

Indian Direct Investment in JVs/WOS abroad

As on July 1, 2002

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

EC.CO.PCD.No. /15.02.76/2002-2003

July 12, 2002

To:

All Authorised Dealers in Foreign Exchange

Dear Sirs,

Master Circular - Indian Direct Investment in JVs/WOS 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.

2. This master circular consolidates directions contained in the undernoted circulars as on July 1, 2002 :

- 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

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/WOS abroad by Indian parties.

Yours faithfully,

(Grace Koshie)
Chief General Manager

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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 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 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 and FEMA 49/2002-RB both Jan. 1, 2002, FEMA 53/2002 –RB dated March 1,2002 and FEMA 55/ RB dated March 7, 2002)(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 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) US\$100 mn. or its equivalent in any one financial year.
- (b) Indian Rupees upto Rs.350 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 US \$ 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 two-tier structure would require prior approval of the Reserve Bank.
- b) The investment should be in a foreign entity engaged in the same core activity [as defined in clause (d) of Regulation 2] carried on by the Indian company;
- c) The Indian party should not be on the Reserve Bank's caution list or under investigation by the Enforcement Directorate or defaulters to the banking system in

India and whose names appear in the defaulters 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.

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 50 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.

Where the investment is entirely funded out of balances in EEFC account and/or out of proceeds of ADR/GDR issues the condition that investment should be in the same core activity as stipulated in Regulation 6 of the Notification will not be applicable. However, when such investments are in the financial sector they will be subject to compliance of Regulation 7 of the Notification *ibid*.

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 US\$ 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 balance-sheet. 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 Party by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment;
- 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 US\$ 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.

B.6 Approval of 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, Reserve Bank's prior approval 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 US\$ 100.00 mio. Or ten times the export earnings (whichever is higher)/Block Allocation.

- 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.7 Block Allocation

An Indian party with 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.6 above.

B.8 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) earned 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.9 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 payments due from the foreign entity 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 shares without entering into Joint Venture Agreements with the approval of the Reserve Bank.

B.10 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 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 ADR/GDR issue.

B.11 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.12 Obligations of Indian Party

An Indian party which has made direct investment abroad is under obligation to (a) receive shares 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 Reserve Bank, in accordance with the provisions specified in Regulation 15 of the Notification.

B.13 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 Reserve Bank.

B.14 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 (a) such shares are issued at a concessional price and (b) the amount of consideration for purchase of shares does not exceed US\$ 20,000 or its equivalent in any one calendar year. 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, 2000 or Rules or Regulations made thereunder are allowed to be pledged for obtaining credit facilities in India from an authorised dealer.

C.3 Prior permission of Reserve Bank in certain cases

Reserve Bank would consider applications from residents for acquisition of foreign securities, if it represents –

- a) qualification shares for becoming a director of a company outside India
- b) rights shares provided the consideration for acquisition does not exceed US\$ 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 Indian promoter company which is engaged in the field of software where the consideration for purchase does not exceed US 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 US\$ 50,000 or its equivalent in a block of five calendar years.

C.4 Investment by Mutual Funds

Reserve Bank may on application permit Mutual Funds in India to purchase foreign securities, subject to such terms and conditions as may be stipulated.

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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 triplicate 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, 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 firm 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 record 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 50 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 a 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, in certain cases investment in JV/WOS requires prior approval of the Reserve Bank. Authorised Dealers may allow remittances under these specific approvals granted by Reserve Bank and report the same to the Chief General Manager, 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 ODA 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, 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, 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, Exchange Control Department, Central Office, Overseas Investment Division, Amar Building(3rd floor), Mumbai 400 001.

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Notification No. FEMA 19 / RB-2000 dated 3rd May 2000
(as amended vide Notification Nos.
FEMA 40/RB-2001 dated 2nd March 2001,
FEMA 48/- RB 2002 Jan. 1, 2002,
FEMA 49/-2002-RB Jan. 1, 2002,
FEMA 53/2002 –RB dated March 1,2002
FEMA 55/ RB dated March 7, 2002)

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

1. Short title and commencement

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

2. Definitions

In these Regulations, unless the context otherwise requires:

- a) “Act” means Foreign Exchange Management Act, 1999, (42 of 1999):
- b) “authorised dealer” means a person authorised as an authorised dealer under sub section (1) of section 10 of the Act;
- c) “American Depository Receipt” (ADR) means a security issued by a bank or a depository in United States of America (USA) against underlying rupee shares of a company incorporated in India;
- d) ‘Core Activity’ means activity carried on by an Indian entity which constitutes at least 50% of its average turnover in the previous accounting year;
- e) “Direct investment outside India” means investment by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity, but does not include portfolio investment or investment through stock exchange or by private placement in that entity;

- f) “Financial commitment” means the amount of direct investment by way of contribution to equity and loan and 50 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary;
- g) “Foreign Currency Convertible Bond” (FCCB) means a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which is payable in foreign currency;
- h) “Form” means the form annexed to these Regulations;
- i) “Global Depository Receipt” (GDR) means a security issued by a bank or a depository outside India against underlying rupee shares of a company incorporated in India;
- j) “Host country” means the country in which the foreign entity receiving the direct investment from an Indian party is registered or incorporated;
- k) “Indian party” means a company incorporated in India or body created under an Act of Parliament, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by Reserve Bank:-

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

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

3. Prohibition on issue or transfer of foreign security

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

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

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

A person resident in India

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

Explanation:

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

Part I

Direct Investment outside India

5. Prohibition on Direct Investment outside India

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

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

6. Permission for Direct Investment in certain cases

- (1) Subject to the conditions specified in sub-regulation (2), an Indian party may make direct investment in a Joint Venture or Wholly Owned Subsidiary outside India.
- (2) (i) Total financial commitment of the Indian party in Joint Ventures/Wholly Owned Subsidiaries shall not exceed US\$ 100 million or its equivalent in any financial year, except investment in Nepal, Bhutan and Pakistan;

Provided that in respect of commitment in Joint Ventures / Wholly Owned Subsidiaries in Myanmar and SAARC countries (other than Nepal, Bhutan and Pakistan), the ceiling shall be increased by US\$ 25 million or its equivalent in any one financial year, in respect of such commitment;

Provided further that the ceiling of US \$ 100 million shall not apply to financial commitment by a unit located in a Special Economic Zone where the investment is made out of the balances held in EEFC account, maintained in accordance with the Foreign Exchange

Management (Foreign currency accounts by a Person resident in India) Regulations, 2000, as amended from time to time.

- (ii) In respect of direct investment in Nepal or Bhutan, in Indian rupees the total financial commitment shall not exceed Indian Rupees 350 crores in any one financial year;
- (iii) The direct investment is made in a foreign entity engaged in the same core activity carried on by the Indian party;
- (iv) The Indian Party is not on the Reserve Bank's caution list or under investigation by the Enforcement Directorate;
- (v) The Indian Party routes all transactions relating to the investment in a Joint Venture/Wholly Owned Subsidiary through only one branch of an authorised dealer to be designated by it.

Explanation: -

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

- (vii) The Indian Party submits form ODA, duly completed, to the designated branch of an authorised dealer for onward transmission to Reserve bank

(3) Investment under this Regulation may be funded out of one or more of the following sources, namely:-

- i) out of balance held in the Exchange Earners Foreign Currency account of the Indian party maintained with an authorised dealer in accordance with Regulation 4 of Foreign Exchange Management (Foreign Currency Accounts) Regulations, 2000;
- ii) drawal of foreign exchange from an authorised dealer in India not exceeding 50 per cent of the net-worth of the Indian Party as on the date of last audited balance sheet;
- iii) utilisation of the amount raised by issue of ADRs/GDRs by the Indian Party;

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

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

(7) (a) For the purpose of investment under this Regulation by way of remittance from India, valuation of shares of the company outside India shall be made

- (i) where the investment is more than US \$ 5 (Five) million, by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker /Merchant banker outside India registered with the appropriate regulatory authority in the host country; and
- (ii) in all other cases by a Chartered Accountant or a Certified Public accountant.

(b) For the purposes of investments under this Regulation by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the India party's shares, the valuation of shares of the company outside India shall in all cases, be carried out by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker /Merchant banker outside India registered with the appropriate regulatory authority in the host country.

Provided that:

- a) the ADR/GDR issue has been made in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme 1993 and the guidelines issued thereunder from time to time by the Central Government;
- b) the Indian Party files with Reserve Bank, in form ODA full details of the investment made, within 30 days of such investment.

7. Investment in Financial Services Sector

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

Provided that the Indian party –

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

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

- (1) An Indian Party may acquire shares of a foreign company, 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;

Provided that

- a. the Indian Party has already made an ADR and / or GDR issue and that such ADRs/GDRs are currently listed on any stock exchange outside India;
 - b. such investment by the Indian Party does not exceed the higher of the following amounts, namely:-
 - i) amount equivalent of US\$ 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 balance-sheet, inclusive of all investments made under Regulations in Part I, including under (i) of this clause, in the same financial year,
 - 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 Party by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment;
 - e. the valuation of the shares of the foreign company is made, -
 - 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.”
- (2) Within 30 days from the date of issue of ADRs and/or GDRs in exchange for acquisition of shares of the foreign company under sub-regulation (1), the Indian Party shall submit a report in form ODG to the Reserve Bank.
- 9. Approval of Reserve Bank in certain cases**
- (1) An Indian Party, which does not satisfy the eligibility norms under Regulations 6 or 7 or 8, may apply to the Reserve Bank for approval.
 - (2) Application for direct investment in Joint Venture/Wholly Owned Subsidiary outside India, or by way of exchange for shares of a foreign company, shall be made in Form ODI, or in Form ODB, respectively.
- (2A) An application made under sub regulation (2) in form ODI

- (a) for the purpose of investment by way of remittance from India, shall be accompanied by the valuation of shares of the company outside India made
 - (i) where the investment is more than US \$ 5 (Five) million, by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker /Merchant banker outside India registered with the appropriate regulatory authority in the host country; and
 - (ii) in all other cases by a Chartered Accountant or a Certified Public accountant.
- (b) For the purposes of investments under this Regulation by acquisition of shares of an existing company outside India where the consideration is to be paid fully or partly by issue of the India party's shares, the valuation of shares of the company outside India shall in all cases, be carried out by a Category I Merchant Banker registered with the Securities and Exchange Board of India (SEBI) or an Investment Banker /Merchant banker outside India registered with the appropriate regulatory authority in the host country.
- (3) Reserve Bank may, inter alia, take into account following factors while considering the application made under sub-regulation (2):
 - a) Prima facie viability of the Joint Venture/Wholly Owned Subsidiary outside India;
 - b) Contribution to external trade and other benefits which will accrue to India through such investment;
 - c) Financial position and business track record of the Indian Party and the foreign entity;
 - d) Expertise and experience of the Indian Party in the same or related line of activity of the Joint Venture or Wholly Owned Subsidiary outside India.

9A Block allocation by Reserve Bank

1. Reserve Bank may, on application made to it, approve, subject to such terms and conditions as considered necessary, a block allocation of foreign exchange to an Indian Party which has exhausted the limit available to it under sub-regulation (2) of Regulation 6.
2. For considering the application made under sub-regulation (1), the Reserve Bank may take into account the factors mentioned in sub-regulation (3) of Regulation 9.

10. Unique Identification Number

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

11. Method of Investment by capitalisation

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

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

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

12. Export of Goods towards Equity

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

13. Submission of Information to Reserve Bank

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

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

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

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

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

15. Obligations of the Indian Party

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

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

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

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

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

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

Part IA

Investments abroad by a firm in India

17A Investments abroad by a firm in India

- (1) A firm in India registered under the Indian Partnership Act, 1932, may apply to the Reserve Bank for permission to invest abroad to the extent and in the manner specified in Part I.
- (2) Reserve Bank may, after taking into account the factors specified in sub regulation (3) of Regulation 9, grant permission subject to such terms and conditions as are considered necessary.

17B Investments by partnership firm without prior approval of Reserve Bank

- (1) A partnership firm registered under the Indian Partnership Act, 1932 which is engaged in providing professional services specified in the Schedule, may make investment in foreign concerns engaged in similar activity, by way of remittance from India and/or capitalisation of fees/other entitlements due to it from such foreign concerns

Provided that:-

- a. such investments do not exceed US\$ 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 capitalisation 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.”

17C. Investment by Proprietary Concern

A proprietary concern in India may apply to the Reserve Bank in form ODB for general permission valid for a period of one year to accept shares of a company outside India in lieu of due to it for professional services rendered by the said company

Provided that:-

- (a) the value of shares accepted from each company outside India shall not exceed fifty per cent of the fees receivable by the Indian party from that company; and
- (b) the Indian concern's shareholding in any one company outside India by virtue of shares accepted as aforesaid shall not exceed ten per cent of the paid up capital of the company outside India, whose shares are accepted.

Part II

Investments in Foreign Securities other than by way of Direct Investment

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

- (1) Save as otherwise provided in the Act or in sub-regulation (2), no person resident in India shall issue or transfer a foreign security.

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

- (1) A person resident in India being an individual may acquire foreign securities:-

- i) by way of gift from a person resident outside India; or

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

Provided that –

- a) the shares are offered at a concessional price; and
 - b) the consideration for purchase does not exceed U.S.\$ 20,000 or its equivalent, in any one calendar year.
- (3) An authorised dealer may allow the remittance by the person eligible to purchase the shares in terms of sub-regulation (2):-
Provided that the conditions specified in that sub-regulation are fulfilled.

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

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

21. Prior Permission from Reserve Bank in certain cases

- (1) Reserve Bank, on an application, may permit a person resident in India to acquire foreign securities :-
- a) being the minimum number of qualification shares issued by a company incorporated outside India for holding a post of a director in the company;
 - b) by way of right shares issued by a company incorporated outside India:-

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

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

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

Provided that –

- (i) the consideration for purchase does not exceed US 10,000 or its equivalent per employee in a block of five calendar years,
 - (ii) the shares so acquired do not exceed 5% of the paid-up capital of the Joint Venture or Wholly Owned Subsidiary outside India, and
 - (iii) after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment.
- (2) Reserve Bank may, on an application made to it by the Indian software company allow its resident employees (including working directors) to purchase foreign securities under the ADR/GDR linked stock option schemes:-

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

22. Investment by Mutual Funds

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

Schedule

(See Regulation 17B)

List of professional services provided by Registered partnership firms eligible for investment Abroad without prior approval of the Reserve Bank

1. Chartered Accountancy
2. Legal practice and related services
3. Information Technology and Entertainment Software related services
4. Medical and healthcare services
