

## **A P (DIR Series) CIRCULAR NO 30/RBI.**

Dated: September 04, 2013

### **Overseas Direct Investments - Rationalization/Clarifications**

Attention of Authorised Dealer Category - I (AD Category - I) banks is invited to the A.P. (DIR Series) Circular No. 23 dated August 14, 2013 and the Notification No. FEMA.120/RB-2004 dated July 7, 2004, as amended from time to time. In this connection, Reserve Bank has been receiving queries from various stakeholders including Authorised Dealers and Indian companies. All such queries have been collated and are annexed to this circular along with the answers / clarifications.

2. It is clarified that all the financial commitments made on or before August 14, 2013, in compliance with the earlier limit of 400% of the networth of the Indian Party under the automatic route will continue to be allowed. In other words, such investments shall not be subject to any unwinding or approval from the Reserve Bank.

3. Attention of Authorised Dealer Category - I (AD Category - I) banks is also invited to the provisions under Regulation 6 of the Notification *ibid*, in terms of which the limit of financial commitments for an Indian Party (presently 100% of its net worth) shall not apply to the financial commitments funded out of EEFC account of the Indian Party or out of funds raised by way of ADRs / GDRs by the Indian Party, as hitherto.

4. It has been decided further to retain the limit of 400% of the net worth of the Indian Party for the financial commitments funded by way of eligible External Commercial Borrowing (ECB) raised by the Indian Party as per the extant ECB guidelines issued by the Reserve Bank of India from time to time.

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

6. Necessary amendments to the Notification, *ibid*, shall be notified separately.

7. The directions contained in this circular have been issued under Sections 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.

**RBI/2013-14/220**

**(C.D. Srinivasan)**  
**Chief General Manager**

**Annex to A.P.(DIR Series) Circular No.30 dated 04.09.2013**

Clarifications on Overseas Direct Investments

| S. No. | Query  | Answer / Clarification  |
|--------|--|---|
| 1.     | Whether an Indian Party (IP) can make fresh financial commitments in a JV/WOS already set-up/ acquired on or before August 14, 2013 [i.e. date of issue of A.P. (DIR Series) Circular No. 23]?                                     | An IP can make fresh financial commitments in the existing JV / WOS (including for the purpose of setting up of/acquiring step down subsidiaries outside India) only up to the revised limit of 100%, under the automatic route. Any financial commitment beyond the 100% cap shall require prior approval of the Reserve Bank under the approval route for ODI.                      |
| 2.     | What happens if the fresh financial commitments, which are up to the earlier limit of 400%, have been committed on or before August 14, 2013 by the Indian Party? Would such cases attract the provisions of the present circular? | In case of an already contracted/committed financial commitment for an existing JV/WOS, the earlier limit of 400%, under the automatic route, would apply. The onus of ensuring the veracity/authenticity of the contract/commitment before permitting remittances will lie with the designated AD bank. Such cases should be immediately reported post facto to RBI by the AD banks. |
| 3.     | For setting up or acquiring a new JV / WOS, for which contract / agreement has been put in place on or before August 14, 2013, whether the new directions of 100% shall be applicable or the existing 400%?                        | In this case also the dispensation given in 2 above would apply i.e. applicability of automatic route upto 400% of net worth and post facto reporting of such cases to RBI immediately by the AD banks.   |
| 4.     | What will be the status of an application, for financial commitment in a JV / WOS, which are already forwarded to the AD / RBI, on or before August 14, 2013, under the automatic route / approval route of 400%?                  | All applications received by the Reserve Bank or/and an AD bank on or before August 14, 2013 would be examined and dealt with by the Reserve Bank or/and an AD bank under the earlier guidelines only, i.e., guidelines prior to August 14, 2013.   |
| 5.     | How will the 100% limit be   | Yes, it will be reckoned, subject to the  |

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|    | calculated for new JV/WOS? Will the earlier investments made by the Indian Party be also reckoned towards this 100% or not?   | answers/clarifications given in this Annex.   |
| 6. | Whether an Indian Party, making fresh financial commitment in an existing overseas JV / WOS of another Indian Party (either by way of transfer of existing stake or by way of fresh contribution), shall qualify for 100% limit?  | Yes. This would be treated as fresh financial commitment by the new Indian Party and it would have to be within the revised limit of 100%, under the automatic route.   |
| 7. | In para 3 of the Circular, term 'Government of India' has been prescribed. Keeping in view that all the proposals of ODI by Navratna PSUs / OVL / OIL are not approved by the GoI, whether all the proposals need to be approved by the GoI for being eligible under the automatic route without any limit? | The term 'Government of India' may be considered to read as the 'Competent Authority'. 'Competent Authority', depending on the amount involved, would be (1) Board of Directors of the respective PSU, (2) Empowered Committee of the Secretaries (ECS); and (3) Cabinet Committee on Economic Affairs (CCEA) as laid down in paragraph 2 of A.P. (DIR Series) Circular No. 59 dated May 18, 2007 . |

Note : Overseas Direct Investment by an Indian Party (IP) for the purpose of A.P. (DIR Series) Circular No. 23 dated August 14, 2013 and this Circular would mean the total financial commitment as laid down in Regulation 2 (f) of Notification No. FEMA.120/RB-2004 dated July 7, 2004, as amended from time to time by an IP and includes investment in equity, loan, corporate guarantee or bank guarantee [backed by a collateral or guarantee by the IP], performance guarantee (upto 50% of the performance guarantee), creation of charge over movable and immovable assets, pledge of shares, etc.