

OVERSEAS DIRECT INVESTMENT (ODI) - SUBMISSION OF ANNUAL PERFORMANCE REPORT

A.P. (DIR SERIES 2015-16) NO.61, DATED 13-4-2016

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. Attention of AD Category - I banks is also invited to A. P. (DIR Series) Circular No. 68 dated June 01, 2007 on Rationalisation of Forms, A. P. (DIR Series) Circular No. 29 dated September 12, 2012 on rationalisation of guidelines relating to submission of the Annual Performance Report (APR), A. P. (DIR Series) Circular No. 24 dated August 14, 2013 on Liberalised Remittance Scheme (LRS) by Resident Individuals under which they were allowed to set up JV/WOS outside India and para B.14 of FED Master Direction No. 15/2015-16 dated January 1, 2016.

2. At present, an Indian Party (IP)/Resident Individual (RI) which has made an Overseas Direct Investment (ODI) has to comply with certain obligations prescribed under the Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended from time to time. One of these includes obligation for submission of an Annual Performance Report (APR) in Form ODI Part III to the Reserve Bank by 30th of June every year in respect of each Joint Venture (JV)/Wholly Owned Subsidiary (WOS) outside India set up or acquired by the IP/RI (as prescribed under Regulation 15 of FEMA Notification, *ibid*).

3. It has been observed that:

- (a) IP/RI are either not regular in submitting the APR or are submitting it with delay. This is not in line with Regulation 15 of the Notification, *ibid*.
- (b) Remittance/s and other forms of financial commitment are often facilitated by the designated Authorised Dealer bank (AD bank) under automatic route even though APR in respect of all overseas JV/WOS of the IP/RI effecting such remittance/s have not been submitted. This is in contravention of Regulation 6(2)(iv) of the Notification, *ibid*.

4. In order to provide AD banks greater capability to track submission of APRs and also improve compliance level in the matter of submission of APRs by the IPs/RIs, it is now advised as under:

- (a) The online OID application has been suitably modified to enable the nodal office of the AD bank to view the outstanding position of all the APRs pertaining to an applicant including for those JV/WOS for which it is not the designated AD bank. Accordingly, the AD bank, before undertaking/facilitating any ODI related transaction on behalf of the eligible applicant, should necessarily check with its nodal office to confirm that all APRs in respect of all the JV/WOS of the applicant have been submitted;
- (b) Certification of APRs by the Statutory Auditor or Chartered Accountant need not be insisted upon in the case of Resident Individuals. Self-certification may be accepted;
- (c) In case multiple IPs/RIs have invested in the same overseas JV/WOS, the obligation to submit APR shall lie with the IP/RI having maximum stake in the JV/WOS.

Alternatively, the IPs/RIs holding stake in the overseas JV/WOS may mutually agree to assign the responsibility for APR submission to a designated entity which may acknowledge its obligation to submit the APR in terms of Regulation 15 (iii) of Notification, *ibid*, by furnishing an appropriate undertaking to the AD bank;

- (d) An IP/RI, which has set up/acquired a JV/WOS overseas in terms of the Regulations of the Notification, *ibid*, shall submit, to the AD bank every year, an APR in Form ODI Part II in respect of each JV/WOS outside India and other reports or documents by 31st of December each year or as may be specified by the Reserve Bank from time to time. The APR, so required to be submitted, shall be based on the latest audited annual accounts of the JV/WOS unless specifically exempted by the Reserve Bank.

5. AD banks may issue necessary instructions to all the dealing officials at the bank/branch level and put in place proper processes and systems to ensure compliance with the extant FEMA guidelines. Any non-compliance with the instruction relating to submission of APR shall be treated as contravention of Regulation 15 of the Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended and viewed seriously.

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

7. Master Direction No. 15/2015-16 dated January 1, 2016 and Master Direction No. 18/2015-16 dated January 1, 2016 are being updated to reflect the changes.

8. 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.