

Preface

1. **Author has felt when he qualified as Chartered Accountant (CA) in Year 1985 that legal provisions' interpretations are big challenge for legal professionals, govts' officials and public at large in India and outside India.**
2. **Author has realized that something should be developed to resolve this challenge in India and outside India.**
3. **Author has started compiling Frequently Asked Questions (FAQs) on many subjects where his 100% answers are precisely based on Yes or No i.e. white or black nothing is grey**
4. **Author has compiled approximately 150 +(plus) research papers / books with 25 thousand +(plus) pages on many prevailing subjects / acts in India and outside India.**
5. **Author's 1st paper book is now being published under head FAQs on Enforcement Directorate (ED) where 571 FAQs are replied based on Yes or No i.e. white or black nothing is grey**
6. **This book is also containing**
 - (i) Foreign Exchange Management Act (FEMA) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (PMLA) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (FEOA) 2018 and rules / regulations
7. **This book is published with Sai Kripa and dedicated to my father (late) Mr. M.R. Agarwal, Mother Mrs. R.D. Agarwal, wife Mrs. Snigdha Agarwal, daughter Ms. Soumya Agarwal, daughter Ms. Sanya Agarwal and dedicated team headed by Rajat Kumar**

● **I trust that you will be enriched by reading this book**

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

Or

www.femainindia.com

Few out of abovementioned Research papers / books are as under:

1. *Book on Enforcement Directorate (ED) in India- (Book with 617 pages)*
2. *Director of Revenue Intelligence (DRI) in India*
3. *Central Bureau of Investigation (CBI) in India*
4. *National Investigation Agency (NIA) in India*
5. *Serious Fraud Investigation Office (SFIO) in India*
6. *Financial Intelligence Unit (FIU-IND) in India*
7. *Central Vigilance Commission (CVC) in India*
8. *Narcotics Control Bureau (NCB) in India*
9. *Research & Analysis Wing (R&AW) in India*
10. *Economic Offence Wing (EOW) in India*
11. *Intelligence Bureau (IB) in India*
12. *Director General of Income Tax Criminal Investigation (DGITCI) in India*
13. *National Company Law Tribunal (NCLT) in India*
14. *Security Exchange Board of India (SEBI) in India*
15. *Prevention of Corruption (PC) Act,1988 in India*

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
27. *Statutory Obligations for Companies Operating in India*
28. *Significant Beneficial Owners (SBO) in India*
29. *Significant Economic Presence (SEP) in India*
30. *Place of Effective Management (POEM) in India*
31. *Liberalized Remittance Scheme (LRS) for residents of India*
32. *Foreign Liability and Asset (FLA) return in India*
33. *FATCA agreement with USA*
34. *Double Taxation Avoidance Agreement (DTAA) with USA*
35. *Foreign Tax Credit (FTC) in India*
36. *Corporate Frauds (CFs) in India*
37. *Export of Goods and Services under FEMA, 1999 in India*
38. *Imports of Goods and Services under FEMA, 1999 in India*
39. *External Commercial Borrowings (ECBs) in India*
40. *Overseas Direct Investments (ODIs) under FEMA, 1999 in India*
41. *Acquisition of Immovable Properties by Non-residents under FEMA, 1999 in India*
42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*

The Overseas Direct Investments (ODIs) From India

1. 'Advantages' of the ODIs

- (i) Increases in the exports of plant, machinery, goods and Services from India
- (ii) Increases in foreign exchange earnings through receipt of dividend, royalty and technical Known how fee etc.

2. 'Guidelines' for the ODIs

- Guidelines' for the ODIs are available through followings Regulations, notifications etc.
- (i) Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 are notified by the RBI vide Notification No. FEMA 120/RB-2004, dated July 07, 2004
- (ii) Notification FEMA No. 19 dated May 03, 2000
- (iii) (a) This notification is to regulate the acquisition and transfer of foreign Security by resident in India i.e. investment by Indian entity (corporates entities) in Joint Ventures (JVs) and Wholly Owned Subsidiaries (WOS) Outside India
(b) And also the ODIs by the 'resident individuals' in shares and Securities through the Liberalized Remittance Scheme (LRS).
- (iv) Master Directions and circulars on the ODIs by the 'resident individuals' in JVs or WOS
- (v) FAQs as available at www.rbi.org.in

3. 'Address' for the Clarification's on the ODIs

- The Chief General Manager the RBI, Foreign Exchange Department, Overseas Investment Division, Central Office Amar Building, 5th Floor, Mumbai- 400001

4. 'Automatic' Routes for the 'Resident Individuals' under the LRS and others

- (i) ODIs are permitted up to USD 2,50,000 'per' person 'per' financial year under the LRS
- (ii) Out of funds as held in RFC account as maintained in India 'without' any limit
- (iii) Acquiring bonus shares against holding of foreign currency shares 'without' any limit
- (iv) Out of foreign currency resources as existed 'Outside' India by a person 'not' permanently resident in India

5. The ODIs Includes and Not' Includes

- (i) The ODIs includes investments through contribution to capital or subscription to Memorandum and Article of Association (M and A) of foreign entity for setting up or acquiring a JVs or WOS
- (ii) The ODIs 'not' includes Portfolio investments by a listed company where up to 50% of net worth is invested in listed shares or rated debt securities Outside India

6. Acquisition of the 'Existing' Company Outside India

- (i) Indian entity is permitted to acquire the partial stake through JVs or 100% stake through WOS
- (ii) However 'valuation' is to be made in accordance to the prescribed norms as applicable in India

7. 'Permitted' Activities

- (i) Indian entity is permitted to invest in bonafide activity except those are 'specifically' prohibited
- (ii) And also the 'additional' Conditions are to be compliance for the financial Service Sector

8. 'Not' Permitted (Prohibited) Activities

- (i) Real estate activities and Banking Business Outside India
- (ii) However Indian banks are permitted to set up JVs or WOS Outside India with the 'approval' from the RBI under the Banking Regulation Act, 1949

9. Indian 'Entity' to Include

- (i) A Company as incorporated in India
- (ii) A body as 'specifically' created under Act of the Parliament in India for this purpose
- (iii) A 'Registered' Partnership Firm
- (iv) A LLP
- (v) An Entity as to be notified by the RBI for this purpose

10. Permitted and 'Non' Permitted Real Estate Activities

- (i) Trading as Buying/Selling of real estate and trading in Transferable Development Rights (TDRs) are 'not' permitted
- (ii) Development of Township out of India is permitted
- (iii) Construction of Residential and Commercial premises or Roads and Bridges outside India is permitted

11. Permitted under the 'Automatic' Routes

- (i) An Indian entity is 'not' required any approval from the RBI for ODIs in JVs or WOS
- (ii) However 'approval' is required from regulatory authority in India and 'Outside' India 'both' for the ODIs in financial Service Sector

12. Permitted 'Limits' under the 'Automatic' Route

- (i) The ODIs is permitted up to **400%** of the 'net worth' of eligible Indian entity in JVs or WOS for the bonafide activities
- (ii) However limit up to **400%** of the 'net worth' is not required where the ODIs is to be made

out of the balances as available in EEEFC account

*(a) Henceforth Indian entity is permitted for the ODIs up to **400%***

Plus (+)

(b) Out of balance as available in EEEFC account

Plus (+)

(c) Out of funds as raised through ADRs or GDRs

(iii) Indian entity is 'not' permitted where the Indian entity is listed in the RBI Caution list or defaulter list in CIBIL or under investigation of DOE

*(iv) Indian entity is required to route all transactions through **1** branch of AD- I Bank only*

(v) Net worth to Include

(a) Net worth = Paid up Capital + 'Free' Reserves

(b) Paid up Capital = Equity shares + Preference Shares

13. Procedure for the ODIs under 'Automatic' Route

• Indian entity is required to submit a form ODI along with following documents

(a) Certified copy of the Board Resolution

(b) Statutory Auditor Certificate

(c) Valuation report is required where acquisition of the 'existing' company is desired

14. Submission of the Form ODI

(i) Form ODI is available as Annex to Master Direction on Direct Investment in JVs/ WOS 'outside' India

(ii) AD-I bank is required to submit part I and II and III of form ODI on the ODI investment application with the RBI

(a) For allotment of the UIN

(b) For reporting of the 'subsequent' remittances

(c) For filing of the APRs etc.

(iii) Indian entity is to continue to submit the form ODI physically and online 'both' to the AD-I bank

15. Computation for the 'Financial' Commitments against the ODIs

*• The ODIs in JVs or WOS + Loans to JVs or WOS + **100%** amount of 'corporate' guarantee as issued for JVs or WOS + **50%** amount of 'performance' guarantee as issued for JVs or WOS should 'not' exceed **400%** of the net worth*

16. 'Valuation' Norms for Acquisition of the 'Existing' Company Outside India

(i) Where the ODIs is exceeding USD 5 Million

- (a) Share valuation is to be made by SEBI registered Merchant Banker in India
- (b) Or by Investment Banker or registered Merchant Banker 'Outside' India

(ii) **Where the ODIs is 'not' exceeding USD 5 Million**

- Share valuation is to be made by a CA or CPA

(iii) **Where the ODIs is through Swap of the Shares**

- (a) Share valuation is to be made by SEBI registered Merchant Banker in India
- (b) Or by Investment Banker or registered Merchant Banker 'Outside' India

17. **'Creation of Charge' on Immovable Properties and Other Financial Assets**

- (i) **Permission** from the RBI is required for creating a charge on the 'immovable' properties
- (ii) And also for pledge of shares of Indian parent or group Companies

18. **The ODIs in 'Pakistan', Nepal and Bhutan**

- (i) **The ODIs in Pakistan**
 - The ODIs are 'not' permitted in Pakistan under the 'automatic' route
- (ii) **The ODIs in Nepal**
 - The ODIs are permitted in Nepal in rupees (INR) under the 'automatic' route
- (iii) **The ODIs in Bhutan**
 - The ODIs in Bhutan is permitted in rupees (INR) and freely 'Convertible' Currencies both under the 'automatic' route

19. **Designated Authorized Dealer - I Bank for the 'Single' JV or WOS**

- (i) Indian entity is required to route all transactions through one branch of AD-I bank only
- (ii) Moreover 'one' branch of AD-I bank is required to route all transactions where two or more Indian entities are investing in the 'same' JV or WOS
- (iii) Change of AD-I bank is permitted with the permission from the RBI and 'after' obtaining NOC from the existing AD-I bank

20. **Designated Authorized Dealer-I bank for the 'Multiple' JVs or WOSs**

- (i) Concept of 'one' designated authorized dealer -I bank is to be obeyed for 'one' JV or WOS
- (ii) Henceforth 'separate' designated authorized dealer-I bank is required for the 'multiple' JVs or WOSs

21. **UIN and 'Prior' Registration with the RBI**

- (i) Indian entity is 'not' required to obtain 'prior' registration with the RBI for the ODIs under the 'automatic' route
- (ii) However the RBI is required to allot a Unique Identification Number (UIN) 'after' receipt of the 'first' remittance.
- (iii) 'Subsequent' the ODIs are 'not' permitted in 'same' project without allotment of UIN by the

RBI

(iv) UIN is be quoted in 'each' communication to the AD-I bank

22. Utility of the UIN

- (i) Allotment of UIN is 'not' constitute an approval from the RBI for the ODIs in any JV or WOS*
- (ii) UIN is only needed to connect with Inflow and Outflow under the 'automatic' route as available for the ODIs*

23. The ODIs Under 'Approval' Route

• Approval from the RBI is required in following cases of the ODIs

- (i) Where the ODIs are in energy and natural resources sector and also ODI is exceeding the limit i.e. 400%*
- (ii) Where the ODIs are to be made by the proprietorship concerns or by the 'Unregistered' partnership firm*
- (iii) Where the ODIs are to be made by the 'registered' trusts or societies as engaged in manufacturing, education or hospital sector*

24. Parameters for decision Under the 'Approval' Route

- Prima facie viability of the JV or WOS should be existed as following*
 - (i) ODI should be benefited for the 'foreign' trade and 'other' benefits to the India*
 - (ii) The 'Financial' position and business track record of Indian entity and the foreign entity should be sound and strong*
 - (iii) Experience and Expertise of the Indian entity in same or similar line of activity of the JVs or WOS should be sound and strong*

25. The ODIs in 'Financial' Service Sector

- Indian entity as engaged in the financial service sector are permitted for the ODIs in JVs or WOS in the financial service sector only subject to satisfaction of the following conditions*
 - (i) Indian entity should have earned 'net' profits in preceding '3' financial years from the financial service activities in India*
 - (ii) Indian entity should be registered with the appropriate regulatory authority for conducting the financial service activities in India*
 - (iii) Indian entity should have obtained the approvals from appropriate regulatory authorities in India and 'Outside' India both before making ODI in financial services activities.*
 - (iv) Indian entity should have fulfilled the prudential norms for the capital adequacy as prescribed by the regulatory authorities in India*

26. Permissible 'Sources' for Funding of the ODIs with in limit up to 400%*

- (i) Out of the withdrawals from an AD - I bank in India*

- (ii) *Out of the swap of shares*
- (iii) *Out of the exports receivables and other dues and entitlements*
- (iv) *Out of the proceeds of the External Commercial Borrowings (ECBs) or Foreign Currency Convertible Bonds (FCCBs)*
- (v) *Out of the proceed of ADR or GDR as issued in accordance with scheme for issue of Foreign Currency Convertible Bonds (FCCBs) and Ordinary shares (Through Depository Receipt Mechanism) Scheme, 1993*
- (vi) *Out of the Balance as available in EEFC account*

*** Permitted up to 400% plus (+) proceeds out of the EEFC, ADRs or GDRs**

27. *Utilization of the 'Net' worth of Subsidiary or Holding Company*

- (i) *Indian entity is permitted to utilize 'net' worth of Indian Subsidiary or holding Company*
- (ii) *However Indian subsidiary or holding company is required to furnish a letter of disclaimer in favor of Indian entity where net worth limit 'not' independently availed by the subsidiary or holding company.*
- (iii) *This facility is 'not' available to the partnership firms and also partnership firm's 'net' worth is 'not' to be utilized by any incorporated entity*
- (iv) *Concept of holding or subsidiary company is to be recognized where shareholding is exceeding the 50%*

28. *'Capitalization' of the Exports Receivable 'etc.' as the ODIs in JVs or WOS*

- (i) *Indian entity is permitted to capitalize the receivables from a foreign entity against exports, fees, royalties or any 'other' dues for supply of technical know-how, Consultancy, managerial or 'other' services up to **400%***
- (ii) *However separate permission from the RBI is to be obtained where export proceeds remain unrealized beyond prescribed period of realization like '6' months*
- (iii) *Moreover Indian 'software' exporters are also 'additionally' permitted to receive up to 25% shares of value of their exports against overseas star-up software company 'without' entering into JVs but with permission from the RBI 'beyond' **400%***

29. *Compulsorily 'Convertible' Preference Shares (CCPS)*

- *Indian entity is permitted to invest in CCPS up to **400%***

30. *The ODIs through 'Share Swap'*

- *The ODIs in JV or WOS is permitted by way of share swap arrangement under the 'automatic' route but with the prescribed valuation norms.*

31. *The ODIs in JV or WOS by a 'Partnership' Firm*

- *'Registered' partnership firm is permitted for the ODIs in JV or WOS subject to satisfaction of the terms and Conditions as applicable to the corporate entity like up to **400%** and other*

prevailing conditions

32. *The ODIs in Name of a Partner'*

- (i) *Individual partner is permitted to hold the shares on behalf of partnership firm in JV or WOS Outside India*
- (ii) *However rules and regulations of the 'host Country' should also to permit shareholding in the name of an individual partner*

33. *Setting Up 'Step Down' Subsidiary*

- (i) *Indian entity is permitted to set-up a step down subsidiary commonly known as second generation operating company with in limit up to **400%***
- (ii) *Step down subsidiary is only permitted where JV or WOS is 'already' existed Outside India*
- (iii) *However 'additional' requirements are needed for setting up a step down subsidiary in the 'financial' services activities*

34. *JV or WOS through a Special Purpose Vehicle (SPV)*

- *JV or WOS is permitted to be Set-Up through a SPV under the 'automatic' route*

35. *'Funding' for the Step down Subsidiary*

- (i) *Indian entity is permitted to fund step down subsidiary directly*
- (ii) *However funding is to be routed through SPV where step down subsidiary is established through SPV*
- (iii) *Indian entity is permitted to provide a guarantee directly with in permissible financial exposures up to **400%** where first level step down subsidiary is operating through a SPV*

36. *Pledging of Shares of JV or WOS as 'Security against Loans'*

- *Indian entity is permitted to pledge the shares of JV or WOS as security against loans for 'own' purpose or for JV or WOS from a bank in India or Outside India with in 'total' permissible limit up to **400%***

37. *Legal Obligations' for the Indian entity*

- (i) *Indian entity is mandatory required to do the following actions*
 - (a) *To receive the share certificates or any 'other' documentary evidence for the investments in JV or WOS and also to submit to the AD - I bank*
 - (b) *To repatriate to India the 'all' dues receivable from JV or WOS like dividend and royalty and technical fees 'etc'.*
 - (c) *To Submit to the RBI through designated AD - I bank an Annual Performance Report (APR) for each JV or WOS*
 - (d) *To report the details to the RBI through designated AD - I bank for diversification of*

the activities or setting up of a step down subsidiary or alteration in share holding pattern with in '30' days of the diversification or alteration

(e) To repatriate to India the sales proceeds of shares or securities within '90' days from the sale and also to submit the documentary evidences to the RBI through designated AD- I bank

(ii) Submission of Foreign Liabilities and Assets (FLA) return annually up to July 15 of every year with the 'unaudited' or audited financial statements.

38. *Penalty for the 'Non' Submission of APR*

(i) Indian entity is liable to pay a penalty for delay submission or 'non' submission of the APR

(ii) Indian entity is required to submit the APR to the RBI through AD - I bank in form ODI part 'III' for each JV or WOS 'after' finalization of audit of accounts in the 'host Country'

39. *Acquire and Sale of Foreign Securities 'without' Approval from the RBI by the 'Resident Individual'*

• Resident individual is permitted in the following cases

(i) Acquisition under gift from the resident 'outside' India

(ii) Acquisition under the Cashless ESOP

(iii) Acquisition under the inheritance from the resident 'outside' India

(iv) Acquisition through funds available in the RFCA as maintained in a bank in India

*(v) Acquisition as bonus or right shares with in the up to **400%***

40. *The ODIs 'other than' in JV or WOS*

*(i) A 'listed' Indian Company in India is permitted to invest up to **50%** of the 'net' worth in a 'listed' foreign companies 'outside' India*

*(ii) Or in rated debt Securities as issued by the 'listed' foreign Company outside India 'over and above' up to **400%***

41. *Acquisition of the 'Qualification' Shares by a 'Resident' individual as the ODI under the LRS*

(i) A 'Resident individual' is permitted to acquire the qualification shares to become a director in host country 'outside' India.

*(ii) However 'maximum' investments are to be made up to **USD 2.5 Lac** under the LRS 'per' financial year. Hence is 'not' permitted 'separately' again under the ODIs up to **400%***

42. *Acquisition of Right Shares by a 'Resident Individual' as the ODI under the LRS*

*(i) A 'resident individual' is permitted to acquire the right shares as issued by company as incorporated outside India up to **USD 2.5 Lac** 'per' financial year*

(ii) However 'original' shares are to be held in accordance to provision of the FEMA, 1999

43. Acquisition of Shares in JV or WOS by the Employees or Directors of Indian Promoter Company as 'Engaged in the Field of Software' in India

- These employees and directors are permitted for acquisition of the shares subject to satisfactions of the following terms and conditions:-
 - (i) That Consideration 'not' to be exceed the limit for the ODI up to **400%**
 - (ii) That Maximum permitted shares are 'not' to exceed beyond **5%** of paid up capital of the JV or WOS

44. The ODIs by Indian 'Mutual Fund'

- Indian Mutual funds are permitted to invest under the ODI in the following Securities

- (i) ADR or GDR of a Indian Company
- (ii) Equity shares of the foreign 'listed' company outside India
- (iii) Rated foreign debt securities
- (iv) Reputed money 'market' investment
- (v) Reputed foreign 'Govt.' securities
- (vi) 'Listed' derivatives for the hedging and portfolio balancing along with underlying as securities
- (vii) Rated short term deposits with the banks
- (viii) Units or Securities as issued by foreign mutual funds

45. The ODIs by 'Domestic' Venture Capital Fund (VCF)

- SEBI registered 'domestic' venture capital fund is permitted to invest in equity and equity linked instruments of the 'foreign' VCF

46. The ODI in 'Agriculture'

- (i) Indian entity is permitted to undertake agricultural operations including purchase of land directly or through their office 'outside' India
- (ii) However Indian entity is permitted to invest up to **400%**
- (iii) Valuation of land is to be certified by an approved valuer as registered with the appropriate valuation authority in the 'host country'

47. 'Acquisition' of a Foreign Company through Bidding or Tender Procedure

- (i) Indian entity is permitted to invest in the ODI through bidding or tender procedure
- (ii) AD- I bank is permitted to allow a remittance for earnest money or to issue a bid bond guarantee for participation in a bid or tender

48. 'Hedging' for the ODIs

- (i) Indian entity is permitted to hedge against the foreign exchange rate risk
- (ii) AD - I bank is permitted to enter into forward or option contract with the Indian entity subject to verification of the exposure

- (iii) The ODI is to include direct investment in equity and loan in JV or WOS.
- (iv) Hedging is permitted till original maturity period where market value of the ODI is shrinking 'after' the hedging
- (v) Rollover of the hedging is permitted on due date at the market rate.

49. 'Performance' Guarantee in Favour of JV or WOS

- (i) Indian entity is permitted to issue a performance guarantee in favour of JV or WOS.
- (ii) However only 50% amount of performance guarantee is to be considered for computation of limit up to 400%
- (iii) Validity period for the performance guarantee is equivalent to time as specified for the completion of contract
- (iv) Indian entity is required a prior 'approval' from the RBI for remitting funds from India where invocation of the performance guarantee is crossing up to 400%.

50. 'Corporate' Guarantee on Behalf of the Step down Subsidiary

- (i) Indian entity is permitted to issue a corporate guarantee on behalf of step down subsidiary commonly known as second generation subsidiary under the 'approval' route.
- (ii) However Indian entity should hold 51% stake directly or indirectly in step down subsidiary

51. 'Disinvestment' from JV or WOS 'Without' Write Off

- (i) Disinvestment is permitted through a transfer or sale of equity shares to a 'non' resident or a resident of India by way of liquidation, merger or amalgamation of the JV or WOS
- (ii) Disinvestment is permitted to another an Indian entity 'without' approval from the RBI
- (iii) Disinvestment is permitted to a non-resident of India subject to satisfaction of the followings terms and conditions
 - (a) Sale should not be a result of any write-off of the investments
 - (b) Sale should be made through stock exchange where shares of JV or WOS is listed
 - (c) Sale should 'not' be lower than value as certified by CA or CPA where shares of JV or WOS is 'not' listed
 - (d) Indian entity should 'not' have any outstanding from JV or WOS i.e. dividend or fee for technical know-how, royalty, Consultancy, commission, any 'other' entitlement or export proceed
 - (e) JV or WOS should have worked for minimum 1 year and also APR has already been filed with the RBI
 - (f) Indian entity should 'not' be under investigation by CBI, DOE, SEBI, IRDA or any 'other' authority in India.

52. 'Disinvestments' from JV or WOS 'With' Write off

- Indian Entity is permitted to disinvest under automatic route, 'with' write off subject to satisfaction of the followings terms and conditions
 - (a) JV or WOS is 'listed' on a stock exchange Outside India

- (b) Indian Entity is 'listed' company on stock exchange in India and also has a net worth is 'not' exceeding Rs.100 crore
- (c) Indian Entity is 'unlisted' company and also investment in overseas JV or WOS is 'not' exceeding USD 10 million
- (d) Indian Entity is 'listed' company and also has a net worth 'not' exceeding Rs.100 crore but investment in overseas JV or WOS is also 'not' exceeding USD 10 million.

53. 'Write-Off' of the Capital and other Receivables in JV or WOS

- Indian entity is permitted to write-off of the capital i.e. equity shares, preference shares or 'other' receivables i.e. loans, royalty, technical know-how fees and management fee relating to JV or WOS beside that such JV or WOS continue to function subject to satisfaction of the followings terms and conditions
 - (i) The 'listed' Indian company is permitted to write-off of the capital and 'other' receivables up to 25% of equity investments in JV or WOS under the 'automatic' route and also 'unlisted' Indian company is permitted under the 'approval' route
 - (ii) Indian entity is required to report to the RBI through AD Bank relating for write-off with in '30' days and also to submit certain documents for scrutiny under automatic and approval 'both' routes

54. 'Acquisition' of the Shares of Foreign Company against Professional Services

- (i) 'Resident individual' is permitted to acquire the shares of foreign company against part or full consideration of professional services rendered or in lieu of Director Remuneration
- (ii) However value of shares is to be up to USD 2.5 Lac per financial year under the LRS.

55. 'Approval' from the RBI

- Approval from the RBI is required where the ODI is 'exceeding' USD 1 billion in a 'financial' year per Indian entity beside the total ODI is with in limit i.e. up to 400% .

• Disclaimer

The entire contents of this document have been prepared on the basis of relevant provisions and as per the information as available at the time of the preparation. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, I assume no responsibility therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not a professional advice and is subject to change without notice. I assume no responsibility for the consequences of use of such information. **In Any Event I Shall Not Be Liable For Any Direct, Indirect, Special or Incidental Damage Resulting From, Arising Out of or In Connection With the Use of the Information**

FORM ODI PART I					
Section A: Details of Indian Party (IP) / Resident Individual (RI)					
I.	Code of Reporting AD bank				
II.	Investment under	Automatic Route	Approval Route		
III. Particulars of the IP / RI					
i.	Name of IP/ RI				
ii.	PAN Number				
iii.	Group to which the IP belongs				
iv.	Activity code of IP (1987 NIC code at 3-digit level)				
v.	Address of IP/ RI				
vi.	City				
vii.	State				
viii.	Pin				
ix.	Networth in INR			As on date	
x.	Contact Person				
xi.	Designation of the contact person				
xii.	Telephone Number				
xiii.	Mobile Number				
xiv.	Fax				
xv.	E-mail ID				
IV. Status of IP/ RI: (Please tick appropriate category):					
i.	Public Ltd. Company		vi.	Unregistered Partnership	
ii.	Private Ltd. Company		vii.	Proprietorship	
iii.	Public Sector Undertaking		viii.	Trust	
iv.	Individual		ix.	Society	
v.	Registered Partnership		x.	Others (please specify)	
V. Financial particulars of the IP for the last 3 years (If the IP is engaged in the financial sector or falls under the category of Proprietorship, Unregistered Partnership)					
i.	Particulars (Actual Amt. in Rs.)	Year 1 [31-3-]	Year 2 [31-3 -]	Year 3 [31-3-]	
ii.	Foreign exchange earnings (excluding equity exports to JV/WOS)				
iii.	Net profit				
iv.	Paid-up Capital				
v.	Net worth of (a) Indian Party (b) Group Company@				
@ to be furnished in terms of explanation to Regulation 6 (3) of Notification No. FEMA 120/ RB-2004 dated July 7, 2004 as amended					
VI. Particulars of existing JV and WOS already in operation or under implementation, of the IP/ RI: (Attach separate sheet if required)					
	Name of IP / RI	Unique Identification Number (UIN) allotted by Reserve Bank	Name of the designated AD bank		
i.					
ii.					
iii.					
iv.					
v.					
VII.	Whether the IP/ RI is under Investigation/ Export Caution list/ Banking Default List. If yes, mention the name of the investigating agency and the duration of investigation			From Date	To Date (if any)
i.					
ii.					

iii.									
FORM ODI - PART I									
Section B: Capital Structure and other details of the JV / WOS / Step Down Subsidiary (SDS)									
Code of Reporting AD bank									
Indicate 13 digit Unique Identification Number issued by the Reserve Bank (if applicable)									
VI	Particulars of JV/WOS								
i.	Name of JV/WOS:								
ii.	Address of JV/WOS:								
iii.	Name of the country								
iv.	e-mail id of the JV/ WOS								
v.	Accounting year followed by the JV/WOS								
vi.	Activity code of the JV/WOS as per NIC 1987								
vii.	Estimated cost/ Fair Value of overseas acquisition								
viii.	Financial commitment w.r.t above JV/WOS		Equity	Loan	Guarantee				
xi.	Financial Commitment w.r.t. all JV/ WOS								
VII	Whether JV/WOS is SPV (Y/N)? <input type="checkbox"/> If Y, Please furnish the details								
i.	Purpose of SPV								
ii.	Full value of the overseas acquisition								
iii.	Direct / Indirect infusion by SPV								
iv.	Funds raised overseas with guarantee/ counter guarantee issued by the IP								
v.	Funds raised overseas without guarantee/ counter guarantee of the IP								
vi.	Funds contributed in the form of equity/ preference equity/ shareholder's loans by foreign investors								
vii.	Securitisation								
viii.	Any other mode (please specify)								
ix.	Total								
VIII	Proposed/ Updated Capital Structure:								
i.	Indian Party (ies)/ RI	% stake	ii.	Foreign partner(s)			% stake		
(1)			(1)						
(2)			(2)						
(3)			(3)						
IX	Furnish the details of investment/ disinvestment of Step down subsidiary (SDS) of JV/ WOS in the prescribed format (attach separate sheet if the number of SDS is more than one)								
i.	Name, Level and Country of SDS								
ii.	Name, Level and Country of parent SDS								
iii.	Name of the Parent of the SDS								
iv.	Investment type:				WOS	JV			
v.	Type of Step Down Subsidiary				SPV	Operating	Operating		
vi.	Cum SPV								
vii.	Activity code as per NIC 1987								
viii.	Investment Amount and Date of investment (if any):								
viii.	% stake held by the parent in the SDS								

FORM ODI - PART I

Section C: Details of Transaction/ Remittance/ Financial Commitment of Indian Party/ Resident Individual

Code of Reporting AD bank

Indicate 13 digit Unique Identification Number issued by Reserve Bank (if applicable)

X	Name of the IP/ RI										
XI	Purpose of investment (Please tick appropriate category) (It can be either [a], [b] [c] or [d])										
[a]	Purpose of investment in New Project @		[b]	Purpose of Supplementary Investment in existing project @							
i.	Participation in JV		i.	Enhancement of equity in the existing JV/WOS overseas							
ii.	Contribution in WOS		ii.	Enhancement of Preference Equity/ Convertible Debt							
iii.	Full acquisition of the foreign concern		iii.	Grant/ Enhancement of Loan in existing JV/WOS							
iv.	Partial acquisition of a foreign concern		iv.	Extension/ Enhancement of Guarantees							
v.	Investment in unincorporated entity		v.	Remittances to Unincorporated Entity							
vi.	Others		vi.	Others							
[c]	Conversion of loan into equity and vice versa \$		[d]	Rollover/ change in amount and date of a guarantee already reported to Reserve Bank \$\$							
XII	Details of Current Remittances/ Transaction Effected (Select a suitable method of investment and give the other details as mentioned in "Note" and the table below):										
i.	Method of Investment										
ii.	Category of Investment										
iii.	Other Details \$, \$\$										
iv.	Amount of Remittance / other financial commitment. **										
<p>Note :</p> <p>** Please indicate name of the foreign currency (FCY) as per SWIFT code.</p> <p>@ Please specify the other dues being capitalized viz., royalty, technical know-how fee, consultancy fees, etc.</p> <p>\$ In case of conversion of loan into equity and vice versa please furnish the following details in the field "Other Details" → a) Date of conversion b) Amount converted into equity/ loan c) 15 digit transaction number allotted by the Reserve bank when the original remittance towards loan/ equity was reported online.</p> <p>\$\$ In case of rollover / change in guarantee please furnish the following details in the field "Other Details" → a) Date of change/ Rollover of guarantee, b) Validity date of the new guarantee c) New Guarantee Amount d) 15 digit transaction number allotted by the Reserve bank when the original guarantee was reported online.</p>											

S. No.	Method or Source of Investments	Category of Investments (OPS: Other Preference Shares, IP: Indian Party)					Other details		
1	Cash Remittance – EEFC	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
2	Cash Remittance – Market Purchase	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
3	ECB	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
4	FCCB	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
5	ADR	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
6	GDR	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
7	Swap of Shares	Equity					Remittance Date		
8	@ Capitalization – Exports/ Others	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
9	Capitalization – Others (Specify)	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
10	Others – Fund based (Specify)	Equity	CCPS	OPS	Loan	Guarantee Invoked	Remittance Date		
11	Corporate or Personal Guarantee Issued	Corporate Guarantee by IP		Personal Guarantee by third party	Corporate Guarantee by third party		Issue date and Validity date		
12	Performance Guarantee Issued	Performance Guarantee Issued					Issue date and Validity date		
13	Bank Guarantee Issued (Name of the Bank)	Bank Guarantee Issued					Issue date and Validity date		
14	Creation of Charge – foreign Assets	Shares of JV / WOS		Movable & Immovable Properties	Other Financial Assets		Date of Creation of charge and Validity date		
15	Creation of charge – domestic Assets (to be denominated in INR) (name of the overseas lender)	Shares of IP and/or its group companies		Movable & Immovable Properties of IP and/or its group	Other Financial Assets of IP and/ or its group		Date of Creation of charge and Validity date (To be allowed only in INR)		
16	Others – Non fund based (Specify)	(Specify)							
17	ODI as a result of merger	Equity		Loan		Guarantee	Date of Merger		
18	ODI as a result of sale/ transfer/ merger by / of Indian Parties	Equity		Loan		Guarantee	Date of Sale Transfer		

To be filled by the AD branch (strike out whichever is not applicable)

We hereby confirm that the remittance/ transaction of (amount in FCY) _____ towards _____ (equity/ loan/ guarantee)

- i) has been allowed under the Automatic Route based on the certification given by the statutory auditors confirming compliance with the prescribed terms and conditions by the Indian Party;
- ii) has been allowed under the Approved Route based on the certification given by the statutory auditors confirming compliance with the prescribed terms and conditions by the Indian Party;
- iii) is in accordance with the terms and conditions of the approval letter issued by the Reserve Bank;
- iv) has been allowed on behalf of the Resident Individual under LRS as per Schedule V of Notification No. FEMA 120/RB-2004 dated July 07, 2004 as amended from time to time; and
- v) in respect of the guarantee invoked, the remittance has been made after satisfying that the claim is in conformity with the terms and conditions of the guarantee issued to/on behalf of the JV/WOS abroad.

Signature of authorized official				<u>Stamp/Seal</u>
Name & Designation of the Authorized Official				
Place:		Date:		
Telephone No:		Fax No:		

FORM ODI - PART I**Section D : Declaration by the Indian Party / Resident Individual**

(a) Whether the Indian Party / Resident Individual, are under investigation/s by any investigative/enforcement agency or regulatory body. If yes, the brief details thereof, including present stage of investigation/ adjudication / manner of disposal of the case.

(b) Whether the promoter Indian Party (ies) is (are) presently on Exporters' Caution List of the Reserve Bank for non-realization of export proceeds or on the list of defaulters to the Banking System circulated by Reserve Bank. If so, status of the Indian Party (ies):

(c) Any other information relevant to this proposal, including any special benefits / incentives available in the host country for setting up / acquiring the proposed concern.

(d) Wherever applicable, the Share Certificate and Annual Performance Report as required in terms of Regulation 15 (i) and 15(iii) of the Notification No. FEMA 120 / RB - 2004 dated July 07, 2004, as amended from time to time, in respect of all the existing JV / WOS of the Indian Party has been submitted.

(e) All the receivables have been repatriated as required in terms of Regulation 15 (ii) of the Notification No. FEMA Notification *ibid* in respect of all the existing JV / WOS of the Indian Party/ Resident Individual.

(f) If the Activity of the Step Down Subsidiary is related to the financial services it is certified that we have complied with Regulation 7(2) of Notification No. FEMA 120 dated July 07, 2004 as amended.

I/ We hereby certify that the information furnished above are true and correct.

Signature of the authorized official of the IP / RI				<u>Stamp/Seal</u>
---	--	--	--	-------------------

Name & Designation of the Authorized Official			
---	--	--	--

Place:		Date:	
--------	--	-------	--

Telephone No.		Fax No.:	
---------------	--	----------	--

List of enclosures:

1.		2.		3.	
4.		5.		6.	

Form ODI - PART I

Section E : Certificate by the Statutory Auditors of the Indian Party

It is certified that the terms and conditions contained in Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time (Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004) have been complied with by the Indian Party _____ (Name of the Indian Party) in

respect of the investment under report. In particular, it is certified that:

- i. the investment is not in real estate oriented or banking business, and
- ii. the remittance / transaction amount towards the investment together with earlier financial commitment is within the limit stipulated by the Reserve Bank from time to time. This has been verified with reference to the net worth (Amt in INR _____ /Amt in equivalent FCY _____) of the Indian Party _____ (Name of the Indian Party) as on the date of last audited balance sheet, i.e. (date _____) and the total financial commitment (Amt in FCY _____) vis a vis net worth arrived at ____%.
- iii. The Financial commitment of the Indian Party is within the 1 Billion limit for this financial year in terms of A.P. (DIR Series) Circular No.1 dated July 03, 2014.
- iv. has complied with the valuation norms prescribed for the investment towards equity and the valuation for the investment in _____(no of shares) is arrived at _____ (amount in FCY).
- v. has complied with the ECB guidelines #.
- vi. that the Indian Party (a) has made net profits during the preceding three years, (b) has fulfilled the prudential norms of capital adequacy as prescribed by the regulatory authority concerned; (c) has been registered with the appropriate regulatory authority in India and (d) has obtained approval for the investment in financial services sector activities from the regulatory authorities concerned in India and abroad*.

Further, certified that, wherever applicable, the Annual Performance Report, as required in terms of Regulation 15(iii) of the Notification *ibid*, in respect of all its JV / WOS (UIN to be mentioned in the table below) of the Indian Party have been submitted. (attach a separate sheet if required)

UIN 1:	UIN 2:	UIN 3:
UIN 4:	UIN 5:	UIN 6:

Note: *Applicable only in cases where the investment proposed is in the financial services sector (e.g. insurance, mutual fund, asset management, etc.).

Applicable where investment is funded through ECB/FCCB balances.

Signature of the Statutory Auditors of the Indian Party		<u>Stamp/Seal</u>
Name of the firm and registration number		
Place:	Date:	

Instructions relating to submission of Form ODI Part I:

- a) In case of Automatic Route - AD Category – I banks may allow Overseas Direct Investment on receipt of application in Form ODI, where the Indian Party is complying with Regulation 6 of [Notification No. FEMA 120/RB-2004 dated July 7, 2004](#) as amended from time to time and the Resident Individual is complying with Regulation 20 read with Schedule V of the FEMA Notification *ibid*.
- b) In case of Approval Route – the application should be submitted to the Reserve Bank in the on-line application of Form ODI Part I as contemplated above.

The proposal under the approval route shall be submitted after due scrutiny and with the specific recommendations of the designated AD bank along with a copy of Section D and Section E of Part I of Form ODI and supporting documents to 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.

In case the proposal is approved, the AD bank should effect the remittance under advise to Reserve Bank so that the UIN may be allotted under the approval route.

For approval by the Reserve Bank, following documents need to be submitted along with Part I of Form ODI by the designated Authorized Dealer:

- a. A letter from the designated AD of the IP in a sealed cover mentioning the following details:
 - Transaction number generated by the ODI application
 - Brief details of the Indian entity
 - Brief details of the overseas entity
 - Background of the proposal, if any
 - Brief details of the transaction
 - Reason/s for seeking approval mentioning the extant FEMA provisions.
 - Observation of the designated AD bank with respect to the following:
 - Prima facie viability of the JV/ WOS outside India;
 - Contribution to external trade and other benefits which will accrue to India through such investment;
 - Financial position and business track record of the IP and the foreign entity;
 - Expertise and experience of the IP in the same or related line of activity of the JV/ WOS outside India.
 - Recommendations of the designated AD bank
- b. A letter from the IP addressed to the designated AD bank.
- c. Board resolution for the proposed transaction/s.
- d. Diagrammatic representation of the organisational structure indicating all the subsidiaries of the IP horizontally and vertically with their stake (direct & indirect) and status (whether operating company or SPV).

- e. Incorporation certificate and the valuation certificate for the overseas entity (if applicable).
- f. Other relevant documents properly numbered, indexed and flagged.
- c) Part I contains details of the JV/WOS, Indian Parties/ Resident Individuals and the remittance/ other financial commitment of the overseas entity and shall be submitted:
 - a. at the time of initial remittance.
 - b. for reporting the remittance for supplementary investment and any other forms of financial commitment.
 - d) subsequent remittances (or financial commitment) under the automatic route and remittances (or financial commitment) under the approval route should be made, only after receipt of auto generated e-mail from RBI confirming the UIN.
 - e) In cases where the investment (or financial commitment) is being made jointly by more than one IP/ RI, Form ODI is required to be submitted individually by all the investing entities and submitted to the designated branch of the AD bank. The AD bank should file online a consolidated Form ODI indicating details of each party. The Reserve Bank would allot only one UIN to the overseas project.
 - f) In terms of Regulation 11 of the Notification *ibid*, the Indian parties are permitted to make direct investment (or undertake financial commitment) in JV / WOS abroad by way of capitalisation of exports or other dues/entitlements like royalties, technical knowhow fees, consultancy fees, etc. In such cases also, the IP is required to submit details of capitalisation in the Form ODI to the designated AD bank branch.
 - g) All Indian parties/ Resident Individual are required to undertake all the Overseas Direct Investments through the respective AD bank through which the UIN is obtained.
 - h) All amounts of foreign currency (FCY) and Indian Rupees (INR) should be in actuals only. Please indicate the name of the foreign currency (FCY) as per SWIFT code.
 - i) The dates shall be in the format of DD/MM/YYYY.
 - j) Each page of the Form ODI - Part I should be duly signed and stamped with date by the RI / authorized person of the IP.
 - k) If more than one IP / RI are investing in the same JV / WOS, the Form ODI Part I is to be submitted by each IP / RI.
 - l) Estimated cost/ Fair Value of the overseas acquisition – The amount of the estimated cost/ fair value should be in FCY.
 - m) Financial Commitment with the current JV/ WOS – The IP / RI shall furnish the outstanding financial commitment towards equity, loan and guarantee.
 - n) The certificate by the statutory auditor shall be required only in case of IP and not in case of RI.
 - o) Proposals for conversion of equity into loan shall be forwarded to the Reserve Bank for prior approval through the designated AD bank.
 - p) Reserve Bank reserves the right to put the information furnished here in the public domain.
 - q) Step down subsidiary can be:

- a. Operating company
- b. Holding Company/ Special Purpose Vehicle (SPV)
- c. Holding cum Operating company
- r) Type of investment can be wholly owned step down subsidiary (WO SDS) or Step Down Joint Venture (JV SDS).
- s) Level of step down Subsidiary (SDS) should be calculated treating the JV/ WOS as the parent. So an SDS under the direct JV/ WOS should be treated as first level SDS. Accordingly an SDS under the first level SDS would be treated as second level SDS.
- t) Post Investment changes may be reported in the relevant section as prescribed under:

S. No.	Type of post investment change	Relevant Section of Form ODI – Part I to be submitted individually
1.	Change in the details of IP/ RI viz Change in the name, Address, contact details, status.	Section A
2.	Investigation details of the IP / RI	Section A
3.	Change in the Networth of the IP	Section A
4.	Change in capital structure of the JV/ WOS	Section B
5.	Change in status of JV/ WOS from operating entity to SPV or vice versa	Section B
6.	Change in the details of JV/ WOS such as name address etc.	Section B
7.	Reporting of setup/ incorporation/ investment / disinvestment of SDS	Section B
8.	Conversion of loan into equity and vice versa	Section C
9.	Rollover/ change in amount / validity date of the guarantee already reported to the Reserve Bank	Section C

Form ODI PART II
ANNUAL PERFORMANCE REPORT (APR)

Note: all amounts should be in actuals and **NOT** in thousands. All the figures should be in a single foreign currency except for Non-Equity Exports Realized i.e. item V (iii).

I.	APR for the period	From date				To Date					
II.	Unique Identification Number (UIN)										
III.	Capital structure as on the last day of the accounting year of JV/ WOS										
		Amount				% share					
i)	Indian										
ii)	Foreign										
IV.	Operational details of the JV/ WOS for the last two years										
		Previous Year				Current Year					
i)	Net Profit / (Loss)										
ii)	Dividend										
iii)	Net worth										
V.	Repatriation from the JV / WOS										
		Current Year				Since commencement of business					
(i)	Dividend										
(ii)	Repayment of Loan										
(iii)	Non-Equity Exports Realised (in INR)										
(iv)	Royalties										
(v)	Technical Know-how Fees										
(vi)	Consultancy Fees										
(vii)	Others (Please specify)										
(viii)	Profit										
(ix)	Retained Earnings										
(x)	FDI by JV/ WOS/ SDS into India										
(xi)	Refund of excess share application money @ Transaction No. -										
@ furnish 15 / 17 digit transaction number allotted by Reserve Bank allotted at the time of reporting on the online ODI application											
VI.	Furnish the details of investment in either Wholly owned or a Joint Venture Step down subsidiary (SDS) of JV/ WOS in the prescribed format (attach separate sheet if the number of SDS is more than one)										
(i)	Name, Level and Country name of SDS										
(ii)	Name, Level and Country name of the parent of SDS										
(iii)	Investment Amount in FCY and Date of investment (if any)	Currency: Amount:			Date:						
(iv)	Investment type	WO SDS			JV SDS						
(v)	Type of Step Down Subsidiary	SPV/ Holding company			Operating			Operating Cum SPV			
(vi)	Activity code as per 1987										
(vii)	% stake held in SDS										
(viii)	Is the activity of SDS into financial services (tick)				Yes			No			

Certificate from Indian Party/ Resident Individual (Strike out whichever is not applicable)

We/ I the Indian Party/ Resident Individual (wherever applicable) further confirm that:

- i. Investment in step down subsidiary (SDS) has been reported to RBI from time to time in terms of Regulation 13 of [Notification No. FEMA.120/RB-2004 dated July 7, 2004](#) as amended;
- ii. If the activity of the SDS is related to financial services - it is certified that Regulation 7(2) of Notification No FEMA 120/RB-2004 dated July 7, 2004 as amended has been complied with;
- iii. Changes in the capital structure of the JV/ WOS since last APR has been reported under Section C of Form ODI Part I.
- iv. We have received share certificate/s (or any other proof of investment) and submitted the same to the designated AD bank for verification within 6 months of making the remittance/s for all (equity/CCPS) investment made as per Regulation 15 (i) of FEMA Notification *ibid*.
- v. The previous APRs for all JV/ WOS have been filed to the respective designated AD bank.
- vi. Repatriated to India, all dues receivable from the overseas JV / WOS, like dividend, royalty, technical know-how fees etc., within 60 days of its falling due or as prescribed by Reserve Bank from time to time.

Signature of the authorized official of the IP approved by the Board / RI		Stamp/Seal
Name & Designation of the Authorized Official of the IP		
Place:	Date:	

Certificate of the statutory auditor (only in case of Indian Party) / self-certification in case Resident individuals (strike out whichever is not applicable)

We hereby certify that:

- i. APR for the year ended _____ is prepared on the basis of audited/ unaudited balance sheet of the JV/WOS for the year ended _____.
- ii. APR for the year ended _____ is prepared on the basis of unaudited balance sheet of the JV/WOS since audit is not mandatory in host country and in compliance with Regulation 15 (iii) read with 15 (v) of FEMA Notification *ibid* and Para 6 of A.P. (DIR Series) Circular No. 29 dated September 12, 2012.
- iii. The IP repatriated to India, all dues receivable from the foreign entity, like dividend, royalty, technical know-how fees etc., within 60 days of its falling due or as prescribed by the Reserve Bank from time to time. Repatriation from the JV/WOS has been verified from the Foreign Inward Remittance Certificate issued by the AD bank/s.

Signature of the Statutory Auditors of the Indian Party		Stamp/Seal
(Name of the firm and Registration number)		
Place:	Date:	

Certificate by the Authorized Dealer bank

- i. In terms of Para 3 of AP (Dir. Series) Circular No. 14 dated September 5, 2008 the branch has received the share certificate/s or any other document as evidence of investment and are satisfied about the bonafide of the documents so received.
- ii. The duly filled in Form ODI Part II (Annual Performance Report) was submitted by the IP/ RI on _____ day of _____ (month) _____ (year).
- iii. All the previous year APRs submitted by the IP / RI have been reported in the online ODI application.

Signature of the Authorized Official of the AD bank		Stamp/Seal
Name and designation of the AD bank official		
Place:	Date:	

Instruction for submission of Form ODI Part II:

- a) APR is to be certified by statutory auditors of the IP and submitted, through the designated AD bank every year by December 31st as long as the JV / WOS is in existence.
- b) The IP / RI shall ensure that all the previous year APR has been submitted to the designated AD bank.
- c) Para I: Please mention the date in format DD/MM/YYYY.
- d) Please indicate the name of the foreign currency (FCY) as per SWIFT code
- e) Para II: Please indicate 13 digit UIN issued by RBI.
- f) Para III: Capital structure should be in cumulative and the % stake should be a total of all the IP / RIs in the JV/ WOS
- g) Para IV (i) – the figure reported for loss should be mentioned in brackets.
- h) Para V: Figures under “since commencement of business” should be equal to or more than the figure mentioned under current year.
- i) Para V (ii): Redemption of preference shares (not in the nature of compulsorily convertible preference shares (CCPS)) should also be reported.
- j) Para V (ix): Represents part of the profits of the JV/WOS which is retained and reinvested in the JV/WOS.
- k) Para VI (x) – Represents interest on loan or license fee etc.
- l) Para VI Step down subsidiary can be:
 - a. Operating company
 - b. Holding Company/ Special Purpose Vehicle
 - c. Holding cum Operating company
- m) Para VI (iv): Type of investment can be wholly owned step down subsidiary (WO SDS) or Step Down Joint Venture (JV SDS).
- n) Level of step down Subsidiary (SDS) should be calculated treating the JV/ WOS as the parent. So an SDS under the direct JV/ WOS should be treated as first level SDS. Accordingly an SDS under the first level SDS would be treated as second level SDS.
- o) Retained earnings is to be calculated as per the procedure laid down by the International Monetary Fund in the latest version of their publication “Balance of Payments and International Investment Position Manual”. It is to be noted that the negative retained earnings is to be treated as ‘0’ (zero).
- p) The certificate by statutory auditor shall be required only in case of IP and not in case of RIs.
- q) Each page of the Part II of Form ODI (APR) should be duly signed and stamped with date, by the RI / authorized person of the IP.

Form ODI - PART III

Reporting of Disinvestment by way of Sale or Transfer of Shares / Closure / Voluntary Liquidation /Winding Up/ Merger /Amalgamation of JV / WOS

Note : All amounts should be in a single foreign currency and in actuals.

Unique Identification Number allotted by the Reserve Bank

S. No.	Name, AD Code and Address of the AD bank:									
I	Date of submission of and period to which last APR relates									
II	Disinvestment route(tick)	Approval Route		Automatic Route						
III	Disinvestment Type (tick)	Full disinvestment		Partial Disinvestment						
IV	Date of Disinvestment									
V	PAN No and name of the disinvesting IP / RI									
VI	% Stake held at the time of disinvestment	% stake disinvested in case of partial disinvestment								
VII	Method of disinvestment	Details to be furnished as Annex to the Form ODI PartIII								Tick
i.	Sale or transfer of shares to another IP/ Individual, Merger / Liquidation of IP	Furnish the details of the entity buying the stake and also whether the entity purchasing the stake is an existing foreign partner/ Indian Partner in the JV / WOS or a foreign party / IP buying stake in the concerned JV / WOS for the first time.								
ii.	Closure/ Voluntary Liquidation of the JV/ WOS	Details of the JV/ WOS								
iii.	Buy back by the JV/ WOS	Details of the JV/ WOS								
iv.	Merger of two or more JV/ WOS of the same IP or different IP	Furnish details of merging JV/ WOS and the surviving JV/ WOS such as Name, UIN of the JV/ WOS and the name of the IP concerned of both the JV/ WOS. Also furnish details of SDS of those JV/ WOS which shall merge.								
v.	Merger of the JV/ WOS with the Step down subsidiaries of the same IP or another IP	Furnish UIN of the merging JV/ WOS, the name of the IP holding indirect stake in SDS, name of the SDS, Level of SDS, name and country of immediate parent of SDS								
vi.	Merger of JV/ WOS with an Independent Foreign Company not having any relation with the IP/ RI	Furnish the detail of the foreign company such as name and address								
VIII	Summary of the Overseas Direct Investment (Cumulative amount)									
i.	Equity	Loan	Guarantees Issued			Guarantee Invoked				
IX	Date wise details of remittances/ transaction (attach separate sheet if necessary)									
i.	Date of Remittance/ Transaction	Method of Investment	Category of Investment			Amount				
X	Fair Value of the total disinvestment as per the valuation report									
XI	Whether there is write off? If yes please provide the amount of write off									
i.	Equity	Loan	Others (please specify)							
XII	Amount Repatriated on disinvestment (attach separate sheet if necessary)									
i.	Date of Repatriation	Equity	Loan	Others						
XIII	Amount repatriated since reporting of the last APR except the disinvestment proceeds									

Equity	Loan	Others (Please Specify)

It is certified that (Strike out whichever is not applicable)

(a) the sale is effected through a stock exchange where the shares of the overseas JV / WOS are listed;

(b) 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;

(c) The IP / RI 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 / WOS;

(d) The overseas concern has been in operation for at least one full year and the share certificate/s or any other document as an evidence of investment and APR for all the years has been submitted to the designated AD bank / Reserve Bank;

(e) The Indian Party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India.

(f) All the remittances/ transactions have been reported to Reserve Bank and it reconciles with the remittances / transaction details reported to the Reserve Bank.

(g) All the guarantees issued on behalf of the JV/ WOS and its SDS are either novated to another entity or the guarantee is closed.

(h) In case the SDS has become the direct JV/ WOS as result of disinvestment of the JV/ WOS then it is certified that Form ODI Part I with respect to all such SDS is submitted to Reserve Bank for allotment of UIN.

Place:	Place:
Date:	Date:
(Signature and seal of authorised official of the IP / RI)	(Signature and seal of authorised official of the Bank)
Name:	Name:
Designation:	Designation:
Tel. No.:	Tel. No.:
FAX No.	FAX No.

Instructions to submit the From ODI Part III:

- a) A new system has been introduced for reporting of the disinvestment / closure/ winding up / voluntary liquidation of the overseas JV / WOS under the general permission (Part III of Form ODI). In case the disinvestment / closure / winding up / voluntary liquidation is under the Automatic Route, in terms of Regulation 16 of [Notification No FEMA 120/RB-2004 dated July 7, 2004](#) as amended from time to time read with the [A. P. \(Dir Series\) Circular No. 29 dated March 27, 2006](#) and the [A.P. \(Dir Series\) Circular No. 73 dated June 29, 2011](#), a report should be submitted in the online ODI application within 30 days of the disinvestment by the designated AD bank, in Part III of Form ODI.
- b) Form ODI Part III is to be submitted by the IP/ RI to the designated AD bank which in turn shall be reported the same in the online ODI application through their nodal office.
- c) In all other cases of disinvestment, as per the current procedure, an application along with the necessary supporting documents should be submitted to the Reserve Bank for prior approval. In case the proposal is approved, the AD bank should submit the report on disinvestment in Form ODI Part III in physical copy to the Reserve Bank so that the UIN can be cancelled/ closed.
- d) All amounts should be in actuals and in a single foreign currency.
- e) All dates should be in the format DD/MM/YYYY.