

Foreign Exchange Management (Overseas Investment) Directions, 2022 [A.P. (DIR Series) Circular No. 12 dated 22 August 2022, RBI/2022-2023/110]. Retrieved from <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12381&Mode=0>

RBI/2022-2023/110

A.P. (DIR Series) Circular No.12

August 22, 2022

All Category – I Authorised Dealer Banks

Madam/Sir

Foreign Exchange Management (Overseas Investment) Directions, 2022

Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such interlinkages.

2. In keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken with operationalisation of a new Overseas Investment regime. Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government vide Notification No. G.S.R. 646(E) dated August 22, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022 have been notified by the Reserve Bank vide Notification No. FEMA 400/2022-RB dated August 22, 2022 in supersession of the Notification No. FEMA 120/2004-RB dated July 07, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] and Notification No. FEMA 7 (R)/2015-RB dated January 21, 2016 [Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015]. The new regime simplifies the existing framework for overseas investment by persons resident in India to cover wider economic activity and significantly reduces the need for seeking specific approvals. This will reduce the compliance burden and associated compliance costs.

3. Some of the significant changes brought about through the new rules and regulations are summarised below:

- (i) enhanced clarity with respect to various definitions;
- (ii) introduction of the concept of “strategic sector”;
- (iii) dispensing with the requirement of approval for:
deferred payment of consideration;

investment/disinvestment by persons resident in India under investigation by any investigative agency/regulatory body;

issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary (SDS);

write-off on account of disinvestment;

(iv) introduction of “Late Submission Fee (LSF)” for reporting delays.

4. The detailed operational instructions in this regard are given in Annex-I. The instructions contained in these directions shall supersede the instructions contained in the circulars listed in Annex-II.

5. The revised reporting forms and instructions for filling up the forms under the new regime are being provided on Reserve Bank’s website in Part VIII of the Master Direction no. 18 on ‘Reporting under Foreign Exchange Management Act, 1999’ dated January 01, 2016.

6. AD banks may bring the contents of the circular to the notice of their customers/constituents concerned.

7. The directions contained in this circular have been issued under Section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

Yours faithfully

Ajay Kumar Misra

Chief General Manager-in-Charge

Annex-I

Foreign Exchange Management (Overseas Investment) Directions, 2022

(Annexed to AP DIR Circular No. 12 dated August 22, 2022)

These Directions shall be called Foreign Exchange Management (Overseas Investment) Directions, 2022 (hereinafter

referred to as "OI Directions") which shall be read with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022 (hereinafter referred to as "OI Rules") and Foreign Exchange Management (Overseas Investment) Regulations, 2022 (hereinafter referred to as "OI Regulations").

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Part I - Definitions and associated details

1. Reference shall be made to OI Rules and OI Regulations for the definitions of the various terms used in these directions. However, the major terms are reiterated and elaborated below:

(i) "foreign entity" - the extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability. 'Limited liability' would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited. In case of a foreign entity being an investment fund or vehicle, duly regulated by the regulator for the financial sector in the host jurisdiction and set up as a trust outside India, the liability of the person resident in India shall be clear and limited not exceeding the interest or contribution in the fund in any manner. Further, the trustee of such fund shall be a person resident outside India.

(ii) "strategic sector" shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

(iii) "control" means the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their

shareholding or management rights or shareholders' agreements or voting agreements that entitle them to ten percent or more of voting rights or in any other manner in the entity.

(iv) "Indian entity" – the extant concept of Indian party (IP) where all the investors from India in a foreign entity were together considered as IP, has been substituted under the new regime with the concept of Indian entity where each investor entity shall be separately considered as an Indian entity. Indian entity shall mean a company defined under the Companies Act, 2013 or a body corporate incorporated by any law for the time being in force or a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008 or a partnership firm registered under the Indian Partnership Act, 1932.

(v) "subsidiary"/ "step down subsidiary (SDS)" of a foreign entity means an entity in which the foreign entity has control and the structure of such subsidiary/SDS shall comply with the structural requirements of a foreign entity, i.e., such subsidiary/SDS shall also have limited liability where the foreign entity's core activity is not in strategic sector. The investee entities of the foreign entity where such foreign entity does not have control (as defined above) shall not be treated as SDSs and therefore need not be reported henceforth.

(vi) "Overseas Direct Investment (ODI)" means (i) acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or (ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.

Explanation: Once an investment in a foreign entity is classified as ODI, the investment shall continue to be treated as ODI even if such investment falls below 10% of the paid-up equity capital or the investor loses control in the foreign entity.

(vii) "equity capital" means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity, which is in the nature of fully and compulsorily convertible instruments.

Accordingly, any instrument which is redeemable or non-convertible or optionally convertible shall be treated as debt for the purpose of OI Rules/Regulations/Directions.

(viii) "financial commitment" by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund-based facility or facilities extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity, including overseas SDSs of such Indian entity, subject to the following conditions:

the Indian entity is eligible to make ODI;

the Indian entity has made ODI in the foreign entity;

the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

(ix) "Overseas Portfolio Investment (OPI)" means investment, other than ODI, in foreign securities. The following is further provided:

a) OPI shall not be made in:

any unlisted debt instruments; or

any security which is issued by a person resident in India who is not in an IFSC; or

any derivatives unless otherwise permitted by Reserve Bank; or

any commodities including Bullion Depository Receipts (BDRs).

b) OPI by a person resident in India in the listed equity capital of a listed entity, even after its delisting, shall continue to be treated as OPI until any further investment is made in the entity, i.e., any further investment made in the equity capital of the foreign entity after its delisting shall be made as ODI.

c) A listed Indian company may make OPI, including by way of reinvestment, in accordance with schedule II of the OI Rules. 'Reinvestment' means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within the time specified for realisation and repatriation as per Notification No. FEMA 9(R)/2015-RB namely, Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 .

d) An unlisted Indian entity may make OPI in accordance with schedule II of the OI Rules.

e) The investment (including sponsor contribution) in units of any investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be considered as OPI. Accordingly, in jurisdictions other than IFSC, listed Indian companies and resident individuals may make such investment. Whereas in IFSC an unlisted

Indian entity may also make such OPI in units of an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable.

f) Resident individuals may make OPI within the overall limit for Liberalised Remittance Scheme (LRS) in terms of schedule III of the OI Rules. Further, shares or interest acquired by the resident individuals by way of sweat equity shares or minimum qualification shares or under Employee Stock Ownership Plan (ESOP)/ Employee Benefits Scheme up to 10% of the paid-up capital/stock, whether listed or unlisted, of the foreign entity and without control shall also qualify as OPI.

g) Any investment made overseas in accordance with schedule IV of the OI Rules in securities as stipulated by SEBI by Mutual Funds (MFs), Venture Capital Funds (VCFs) and Alternative Investment Funds (AIFs) registered with SEBI shall be considered as OPI.

(x) "Listed equity capital or instrument" - Wherever a reference is made in these directions or OI Rules or OI Regulations to listed equity capital or a listed instrument overseas, it shall mean that such equity capital or instrument, as the case may be, shall be listed on a recognised stock exchange outside India.

Part II – General provisions

2. Exemptions from applicability of OI Rules/Regulations/Directions

The provisions contained in the OI Rules/Regulations/Directions shall not apply, and general permission shall be available for acquisition or transfer of any investment outside India made as per rule 4 of the OI Rules.

3. Permission for making overseas investment

(1) A person resident in India may make or transfer any investment or financial commitment outside India under general permission/automatic route subject to the provisions contained in the OI Rules, OI Regulations and these directions. Accordingly, overseas investment may be made in a foreign entity engaged in a bona fide business activity, directly or through SDS/special-purpose vehicle (SPV).

(2) The person intending to make any financial commitment shall fill up the Form FC as provided in the " Master Direction – Reporting under Foreign Exchange Management Act, 1999 " duly supported by the requisite documents and approach the designated AD bank for making the investment/remittance.

(3) In respect of any case under the approval route, the applicant shall approach their designated AD bank who shall forward the proposal to the Reserve Bank after due scrutiny and with its specific recommendations. The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical/electronic form through email as hitherto, in addition to the online reporting. The designated AD bank before forwarding the proposal shall submit the relevant sections of the Form FC in the online OID application and the transaction number generated by the application shall be mentioned in their reference. The following documents shall be submitted along with the proposal:

- Background and brief details of the transaction.
- Reason(s) for seeking approval mentioning the extant FEMA provisions.
- Observations of the designated AD bank with respect to the following:
 - o Prima facie viability of the foreign entity;
 - o Benefits which may accrue to India through such investment;
 - o Financial position and business track record of the Indian entity and the foreign entity;
 - o Any other material observation.
- Recommendations of the designated AD bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.
- Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV).
- Valuation certificate for the foreign entity (if applicable).
- Other relevant documents properly numbered, indexed and flagged.

The proposal shall be submitted to the following address:

The Chief General Manager,
Reserve Bank of India,
Foreign Exchange Department,
Overseas Investment Division,
Amar Building, 5th Floor,
Sir P. M. Road, Fort,
Mumbai 400001.

4. Approval from the Central Government

The applications for overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government from time to time or in strategic sectors/specific geographies in accordance with rule 9 of OI Rules shall be forwarded by the AD banks from their constituents to the Reserve Bank as per the laid down procedure for onward submission to the Central Government.

5. Approval from the Reserve Bank

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

6. No Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency

(1) Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as wilful defaulter or is under investigation by a financial sector regulator/ investigative agency shall obtain an NOC from the lender bank/regulatory body/investigative agency concerned in accordance with rule 10 of OI Rules, before making financial commitment or undertaking disinvestment.

(2) Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.

7. Rights issue and bonus shares

(1) A person resident in India, who has acquired and continues to hold equity capital in a foreign entity in accordance with the OI Rules/Regulations may acquire equity capital through exercise of rights or by way of bonus shares in accordance with rule 7 of the OI Rules.

(2) The acquisition of equity capital through exercise of such rights shall be reported in Form FC. Where such person does not exercise the rights but renounces such rights in favour of a person resident in India or a person resident outside India, such renouncement shall not require reporting. Further, the acquisition of bonus shares shall not be treated as fresh financial commitment and will not require reporting.

8. Acquisition of a foreign entity through bidding or tender procedure

(1) AD banks may, on being approached by an eligible person resident in India, allow remittance towards Earnest Money Deposit (EMD) after obtaining Form A2 duly filled in or may issue bid bond guarantee on their behalf in accordance with regulation 9(5) of OI Regulations for participation in bidding or tender procedure for acquisition of a foreign entity. On winning the bid, AD banks may facilitate further remittances to the foreign entity so acquired after obtaining Form FC duly filled in and report such financial commitment.

(2) AD banks, while permitting remittance towards EMD should advise the Indian entity/investor that in case they are not successful in the bid, they shall repatriate the amount remitted in accordance with Notification No. FEMA 9(R)/2015-RB .

(3) In cases where such a person resident in India, after being successful in the bid/tender decides not to proceed further with the investment, AD banks shall ensure the bona fides of transaction while permitting the invocation of bid-bond guarantee or forfeiture of EMD.

9. ODI in startups

Any ODI in startups in accordance with rule 19(2) of OI Rules shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.

10. Acquisition or transfer by way of deferred payment

(1) AD bank shall verify the bona fides of the transactions from the underlying agreement/documents in case of deferment of payment of consideration in accordance with regulation 7 of OI Regulations. The period of deferment shall be defined upfront. In case the remittance towards acquisition of equity capital is to be made post subscription to Memorandum of Association, the period within which such remittance is to be made shall be defined in the underlying agreement/documents/applicable laws else the remittance shall be made on or before acquisition of/setting up of the foreign entity.

(2) The part of the payment towards consideration deferred by the person resident in India shall be treated as non-fund based financial commitment by such person and shall be reported accordingly. Subsequent payments towards deferred consideration shall be reported in Form FC as conversion of non-fund based financial commitment to equity. The valuation in accordance with pricing guidelines, wherever applicable, shall be done upfront.

11. Mode of Payment

The mode of payment by a person resident in India for making overseas investment shall be in accordance with regulation 8 of the OI Regulations. It is further provided that:

(i) Overseas investment by way of cash is not permitted.

(ii) In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015 , an Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/office outside India for making any overseas investment.

(iii) A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.

(iv) Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification

No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 . All dues receivable on investments (or financial commitment) 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.

12. Pricing Guidelines

(1) The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions contained in rule 16 of OI Rules. With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, inter alia, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. The AD bank shall put in place a board approved policy within two months from the date of these directions.

(2) Such policy may also provide for scenarios where the valuation may not be insisted upon, such as (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction or (ii) price is readily available on a recognised stock exchange, etc. The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

13. Transfer or liquidation

A person resident in India holding equity capital in accordance with OI Rules may transfer such investment in accordance with rule 17 of OI Rules. It is clarified that where the transferor is required to repatriate all the dues before disinvestment, such requirement shall not apply to the dues that do not arise on account of investment in equity or debt like export receivables, etc.

14. Restructuring

(1) A person resident in India who has made ODI in a foreign entity, may permit restructuring of the balance sheet by such foreign entity in accordance with rule 18 of OI Rules. The aggregate investment in both the equity and debt of the foreign entity shall be taken into consideration for computing the proportionate amount of accumulated losses. However, in case the restructuring involves only equity, investment only in equity of the foreign entity may be taken into consideration for computing proportionate losses.

(2) The certificate required to be furnished in accordance with rule 18 of OI Rules shall mention the amount of accumulated losses as per the audited balance sheet of the foreign entity, the proportionate amount of accumulated losses based upon the share of the Indian entity/investor, the amount of diminution in the value of the outstanding dues towards the Indian entity/investor post restructuring and that such diminution does not exceed the proportionate amount of accumulated losses.

(3) These provisions shall not be used where the assets are simply revalued in the books of the Indian entity without any restructuring of the balance sheet of the foreign entity.

15. Opening of Foreign Currency Account abroad by an Indian entity

An Indian entity may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of making ODI in accordance with the provisions contained in Regulation 5 (D) of Notification No. FEMA.10(R)/2015-RB, namely, Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015 .

16. Obligations of the Person Resident in India

(1) A person resident in India making ODI shall meet the obligations laid down in regulation 9 of OI Regulations.

(2) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit the evidence of investment as per regulation 9(1) of OI Regulations to the AD bank within six months, failing which the funds remitted overseas shall be repatriated within the said period of six months. The evidence of investment shall be retained by the designated AD bank, who shall monitor the receipt of required documents and satisfy themselves about the bona fides of the documents so received.

(3) Form FC shall be submitted along with requisite documents to AD bank for obtaining UIN on or before making initial ODI. The AD bank after due verification shall report the details in the OID application for allotment of UIN. Any remittance towards a foreign entity shall be facilitated by the AD bank only after obtaining the necessary UIN for such entity. The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the foreign entity. The issue of UIN only signifies taking on record of the investment for maintaining the database. Further, with effect from June 01, 2012, an auto generated e-mail giving the details of UIN allotted to the foreign entity is forwarded to the AD bank/Indian investor as confirmation of allotment of UIN, and no separate letter is issued by the Reserve Bank.

17. Reporting

(1) All reporting with respect to overseas investment by a person resident in India shall be made in accordance with regulation 10 of OI Regulations through the designated AD bank as per the revised reporting forms and instructions contained in the " Master Direction – Reporting under Foreign Exchange Management Act, 1999 ". The reporting forms can be downloaded from Reserve Bank's website www.rbi.org.in . Any incomplete filing shall be treated as non-submission.

(2) Any acquisition of foreign securities through conversion of Indian Depository Receipts (IDRs) shall be duly

reported as ODI or OPI, as applicable.

(3) The Annual Performance Report (APR) shall be certified by a chartered accountant where the statutory audit is not applicable, including in case of resident individuals. It is also clarified that where APR is required to be filed jointly, either one investor may be authorised by other investors for filing APR, or such persons may jointly file the APR.

(4) A resident individual making overseas investment must comply with the reporting requirements as provided under the OI Regulations and reporting shall also be done as provided under the LRS where such investment is reckoned towards the LRS limit. Acquisition of foreign securities by way of inheritance or gift in accordance with paragraph 2 of Schedule III of OI Rules shall not be reckoned towards the LRS limit and hence, shall not require reporting under LRS.

18. Delay in Reporting

(1) In case a person resident in India has made a delay in filing/submitting the requisite form/return/document, such person may file/submit the requisite form/return/ document, etc. and pay the Late Submission Fee (LSF) through the designated AD bank in accordance with regulation 11 of OI Regulations.

(2) The LSF for delay in reporting of overseas investment related transactions shall be calculated as per the following matrix:

Sr. No. Type of Reporting delays LSF Amount (INR)

1 Form ODI Part-II/ APR, FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting 7500

2 Form ODI-Part I, Form ODI-Part III, Form FC, or any other return which captures flows or returns which capture reporting of non-fund based transactions or any other transactional reporting $[7500 + (0.025\% \times A \times n)]$

Notes:

a) "n" is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.

b) "A" is the amount involved in the delayed reporting.

c) LSF amount is per return.

d) Maximum LSF amount will be limited to 100 per cent of 'A' and will be rounded upwards to the nearest hundred.

e) Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted. If the applicant subsequently approaches for payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of LSF.

f) The option of LSF shall be available up to three years from the due date of reporting/submission under OI Regulations. The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of OI Regulations.

g) In case a person resident in India responsible for submitting the evidence of investment or filing any forms/returns/reports, etc. as per OI Regulations/earlier corresponding regulations, neither makes such submission/filing within the specified time nor makes such submission/filing along with LSF as provided in regulation 11 of OI Regulations, such person shall be liable for penal action under the provisions of FEMA, 1999.

(3) The LSF may be paid by way of a demand draft drawn in favour of "Reserve Bank of India" and payable at the Regional Office concerned (in accordance with UIN mapping given in the table below).

Sr.No UIN with prefix UIN mapped to

1. AH RO Ahmedabad

2. BG RO Bengaluru

3. BL or BY or PJ RO Mumbai

4. BN or CA or GA or GH RO Kolkata

5. CG or JM or JR or KA or ND or PT or WR RO New Delhi

6. HY RO Hyderabad

7. KO or MA RO Chennai

19. Restriction on further financial commitment or transfer

AD bank shall not facilitate any outward remittance/further financial commitment by a person resident in India towards a foreign entity until any delay in reporting is regularised and may be guided by regulation 12 of OI Regulations.

20. Restrictions and prohibitions

(1) AD bank shall not facilitate any transaction in respect of any foreign entity engaged in an activity mentioned in rule 19(1) of OI Rules or located in countries/ jurisdictions as advised by the Central Government under rule 9(2) of OI Rules. It is clarified that financial products linked to Indian Rupee shall include non-deliverable trades involving foreign currency-INR exchange rates, stock indices linked to Indian market, etc.

(2) The financial commitment by a person resident in India in a foreign entity that has invested or invests into India at

the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries is not permitted in accordance with rule 19(3) of the OI Rules. It is provided that no further layer of subsidiary or subsidiaries shall be added to any structure existing with two or more layers of subsidiaries post notification of the OI Rules/Regulations.

Note: It may be noted that subsidiary shall have the meaning as provided in the OI Rules i.e. an entity in which the foreign entity has control (which includes a stake of 10% or more in an entity as per the OI Rules).

Part III – Specific provisions

21. Financial commitment by an Indian entity

An Indian entity, within the overall limit provided in schedule I of the OI Rules and subject to regulation 3 of OI Regulations, may make financial commitment by way of ODI as per schedule I of the OI Rules, financial commitment by way of debt as per regulation 4 of OI Regulations and non-fund based financial commitment as per regulations 5, 6 and 7 of OI Regulations. The following is further provided:

(1) In case of swap of securities both the legs of transaction shall comply with FEMA provisions, as applicable.

(2) In case of investment in foreign entity by a registered Partnership firm, it will be in order for individual partners to hold shares for and on behalf of the firm in the foreign entity if the host country regulations or operational requirements warrant such holdings.

(3) Financial commitment by way of debt [regulation 4 of OI Regulations]- AD bank shall facilitate an outward remittance towards financial commitment by way of debt only after obtaining the necessary agreement/documents for ensuring the bona fides of the transaction. An Indian entity shall not lend directly to its overseas SDS. Further a resident individual shall not make financial commitment by way of debt.

(4) It is provided with respect to financial commitment by way of Guarantee [regulation 5 of OI Regulations] that-

a) In the case of performance guarantee, time specified for the completion of the contract shall be treated as its validity period.

b) No prior approval from the Reserve Bank shall be needed for remitting the funds from India on account of invocation of a performance guarantee extended in accordance with OI Rules/Regulations.

c) Any guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based financial commitment but will be considered as financial commitment by way of debt. Such invocation shall be reported in Form FC.

d) Roll-over of guarantee shall not be treated as fresh financial commitment. However, such roll-over shall be reported in Form FC.

e) A group company of the Indian entity may extend a guarantee in accordance with the OI Regulations if such group company is eligible to make ODI as per the OI Rules and such guarantee shall be counted towards the utilisation of the financial commitment limit of such group company and shall be reported by the group company concerned. In case of a resident individual promoter, the same shall be counted towards the financial commitment limit of the Indian entity and accordingly be reported by the Indian entity. The concept of utilising the net worth of the subsidiary/holding company by the Indian entity has been discontinued henceforth. Further, for computing the financial commitment limit of the group company, any fund-based exposure of such group company to the Indian entity or of the Indian entity to such group company, as the case may be, shall be deducted from the net worth of such group company.

(5) The provisions related to financial commitment by way of pledge/charge [regulation 6 of OI Regulations] are summarised below :

Security by Indian entity In whose favour Facility availed Amount reckoned towards financial commitment

A) Pledge the equity capital of the foreign entity /its SDS outside India. AD bank or a public financial institution in India or an overseas lender. Fund/non-fund based facilities for Indian entity. Nil.

Fund/non-fund based facilities for any foreign entity/its SDSs outside India. The value of the pledge or the amount of the facility, whichever is less.

A debenture trustee registered with SEBI in India. Fund based facilities for Indian entity. Nil.

B) Create charge on its assets (other than A above) in India [including the assets of its group company or associate company, promoter and / or director]. AD bank or a public financial institution in India or an overseas lender.

Fund/non-fund based facility for any foreign entity/its SDS outside India The value of charge or the amount of the facility, whichever is less

Overseas or Indian lender. fund/non-fund based facilities for Indian entity. Nil.

C) Create charge on the assets outside India of the foreign entity/ its SDS outside India. An AD bank in India or a public financial institution in India. Fund/non-fund based facility for any foreign entity/its SDS outside India. The value of the charge or the amount of the facility, whichever is less.

Fund/non-fund based facility for Indian entity. Nil.

a debenture trustee registered with SEBI in India. fund based facilities for Indian entity. Nil

(6) Financial commitment by way of pledge/charge shall be subject to following conditions:

The value of the pledge/charge or the amount of the facility, whichever is less, shall be reckoned towards the

financial commitment limit provided such facility has not already been reckoned towards the limit prescribed;

Overseas lender in whose favour such pledge/charge is created shall not be from any country or jurisdiction in which financial commitment is not permissible under the OI Rules;

the creation/enforcement of such pledge/charge shall be in accordance with the relevant provisions of the Act or rules or regulations made, or directions issued thereunder;

The assets on which charge is being created are not securitised;

The period of charge, if not specified upfront, shall be co-terminus with the period of facility (like loan or other facility) for which charge has been created;

in the event of enforcement of charge created on domestic assets, such domestic assets shall be transferred by way of sale to a person resident in India only;

Wherever creation of charge involves pledge of shares of an Indian company in favour of an overseas lender, the pledge shall also be governed by the extant FEMA provisions contained in FEM (Non-Debt Instruments) Rules, 2019.

(7) The provisions pertaining to ODI in financial services activity [paragraph 2 of schedule I and paragraph 2 of schedule V of OI Rules] are summarised below:

Indian entity ODI in foreign entity Subject to the financial commitment limit, reporting and documentation as per the OI Rules/Regulations and other applicable provisions as under

a) Engaged in Financial Services activity Engaged in Financial Services activity Subject to the provisions contained in paragraph 2(1) of schedule I of the OI Rules. Where such investment is in IFSC, the requisite approval by the financial services regulator concerned shall be decided within 45 days from the date of receipt of application complete in all respects failing which it shall be deemed to be approved

Not engaged in Financial Services activity Subject to the guidelines issued by the respective regulator

b) Not engaged in Financial Services activity Engaged in Financial Services activity except banking or insurance Indian entity has posted net profits during the preceding three financial years. However, an Indian entity not meeting 3-year profitability condition may make such ODI in a foreign entity in IFSC in India.

Engaged in general and health insurance Apart from the 3 years profitability criteria, such insurance business is supporting the core activity undertaken overseas by such Indian entity. For instance, health insurance to support medical/hospital business, vehicle insurance to support the manufacturing/export of motor vehicles, etc.

c) Overseas investment in any sector by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to such other conditions as may be stipulated by the regulatory department concerned of the Reserve Bank in this regard.

d) A foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

(8) Limit of financial commitment shall be governed by paragraph 3 of schedule I of the OI rules. The following is further provided:

a) Utilisation of the balances held in EEFC account, and the amount raised by issue of American Depositary Receipts (ADR)/ Global Depositary Receipts (GDR) and ADR/ GDR stock-swap for making financial commitment shall also be reckoned towards the financial commitment limit. However, financial commitment made through such resources prior to the date of notification of the OI Rules/Regulations shall not be reckoned towards the limit.

b) Where the proceeds from External Commercial Borrowings (ECB) are utilised for making financial commitment, the same shall be reckoned towards the financial commitment limit. However, only that part of the ECB shall be reckoned towards the financial commitment limit that exceeds the amount of the corresponding pledge or creation of charge on assets which has already been counted towards the financial commitment limit.

22. Overseas investment by resident individuals

With effect from August 05, 2013, resident individuals (single or in association with another resident individual or with an Indian entity) were permitted to make ODI. A resident individual may make overseas investment in accordance with schedule III of OI Rules. The following is further provided:

(1) Where a resident individual has made ODI without control in a foreign entity that subsequently acquires or sets-up a subsidiary/SDS, such resident individual shall not acquire control in such foreign entity.

(2) Overseas investment by way of capitalisation, swap of securities, rights/bonus, gift, and inheritance shall be categorised as ODI or OPI based on the nature of the investment. However, where the investment, whether listed or unlisted, by way of sweat equity shares, minimum qualification shares and shares/interest under Employee Stock

Ownership Plan (ESOP)/Employee Benefits Scheme does not exceed 10 per cent of the paid-up capital/stock of the foreign entity and does not lead to control, such Investment shall be categorised as OPI.

(3) In case of swap of securities both the legs of the transaction shall comply with FEMA provisions, as applicable. However, where swap of securities results in acquisition of any equity capital which is not in conformity with the OI Rules/Regulations, e.g., ODI in foreign entity engaged in financial services activity, foreign entity having a subsidiary/SDS, etc., such equity capital must be disinvested within a period of six months from the date of such acquisition.

(4) Resident individuals are not permitted to transfer any overseas investment by way of gift to a person resident outside India.

(5) Shares/interest under ESOP/Employee Benefits Scheme - AD banks may allow remittances, towards acquisition of the shares/interest in an overseas entity under the scheme offered directly by the issuing entity or indirectly through a Special Purpose Vehicle (SPV) /SDS. Where the investment qualifies as OPI, the necessary reporting in Form OPI shall be done by the employer concerned in accordance with regulation 10(3) of OI Regulations. Where such investment qualifies as ODI, the resident individual concerned shall report the transaction in Form FC.

(6) Foreign entities 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 FEMA, 1999, (ii) the shares are being repurchased in terms of the initial offer document, and (iii) necessary reporting is done through the AD bank.

(7) Though there is no limit on the amount of remittance made towards acquisition of shares/interest under ESOP/Employee Benefits Scheme or acquisition of sweat equity shares, such remittances shall be reckoned towards the LRS limit of the person concerned.

23. Overseas investment by a person resident in India, other than an Indian entity or a resident individual

A person resident in India, other than an Indian entity or a resident individual may make overseas investment in accordance with schedule IV of OI Rules. The following is further provided:

(1) Mutual Funds (MFs) and Venture Capital Funds (VCFs)/Alternative Investment Funds (AIFs) registered with SEBI may, in accordance with paragraph 2 of schedule IV of OI Rules, invest overseas in securities as stipulated by SEBI within an overall cap of USD 7 billion and USD 1.5 billion, respectively. Further, a limited number of qualified MFs are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI. Such investment shall be considered as OPI irrespective of whether the securities are listed or not.

(2) MFs/VCFs/AIFs desirous of availing this facility may approach SEBI for necessary permission. Operational modalities regarding eligibility criteria, individual limits, identification of recognised stock exchanges, investible universe, monitoring of aggregate ceilings, etc., shall be as per the guidelines issued by SEBI. General permission is available to such investors for sale of securities so acquired.

(3) An AD bank, including its overseas branch, may acquire or transfer foreign securities in terms of host country regulations/laws, as applicable, in the normal course of its banking business. The provisions contained in OI Rules/Regulations shall not apply to such acquisition or transfer of foreign securities by an AD bank.

(4) A bank in India, being licensed by the Reserve Bank under the provisions of the Banking Regulation Act, 1949, may acquire the shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT) as per the by-laws of SWIFT, provided the bank has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as a member.

(5) Any overseas investment by the sole proprietorship or unregistered partnership firms may be made by the proprietor concerned or the individual partners concerned within their limit available under the LRS in accordance with schedule III of the OI Rules. If the proposed investment is in strategic sector, any application for making overseas investment in excess of the LRS limit may be made under the government approval route.

(6) Overseas investment by registered trust/society may be made under the approval route in accordance with paragraph 1 of schedule IV of OI Rules.

24. Overseas investment in an IFSC in India by a person resident in India

A person resident in India may make overseas investment in an IFSC in India in accordance with schedule V of OI Rules. The following is further provided:

(1) A person resident in India, being an Indian entity or a resident individual, may make investment (including sponsor contribution) in the units of an investment fund or vehicle set up in an IFSC as OPI. Accordingly, in addition to listed Indian companies and resident individuals, unlisted Indian entities may also make such investment in IFSC.

(2) The restriction of making ODI only in an operating foreign entity or not making ODI in a foreign entity engaged in financial services activity by resident individuals, shall not apply to an investment made in IFSC. Such investment, however, shall not be made in any foreign entity engaged in banking or insurance. Such foreign entity in IFSC may have subsidiary/SDS in IFSC. It may also have subsidiary/SDS outside IFSC where the resident individual does not have control in the foreign entity. Resident individual who has made ODI without control shall not acquire control in a foreign entity that subsequently acquires or sets-up a subsidiary/SDS outside India.

25. Acquisition or Transfer of Immovable Property outside India

Any acquisition or transfer of immovable property outside India shall be governed by the provisions contained in rule 21 of OI Rules. The following is further provided:

(1) An AD bank may allow an Indian entity having an overseas office to acquire immovable property outside India for the business and residential purposes of its staff, provided total remittances do not exceed the following limits as laid down for initial and recurring expenses, respectively:

15 per cent of the average annual sales/income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher;

10 per cent of the average annual sales/income or turnover during the last two financial years.

Part IV - Other Operational Instructions to AD banks

26. Designated banks

(1) An eligible person resident in India making ODI (or financial commitment) in a foreign entity is required to route all its transactions relating to such investment (or financial commitment) through the AD bank designated by it. In case a foreign entity is being set up by two or more persons resident in India, then all such persons shall route all transactions in respect of that foreign entity only through one designated AD bank. However, different AD banks may be designated, if required, for different foreign entities.

(2) In case such a person resident in India wants to switch over to another AD, it may approach the new AD after obtaining an NOC from the existing AD bank.

(3) All communication from the person resident in India to the Reserve Bank should be routed through the nodal branch of the designated AD bank. For proper follow up, the AD bank shall maintain person-wise record in respect of each foreign entity.

27. Overseas investment under OI Rules/Regulations

(1) AD banks may allow remittance towards overseas investment up to the permissible limits on receipt of application in Form FC together with form A-2, duly filled in, from the person making such investments subject to their complying with the conditions prescribed in the OI Rules/Regulations/Directions. AD banks shall render themselves liable for penal action under section 11 and 13 of FEMA, 1999, if they facilitate remittances towards financial commitment without obtaining the requisite duly completed Form FC.

Explanation: AD banks may note that an additional timeline of 15 days is made available to them for reporting of investments/financial commitment by their constituents to RBI in the OID application (other than first remittance, which requires to be reported in OID system before executing the transaction, to generate UIN) and is not to be availed by the Indian entities/resident individuals for submission of forms and documents to the AD bank.

(2) AD banks should allow remittance towards loan to the foreign entity and/or issue bank guarantee to/on behalf of the foreign entity only after ensuring that the Indian entity has made ODI and has control in the foreign entity.

(3) The Reserve Bank will not, generally, specify the documents which should be verified by the AD banks for ensuring the bona fides of the transactions. In this connection, attention of authorised persons is drawn to sub-section (5) of Section 10 of the FEMA, 1999 which provides that an authorised person shall require any person desiring to transact in foreign exchange to make such a declaration and to give such information as will reasonably satisfy him that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of the FEMA, 1999 or any rule, regulation, notification, direction or order issued thereunder. AD banks shall put in place a standard policy laying down the requirements or documents or information to be obtained by their branches to ensure compliance with said provisions of FEMA.

(4) AD banks shall ensure bona fides of the transaction, compliance with FEMA provisions, compliance with Know Your Customer (KYC) Guidelines and compliance with anti-money laundering guidelines/laws. Any doubtful case/suspicious transaction shall be referred to Directorate of Enforcement (DoE) for further investigation and necessary action.

(5) In case of ODI by way of capitalisation of export proceeds or other entitlements, Indian entity/resident individual shall make an application in Form FC to its designated AD bank. AD bank may ensure necessary reporting in Form FC, compliance with OI Rules/Regulations and necessary reporting in EDPMS, wherever applicable, for facilitating such transactions. In case where such proceeds are overdue beyond the period specified for realisation/repatriation, before permitting such capitalisation AD bank may grant necessary extension post proper due diligence.

(6) Pre-incorporation expenses – AD bank may allow remittance towards pre-incorporation expenses after satisfying itself of the reasonableness, up to a maximum of USD 100,000 per foreign entity. Such remittances made by a resident individual shall be reckoned towards their LRS limit. A person resident in India may capitalise pre-incorporation expenses (i.e., financial commitment by way of ODI) or recognise such expenses as receivables (i.e., financial commitment by way of debt) or account them as expenses in their books. It is clarified that unless recognised as financial commitment such expenses shall not attract provisions of OI Rules/Regulations.

28. General procedural instructions for online reporting

(1) The existing application for online reporting of overseas investment related transactions by Authorised dealers

(ADs) has provision for Maker, Checker and Authoriser. The AD Maker shall initiate the transaction and submit to the AD Checker for verification before submission to Reserve Bank. In case of delay in reporting for any reason the transaction shall be reported to RBI only after a middle management level officer designated as an authoriser ratifies it by recording the reasons for the same.

(2) The AD Maker, AD Checker and AD Authoriser as above identified by the AD Bank may obtain a user-id, if not obtained already, for accessing the online OID application by submitting a request in the prescribed format as per appendix A .

(3) The online reporting shall be made by the Centralised Unit/Nodal Office of AD banks. The overseas investment application is hosted on the Reserve Bank's Website at <https://fed.rbi.org.in> . AD banks shall be responsible for the validity of the information reported online.

(4) Reserve Bank reserves the right to place the information received through the forms in the public domain.

(5) AD banks should put in place proper processes and systems and issue necessary instructions to all the dealing officials at the bank/branch level to ensure compliance with these directions.

Annex-II

List of the circulars/ master direction superseded

1. A.P. (DIR Series) Circular No. 32 February 9, 2005
2. A.P. (DIR Series) Circular No. 42 May 12, 2005
3. A.P. (DIR Series) Circular No. 14 October 1, 2004
4. A.P. (DIR Series) Circular No. 9 August 29, 2005
5. A.P. (DIR Series) Circular No. 29 March 27, 2006
6. A.P. (DIR Series) Circular No. 30 April 5, 2006
7. A.P. (DIR Series) Circular No. 3 July 26, 2006
8. A.P. (DIR Series) Circular No. 6 September 6, 2006
9. A.P. (DIR Series) Circular No. 41 April 20, 2007
10. A.P. (DIR Series) Circular No. 49 April 30, 2007
11. A.P. (DIR Series) Circular No. 50 May 4, 2007
12. A.P. (DIR Series) Circular No. 59 May 18, 2007
13. A.P. (DIR Series) Circular No. 68 June 1, 2007
14. A.P. (DIR Series) Circular No. 72 June 8, 2007
15. A.P. (DIR Series) Circular No. 75 June 14, 2007
16. A.P. (DIR Series) Circular No. 2 July 19, 2007
17. A.P. (DIR Series) Circular No. 11 September 26, 2007
18. A.P. (DIR Series) Circular No. 12 September 26, 2007
19. A.P. (DIR Series) Circular No. 34 April 3, 2008
20. A.P. (DIR Series) Circular No. 48 June 3, 2008
21. A.P. (DIR Series) Circular No. 53 June 27, 2008
22. A.P. (DIR Series) Circular No. 7 August 13, 2008
23. A.P. (DIR Series) Circular No.14 September 5, 2008
24. A.P. (DIR Series) Circular No. 5 July 22, 2009
25. A.P. (DIR Series) Circular No. 36 February 24, 2010
26. A.P. (DIR Series) Circular No. 45 April 1, 2010
27. A.P. (DIR Series) Circular No. 69 May 27, 2011
28. A.P. (DIR Series) Circular No. 73 June 29, 2011
29. A.P. (DIR Series) Circular No. 96 March 28, 2012
30. A.P. (DIR Series) Circular No. 97 March 28, 2012
31. A.P. (DIR Series) Circular No. 101 April 2, 2012
32. A.P. (DIR Series) Circular No. 131 May 31, 2012
33. A.P. (DIR Series) Circular No. 133 June 20, 2012
34. A.P. (DIR Series) Circular No.15 August 21, 2012
35. A.P. (DIR Series) Circular No. 25 September 7, 2012
36. A.P. (DIR Series) Circular No. 29 September 12, 2012
37. A.P. (DIR Series) Circular No. 99 April 23, 2013
38. A.P. (DIR Series) Circular No. 100 April 25, 2013
39. A.P. (DIR Series) Circular No. 8 July 11, 2013
40. A.P. (DIR Series) Circular No. 23 August 14, 2013
41. A.P. (DIR Series) Circular No. 24 August 14, 2013
42. A.P. (DIR Series) Circular No. 41 September 10, 2013
43. A.P. (DIR Series) Circular No. 83 January 3, 2014
44. A.P. (DIR Series) Circular No. 131 May 19, 2014

45. A.P. (DIR Series) Circular No. 1 July 3, 2014
46. A.P (DIR Series) Circular No. 48 December 9, 2014
47. A.P (DIR Series) Circular No. 54 December 29, 2014
48. A.P (DIR Series) Circular No. 59 January 22, 2015
49. A.P. (DIR Series) Circular No. 61 April 13, 2016
50. A.P. (DIR Series) Circular No. 62 April 13, 2016
51. A.P. (DIR Series) Circular No. 28 January 25, 2017
52. A.P. (DIR Series) Circular No. 4 May 12, 2021
53. FED Master Direction No. 15/2015-16 January 1, 2016, as amended from time to time