

5. DIRECT INVESTMENT BY RESIDENTS IN JOINT VENTURE(JV) WHOLLY OWNED SUBSIDIARY (WOS) ABROAD

JOINT VENTURE / WHOLLY OWNED SUBSIDIARY ABROAD

- PROHIBITION – Indian entities are prohibited from making investment in a Foreign entity engaged in Real Estate or trading in TDRs or Banking, without prior RBI approval
- GENERAL PERMISSION to Residents for purchase / acquisition of securities out of RFC funds, as bonus shares on existing Fgn. CNY shares, out of FC resources when not permanently resident in India

DIRECT INVESTMENT OUTSIDE INDIA - AUTOMATIC ROUTE

- An Indian party can make investment in JV or WOS not exceeding 100% of Net Worth as on date of last Audited Balance Sheet of the Indian party. This includes total fin. Commitments of all JVs / WOS put together
- Total fgn. Commitment includes 100% of eq. shares / conv.pref.shares, pref. shares, loans, guarantees & 50% of performane guarantees
- Ceiling of 100% not applicable if investment made out of EEFC a/c or funds raised through ADR / GDR

DIRECT INVESTMENT OUTSIDE INDIA - AUTOMATIC ROUTE

CONDITIONS OF INVESTMENT :

- Indian co. can extend loan / guarantee to an overseas JV / WOS in which it has equity participation.
- Any form of guarantee allowed provided that all financial commitments are within overall ceiling, no guarantee is open-ended and reported to RBI
- In event of invocation, if ceiling is breached, prior approval of RBI reqd.
- Guarantees issued by Banks would be outside the ceiling and would be subject to RBI – DBOD guidelines & reporting to RBI in ODI – Part II
- RBI approval reqd. for creating charge on immovable property / pledge of shares & subject to specified conditions
- In case of investment by partnership, partners can hold shares

DIRECT INVESTMENT OUTSIDE INDIA - AUTOMATIC ROUTE

CONDITIONS OF INVESTMENT :

- Indian entity should not be on Exporters' Caution list / List of Defaulters of RBI / CIBIL / or any other credit information company as approved by RBI
- All transactions to be routed through same AD
- Acquisition of shares of a fgn. co. engaged in a bonafide activity, in exchange for ADRs / GDRs is permitted, subject to certain conditions (where inv. > \$5Mn valuation reqd.)
- Investment in Nepal permitted in INR and in Bhutan in INR & freely convertible currencies

AUTOMATIC ROUTE IS NOT AVAILABLE FOR INVESTMENT IN PAKISTAN

ISSUE OF GUARANTEE BY AN INDIAN PARTY TO STEP DOWN SUBSIDIARY OF JV / WOS

- Indian parties can issue corporate guarantees on behalf of their first level step down operating company set up by the JV / WOS operating as an SPV under the Automatic Route, within prevailing limit for ODI, under report to RBI in Form ODI through designated AD Category – I Bank
- In respect of second generation or further step down subsidiary, issuance of such guarantees will be considered under the APPROVAL ROUTE , subject to certain conditions (Indian party indirectly owning 51% or more stake in overseas subs.

INVESTMENT IN UNINCORPORATED ENTITIES OVERSEAS UNDER THE AUTOMATIC ROUTE

- Investment in unincorporated entities abroad in the Oil sector by Navratna PSUs, ONGC Videsh Ltd. permitted by AD Category – I Banks, without limit provided such investments are approved by the competent authority
- Other Cos. Permitted to invest in unincorporated entities upto 100%
- Other Indian Co.s permitted to participate in consortium with other intl. operators to construct and maintain submarine cable systems on co-ownership basis under the Auto Route
- All such investments in consortium may be reported by Indian entities in Form OD I to AD Cat. I Bank for online submission to RBI for allotment of Unique Identification number

INVESTMENT IN JV / WOS – METHOD OF FUNDING

- Drawal of Exchange from AD Bank
- Capitalisation of Exports & other dues
- Swap of shares
- Proceeds of ECBs / FCCBs
- In exchange for ADRs / GDRs
- Balances in EEFC a/cs (Without limit)
- Proceeds of fgn. Currency funds raised through ADRs / GDRs (Without limit)
- Gen. permission to residents to purchase / acquire securities as under :
 - out of RFC funds / bonus shares / FCY resources acquired when NRI

INVESTMENT IN JV / WOS – METHOD OF FUNDING

INVESTMENT IN FINANCIAL SERVICES SECTOR BY REGULATED ENTITIES :

- Investing entity should be registered with the regulatory authority of India, should have earned Net Profit in preceding 3 Fin. Years, should have obtd. Regulatory approval in India and abroad, should have fulfilled prudential norms relating to capital adequacy
- Additional investment by an existing JV / WOS or its step down subsidiary in the fin. Sector also needs to comply with above conditions
- Capitalisation of Export proceeds (non-overdue bills)
- Indian s/w cos. Permitted to receive 25% of value of Exports as shares without JV agreement, with prior RBI approval

Unregulated entities in the fin. Services sector in India may invest in non-fin. sector subject to certain specified compliances

INVESTMENT IN EQUITY OF COS. REGISTERED OVERSEAS / RATED DEBT INSTRUMENTS

- Listed cos. permitted to invest upto 50 % of Net worth as on last Aud. B/S date in shares and bonds / investment grade rated fixed income securities
- SEBI-registered Indian Mutual Funds are permitted to invest within the overall limit of USD 7 Bn in ADRs/ GDRs & other prescribed securities, subject to certain conditions

INVESTMENT IN EQUITY OF COS. REGISTERED OVERSEAS / RATED DEBT INSTRUMENTS

- Limited no. of qualified Indian MFs are permitted to invest cumulatively upto USD 1 Bn. In overseas exchange traded funds
- SEBI registered Domestic VC funds may invest in equity and equity-linked instruments of off-shore VC undertakings, with due approval of SEBI
- General permission is available to all investors for sale of securities acquired under the general permission

RBI APPROVAL

- All other cases of Direct Investment, not covered under the general permission require the prior approval of RBI by submitting in Form OD I through AD Category – I Bank
- While considering the application, RBI would consider various factors
- Investment in JV / WOS in the energy & natural resources sector in excess of 400 % of Net worth of Indian co. would be considered by RBI

OVERSEAS INVESTMENT BY PROPRIETORSHIP / PARTNERSHIP CONCERNS

CONDITIONS FOR INVESTMENT :

- The firm / concern should be a DGFT – recognized Star Export House
- KYC Compliance
- Exporter is engaged in the proposed business & has proven track-record - overdue exports do not exceed 10% of average export realizations in the preceding 3 fin. Yrs.

OVERSEAS INVESTMENT BY PROPRIETORSHIP / PARTNERSHIP CONCERNS

CONDITIONS FOR INVESTMENT :

- Exporter should not have come to the adverse notice of any Govt. agency like ED / CBI and is not a defaulter
- Amt. of investment outside India not to exceed 10 % of average export realization of preceding 3 fin. Yrs. or 200 % of NOF (Net owned funds), whichever is lower
- Prior RBI Approval to be sought in Form ODI
- Prior RBI Approval to be sought in Form ODI in case of overseas investment by Regd. Trust / Society which is subject to certain conditions

MISCELLANEOUS ASPECTS

Post-Investment Changes including diversification / Addl. investment in existing JV / WOS –

- Indian party to report to RBI through AD Cat.I Bank, details within 30 days of the approval by the competent authority of the JV / WOS concerned
- Such details also to be reported in the Annual Performance Report (APR – Part III OF Form ODI)

MISCELLANEOUS ASPECTS

Restructuring of the Balance sheet of the overseas

Entity – Indian promoters having WOS or at least 51 % stake in JV are permitted to write-off capital / receivables as under :

- Listed cos. - upto 25 % of equity inv. under Auto. Route
 - Unlisted cos. – upto 25% of equity inv. under Appr. Route
- Write-off / restructuring to be reported to RBI through designated AD Cat. I Bank within 30 days thereof and approval subject to certain conditions

MISCELLANEOUS ASPECTS

Transfer by way of sale of Shares of a JV / WOS –

Indian party may transfer shares, without prior approval of RBI, to another Indian party / person resident outside India, in conformity with FEMA subject to the foll. conditions & reporting to RBI :

- Sale not to result in any write-off of inv. & effected through overseas stock exchange where shares of JV / WOS are listed
- If unlisted, and disinvested by private arrangement, share price not to be below fair value
- No dues receivable from JV / WOS
- Reporting compliances ensured & no investigation / adverse notice of Regulators

MISCELLANEOUS ASPECTS

Transfer by way of sale of Shares of a JV / WOS involving Write-off of Investment – without prior RBI approval, in following cases, subject to reporting to RBI and certain conditions:

- Where JV / WOS is listed in overseas stock exchange & has Net worth of \geq Rs.100 Crs.
- Where Indian party is an unlisted co. and overseas investment is \leq USD 10 Mn.
- Where Indian party is a listed co. with Net worth of $<$ Rs.100 Crs. but overseas investment in JV / WOS is $<$ USD 10 Mn.

PLEDGE OF FGN. SECURITY BY PERSON RESIDENT IN INDIA

Shares acquired by persons resident in India in accordance with FEMA Rules and regulations are allowed to be pledged for obtaining credit facilities in India from an AD Cat.- I Bank / Public fin. Instn.

Hedging of ODI is permitted

GENERAL PERMISSION IN CERTAIN CASES

Residents are permitted to acquire fgn. Security, if it represents :

- Gifts from NR / under ESOP / Inheritance
- Qualification shares for becoming Director of a co. outside India, subject to LRS ceiling
- Part / Full consideration of professional services rendered to the fgn. Co. or in lieu of Director's remuneration, subject to LRS ceiling
- Rights shares provided that they are being issued by virtue of holding shares in accordance with the law
- Shares of JV / WOS abroad of the Indian promoter co., subject to certain conditions
- Fgn. Securities under ADR / GDR linked stock option schemes by resident employees of Indian cos. Provided purchase consideration does not exceed \$50000

Resident may transfer by sale, shares acquired & proceeds to be repatriated within 90 days

OPERATIONAL INSTRUCTIONS TO AD BANKS

- Designated branches – only one branch to be designated. Different AD Banks for different JVs / WOS can be designated.
- AD Cat.I Banks can allow investments upto permissible limits. Application in Form ODI alongwith A2 to be obtd. All necessary documents and compliances should be ensured by AD Bank

OPERATIONAL INSTRUCTIONS TO AD BANKS

ODI Form comprises of 4 Parts

➤ Part I

- Sec A - details of Indian Party
- Sec B - details of Investment in new project
- Sec C - details of investments in existing projects
- Sec D - Funding for JV / WOS
- Sec E - declaration by Indian party (to be retained by AD Cat-1 Bank)
- Sec F - Cert. of Statutory auditors (to be retained by AD Cat-1 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

OPERATIONAL INSTRUCTIONS TO AD BANKS

- On- line reporting of ODI form commenced . Unique identification number (UIN) is generated on-line and acknowledgement of remittances and filing of APRs is also done on-line
- Part I Sec A – D, Part II & Part III are to be filed on-line in the application for allotment of UIN, reporting of subsequent remittances, filing of APRs etc.
- The AD Bank should continue to receive the hard copy of Form OD I which should be preserved by the AD Bank
- Transactions in MFs, PIS, ESOPs are also reqd. to be submitted on-line in the Overseas Investment Application

OPERATIONAL INSTRUCTIONS TO AD BANKS

- On- line reporting would be reqd. to be made by the Centralised Unit / Nodal Office of the AD
- Application for Overseas investment under the Approval Route is to be submitted to RBI in hard copy in addition to on-line reporting of Part I, for approval purposes
- In case of closure / disinvestment / voluntary liquidation / winding up of JV / WOS under the Automatic Route, AD to report in Part IV of Form ODI.
- In all other cases of disinvestment, application alongwith necessary supporting documents should be submitted to RBI
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OPERATIONAL INSTRUCTIONS TO AD BANKS

- UIN would be generated on-line under the Automatic Route – only one per overseas project
- Subsequent reports under both Automatic & Approval route should be on-line in Part II, only after receipt of UIN from the RBI
- In case where the investment is being made jointly by more than one Indian party, form ODI is reqd. to be signed jointly by all and submitted to AD
- AD Bank should file consolidated form ODI, indicating details of each party. Same procedure in case of ADR / GDR issues of an Indian party.

OPERATIONAL INSTRUCTIONS TO AD BANKS

- AD Cat. I Banks should allow remittances towards loans to/ issue guarantees to / on behalf of JV / WOS only after ensuring equity stake of Indian party in the JV / WOS.
- Prior RBI approval is reqd. before allowing remittance towards the loan / issue of guarantee to / on behalf of the overseas JV / WOS, where host country regulations do not mandatorily require such equity holding
- In the case of investment in JV / WOS by way of capitalisation of export or other dues, details are to be provided in form ODI to AD. Such investments would also be reckoned in computing the cap of 400% of Net worth
- Prior RBI approval reqd. for capitalisation of such export proceeds, other dues

OPERATIONAL INSTRUCTIONS TO AD BANKS

- UIN to be quoted in all related correspondence with RBI
- In case of investment by way of share swap AD Bank is reqd. to additionally provide details of transactions such as the no. of shares recd./ allotted, premium paid / recd., brokerage paid / recd.etc. to RBI
- Further confirmation to the effect that inward leg of the transaction has been approved by FIPB and fulfillment of other conditions

OPERATIONAL INSTRUCTIONS TO AD BANKS

- Wherever Investments in JVs / WOS requires prior approval of RBI, remittances may be effected under these specific approvals under report to RBI, Overseas Investment Division
- AD Cat.I Banks may effect remittances upto USD 50000 or its equiv. in a block of 5 calendar years, without the prior approval of RBI for purchase of fgn. Securities in certain cases
- Disinvestment to be reported to RBI within 30 days thro' ADI Bank
- Evidence of Investment to be maintained by ADI Bank
- Opening of FCA abroad by Indian party is permitted for carrying out investment

THANK YOU