



भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

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RBI/2010-11/584

June 29, 2011

A.P. (DIR Series) Circular No. 73

To

All Category-I Authorised Dealer Banks

Madam/Sir,

### **Overseas Direct Investment- Liberalisation/ Rationalisation**

Attention of the Authorised Dealer (AD - Category I) banks is invited to the [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#) [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004] (the Notification), as amended from time to time, and the following circulars issued thereunder:

- [A.P. \(DIR Series\) Circular No. 41 dated December 6, 2003](#)
- [A.P. \(DIR Series\) Circular No. 29 dated March 27, 2006](#)
- [A.P. \(DIR Series\) Circular No. 69 dated May 27, 2011](#)

With a view to restating the various provisions relating to transfer by way of sales of a joint venture or wholly owned subsidiary (JV or WOS) outside India with and without write off, the existing guidelines are consolidated as indicated below:

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

An Indian Party, without prior approval of the Reserve Bank, may transfer by way of sale to another Indian Party which complies with the provisions of Regulation 6 of FEMA Notification 120/RB-2004 dated July 7, 2004 or to a person resident outside India, any

share or security held by it in a JV or WOS outside India subject to the following conditions:

- (i) the sale does not result in any write off of the investment made.
- (ii) the sale is to be effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- (iii) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
- (iv) the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
- (v) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- (vi) the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

**3. Transfer by way of sale of shares of a JV / WOS involving write off of the investment**

- (a) Indian Parties may disinvest without prior approval of the Reserve Bank, in the under noted cases where the amount repatriated on disinvestment is less than the amount of the original investment:
  - i) in cases where the JV / WOS is listed in the overseas stock exchange;
  - ii) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
  - iii) where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million and
  - iv) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed

USD 10 million.

(b) Such disinvestments shall be subject to the conditions listed at items (ii) to (vi) of paragraph 2 above.

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

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

6. Necessary amendments to the Foreign Exchange Management (Transfer or Issue of Any Foreign Security), Regulations, 2004 are being issued separately.

7. AD - Category I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

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

Yours faithfully,

**(Dr. Sujatha Elizabeth Prasad)**  
**Chief General Manager**