

# Handbook on **OVERSEAS DIRECT INVESTMENT (ODI)**



**Making ODI transactions smoother  
and seamless**



Table of Contents	Page No.
Overseas Investment - Background	1
What is Overseas Investment	3
Key definitions under OI guidelines	6
Routes available for OI Investment	9
Pricing guidelines	10
ICICI Bank's Valuation Framework	10
ODI Life Cycle	11
<b>Overseas Direct Investment by Indian Entity</b>	
1. Financial Commitment	13
2. Mode of Payment	18
3. Compliance & Reporting Requirement	20
4. Obligations of Indian Entity /Resident Individual	21
5. Delay in Reporting - LSF Implication	22
6. Repatriation of Disinvestment proceeds & Reporting	24
Overseas Direct Investment by Resident Individual	26
<b>OI under Specific Sector</b>	
» Overseas Investment in IFSC	29
» Overseas Investment in Start Ups	30
OI by Mutual Funds or Venture Capital Funds or AIFs	31
ODI by Registered Trust or Society	32
What does ICICI Bank do differently for you?	33
<b>Frequently Asked Questions</b>	
A. APR filing Related	34
B. Others	35



## Overseas Investment - Background

Overseas Investments by Indian entities enhance the scale and scope of business operations by providing global opportunities for growth and establishing Indian footprint in other countries.

India's ODI stood at USD 12.95 billion in FY 2022-23 (Source: Department of Economic Affairs).

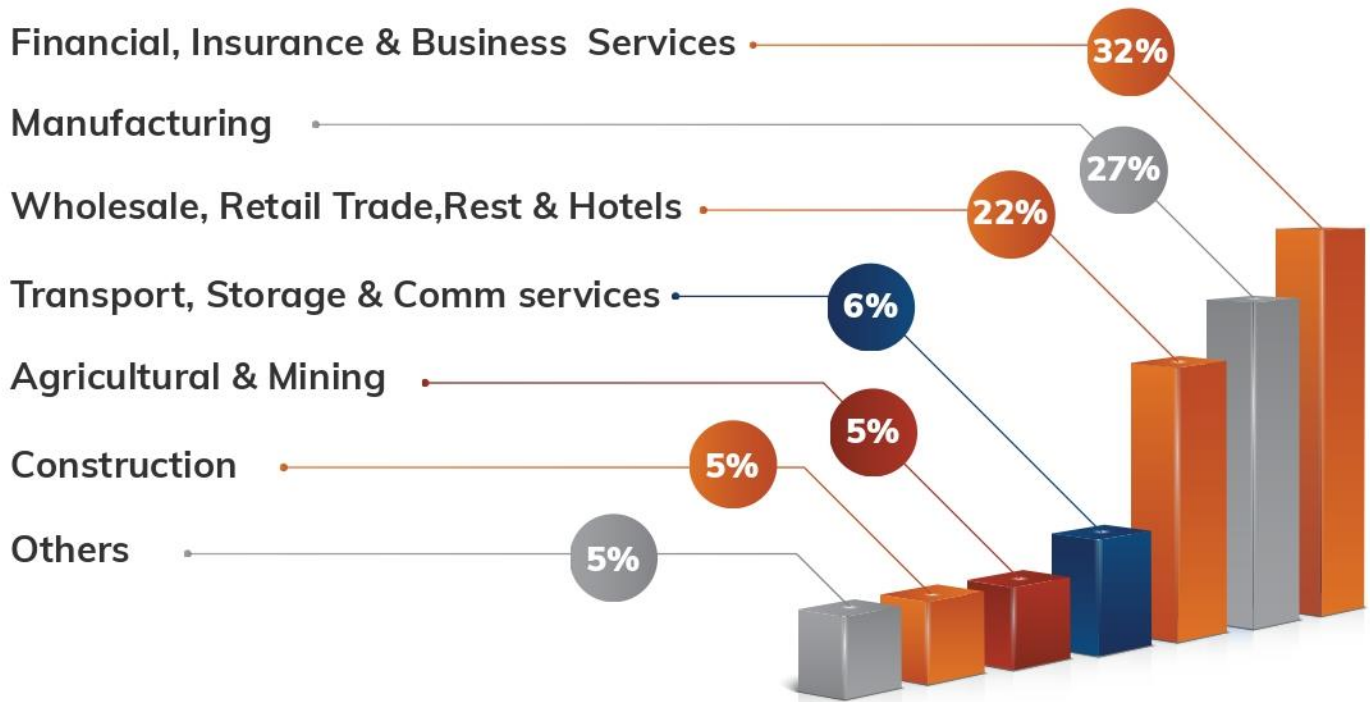
The Central Government and the Reserve Bank of India (RBI) have jointly notified revised directives in August 2022. The OIs are regulated under OI rules (issued by Central Government), OI Regulations & Directions (Issued by RBI) through FEMA 400/2022-RB and RBI/2022-2023/110 A.P. (DIR Series) Circular No.12 respectively.



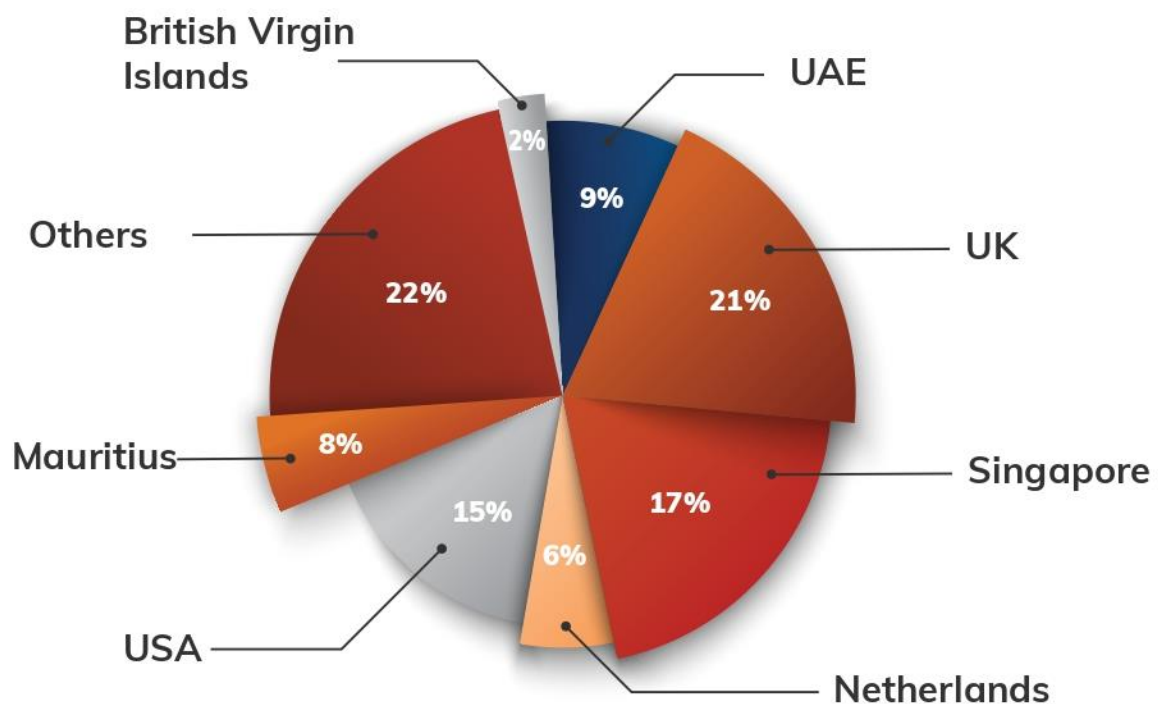


# ODI Snapshot

## Sectors attracting highest ODI – FY'23



## Top Countries with OI from India- FY 2023



## What is Overseas Investment?

OI means ODI and Overseas Portfolio Investment (OPI) by a person residing in India. Overseas Investments are permitted in bona fide business activities in line with regulatory guidelines.



### Overseas Direct Investment

- » Acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Understanding (MOA) of a Foreign Entity (FE)
- » Investment in 10% or more of the paid-up equity capital of a listed FE
- » Investment with control\* where investment is less than 10% of the paid-up equity capital of a listed FE.

## Overseas Portfolio Investment

- » Investments other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an International Financial Services Centre (IFSC)
- » The investment (including sponsor contribution) in units of any investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be considered as OPI
- » Shares or interest acquired by the Resident Individuals (RI) by way of sweat equity shares or minimum qualification shares or under Employee Stock Ownership Plan (ESOP)/ Employee Benefits Scheme up to 10% of the paid-up capital/stock, whether listed or unlisted, of the FE and without control\* shall also qualify as OPI
- » Any investment made overseas in accordance with schedule IV of the OI Rules in securities as stipulated by the Securities and Exchange Board of India (SEBI) in the case of Mutual Funds (MFs), Venture Capital Funds (VCFs) and Alternative Investment Funds (AIFs) registered with SEBI shall be considered as OPI.





## Explanation

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity

Once an investment in an FE is classified as ODI, the investment shall continue to be treated as ODI even if such investment falls below 10% of the paid-up equity capital or the investor loses control in the FE



**\*“Control”** means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders’ agreements or voting agreements that entitle them to ten per cent or more of voting rights or in any other manner in the entity.

# Key Definitions under Overseas Investment Guidelines



## Foreign Entity (FE)

Means an entity formed or registered or incorporated outside India, including IFSC that has limited liability. Provided that the restriction of limited liability shall not apply to an entity with core activity in a strategic sector.



## Indian Entity (IE)

- » A company defined under the Companies Act, 2013 (18 of 2013)
- » A body corporate incorporated by any law for the time being in force
- » A Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009)
- » A partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932).



## Equity Capital

Means equity shares or perpetual capital or instruments that are irredeemable or contributing to the non-debt capital of an FE, which is in the nature of fully and compulsorily convertible instruments. Accordingly, any instrument which is redeemable or non-convertible or optionally convertible shall be treated as debt for the purpose of OI Rules/Regulations/Directions.



## Resident Individual (RI)

Means a person residing in India who is a natural person.



# Key Definitions under Overseas Investment Guidelines



## Strategic sector

Shall include energy and natural resources-based sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable system and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of limited liability structure of FE shall not be mandatory for entities with core activity in any strategic sector. Accordingly, ODI can be made in such sectors in unincorporated entities as well.



## Net Worth

Shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013 (18 of 2013). Net Worth of registered partnership firm or Limited Liability Partnership shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet.



## Subsidiary/ Step Down Subsidiary (SDS) of an FE

Means an entity in which the FE has control and the structure of such subsidiary/SDS shall comply with the structural requirements of an FE, i.e., such subsidiary/SDS shall also have limited liability where the FE's core activity is not in strategic sector. The investee entities of the FE where such FE does not have control (as defined above) shall not be treated as SDSs and therefore need not be reported henceforth.



## Last audited Balance Sheet

Means audited Balance Sheet as on date not exceeding eighteen months preceding the date of the transaction.



# Key Definitions under Overseas Investment Guidelines



## Sweat Equity Shares

Means such equity shares as are issued by an overseas entity to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights like intellectual property rights or value additions, by whatever name called.



## Listed equity capital or instrument

Wherever a reference is made in these directions or OI Rules or OI Regulations to listed equity capital or a listed instrument overseas, it shall mean that such equity capital or instrument, as the case may be, shall be listed on a recognised stock exchange outside India.



## Financial Commitment

The aggregate amount of investment made by a person residing in India by way of ODI, debt other than OPI in an FE or entities in which the ODI is made and shall include the non-fund-based facilities extended by such person to or on behalf of such FE or entities.



## Disinvestment

Means partial or full extinguishment of right, title or possession of equity capital acquired under these OI Rules.

# Routes available for Overseas Investment



## Automatic Route

A person resident in India may make financial commitment subject to OI guidelines and not falling under Approval Route and Prohibited Sectors.



## Approval Route

- » Approval by Central Govt -
  - 1 Any Investment in Pakistan/ other jurisdiction as advised by Central Govt
  - 2 In Strategic sector/Specific geographies in accordance with Rule 9 of OI rules
- » Approval by RBI - any financial commitment exceeding USD 1 (one) billion (or its equivalent) in a financial year.



## Prohibited Sector

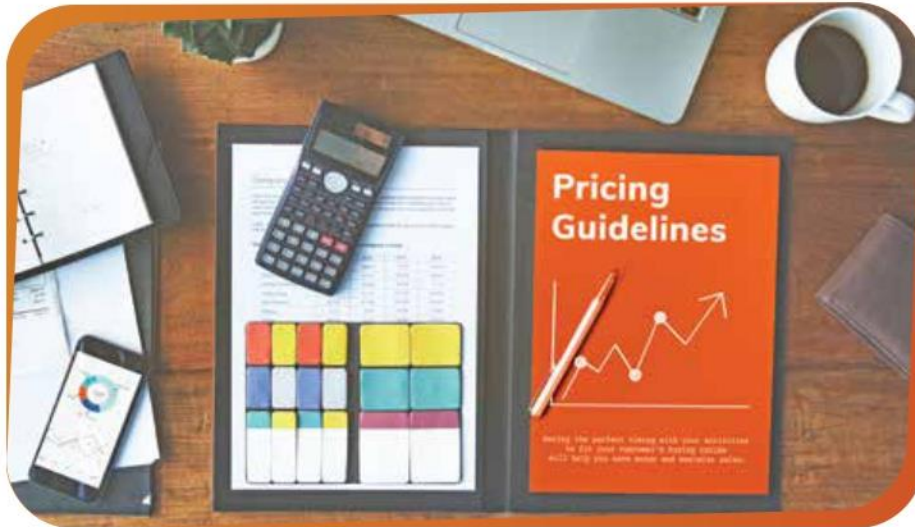
- » Real estate activity<sup>#</sup>
- » Gambling in any form
- » Dealing in financial products linked to the Indian Rupee.

<sup>#</sup>Real estate activity means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.



## Pricing Guidelines

The ODI Rules state that any issue or transfer of equity capital of an FE, from a non-resident or an Indian resident, to an Indian resident who is eligible to make such investment or from a resident to a non-resident, shall be made on an arm's length basis.



Arm's length pricing shall be arrived at as per any internationally accepted valuation method.

Authorised Dealer (AD) Banks are required to put in place a board approved policy for taking into consideration the valuation on arm's length basis.

## ICICI Bank's valuation framework

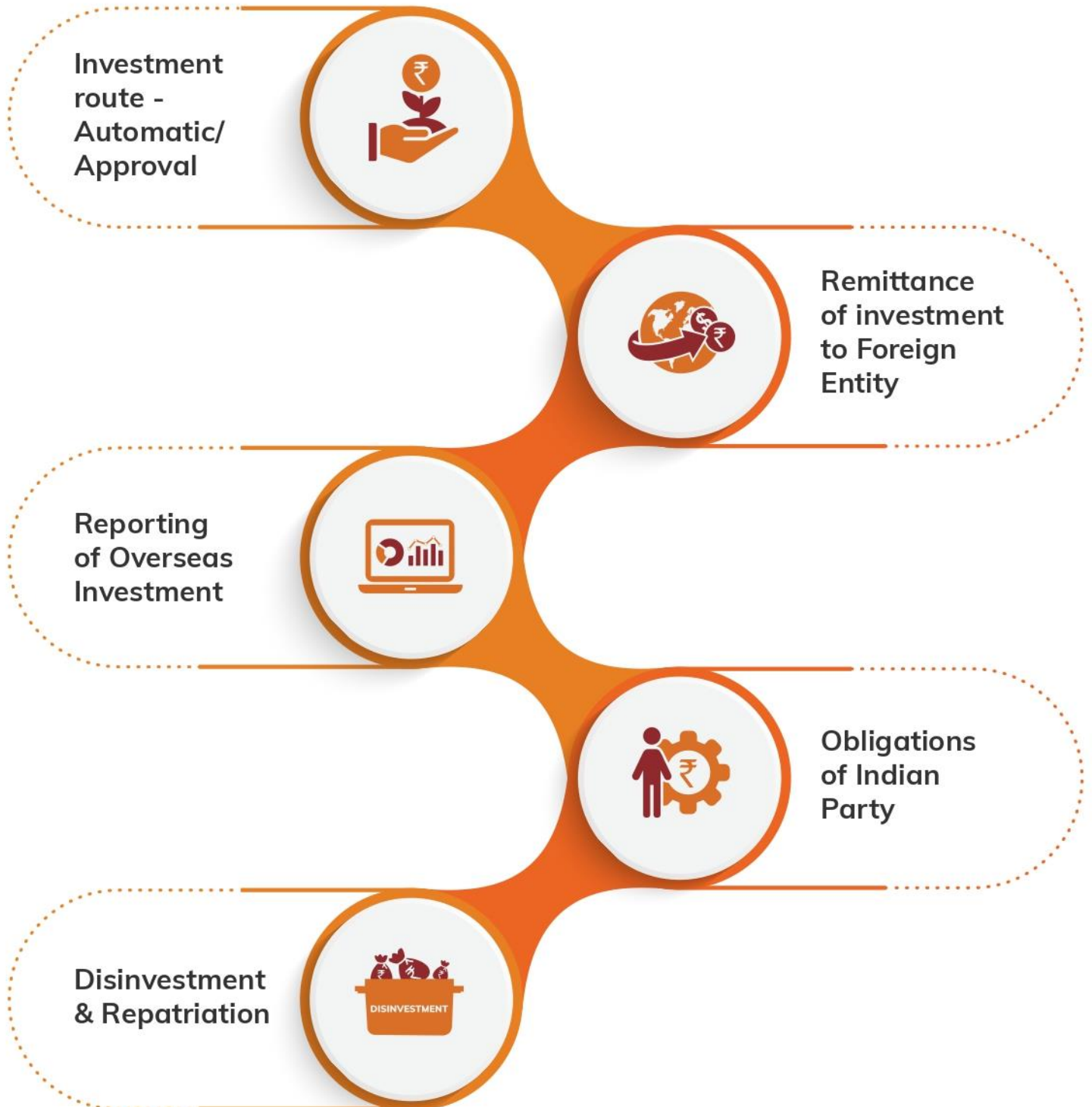
ICICI Bank's framework on valuation primarily requires the Valuer/Indian entity to ensure that:

- ▶ Valuation is based on internationally accepted valuation methodology & on arm's length basis
- ▶ Valuation report shall be accepted based on the amount of investment/disinvestment and nature of transaction from any one of the qualified valuers
- ▶ Certificate is based on the last audited financial statements
- ▶ In case of financial commitment by way of equity capital, transaction shall be executed at the value not exceeding the fair value as per the valuation report
- ▶ In case of disinvestment, the repatriation value shall not be less than the fair value as per the valuation report
- ▶ Valuation Certificate should not be dated more than 6 months from the date of current transaction.

**Note:** Valuation Certificate is not required in case of initial subscription to MOA, if subscribed at face value.



# Overseas Direct Investment Life Cycle



### **Investment Route - Automatic/Approval**

A person intending to make any financial commitment shall approach the designated AD Bank for making the investment/remittance duly supported by the requisite documentation. In case where any automatic route conditions stipulated in guidelines are not met by the IE/RI, then prior RBI approval is required.

### **Remittance of Investment to FE**

After verifying the documents, AD Bank will generate the Unique Identification Number (UIN) and do the necessary remittance to FE.

### **Reporting of Overseas Investment**

After remittance, the AD Bank will update the remittance details in project profile of the FE.

### **Obligations of Indian Party**

The Indian Party (IP) has to comply with submission of proof of investments, APR's, etc. within the prescribed timeline.

### **Disinvestment & Repatriation**

At the time of disinvestment, IP has to disinvest from the FE in proper manner and by complying all the conditions of disinvestment. All the disinvestment proceeds has to be repatriated in India through a valid mode and to be reported within prescribed timeline.

# Overseas Direct Investment by Indian Entity

## 1. Financial Commitment

An IE can make financial commitment as given below:



## Limit of Financial Commitment

The total financial commitment made by an IE in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400% of its net worth as of the date of the last audited Balance Sheet (last audited Balance Sheet shall not be

older than 18 months from the date of transaction) or USD 1 (one) billion (or its equivalent) in a financial year, whichever is lower.





## Financial commitment by way of Equity Capital

An IE may make ODI by way of investment in equity capital for the purpose of undertaking bona fide business activity in the manner as given under and subject to the limit of financial commitment.

### Manner of making Financial Commitment (Equity)



Swap of securities



Rights / Bonus Issue



Merger/ Demerger/ Amalgamation



Purchase of Equity capital



Capitalisation of dues



Subscription to MOA of FE



Acquisition through Bidding/Tender

## Financial commitment by way of debt or non-fund-based Commitment

An IE may lend or invest in any debt instruments issued by an FE or extend non-fund based commitment to or on behalf of an FE, including overseas SDSs of such IE, subject to the following conditions:



- a** — IE is eligible to make ODI
- b** — IE has made ODI in the FE
- c** — IE has acquired control in the FE on or before the date of making such financial commitment
- d** — In case of loan, such financial commitment should be duly backed by a loan agreement where the rate of interest shall be charged on an arm's length basis.

**Explanation:** For the purpose of this regulation, the expression 'arm's length' means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.



## Additional conditions for investment in Financial Service Sector overseas by Indian entities:



### IE engaged in financial services

- » It has net profits in the past three financial years
- » The Indian entity is registered with or regulated by a financial services regulator in India
- » Has obtained approvals from regulators in India and the host jurisdiction for the financial activity.



### IE not engaged in financial services

- » It has net profits in the last three financial years
- » Engaged in Financial Services activity except for banking and insurance.





## **Restriction on layers of subsidiary**

The financial commitment by an IE in an FE that has invested or invests into India at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries is not permitted in accordance with rule 19(3) of the OI Rules. It is provided that no further layer of subsidiary or subsidiaries shall be added to any structure existing with two or more layers of subsidiaries post-notification of the OI Rules / Regulations.



## **Acquisition by way of subscription to the MOA of an FE**

In case the remittance towards acquisition of equity capital is to be made post subscription to MOA, the period within which such remittance is to be made shall be defined in the underlying agreement/documents/applicable laws, else the remittance shall be made on or before acquisition of/setting up of the FE. Further, agreement is a mandatory document wherein the period of deferment to be defined upfront.

In the above scenario, subscription to MOA shall be reported as non-fund based financial commitment. While undertaking the remittance as per the deferred agreement, the non-fund based financial commitment reported earlier shall be converted to equity. Please note that late submission fee will be levied, if the IR/RI approaches the AD Bank to report the non-fund based financial commitment after signing the MOA.

## 2. Mode of Payment



### A person resident in India making Overseas Investment may make payment:

- » By remittance made through banking channels, from funds held in an account maintained in accordance with the provisions of the Act
- » By swap of securities
- » By using the proceeds of American Depositary Receipts (ADRs) or Global Depositary Receipts (GDRs) or stock-swap of such receipts
- » External Commercial Borrowings (ECB) raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt.



### Note:

Overseas investment by way of cash is not permitted.

A person resident in India shall not make any payment on behalf of any FE other than by way of financial commitment as permitted under the OI Rules / Regulations.

Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in Notification No. FEMA 14(R)/2016-RB, namely, Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale/winding up proceeds are required to be repatriated to India in freely convertible currencies only.



## Points to remember before making ODIF



- » In case of swap of securities, both the legs of transaction shall comply with Foreign Exchange Management Act (FEMA) provisions, as applicable
- » In case of investment in an FE by a registered Partnership firm, it will be in order for individual partners to hold shares for and on behalf of the firm in the FE if the host country regulations or operational requirements warrant such holdings
- » Utilisation of the balances held in EEFC Account and the amount raised by issue of ADR/ GDR and ADR/ GDR stock-swap for making financial commitment shall also be reckoned towards the financial commitment limit
- » Where the proceeds from ECBs are utilised for making financial commitment, the same shall be reckoned towards the financial commitment limit. However, only that part of the ECB shall be reckoned towards the financial commitment limit that exceeds the amount of the corresponding pledge or creation of charge on assets which have already been counted towards the financial commitment limit
- » Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as wilful defaulter or is under investigation by a financial sector regulator/ investigative agency shall obtain a No-Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency concerned in accordance with Rule 10 of OI Rules, before making financial commitment or undertaking disinvestment.



## 3. Compliance & Reporting Requirement

- » An Indian Party and a RI making an ODI is required to submit Form FC & other supporting documents to designated AD Bank for undertaking the financial commitment (fund/non-fund based) at the time of sending outward remittance or before making a financial commitment, whichever is earlier
- » The AD Bank after due verification shall report the details in the ODI application and the Reserve Bank of India would allot only one UIN to an FE
- » In case an FE is being set up by two or more persons resident in India, then all such persons shall route all transactions in respect of that FE only through one designated AD Bank. Form FC shall be submitted individually by all such investing persons to the designated branch of the AD Bank. The AD Bank should report the forms online indicating details of each party
- » Under the Approval Route, the Form FC after scrutiny, should be submitted by the AD Bank, to the Reserve Bank of India as per the instructions in Para 3 of FEM (Overseas Investment) Directions, 2022
- » The allotment of UIN does not constitute an approval from the Reserve Bank of India for the investment made/to be made in the FE. The issue of UIN only signifies taking on record of the investment for maintaining the database.



### ODI Remittance & Reporting

Section A	Section B	Section C	Section D	Section E
Details of IE/RI/Trust/Society	FE/SDS	Details of transaction/remittance/Financial Commitment	Declaration by the IP/RI	Certificate by the Statutory Auditors of the IE/ Group Company

## 4. Obligations of Indian Entity /Resident Individual

Nature of Reporting	Timelines									
Annual Performance Report (APR)	By 31st December every year E.g.									
	<table><tr><th>Accounting year followed</th><th>For Accounting year</th><th>Due Date</th></tr><tr><td>APR - MAR</td><td>APR '23 - MAR '24</td><td>Dec 31, 2024</td></tr><tr><td>JAN - DEC</td><td>JAN '24 - DEC '24</td><td>Dec 31, 2025</td></tr></table>	Accounting year followed	For Accounting year	Due Date	APR - MAR	APR '23 - MAR '24	Dec 31, 2024	JAN - DEC	JAN '24 - DEC '24	Dec 31, 2025
	Accounting year followed	For Accounting year	Due Date							
	APR - MAR	APR '23 - MAR '24	Dec 31, 2024							
	JAN - DEC	JAN '24 - DEC '24	Dec 31, 2025							
Any post investment changes (mentioned below) to be reported at the time of filing APR.										
<ul style="list-style-type: none"><li>• SDS reporting</li><li>• Change in Capital Structure, etc</li></ul>										
Proof of Investment / Share Certificate	Within 6 months from the date of remittance									
Form FC - Section F (Reporting of Restructuring)	Within 30 days from the date of restructuring									
Form FC - Section G (Reporting of Disinvestment)	Within 30 days from the date of receipt of disinvestment proceeds									
Form OPI	60 days from the end of half yearly (September or March)									



## 5. Delay in Reporting – Late Submission Fee Implication

- In case a person residing in India has made a delay in filing/submitting the requisite form/ return/ document, such person may file/submit the requisite form/return/ document, etc. and pay the Late Submission Fee (LSF) through the designated AD Bank
- The LSF for delay in reporting of OI-related transactions shall be calculated as per the following matrix:



Type of Reporting delays	LSF Amount (INR)
Form ODI Part-II/ APR, FCGPR (B), FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
Form ODI-Part I, Form ODI-Part III, Form or any other return which captures flows or returns which capture reporting of non-fund-based transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$



## Notes:

- a — 'n' is the number of years of delay in submission rounded upwards to the nearest month and expressed up to 2 decimal points
  - b — 'A' is the amount involved in the delayed reporting
  - c — LSF amount is per return
  - d — Maximum LSF amount will be limited to 100% 'A' and will be rounded upwards to the nearest hundred
  - e — Where an advice has been issued for payment of LSF and such LSF is not paid within 30 days, such advice shall be considered as null and void and any LSF received beyond this period shall not be accepted. If the applicant subsequently approaches for the payment of LSF for the same delayed reporting, the date of receipt of such application shall be treated as the reference date for the purpose of calculation of LSF.
- 
- » The option of LSF shall be available up to three years from the due date of reporting/submission under OI Regulations. The option of LSF shall also be available for delayed reporting/submissions under the Notification No. FEMA 120/2004-RB and earlier corresponding regulations, up to three years from the date of notification of OI Regulations
  - » A person residing in India who has made a financial commitment in FE in accordance with the Act or rules and regulations made thereunder, shall not make any further financial commitment towards such FE or transfer such investment till any delay in reporting is regularised.

## 6. Repatriation of Disinvestment proceeds & Reporting

1



### Manner of Disinvestment

- » A person residing in India may transfer equity capital by way of sale to a person residing in India, who is eligible to make such investment under these rules or to a person residing outside India
- » In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer or liquidation in case of liquidation of the FE, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be - Closure / Voluntary Liquidation.

2



### Indicative Documentation & Reporting

1. The Form FC - Section G along with other supporting documents as per the AD Bank's checklist is to be submitted while undertaking disinvestment in FE, within 30 days from the date of receipt of disinvestment proceeds (inward remittance). Where the disinvestment proceeds are received in tranches in accordance with the agreement, each such receipt shall be reported in Form FC
2. Documentary evidence of disinvestment (ex: Share transfer agreement, Closure certificate, Court Order, Liquidator certificate)
3. Valuation Certificate of Overseas entity based on the latest audited financials
4. SA/CA Certificate confirming the details on write-off, dues and disinvestment.





## Key conditions for disinvestment

- » The transferor, in case of any disinvestment must have stayed invested for at least one year from the date of carrying out ODI
- » A person residing in India having ODI in FE, wherever applicable, shall realise and repatriate to India, all dues receivable from the FE with respect to investment in such FE, the amount of consideration received on account of transfer or disinvestment of such ODI and the net realisable value of the assets on account of the liquidation of the FE as per the laws of the host country or the host jurisdiction, as the case may be, within ninety days from the date when such receivables fall due or the date of such transfer or disinvestment or the date of the actual distribution of assets made by the official liquidator
- » All the APRs till last accounting year to be submitted at the time of disinvestment
- » The disinvestment should comply with the internationally accepted valuation methodology subject to arm's length pricing basis.





# Overseas Direct Investment by Resident Individual

Any RI making ODI by way of investment in equity capital or OPI in the manner provided in the Schedule III of OI Rules, 2022, shall be subject to the overall ceiling under the Liberalised Remittance Scheme (LRS).



## Limit of Financial Commitment

RI's are permitted to carry out ODI & OPI up to the limit prescribed by the RBI from time to time, per financial year under the LRS, for permitted current and capital account transactions. The prevailing LRS limit is USD 250,000 per financial year.



## Points to remember for RI before making ODI:



- ▶ OI by way of capitalisation, swap of securities, rights / bonus, gift and inheritance shall be categorised as ODI or OPI based on the nature of the investment. However, where the investment, whether listed or unlisted, by way of sweat equity shares, minimum qualification shares and shares/interest under ESOP/ Employee Benefits Scheme does not exceed 10% of the paid-up capital/stock of the FE and does not lead to control, such investment shall be categorised as OPI
- ▶ RI is permitted to make ODI in operating FE only which is not engaged in financial services activity and does not have subsidiary or SDS, where the RI has control in the FE





### Points to remember for RI before making ODI:

- » RI may make ODI in FE, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or SDS outside IFSC where the RI has control in the FE
- » Where RI has made ODI without control in FE that subsequently acquires or sets up a subsidiary/SDS, such RI shall not acquire control in such FE
- » RIs are not permitted to transfer any OI by way of gift to a person residing outside India
- » Though there is no limit on the amount of remittance made towards acquisition of shares/interest under ESOP/Employee Benefits Scheme or acquisition of sweat equity shares, such remittances shall be reckoned towards the LRS limit of the person concerned
- » Subject to above, all other conditions and obligations applicable to IE are also to be fulfilled by RI
- » In case the remittance towards acquisition of equity capital is to be made post subscription to MOA, the period within which such remittance is to be made shall be defined in the underlying agreement/documents/applicable laws else the remittance shall be made on or before acquisition of/setting up of the FE. Further, agreement is a mandatory document wherein the period of deferment is to be defined upfront
- » In the above scenario, subscription to MOA shall be reported as non-fund-based financial commitment. While undertaking the remittance as per the deferred agreement, the non-fund-based financial commitment reported earlier shall be converted to equity. Please note that LSF will be levied, if the IR/RI approaches the AD Bank to report the non-fund-based financial commitment after signing the MOA.

# Overseas Investment under Specific Sector



## Overseas Investment in International Financial Services Centre

A person residing in India may make OI in IFSC in India in accordance with schedule V of OI Rules. The following is further provided:

- » In the case of ODI made in IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved
- » An IE not engaged in financial services activity in India, making ODI in FE, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under these rules, may make ODI in IFSC
- » A person residing in India, being IE or RI, may invest (including sponsor contribution) in units of an investment fund or vehicle set up in IFSC as OPI. Accordingly, in addition to listed Indian companies & RIs, unlisted Indian entities may also make such investment in IFSC
- » The restriction of making ODI only in operating FE or not making ODI in FE engaged in financial services activity by RIs, shall not apply to an investment made in IFSC. Such investment, however, shall not be made in any FE engaged in banking or insurance. Such FE in IFSC may have subsidiary/SDS in IFSC. It may also have subsidiary/SDS outside IFSC where the RI does not have control in the FE. RI who has made ODI without control shall not acquire control in FE that subsequently acquires or sets-up a subsidiary/SDS outside India.





## Overseas Investment in Start Ups

Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by IE only from the internal accruals whether from the IE or group or associate companies in India and in case of RIs, from own funds of such an individual.



Further, Statutory Audit (in case of IE) /CA (in case of RI) certificate should be furnished stating that:

- » FE is a start-up recognised under the laws of the host country or host jurisdiction (capture the country/jurisdiction name)
- » ODI is undertaken from the internal accruals whether from the IE or group or associate companies in India
- » In case of RI investor, from own funds of such an individual and ODI is not being done from the borrowed funds.

## Overseas Investments by Mutual Funds or Venture Capital Funds or Alternative Investment Funds

An MF or VCF or AIF may acquire or transfer foreign securities as stipulated by SEBI from time to time in accordance with the provisions of OI Rules and subject to such other Terms and Conditions as may be laid down by the RBI and the SEBI under applicable laws from time to time:



The following is further provided:

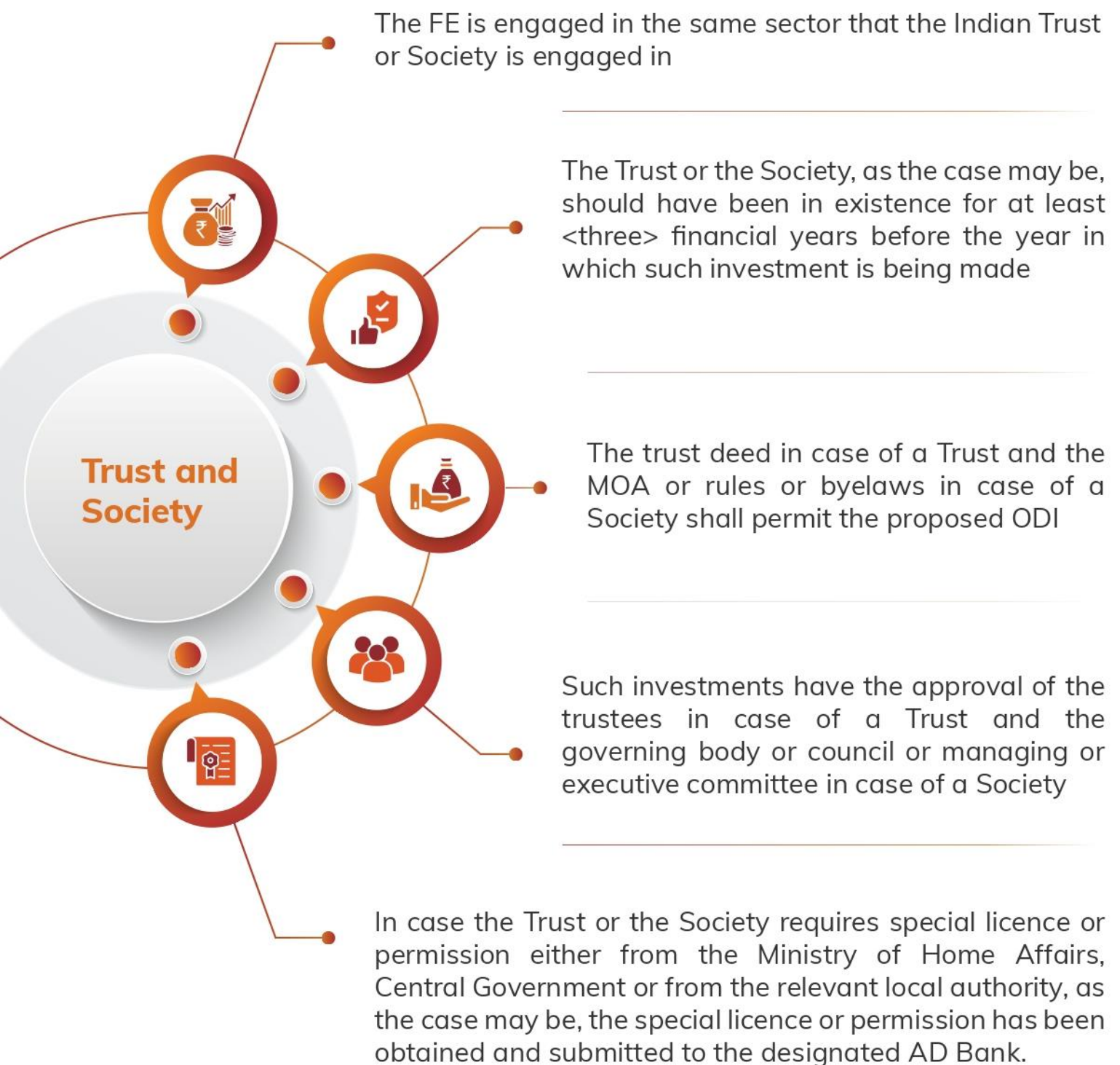
- » The aggregate limit for such investment shall be decided by the RBI in consultation with the Central Government
- » The individual limits for such investments shall be as per the instructions issued by the SEBI from time to time
- » Every transaction relating to the purchase and sale of foreign security by the funds shall be routed through the designated AD Bank in India
- » Notwithstanding anything contained in these rules, any investment under these rules by MFs, VCFs and AIFs shall be treated as OPI

**Explanation** - For the purposes of this paragraph, 'Alternative Investment Fund' means any fund registered as such with the SEBI.



# Overseas Direct Investment by Registered Trust or Society

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in FE with the prior approval of the RBI, subject to the following conditions, namely:



## What does ICICI Bank do differently for you?

Dedicated experts to handle pre & post-transaction queries and regulatory requirements:



Open Global Account at ICICI Bank IBU Gift City



Foreign currency account & deposits at attractive rates



Simplified documentation & quick approval



Initiate ODI remittances online through ICICI Bank Trade Online portal.





## Frequently Asked Questions

### A. Annual Performance Reporting filing related

Particulars	APR filing instructions
In case of multiple Indian entities/ RI made ODI in the same FE, who will be required to file APR for such FE / UIN?	The person having the highest stake in FE will have to file the APR and in case of equal stakes the investors may jointly file or one investor may be authorised by other investors for filing the APR
Is it mandatory that the APR filing should be based on the audited financial statement (FS) of the FE?	If the IE/RI has control in the FE, then APR is to be mandatorily filed on the basis of audited financial statements of the FE. If the IE/RI does not have control in the FE, then APR can be filed on unaudited financial statements where the laws of the host jurisdiction do not mandate auditing of book of accounts, certified by statutory auditor of IE or by CA in case of RI
When APR filing requirement is not applicable to IE/ RI?	<ul style="list-style-type: none"> <li>» If a person residing in India is holding less than 10% of the equity capital and has no control with no other financial commitment except equity capital</li> <li>» From the date of initiation of Liquidation process of FE under liquidation</li> <li>» For the broken period (i.e. full year not completed) in case of disinvestment. Any investments made post submission of last APR till the date of disinvestment/liquidation, same can be reported in Form FC.</li> </ul>

## **B. Others**

**1. Who will certify the Section E of Form FC in case of FC done by RI?**

**A.** In case of RI with Financial Commitment, Section E of Form FC is to be self-certified.

**2. Can RI/IE make remittance post issuance of equity without deferred payment agreement?**

**A.** In case where equity is issued before making the remittance (without deferred agreement), the same is to be regularised post RBI approval. And date of financial commitment will be considered as the date of allotment of equity.

**3. Can an individual invest in Foreign Entities which have subsidiaries?**

**A.** The FE in which RI has control, will not set up or should not have any Step-Down Subsidiaries.

**4. Can RI provide a loan/invest in debt instruments of FE?**

**A.** No, RI shall not make financial commitment by way of loan/debt.

**5. Can RI acquire shares of a foreign company in his/her capacity as Director?**

**A.** Yes. RIs may make OPI/ODI within the overall limit for LRS in terms of schedule III of the OI Rules as minimum qualification shares.



**6. What is the concept of 'designated AD Bank Branch' for ODI investment?**

**A.** The IP / RI is required to route all transactions in respect of a particular overseas FE only through one designated AD. All transactions and communications relating to the investment in that particular FE are to be reported only through this designated AD. In case the FE is being set up abroad by two or more Indian promoters, then all Indian promoters collectively called the IP and the RI, would be required to route all transactions in respect of that FE only through one 'designated AD'. In case such a person residing in India wants to switch over to another AD, it may approach the new AD Bank after obtaining NOC from the existing AD Bank.

**7. Is AD Bank allowed to process ODI transaction of an individual, if there is already another investor who had carried out ODI transaction in that Overseas Entity through another AD Bank?**

**A.** If there is any shareholder who has already carried out a transaction to the FE through one AD Bank and UIN is generated for the FE, the transaction can be processed through another AD Bank only after the transfer of UIN from one AD Bank to another.

**8. What is considered as Financial Services activity?**

**A.** FE is considered to be engaged in the business of Financial Services activity, if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

**9. Can ODI transaction be processed if APR is pending for a FE?**

**A.** ODI transaction to the FE is not permissible if there is any pending reporting such as APR submission, Share Certificates submission, Foreign Liabilities & Assets (FLA) Return, pending LSF payment, till it is regularised.

**10. Can IE setup SDS in India?**

**A.** The financial commitment by IE in FE that has invested/invests in India at the time of making such financial commitment or at any time thereafter, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries is not permitted according to Rule 19(3) of the OI Rules, provided that, no further layer of subsidiary/subsidiaries will be added to any structure existing with two or more layers of subsidiaries, post notification of the OI Rules/Regulations.

**11. Can RI acquire foreign securities through Gift?**

**A.** Yes, RI, without any limit, may acquire foreign securities by way of gift from a person residing in India who is a relative and holding such securities in accordance with the provisions of the Act and from a person residing outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder.

**12. Is reporting required when shares are issued as rights/ bonus to IE/RI?**

**A.** The acquisition of equity capital through rights issue shall be reported in Form FC. However, if the person does not exercise the rights, but renounces such rights in favour of a person residing in India or a person residing outside India, then reporting will not be required. The acquisition of bonus shares will not require reporting.

**13. Can IP capitalise the proceeds of the exports to its overseas FE?**

**A.** Yes, IP is permitted to capitalise the payments due from the FE towards exports proceeds or other entitlements by making an application in Form FC to designated AD Bank.



**14. Can IE extend loan or guarantee to FE?**

**A.** IE needs to have control in overseas entity for extending loan or guarantee. For having control, equity participation is required. So, for extending loan, equity participation by IE into FE is required.

**15. Can Indian party extend corporate guarantee to its step down subsidiaries?**

**A.** Yes, IE can issue corporate guarantee to or on behalf of FE or any of its SDS. Also, a group company of IE in India (which holds at least <51> per cent stake in IE) or a subsidiary company (in which the IE holds at least <51> per cent stake) or a promoter group company, which is a body corporate.

**16. Can IE issue performance guarantee in favour of FE?**

**A.** Yes. Guarantees can be issued to or on behalf of the FE or SDS in which the IE has control through the FE

- a.** In the case of performance guarantee, time specified for the completion of the contract shall be treated as its validity period
- b.** No prior approval from the RBI is required for remitting the funds from India on account of invocation of a performance guarantee extended in accordance with OI Rules/Regulations
- c.** Any guarantee, to the extent of the amount invoked, shall cease to be a part of the non-fund based financial commitment but will be considered as financial commitment by way of debt.

**17. Can IE utilise the net worth of its subsidiary /holding company for investing in FE abroad?**

**A.** No. The concept of utilising the net worth of the subsidiary/holding company by the IE has been discontinued henceforth with the new ODI regime effective from August 22, 2022.

However, the group company can give guarantee and block its limit for computation of financial commitment limit. Further, for computing the financial commitment limit of the group company, any fund-based exposure of such group company to the IE or of the IE to such group company, as the case may be, shall be deducted from the net worth of such group company. In case of RI promoter, the same shall be counted towards the financial commitment limit of the IE and accordingly be reported by the IE.

**18. Can a Loan given to any FE by IP, be converted into equity? If yes, what are the reporting requirements?**

**A.** Yes. Loan may be converted into equity capital as per the OI guidelines (August 2022) and reported to the RBI through the designated AD Bank.

**19. Is there any reporting requirement for investment by VCFs /Alternate Investment Funds (AIF), Portfolio Investments, OIs by MFs and purchase and repurchase of ESOPs?**

**A.** Yes. Any investment under OI guidelines by MFs, VCFs and AIFs will be treated as OPI. A person residing in India other than RI making any OPI or transferring such OPI by way of sale, will report such investment or transfer of investment within <sixty> days from the end of the half year in which such investment or transfer is made, as of <September or March-end>, provided that, in case of OPI by way of acquisition of shares or interest under ESOP or Employee Benefits Scheme, the reporting will be done by the office in India or the branch of an Overseas Entity/Subsidiary in India or the IE in which the Overseas Entity has direct or indirect equity holding where the RI is an employee or director.







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