade;
- viii) derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;
- ix) short-term deposits with banks overseas where the issuer is rated not below investment grade; and
- x) units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators and investing in (a) aforesaid securities, (b) Real





Estate Investment Trusts (REITS) listed on recognized stock exchanges overseas, or (c) unlisted overseas securities (not exceeding 10 per cent of their net assets).

(2). A limited number of qualified Indian Mutual Funds, are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds as may be permitted by SEBI.

(3). Domestic Venture Capital Funds registered with SEBI may invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million. Accordingly, Mutual Funds / Venture Capital Funds desirous of availing of this facility may approach SEBI for necessary permission.

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

### **B.7 Approval of the Reserve Bank**

(1) Prior approval of the Reserve Bank would be required in all other cases of direct investment abroad. For this purpose, application together with necessary documents should be submitted in Form ODI through their Authorised Dealer Category – I banks.

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

- a) Prima facie viability of the JV / WOS 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; and



- d) Expertise and experience of the Indian party in the same or related line of activity as of the JV / WOS outside India.

### **B.8 Investments in energy and natural resources sector**

Reserve Bank will consider applications for investment in JV/WOS overseas in the energy and natural resources sectors (e.g. oil, gas, coal and mineral ores) in excess of 400 per cent of the net worth of the Indian companies as on the date of the last audited balance sheet. AD Category - I banks may forward such applications from their constituents to the Reserve Bank as per the laid down procedure.

### **B.9 Overseas Investments by Proprietorship Concerns**

(1) With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietorship concerns and unregistered partnership firms are allowed to set up JVs / WOS outside India with the prior approval of the Reserve Bank subject to satisfying certain eligibility criteria. An application in form ODI may be made to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5<sup>th</sup> Floor, Fort, Mumbai 400 001, through the AD Category - I bank. AD Category - I banks may forward the applications to the Reserve Bank along with their comments and recommendations, for consideration.

(2) Investments by established proprietorship or unregistered partnership exporter firms will be subject to the following conditions:

- i) The Partnership / Proprietorship firm is a DGFT recognized Star Export House.
- ii) The AD Category – I bank is satisfied that the exporter is KYC (Know Your Customer) compliant and is engaged in the proposed



business and meets the requirement as indicated at i) above.

- iii) Exporter has proven track record i.e. overdue exports do not exceed 10 per cent of the average export realization of preceding three financial years.
- iv) The exporter has not come under adverse notice of any Government agency like Directorate of Enforcement, CBI and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India.
- v) The amount of investment outside India does not exceed 10 per cent of the average export realization of the preceding three financial years or 200 per cent of the net owned funds of the firm, whichever is lower.

#### **B.10 Overseas investment by Registered Trust / Society**

Registered Trusts and Societies engaged in manufacturing / educational / hospital sector are allowed to make investment in the same sector(s) in a JV/WOS outside India, with the prior approval of the Reserve Bank. Trusts / Societies satisfying the eligibility criteria, as indicated below, may submit the application/s in Form ODI-Part I, through their AD Category - I bank/s, to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, 5<sup>th</sup> Floor, Fort, Mumbai 400 001, for consideration.

##### Eligibility Criteria:

- (a) Trust
  - i) The Trust should be registered under the Indian Trust Act, 1882;
  - ii) The Trust deed permits the proposed investment overseas;
  - iii) The proposed investment should be approved by the trustee/s;



- iv) The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- v) The Trust has been in existence at least for a period of three years;
- vi) The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

(b) Society

- i) The Society should be registered under the Societies Registration Act, 1860.
- ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee.
- iii) The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- iv) The Society has been in existence at least for a period of three years;
- v) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

In addition to the registration, the AD Category – I bank should ensure that the special license / permission has been obtained by the applicant in case the activities require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

**B.11 Post investment changes / additional investment in existing JV / WOS**



A JV / WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in the overseas entity (subject to compliance of Regulation 7 of the Notification in the case of financial services sector companies). The Indian party should report to the Reserve Bank through the AD Category - I bank, the details of such decisions within 30 days of the approval of those decisions by the competent authority of the JV / WOS concerned in terms of local laws of the host country and include the same in the Annual Performance Report (APR—Part III of form ODI) required to be forwarded to the AD Category-I bank.

### **B. 12 Restructuring of the balance sheet of the overseas entity involving write- off of capital and receivables**

In order to provide more operational flexibility to the Indian corporates, the Indian promoters who have set up WOS abroad or have at least 51 per cent stake in an overseas JV, may write off capital (equity / preference shares) or other receivables, such as, loans, royalty, technical knowhow fees and management fees in respect of the JV /WOS, even while such JV /WOS continues to function as under:

- (i) Listed Indian companies are permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV /WOS under the Automatic Route; and
- (ii) Unlisted companies are permitted to write off capital and other receivables up to 25 per cent of the equity investment in the JV /WOS under the Approval Route.

The write-off / restructuring have to be reported to the Reserve Bank through the designated AD Category-I bank within 30 days of write-off/ restructuring. The write-off / restructuring is subject to the condition that the Indian Party should submit the following documents for scrutiny along with the applications to the designated AD Category –I bank under the Automatic as well as the Approval Routes:



- a) A certified copy of the balance sheet showing the loss in the overseas WOS/JV set up by the Indian Party; and
- b) Projections for the next five years indicating benefit accruing to the Indian company consequent to such write off / restructuring.

### **B.13 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 AD Category - I bank, in accordance with the provisions of Regulation 14 of the Notification.

### **B.14 Obligations of Indian Entity**

- (1) An Indian party which has made direct investment abroad is under obligation to (a) receive share certificate 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. The share certificate or any other document as evidence of investment has to be submitted to and retained by the designated AD Category - I bank, who is required to monitor the receipt of such documents and satisfy themselves about the bonafides of the documents. A certificate to this effect should be submitted by the designated AD category – I bank to the Reserve Bank along with the APR (Part III of Form ODI).
- (2) Reporting requirements including submission of Annual Performance Report are also applicable for investors in unincorporated entities in the oil sector.
- 3) <sup>10</sup>Where the law of the host country does not mandatorily require auditing of the books of accounts of JV / WOS, the Annual Performance Report (APR) may

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<sup>10</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012



be submitted by the Indian party based on the un-audited annual accounts of the JV / WOS provided:

- a. The Statutory Auditors of the Indian party certify that 'The un-audited annual accounts of the JV / WOS reflect the true and fair picture of the affairs of the JV / WOS' and
- b. That the un-audited annual accounts of the JV / WOS has been adopted and ratified by the Board of the Indian party.

#### **B.15 Transfer by way of sale of shares of a JV / WOS**

1. An Indian Party without prior approval of the Reserve Bank may transfer by way of sale to another Indian Party which complies with the provisions of Regulation 6 of FEMA Notification 120/RB-2004 dated July 7, 2004 or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:
    - (i) the sale does not result in any write off of the investment made.
    - (ii) the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
    - (iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
    - (iv) the Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
    - (v) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
-



(vi) the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

2. The Indian entity is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

### **B. 16 Transfer by way of sale of shares of a JV / WOS involving Write off of the investment**

(1) Indian Parties may disinvest, without prior approval of the Reserve Bank, in any of the under noted cases where the amount repatriated after disinvestment is less than the original amount invested:

- i) in case where the JV / WOS is listed in the overseas stock exchange;
- ii) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- iii) where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million. and
- iv) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.

(2) Such disinvestments shall be subject to the conditions listed at B.15 items (ii) to (vi) and B 15.2.

(3) An Indian Party, which does not satisfy the conditions laid down above for undertaking any disinvestment in its JV/WOS abroad, shall have to apply to the Reserve Bank for prior permission.

### **B.17 Pledge of Shares of JV/WOS**





An Indian party may pledge the shares of JV / WOS to an AD Category – I bank or a public financial institution in India for availing of any credit facility for itself or for the JV / WOS abroad in terms of Regulation 18 of the Notification. Indian party may also transfer by way of pledge, the shares held in overseas JV/WOS, to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian party remain within the limit stipulated by the Reserve Bank for overseas investments, from time to time.

### **B.18 Hedging of Overseas Direct Investments**

(1) Resident entities having overseas direct investments are permitted to hedge the foreign exchange rate risk arising out of such investments. AD Category - I banks may enter into forward / option contracts with resident entities who wish to hedge their overseas direct investments (in equity and loan), subject to verification of such exposure. Cancellation of such forward contracts may be permitted by AD Category - I banks and 50 per cent of such cancelled contracts may be allowed to be rebooked.

(2) If a hedge becomes naked in part or full owing to shrinking of the market value of the overseas direct investment, the hedge may continue to the original maturity. Rollovers on the due date are permitted up to the extent of market value as on that date.



## **SECTION C - Other Investments in Foreign Securities**

### **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;
- b) to acquire shares under cashless Employees Stock Option Programme (ESOP) issued by a company outside India, provided it does not involve any remittance from India;
- 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 under its ESOP Schemes, 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, either direct or through a holding company/Special Purpose Vehicle (SPV) <sup>11</sup>irrespective of the percentage of the direct or indirect equity stake in the Indian company. AD Category – I banks are permitted to allow remittances for purchase of shares by eligible persons under this provision irrespective of the method of operationalisation of the scheme i.e where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / a Special Purpose Vehicle (SPV) / step down subsidiary, provided (i) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and (ii) an Annual Return (Annex B) is submitted by the Indian company to

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<sup>11</sup> [A.P. \(DIR Series\) Circular No. 97 dated March 28, 2012](#)



the Reserve Bank through the AD Category – I bank giving details of remittances / beneficiaries, etc.

A person resident in India may transfer by way of sale the shares acquired as stated above provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities.

- e) Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided (i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999, (ii) the shares are being repurchased in terms of the initial offer document, and (iii) an annual return is submitted through the AD Category – I bank giving details of remittances / beneficiaries, etc.
- f) In all other cases, 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 Pledge 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 AD Category – I bank / Public Financial Institution.

## **C.3 General permission in certain cases**

Residents are permitted to acquire a foreign security, if it represents –

- a) <sup>12</sup>qualification shares for becoming a director of a company outside India to the extent prescribed as per the law of the host country where the company is located provided it does not exceed the limit

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<sup>12</sup> A.P. (DIR Series) Circular No. 97 dated March 28, 2012



prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.

- b) <sup>13</sup>part / full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The limit of acquiring such shares in terms of value is restricted to the overall ceiling prescribed for the resident individuals under the Liberalized Remittance Scheme (LRS) in force at the time of acquisition.
- c) rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force;
- d) purchase of shares of a JV / WOS abroad of the Indian promoter company by the employees/directors of 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 per cent of the paid-up capital of the JV / WOS 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; and
- d) purchase of foreign securities under ADR / GDR linked stock option schemes by resident employees of Indian companies in the knowledge based sectors, 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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<sup>13</sup> A.P. (DIR Series) Circular No. 97 dated March 28, 2012



## PART - II

### Operational Instructions to Authorised Dealer Banks

#### 1. Designated branches

An eligible Indian party making investment in a Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India is required to route all its transactions relating to the investment through one branch of an AD Category – I bank designated by it in terms of clause (v) of sub regulation 2 of Regulation 6 of the Notification. All communication from the Indian parties, to the Reserve Bank, relating to the investment outside India should be routed through the same branch of the AD Category – I bank that has been designated by the Indian investor for the investment. The designated AD Category – I bank while forwarding the request from their customers to the Reserve Bank, should also forward its comments / recommendations on the request. However, the Indian party may designate different AD Category – I banks / branches of AD Category – I banks for different JV / WOS outside India. For proper follow up, the AD Category – I bank is required to maintain party-wise record in respect of each JV/ WOS.

#### 2. Investments under Regulation 6 of Notification No. FEMA 120/2004-RB dated July 7, 2004

AD Category – I banks may allow investments up to the permissible limits on receipt of application in form ODI together with form A-2, duly filled in, from the Indian party(ies) making investments in a JV/WOS abroad subject to their complying with the conditions specified in Regulation 6 of Notification FEMA No.120/RB-2004 dated July 7, 2004, as amended from time to time. Investment in financial services should also comply with the norms stipulated at Regulation 7 of the Notification. While forwarding the report of remittance in respect of investment in financial services sector, AD Category – I banks may certify that prior approvals from the Regulatory Authorities concerned in India and abroad have been obtained. Before allowing the remittance, AD Category – I banks are required to



ensure that the necessary documents, as prescribed in form ODI, have been submitted and found to be in order.

### **3 General procedural instructions**

(1) With effect from June 01, 2007, reporting system for overseas investment has been revised. All the earlier forms have been subsumed into one form viz. ODI, comprising of four parts:

**Part I** - includes the following:

Section A – Details of the Indian Party

Section B – Details of Investment in New Project

Section C - Details of Investment in Existing Project

Section D – Funding for JV / WOS

Section E – Declaration by the Indian Party (to be retained by AD Category – I bank)

Section F - Certificate by the Statutory Auditors of the Indian Party (to be retained by AD Category – I bank)

**Part II** - Reporting of Remittances

**Part III** - Annual Performance Report (APR)

**Part IV** – Report on Closure/Disinvestment/Voluntary Liquidation/Winding up of JV / WOS

(2) The revised form is only a rationalisation and simplification of the reporting procedure and there is no change or dilution in the existing eligibility criteria / documentation / limits.

(3) With effect from March 2, 2010 on-line reporting of the ODI forms has been operationalised in a phased manner. The system enables on-line generation of the Unique Identification Number (UIN), acknowledgment of remittance/s and filing of the Annual Performance Reports (APRs) and easy accessibility to data at the AD level for reference purposes.



- a) Initially, Part I (Sections A to D), II and III of form ODI should be filed on-line in the Overseas Investment Application for allotment of UIN, reporting of subsequent remittances, filing of APRs, etc. AD Category –I banks would continue to receive the ODI forms in physical form, as stipulated in the [A. P. \(DIR Series\) Circular No. 68 dated June 1, 2007](#), which should be preserved, UIN wise, for onward submission to the Reserve Bank, if specifically required. Transactions in respect of Mutual Funds, Portfolio Investment Scheme (PIS) and Employees Stock Options Scheme (ESOPS) are also required to be reported on-line in the Overseas Investment Application.
- b) The on-line reporting would be required to be made by the Centralized Unit/Nodal Office of AD Category - I banks. The Overseas Investment Application is hosted on the Reserve Bank's Secured Internet Website (SIW) <https://secweb.rbi.org.in> and a link has been made available for accessing the Application on the main page of the website. AD Category – I banks would be responsible for the validity of the information reported on-line.
- c) The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical form as hitherto, in addition to the on-line reporting of Part I as contemplated above, for approval purposes.
- d) In case of disinvestment / closure / winding up / voluntary liquidation under the Automatic Route, in terms of [A. P. \(Dir Series\) Circular No. 29 dated March 27, 2006](#), a report should continue to be submitted by the designated AD Category - I bank, in Part IV of form ODI. In all other cases of disinvestment, an application along with the necessary supporting documents should be submitted to the Reserve Bank as per the existing procedure.



- e) As per the new reporting system, AD Category – I banks would be able generate the UIN on-line under the automatic route. However, subsequent remittances under the automatic route and remittances under the approval route should be made and reported on-line in Part II, only after receipt of the letter, confirming the UIN from the Reserve Bank.

(4) In cases where the investment is being made jointly by more than one Indian party, form ODI is required to be signed jointly by all the investing entities and submitted to the designated branch of the AD Category – I bank. AD Category – I banks should file on-line a consolidated form ODI indicating details of each party. The same procedure should be followed where the investment is made out of the proceeds of ADR / GDR issues of an Indian party in terms of Regulation 6(5) of the Notification. The Reserve Bank would allot only one Unique Identification Number to the overseas project.

(5) AD Category – I banks should allow remittance towards loan to the JV / WOS and / or issue guarantee to / on behalf of the JV / WOS abroad only after ensuring that the Indian party has an equity stake in the JV / WOS. However, as has been stated at para B 1 (3) (a) above, <sup>14</sup> wherever the laws of the host country permit incorporation of a company without equity participation by the Indian party, AD banks may obtain prior approval from the Reserve Bank before allowing the remittances towards the loan/issue of guarantee to/on behalf of the overseas JV/WOS.

#### **4. Investments under Regulation 11 of Notification No. FEMA 120/2004-RB dated July 7, 2004**

In terms of Regulation 11 of the Notification, 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

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<sup>14</sup> A.P. (DIR Series) Circular No. 96 dated March 28, 2012





capitalisation in form ODI to the designated branch of the AD Category – I bank. Such investments by way of capitalisation are also to be reckoned while computing the cap of 400 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 AD Category – I banks 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 the revised form ODI. Capitalisation of export proceeds or other entitlements, which are overdue, would require prior approval of the Reserve Bank for which the Indian parties should make an application in form ODI to the Reserve Bank for consideration.

#### **5. Allotment of Unique Identification Number (UIN)**

The Unique Identification Number allotted to each JV or WOS abroad, is required to be quoted in all correspondence with the Reserve Bank. AD Category – I banks may allow additional investment in an existing overseas concern set up by an Indian party, in terms of Regulation 6 only after the Reserve Bank has allotted necessary Unique Identification Number to the overseas project.

#### **6. Investment by way of share swap**

In the case of investment by way of share swap, AD Category – I banks are additionally required to submit to the Reserve Bank the details of transactions such as number of shares received / allotted, premium paid / received, brokerage paid / received, etc., and also confirmation to the effect that the inward leg of transaction has been approved by FIPB and the valuation has been done as per the laid-down procedure and that the overseas company's shares are issued / transferred in the name of the Indian investing company. AD Category – I bank may also obtain an undertaking from the applicants to the effect that future sale / transfer of shares so acquired by Non-Residents in the Indian company shall be in accordance with the provisions of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time.



## **7. Investments under Regulation 9 of Notification No. FEMA 120/2004-RB dated July 7, 2004**

In terms of Regulation 9, investment in JV / WOS in certain cases requires the prior approval of the Reserve Bank. AD Category – I banks may allow remittances under these specific approvals granted by the Reserve Bank and report the same to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> floor, Mumbai 400 001 in form ODI.

## **8. Purchase of foreign securities under ADR / GDR linked Stock Option Scheme**

AD Category – I banks may make remittances up to USD 50,000 or its equivalent in a block of five calendar years, without the prior approval of the Reserve Bank, for purchase of foreign securities in the knowledge based sector under the ADR / GDR linked ESOPs, after satisfying that the issuing company has followed the relevant guidelines of SEBI / Government.

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

- (i) In terms of Regulation 14 of the Notification, AD Category – I banks 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, AD banks 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, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> floor, Mumbai 400 001 in form ODI. AD



Category – I banks, 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 3<sup>rd</sup> May 2000), as amended from time to time

- (ii) In cases where an Indian party, after being successful in the bid / tender decides not to proceed further with the investment, AD banks should submit full details of remittance allowed towards EMD / invoked bid bond guarantee, to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 5<sup>th</sup> 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 entity should obtain approval from the Reserve Bank by submitting form ODI.

#### **10. Transfer by way of sale of shares of a JV / WOS outside India**

The Indian party should report details of the disinvestment through the AD Category – I bank within 30 days of disinvestment in Part IV of the Form ODI as indicated in para 3 (3) (c) above. Sale proceeds of shares / securities shall be repatriated to India immediately on receipt thereof and in any case not later than 90 days from the date of sale of the shares / securities.

#### **11. Verification of evidence of investment**

The share certificates or any other document as evidence of investment, where share certificates are not issued shall, henceforth, be submitted to and retained by the designated AD Category –I bank, who would be required to monitor the receipt of such documents and satisfy themselves about the bonafides of the documents



so received. A certificate to this effect should be submitted by the designated AD Category –I bank to the Reserve Bank along with the APR (Part III of Form ODI).



**FORM ODI**

**PART I**

**For office use only**

Date of Receipt -----

Inward No. -----

**Section A: Details of Indian Party**

(I) Investment under (i) Automatic Route  (ii) Approval Route

(In case there is more than one Indian party, information may be given on separate sheets for each of the parties)

(II) Name of Indian Party

(III) Address of Indian Party

City  State  Pin

(IV) Contact Person  Designation

Tel No.  Fax

e-mail

(V) Status of Indian Party: (Please tick appropriate category)

(1) Public Ltd. Company  (2) Private Limited Company

(3) Public Sector Undertaking  (4) Registered Partnership

(5) Proprietorship  (6) Unregistered Partnership

(7) Trust  (8) Society

(9) Others

(VI) Activity code of Indian Party\*

\*NIC code at 3-digit level



**[If the Indian Party is engaged in Financial sector or falls under the category of Proprietorship, Unregistered Partnership or Financial sector, please furnish the details in Item VII below].**

(VII) Financial particulars of the Indian Party for the last 3 years  
(Amt. in Rs. 000s)

Particulars	Year 1 31-3-	Year 2 31-3	Year 3 31-3
Foreign exchange earnings (excluding equity exports to JV/WOS)			
Net profit			
Paid-up Capital			
Net worth of (a) Indian Party (b) Group Company@			

@ In terms of Explanation to Regulation 6 (3) of Notification No. FEMA 120/ RB-2004 dated July 7, 2004

(VIII) Particulars of existing Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) already in operation or under implementation, of the Indian party and its group concerns:

Sr. No.	Name of Indian Party	Unique Identification Number allotted by Reserve Bank
1.		
2.		
3.		

(IX) Whether the proposed investment is (Tick the appropriate box)

(a) New Project  (Please furnish the details in Section B)

(b) Existing Project\*  (Please furnish the details in Section C)

\* Acquisition of stake in an already existing JV/WOS overseas promoted by an Indian party.



**Section B: Details of Investment in New Project**

<b>For Reserve Bank use only</b>											
<b>Unique Identification Number</b>											

(I) Purpose of investment (Please tick appropriate category)

- (a) Participation in JV  (b) Contribution in WOS
- (c) Full acquisition of a foreign concern
- (d) Partial acquisition of a foreign concern
- (e) Investment in unincorporated entity
- (f) Others

(II) Particulars of JV/WOS

- (a) Name of JV/WOS
- (b) Address of JV/WOS
- (c) Name of the country
- (d) e-mail
- (e) Accounting year followed by JV/WOS

(III) Activity code of JV/WOS

(IV) Whether JV/WOS is SPV (Y/N)? #

# If Y, Please furnish the details in Section D

Proposed Capital Structure

	[a] Indian Party (ies)	% stake		[b] Foreign partner(s)	% stake
(1)			(1)		
(2)			(2)		
(3)			(3)		



**Section C: Details of Investment in Existing Project**

<b>Indicate 13 digit Unique Identification Number issued by Reserve Bank</b>												

(I) Purpose of Supplementary Investment (Please tick appropriate category)

- (a) Enhancement of Equity in existing JV/WOS overseas
- (b) Enhancement of Preference Equity/ Convertible Debt
- (c) Grant/ Enhancement of Loan in existing JV/WOS
- (d) Extension/ Enhancement of Guarantees
- (e) Remittances to Unincorporated Entity
- (e) Others

(II) Capital Structure

	[a] Indian Party (ies)	% stake		[b] Foreign partner(s)	% stake
(1)			(1)		
(2)			(2)		
(3)			(3)		





**Section D - Funding for JV / WOS**

(Amount in FCY 000's)

I Full Value of the Overseas Acquisition

II Estimated cost of overseas acquisition for the Indian Party

III Financial commitment \* (in applicable FCY): FYC  Amount

IV Method of Investment by Indian Party

(i) Cash Remittance

(a) EEFC

(b) Market Purchase

(ii) Capitalization of

(a) Export of plant and machinery

(b) Others (please Specify)

(iii) ADRs /GDRs [raised overseas]

(iv) ECB/FCCB

(v) Swap of shares

(vi) Others (Please specify)

Total A [Indian Party]

V. Whether JV/WOS is SPV (Y/N)

(a) If Y, purpose of SPV:

i) Full value of the overseas acquisition

ii) Direct / Indirect infusion by SPV

ii) Funds raised overseas with guarantee/  
counter guarantee from Indian party

iii) Funds raised overseas without guarantee/  
counter guarantee from Indian Party

iv) Funds contributed in the form of equity/  
preference equity/ shareholder's loans  
by foreign investors

v) Securitisation

vi) Any other mode (please specify)

Total

VI. Guarantees/ Other Non fund based Commitments

**Note** \* : Financial Commitment as defined in FEMA 120/RB-2004 dated July 7, 2004  
 Sec 2(f)- Financial Commitment means amount of Direct Investment by way of contribution to equity, loan and 100 per cent of the amount of guarantee issued by Indian Party to or on behalf of its overseas Joint Venture company or Wholly Owned Subsidiary.



**Section E : Declaration by the Indian Party**

I (a) Whether the applicant party (ies), its promoters, directors, etc., are under investigations by any investigative/enforcement agency or regulatory body. If yes, the brief details thereof, including present stage of investigation/ adjudication / manner of disposal of the case .

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(b) Whether the promoter Indian party(ies) is(are) presently on Exporters' Caution List of Reserve Bank for non-realization of export proceeds or on the list of defaulters to the Banking System circulated by Reserve Bank. If so, status of the Indian party (ies):

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(c) Any other information relevant to this proposal, including any special benefits/ incentives available in the host country for setting up / acquiring the proposed concern.

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I/ We hereby certify that the information furnished above are true and correct.

Place: \_\_\_\_\_

\_\_\_\_\_  
(Signature of authorised official)

Date : \_\_\_\_\_

**Stamp/Seal**

Name:-----

Designation-----

List of enclosures:

- |    |    |
|----|----|
| 1. | 4. |
| 2. | 5. |
| 3. | 6. |



### **Section F: Certificate by the Statutory Auditors of the Indian Party**

It is certified that the terms and conditions contained in Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time (Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004) have been complied with by the Indian party (Name of the Indian Party) in respect of the investment under report. In particular, it is certified that:

- (i) the investment is not in real estate oriented or banking business, and
  - (ii) the amount of foreign exchange proposed to be purchased for remittance towards the investment together with remittances for all overseas investments already made and exports and other dues capitalized / swap of shares / investment from ECB / FCCB balances for investment abroad under the Automatic Route is within the limit stipulated by the Reserve Bank from time to time. This has been verified with reference to the net worth of the Indian party (Name of the Indian Party) as on the date of last audited balance sheet, i. e.-----(date)
- (iii) has complied with the valuation norms prescribed for the investment
- (iv) has complied with the ECB guidelines #
- (v) that the Indian party (a) has made net profits during the preceding three years, (b) has fulfilled the prudential norms of capital adequacy as prescribed by the regulatory authority concerned; (c) has been registered with the appropriate regulatory authority in India and (d) has obtained approval for the investment in financial services sector activities from the regulatory authorities concerned in India and abroad \*.

Note : \*Applicable only in cases where the investment is in the financial services sector (e.g. insurance, mutual fund, asset management, etc.).

# Applicable where investment is funded through ECB/FCCB balances.

**(Signature of the Statutory Auditor of the Company)  
Name of the firm, Stamp and Registration number**



**PART II**

**REPORTING OF REMITTANCES**

**For office use only**

**Date of Receipt** -----  
**Inward No.** -----

In case investment is in the existing JV/WOS, please indicate Unique Identification No. already allotted :

No.														
-----	--	--	--	--	--	--	--	--	--	--	--	--	--	--

(I) Name of Indian Company:   
 (II) Is there any change in Company name since last reporting? (Y/N)   
 If yes, specify Old Company Name

**DETAILS OF CURRENT REMITTANCES EFFECTED**

(Amount in 000's of FCY)

Code of Reporting AD <input type="text"/>		foreign currency** : <input type="text"/>	
<b>(a) From EEFC A/c.</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(b) By Market Purchases</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(c) From the ADR/GDR funds</b>			
Equity	Loan	Guarantee (Invoked)	Date of Remittance
<b>(d) By Swap of Shares</b>			
Equity	Loan	Guarantee (Invoked)	Date of Swap
		XXXX	



(e) From ECB/ FCCB balances parked in India/outside India			
Equity	Loan	Guarantee (Invoked)	Date of Transaction
(g) Capitalization of Exports/Other dues@			
Date of capitalization:		Amount:	
(h) Guarantee issued: Date (Fresh / Existing Guarantee Period Extended )		Amount:	
Validity Period			

Note : \*\* Please indicate name of the foreign currency (FCY) as per SWIFT code.

@ Please specify the other dues being capitalized viz., royalty, technical know-how fee, consultancy fees, etc.

We hereby confirm that the remittance (strike out whichever is not applicable)

i) has been allowed under the Automatic Route based on the certification given by the Statutory Auditors confirming compliance with the prescribed terms and conditions by the Indian party ;

ii) is in accordance with the terms and conditions of the approval letter issued by the Reserve Bank ; and

iii) in respect of the invoked guarantee remittance has been made after satisfying that the claim is in conformity with the terms and conditions of the guarantee issued to/on behalf of the JV/WOS abroad.

Place  
Date:

(Signature of authorised official of the bank)

Name :  
Designation :  
Tel. No. :  
FAX No :

**Stamp /Seal**



### **PART III**

#### **ANNUAL PERFORMANCE REPORT (APR)**

(To be submitted certified by Statutory Auditor of the Company through the designated AD Category– I bank every year within 3 months of the closing of annual accounts of the JV / WOS as long as the JV/WOS is in existence)

I. Date of APR : \_\_\_\_\_

II. Unique Identification Number :

--	--	--	--	--	--	--	--	--	--	--	--	--

(Please indicate 13 digit Unique Identification number issued by RBI)

III. Changes in capital structure since last reporting

	Amount (new)	% share (new)
Indian		
Foreign		

IV. Operational details of the JV/ WOS for the last two years

(Amount in 000's FCY)

	Previous Year	Current Year
i) Net Profit / (Loss)		
ii) Dividend		
iii) Net worth		

V. Repatriation from the JV/WOS

Foreign exchange earnings from Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS)

	During the last year ended	Since commencement of business
(i) Profit		
(ii) Dividend		
(iii) Retained Earnings*		
(iv) Investments into India		
(v) Others**(Please specify)		

\*(Represent part of the profits of the JV/WOS which is retained and reinvested in the JV/WOS).

\*\* (Royalties, technical know-how fees, consultancy fees, etc.)



VI. Investment in step down subsidiaries since last reporting

Country	
Name of JV/WOS	
Amount of Investment	

Place: \_\_\_\_\_

Date : \_\_\_\_\_

(Signature of authorised official)

**Stamp/Seal**

Name:-----

Designation-----

(Signature of the Statutory Auditor of the Company)

Name of the firm, Stamp and Registration number

**Signature of the Authorised Official of the bank:**

**Name:**

**Designation:**



**PART IV**

**Report on Closure / Disinvestment / Voluntary Liquidation /Winding Up  
of JV / WOS**

(To be submitted by the designated AD Category –I bank  
(All Amounts in FCY, in thousands)

Name and Address of the AD Category – I bank: \_\_\_\_\_

AD Code: \_\_\_\_\_

Unique Identification Number allotted by the Reserve Bank

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Whether APRs submitted regularly? (Y/N)

Date of submission and period to which last APR relates: \_\_\_\_\_

**Details of Investment**

Equity	Loan	Guarantees Issued

**Details of Remittances**

Equity	Loan	Guarantees Invoked

**Changes in the capital Structure since the last APR**

Equity	Loan	Guarantees Issued

**Amount Repatriated on disinvestments**

Equity	Loan

It is certified that (Strike out whichever is not applicable)

- I. (a) the sale is effected through a stock exchange where the shares of the overseas Joint Venture (JV) or Wholly Owned Subsidiary (WOS) are listed;
- (b) if the shares are not listed on the stock exchange, and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant /Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the Joint Venture or Wholly Owned Subsidiary;
- (c) The Indian party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements, and/or export proceeds from the Joint Venture or Wholly Owned Subsidiary,
- (d) The overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;





(e) The Indian party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India.

Place

Date:

(Signature of authorised official of the bank)

Name:

Designation :

Tel.No. :

FAX No. :

**Stamp /Seal**



## **Instructions for filling up the Form ODI**

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

This set of forms attempts to capture basic information relating to overseas investments by Indian parties (as defined under Notification FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time).

- Part I contains details of the JV/WOS, Indian Parties and the financing pattern of the overseas entity.
- Part II reports remittances certified by AD.
- Part III is the Annual Performance Report, which contains brief particulars of the performance of the overseas entity and
- Part IV is to be used at the time of disinvestment/liquidation/winding up.

Section D of Part I is critical, since information regarding ownership structure and financing pattern have been included here. In addition to details of remittance from India, Part I must report full details of funding through SPVs / subsidiaries overseas, share of foreign partners, etc.

(1) Part I (barring Section C) of the form is required to be filled up by the Indian party seeking to invest in JV / WOS overseas either under Automatic Route or Approval Route and submitted to the designated AD Category – I bank. Part I (Sections C and D) is required to be submitted, whenever the initial capital or financing structure of the JV / WOS reported to the Reserve Bank at the time of the initial remittance / approval undergoes changes by way of expansion, merger, infusion of additional capital, etc.

(2) Under Automatic Route, in case of new proposals, immediately after effecting remittance, the designated AD Category - I bank should forward Part I of the form along with Part II to The Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Central Office, Overseas Investment Division, (OID), Amar Bldg., Mumbai 400001 for obtaining the Unique Identification Number..

3) Under Approval Route, Part I of the form, after scrutiny, should be submitted by the AD Category-I bank, along with their recommendations, to the Reserve Bank at the above address. If approved, Part I of the form will be returned to the AD Category – I bank and should be resubmitted by the AD Category – I bank to Reserve Bank immediately after effecting the remittance, along with Part II of form at the address mentioned above.

(4) In case of supplementary remittances, only Part II of the form, complete in all respects, is required to be submitted by the AD Category - I bank to Reserve Bank. However, if capital structure / financing pattern, etc. of the JV / WOS have changed since



reporting at the time of initial investment Part I of the form (barring Sections A and B) need to be submitted along with Part II.

(5) In case more than one Indian promoter is investing in the same JV / WOS, details of each such promoter should be provided in a single format by the AD designated for the JV / WOS.

(6) Annual Performance Report (APR) (Part III) should be submitted, through the designated AD Category-I bank, every year within 3 months of the closing of annual accounts of the JV / WOS for as long as the JV/WOS is in existence, at the address above.

(7) All amounts of foreign currency (FCY) and Indian rupees (INR) **should be in thousands only.**

(8) When JV / WOS is closed / wound up / disinvested / liquidated, etc., report should be submitted to Reserve Bank at the address above in Part IV of the form within 30 days of the disinvestment.

(9) Reserve Bank reserves the right to put the information furnished here in the public domain.

For approval by the Reserve Bank, the following documents need to be submitted along with Part I.

(a) A report from the bankers of the Indian party in a sealed / closed cover.

(b) The latest Annual Accounts, i.e. Balance Sheet and Profit and Loss Account of the Indian party along with the Directors' Report.

(c) Additional documents as under, if the application is made for partial / full takeover 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 of the foreign concern along with Directors' Report; and

(iii) A copy of the share valuation certificate from:

► a Category I Merchant Banker registered with SEBI, or, an Investment Banker / Merchant Banker registered with the appropriate regulatory authority in the host country, where the investment is more than USD 5 million (US Dollars Five million), and

► in all other cases, by a Chartered Accountant or a Certified Public Accountant.

(d) A certified copy of the Resolution of the Board of Directors of the Indian party/ies approving the proposed investment.



(e) Where investment is in the financial services sector, a certificate from a Statutory Auditor / Chartered Accountant to the effect that the Indian Party :

- (i) has earned net profits during the preceding three financial years from the financial service activity;
- (ii) is registered with the appropriate regulatory authority in India for conducting the financial services activity;
- (iii) has obtained approval for investment in financial sector activities abroad from regulatory authority concerned in India and abroad; and
- (iv) fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India.

Overseas Investments - Proprietorship concerns / unregistered Partnership firms

Eligible Proprietorship concerns / unregistered Partnership firms may apply in Part I of form ODI through their AD Category – I bank, together with the latter's recommendations, in terms of para 4 of A. P. (Dir Series) Circular No 29 dated March 27, 2006 to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building, Fort, Mumbai 400 001.



Annex – B

**ESOP Reporting**  
**Statement of shares allotted to Indian employees / directors under ESOP**  
**Schemes for the year ended March \_\_\_\_\_**  
**(to be submitted on the letterhead of the company through their AD bank)**

\_\_\_\_\_  
We, \_\_\_\_\_, (Indian company) hereby declare that:

a) \_\_\_\_\_ (foreign company) has issued \_\_\_\_\_ shares to our employees under ESOP Scheme during the year as under

- (i) No. of shares allotted : \_\_\_\_\_
- (ii) Number of employees/directors who accepted shares : \_\_\_\_\_
- (iii) Amount remitted : \_\_\_\_\_

b) effective holding of the foreign company M/s \_\_\_\_\_ in the Indian company, as on March 31, \_\_\_\_\_, is not less than 51% and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official : \_\_\_\_\_  
Name : \_\_\_\_\_  
Designation : \_\_\_\_\_  
Date : \_\_\_\_\_

\_\_\_\_\_  
To,  
The Chief General Manager  
Reserve Bank of India  
Foreign Exchange Department,  
Overseas Investment Division,  
Central Office, Amar Bldg., 5<sup>th</sup> Floor,  
Sir. P.M. Road, Fort, Mumbai 400 001.



**Annex –C**

**Statement of shares repurchased by the issuing company from  
Indian employees / directors under ESOP Schemes  
for the year ended March \_\_\_\_\_  
(to be submitted on the letterhead of the company through their AD bank)**

We, ..... (Indian company) hereby declare that:

a) ..... (foreign company) has repurchased ..... shares issued to our employees under ESOP Scheme during the year,

(i) Number of shares allotted :

(ii) Number of employees/directors who sold shares :

(iii) Amount of remittance (inward) :

b) effective holding of the foreign company M/s ..... in the Indian company, as on March 31, \_\_\_\_\_, is not less than 51% and

c) the information furnished above is true and correct to the best of our knowledge and belief.

Signature of the Authorised Official :

Name :

Designation :

Date :

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To,

The Chief General Manager  
Reserve Bank of India  
Foreign Exchange Department,  
Overseas Investment Division,  
Central Office, Amar Bldg., 5th Floor,  
Sir. P.M. Road, Fort,  
Mumbai 400 001.



## Appendix

### **List of Circulars/Notifications consolidated in the Master Circular Direct Investment in Joint Ventures/ Wholly Owned Subsidiaries Abroad**

#### **Notifications**

Sl. No.	Notification No.	Date
1.	<a href="#">FEMA.120/2004-RB</a>	July 07, 2004
2.	<a href="#">FEMA.132/2005-RB</a>	March 31, 2005
3.	<a href="#">FEMA.135/2005-RB</a>	May 17, 2005
4.	<a href="#">FEMA.139/2005-RB</a>	August 11, 2005
5.	<a href="#">FEMA.150/2006-RB</a>	August 21, 2006
6.	<a href="#">FEMA.164/2007-RB</a>	October 9, 2007
7.	<a href="#">FEMA.173/2007-RB</a>	December 19, 2007
8.	<a href="#">FEMA.180/2008-RB</a>	September 5, 2008
9.	<a href="#">FEMA.181/ 2008-RB</a>	October 1, 2008
10.	<a href="#">FEMA.196/ 2009-RB</a>	July 28, 2009

#### **A.P. (DIR Series) Circulars**

Sl. No.	Circular No.	Date
1.	<a href="#">AP (DIR Series) Circular No.14</a>	October 01, 2004
2.	<a href="#">AP (DIR Series) Circular No.32</a>	February 09, 2005
3.	<a href="#">AP (DIR Series) Circular No.42</a>	May 12, 2005
4..	<a href="#">AP (DIR Series) Circular No.9</a>	August 29, 2005
5.	<a href="#">AP (DIR Series) Circular No.29</a>	March 27, 2006
6.	<a href="#">AP (DIR Series) Circular No.30</a>	April 05, 2006
7.	<a href="#">AP (DIR Series) Circular No. 3</a>	July 03, 2006
8.	<a href="#">AP (DIR Series) Circular No.6</a>	September 06, 2006
9.	<a href="#">AP (DIR Series) Circular No. 11</a>	November 16, 2006
10.	<a href="#">AP (DIR Series) Circular No. 41</a>	April 20, 2007
11.	<a href="#">AP (DIR Series) Circular No. 49</a>	April 30, 2007
12.	<a href="#">AP (DIR Series) Circular No. 50</a>	May 04, 2007
13.	<a href="#">AP (DIR Series) Circular No.53</a>	May 08, 2007
14.	<a href="#">AP (DIR Series) Circular No.68</a>	June 01, 2007
15.	<a href="#">AP (DIR Series) Circular No. 72</a>	June 08, 2007
16.	<a href="#">AP (DIR Series) Circular No.75</a>	June 14, 2007
17.	<a href="#">AP (DIR Series) Circular No.76</a>	June 19, 2007
18.	<a href="#">AP (DIR Series) Circular No. 11</a>	September 26, 2007



19.	<a href="#">AP (DIR Series) Circular No. 12</a>	September 26, 2007
20.	<a href="#">AP (DIR Series) Circular No. 34</a>	April 03, 2008
21.	<a href="#">AP (DIR Series) Circular No. 48</a>	June 03, 2008
22.	<a href="#">AP (DIR Series) Circular No. 53</a>	June 27, 2008
23.	<a href="#">AP (DIR Series) Circular No.07</a>	August 13, 2008
24.	<a href="#">AP (DIR Series) Circular No. 14</a>	September 05, 2008
25.	<a href="#">AP (DIR Series) Circular No. 36</a>	February 24, 2010
26.	<a href="#">AP (DIR Series) Circular No. 45</a>	April 01, 2010
27.	<a href="#">AP (DIR Series) Circular No.69</a>	May 27, 2011
28.	<a href="#">AP (DIR Series) Circular No.73</a>	June 29, 2011