

CHAPTER

1B

Overseas Direct Investments by Resident Individuals



ODI by RIs



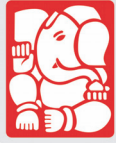


Overseas Direct Investments by Resident Individuals

Topic	Detailed Explanation
Introduction	<p>Overseas Investments (or Financial Commitment) in Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) have been recognised as important avenues for promoting global business by Indian entrepreneurs. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries.</p> <p>In keeping with the spirit of liberalisation, which has become the hallmark of economic policy in general, and Foreign Exchange regulations in particular, the Reserve Bank has been progressively relaxing the rules and simplifying the procedures both for current account as well as capital account transactions.</p>
Section 6 of FEMA, 1999	<p><u>Permissible Capital Account Transactions</u></p> <p>Section 6 provides powers to the Reserve Bank to specify, in consultation with the Government of India the classes of permissible Capital Account Transactions and limits up to which foreign exchange is admissible for such transactions.</p> <p><u>Power of Reserve Bank</u></p> <p>Section 6(3) provides powers to the Reserve Bank to -</p> <ul style="list-style-type: none"> (i) prohibit, (ii) restrict or (iii) regulate <p>various transactions referred to in the sub-clauses of Section 6(3), by making Regulations.</p>
Notification No. FEMA.120/RB-2004 dated 7.7.2004	<p>The Reserve Bank issued Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 vide Notification No. FEMA.120/RB-2004 dated July 7, 2004. The Notification seeks to regulate acquisition and transfer of a foreign security by a PRI i.e. investment (or financial commitment) by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a PRI in shares and securities issued outside India.</p>

Relevant Definitions

Topic	Detailed Explanation
Direct Investment Outside India	<p>“Direct Investment Outside India” means investments, either under the Automatic Route or the Approval Route, by way of:</p> <ul style="list-style-type: none"> (i) contribution to the capital or subscription to the Memorandum of a foreign entity, or (ii) purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS). <p><u>Exception:</u> It does not include Portfolio investment.</p>



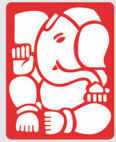
Topic	Detailed Explanation
	<p>Note:</p> <ol style="list-style-type: none"> (1) A resident individual may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. (2) The limit of overseas direct investment by the resident individual is prescribed by RBI. (3) Portfolio investments are investments in the form of a group (portfolio) of assets, including transactions in equity, securities, such as common stock, and debt securities, such as banknotes, bonds, and debentures.
<p>Financial Commitment (FC)</p>	<p>“Financial Commitment” means the amount of direct investment by way of contribution to: -</p> <ol style="list-style-type: none"> (a) equity, (b) loan, (c) 100% of the amount of guarantees and (d) 50% of the performance guarantees <p>issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.</p>
<p>Joint Venture</p>	<p>“Joint Venture” means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.</p>
<p>Wholly Owned Subsidiary (WOS)</p>	<p>“Wholly Owned Subsidiary” means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party.</p>
<p>Indian Party</p>	<p>“Indian Party” means -</p> <ol style="list-style-type: none"> (1) a company incorporated in India or (2) a body created under an Act of Parliament or (3) a partnership firm registered under the Indian Partnership Act, 1932, or (4) a LLP registered under the LLP Act, 2008, <p>making investment in a Joint Venture or Wholly Owned Subsidiary abroad and</p> <p>INCLUDES</p> <p>any other entity in India as may be notified by the Reserve Bank.</p> <p>Note:</p> <p>When more than 1 such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party".</p>
<p>Host Country</p>	<p>“Host Country” means the country in which the foreign entity receiving the direct investment from an Indian Party is registered or incorporated.</p>



Mode of Direct Investment Outside India

(1) Automatic Route for Direct Investment or Financial Commitment Outside India

Regulation 6 of Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004	<p>An Indian Party has been permitted to make investment/ undertake financial commitment (FC) in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.</p> <p>With effect from July 03, 2014</p> <table border="1" data-bbox="427 520 1425 646"> <tr> <td data-bbox="427 520 732 646">FC ≥ \$ 1 Billion in a F.Y.</td> <td data-bbox="732 520 1425 646">Prior Approval of the Reserve Bank. Even if the total FC of the Indian Party is within the eligible limit under the Automatic Route.</td> </tr> </table> <p>Eligible Limit under Automatic Route, i.e., within 400% of the NW (PUC + FR) as per the last audited balance sheet.</p>	FC ≥ \$ 1 Billion in a F.Y.	Prior Approval of the Reserve Bank. Even if the total FC of the Indian Party is within the eligible limit under the Automatic Route.	
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Limit Permissible	<p>The total FC of the Indian Party in all the JV/ WOS shall comprise of the following:</p> <p>(a) 100% of the amount of Equity Shares and/ or Compulsorily Convertible Preference Shares (CCPS);</p> <p>(b) 100% of the amount of other Preference Shares;</p> <p>(c) 100% of the amount of Loan;</p> <p>(d) 100% of the amount of Guarantee issued by the Indian Party;</p> <table border="1" data-bbox="472 1035 1442 1098"> <tr> <td data-bbox="472 1035 1442 1098">Exception: Performance Guarantee.</td> </tr> </table> <p>(e) 100% of the amount of Bank Guarantee issued by a Resident Bank on behalf of JV or WOS of the Indian Party</p> <table border="1" data-bbox="472 1192 1442 1255"> <tr> <td data-bbox="472 1192 1442 1255">Provided the Bank Guarantee is backed by a Counter Guarantee / Collateral by the Indian Party.</td> </tr> </table> <p>(f) 50% of the amount of Performance Guarantee issued by the Indian Party</p> <table border="1" data-bbox="472 1318 1442 1444"> <tr> <td data-bbox="472 1318 1442 1444">Provided that if the outflow on account of invocation of Performance Guarantee results in the breach of the limit of the FC in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the FC.</td> </tr> </table>	Exception: Performance Guarantee.	Provided the Bank Guarantee is backed by a Counter Guarantee / Collateral by the Indian Party.	Provided that if the outflow on account of invocation of Performance Guarantee results in the breach of the limit of the FC in force, prior permission of the Reserve Bank is to be obtained before executing remittance beyond the limit prescribed for the FC.
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Requirements for Investments/ Financial Commitments	<p>The criteria for overseas direct investment under the Automatic Route are as under:</p> <p>(i) The Indian Party can invest up to the prescribed limit of its NW (as per the last audited Balance Sheet) in JV / WOS for any bonafide activity permitted as per the law of the host country.</p> <table border="1" data-bbox="472 1644 1442 1749"> <tr> <td data-bbox="472 1644 1442 1749">The prescribed limit vis-a-vis the NW will not be applicable where the investment is made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs;</td> </tr> </table> <p>(ii) The Indian Party is not on the Reserve Bank's exporters' caution list / list of defaulters to the banking system published/ circulated by the Credit Information Bureau of India Ltd. (CIBIL) /RBI or any other credit information company as</p>	The prescribed limit vis-a-vis the NW will not be applicable where the investment is made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs;		
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	<p>approved by the Reserve Bank or under investigation by the Directorate of Enforcement or any investigative agency or regulatory authority; and</p> <p>(iii) The Indian Party routes all the transactions relating to the investment in a JV/WOS through only 1 branch of an authorised dealer to be designated by the Indian Party.</p>
Process	<p>(1) The Indian Party should approach an Authorized Dealer with an application in Form ODI and the prescribed enclosures / documents for effecting the remittances towards such investments.</p> <p>(2) Investments (or FC) in JV/WOS abroad by Indian Parties through the medium of a Special Purpose Vehicle (SPV) are also permitted under the Automatic Route if the Indian Party is not appearing in the Reserve Bank's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank.</p>

(2) Approval Route for Direct Investment or Financial Commitment Outside India

Compliances	<p>(i) Prior approval of the Reserve Bank would be required in all other cases of direct investment (or FC) abroad.</p> <p>(ii) Reserve Bank would, inter alia, take into account the following factors while considering such applications:</p> <p>(a) Prima facie viability of the JV / WOS outside India;</p> <p>(b) Contribution to external trade and other benefits which will accrue to India through such investment (or FC);</p> <p>(c) Financial position and business track record of the Indian Party and the foreign entity; and</p> <p>(d) Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Requirements under the Approval Route (proposals not covered by the conditions under the automatic route) are as under: -</p> <p>(1) Prior Approval of the Reserve Bank would be required.</p> <p>(2) A specific application in Form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I Banks.</p> </div>
Overseas Direct Investments by Resident Individuals	<p>With effect from August 05, 2013, a resident individual (single or in association with another resident individual or with an 'Indian Party' as defined in the Notification) satisfying the criteria as per Schedule V of the Notification, may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a JV or WOS outside India.</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme, as prescribed by the Reserve Bank from time to time.</p> </div>
Prohibitions on Direct Investment in Abroad by an Indian Party	<p>(a) Indian Parties are prohibited from making investment (or FC) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs)</p> <p>BUT DOES NOT INCLUDE</p> <p>(i) development of townships,</p>



	<p>(ii) construction of residential/commercial premises, (iii) roads or (iv) bridges or (v) banking business, without the prior approval of the Reserve Bank.</p> <p>(b) An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank.</p>
<p>General Permission</p>	<p><u>General permission has been granted to PRI for purchase / acquisition of securities in the following manner: -</u></p> <p>(a) out of the funds held in RFC account; (b) as bonus shares on existing holding of foreign currency shares; and (c) when not permanently resident in India, out of their foreign currency resources outside India.</p> <p>Note: General permission is also available to sell the shares so purchased or acquired.</p>