

Overseas Direct Investment

Lesson 3

KEY CONCEPTS

■ Foreign Entity ■ Strategic Sector ■ Overseas Direct Investment ■ Overseas Portfolio Investment ■ Financial Commitment

Learning Objectives

To understand:

- Permission for Making Overseas Investment
- Acquisition of a Foreign Entity through Bidding
- Overseas Direct Investment (ODI) in Start-ups
- Opening of Foreign Currency Account abroad
- Financial Commitment by way of Guarantee
- Manner of making Overseas Direct Investment
- Manner of Making Overseas Portfolio Investment
- Restrictions and Prohibitions

Lesson Outline

- Acquisition and Transfer of Foreign Securities
- Acquisition by way of Gift or Inheritance
- ODI by Registered Trust or Society
- OI by Mutual Funds or Venture Capital Funds
- Overseas Investment in IFSC
- Reporting
- Lesson Round-Up
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- Foreign Exchange Management Act, 1999
- Foreign Exchange Management (Overseas Investment) Rules, 2022
- Foreign Exchange Management (Overseas Investment) Regulations, 2022

Overseas Investments Governed under:

- *Foreign Exchange Management (Overseas Investment) Rules, 2022*
- *Foreign Exchange Management (Overseas Investment) Regulations, 2022*
- *Foreign Exchange Management (Overseas Investment) Directions, 2024*

Regulation Notified by RBI	Regulations Superseding on Notification
Foreign Exchange Management (Overseas Investment) Regulations, 2022	Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004
	Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015

Introduction

Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value. These overseas investments are also important drivers of foreign trade and technology transfer thus boosting domestic employment, investment and growth through such interlinkages.

In view of the evolving needs of businesses in India, in an increasingly integrated global market, there is need of Indian corporates to be part of global value chain and in keeping with the spirit of liberalisation and to promote ease of doing business, the Central Government and the Reserve Bank of India have been progressively simplifying the procedures and rationalising the rules and regulations under the Foreign Exchange Management Act, 1999. In this direction, a significant step has been taken with operationalisation of a new Overseas Investment regime. Foreign Exchange Management (Overseas Investment) Rules, 2022 have been notified by the Central Government on August 22, 2022.

Overseas Direct Investment (ODI) means:

- Acquisition of any **unlisted equity capital** or **subscription** as a part of the Memorandum of Association of a foreign entity, or*
- Investment in 10% or more of the **paid-up equity capital of a listed foreign entity**, or*
- Investment with control** where investment is less than 10% of the paid-up equity capital of a listed foreign entity.*

For better understanding of Overseas Direct Investment (ODI), **foreign entity** means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.

Further, **Control** means the right to appoint majority of the directors or to control the 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 percent or more of voting rights or in any other manner in the entity.

“Overseas Investment” means **financial commitment and Overseas Portfolio Investment** by a person resident in India.

It may be noted that **financial commitment** by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund-based facility or facilities extended by it to all foreign entities.

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

- (i) the Indian entity is eligible to make ODI;
- (ii) the Indian entity has made ODI in the foreign entity;
- (iii) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

Indian Entity	A Company defined under the Companies Act, 2013.
	A Body corporate incorporated by any law for the time being in force.
	A Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008.
	A Partnership firm registered under the Indian Partnership Act, 1932.

Overseas Portfolio Investment (OPI) means investment, 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 IFSC:

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.

Debt instruments are :

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by firms through loans; and
- (v) depository receipts whose underlying securities are debt securities.

Overseas Portfolio Investment (OPI)” shall not be made in:

- i. any unlisted debt instruments; or
- ii. any security which is issued by a person resident in India who is not in an IFSC; or
- iii. any derivatives unless otherwise permitted by Reserve Bank; or
- iv. any commodities including Bullion Depository Receipts (BDRs).

OPI by a person resident in India in the listed 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, i.e., any further investment made in the equity capital of the foreign entity after its delisting shall be made as ODI.

A listed Indian company may make OPI, including by way of reinvestment, in accordance with schedule II of the OI Rules. 'Reinvestment' means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within the time specified for realisation and repatriation as per Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015.

An unlisted Indian entity may make OPI in accordance with schedule II of the OI Rules.

The investment (including sponsor contribution) in units or any other instrument (by whatever name called) issued by an investment fund overseas, duly regulated by the regulator for the financial sector in the host jurisdiction, shall be treated as OPI. Accordingly, in jurisdictions other than IFSCs, listed Indian companies and resident individuals may make such investment. Whereas in IFSCs, an unlisted Indian entity also may make such OPI in units or any other instrument (by whatever name called) issued by an investment fund or vehicle, in terms of schedule V of the OI Rules subject to limits, as applicable.

Resident individuals may make OPI within the overall limit for Liberalised Remittance Scheme (LRS) in terms of schedule III of the OI Rules. Further, shares or interest acquired by the resident individuals 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 foreign entity 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 SEBI by Mutual Funds (MFs), Venture Capital Funds (VCFs) and Alternative Investment Funds (AIFs) registered with SEBI shall be considered as OPI.

Permission for Overseas Investment

A person resident in India may make or transfer any investment or financial commitment outside India under general permission/automatic route subject to the provisions contained in the Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022. Accordingly, overseas investment may be made in a foreign entity engaged in a bona fide business activity, directly or through Step Down Subsidiary (SDS) /Special-Purpose Vehicle (SPV).

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

Procedure for Making Overseas Investment

1	The person intending to make any financial commitment shall fill up the Form FC duly supported by the requisite documents and approach the designated Authorised Dealer (AD) bank for making the investment/remittance.
2	In respect of any case under the approval route, the applicant shall approach their designated AD bank who shall forward the proposal to the Reserve Bank after due scrutiny and with its specific recommendations. The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical/electronic form through email as hitherto, in addition to the online reporting.

3	The designated AD bank before forwarding the proposal shall submit the relevant sections of the Form FC in the online OID application and the transaction number generated by the application shall be mentioned in their reference.
4	The following documents shall be submitted along with the proposal: ➤ Background and brief details of the transaction. ➤ Reason(s) for seeking approval mentioning the extant FEMA provisions. ➤ Observations of the designated AD bank with respect to the following: ● Prima facie viability of the foreign entity; ● Benefits which may accrue to India through such investment; ● Financial position and business track record of the Indian entity and the foreign entity; ● Any other material observation.
5	Recommendations of the designated AD bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.
6	Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV).
7	Valuation certificate for the foreign entity (if applicable).
8	Other relevant documents properly numbered, indexed and flagged.
9	The proposal shall be submitted to the Reserve Bank of India.

Approval from the Central Government

The applications for overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government from time to time or in strategic sectors/specific geographies shall be forwarded by the AD banks from their constituents to the Reserve Bank as per the laid down procedure for onward submission to the Central Government.

It may be noted that strategic sector shall include energy and natural resources 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 foreign entity shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis. AD banks may allow remittances for ODI in strategic sector after ensuring that Indian entity has obtained necessary permission from the competent authority, wherever applicable.

Approval from the Reserve Bank

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

No Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency

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 an NOC from the lender bank/regulatory body/investigative agency concerned before making financial commitment or undertaking disinvestment.

Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.

Mode of Payment

A person resident in India making Overseas Investment may make payment –

- (i) *by remittance made through banking channels;***
- (ii) *from funds held in an account maintained in accordance with the provisions of the Foreign Exchange Management Act;***
- (iii) *by swap of securities;***
- (iv) *by using the proceeds of American Depositary Receipts or Global Depositary Receipts or stock swap of such receipts or external commercial borrowings 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 by an Indian entity.***

It is further provided that:

- (i) Overseas investment by way of cash is not permitted.
- (ii) An Indian entity can make remittances to its office/branch outside India only for the purpose of normal business operations of such branch or office. Accordingly, no remittance shall be made by any Indian entity to its branch/office outside India for making any overseas investment.
- (iii) A person resident in India shall not make any payment on behalf of any foreign entity other than by way of financial commitment as permitted under the OI Rules/Regulations.
- (iv) Any investment/financial commitment in Nepal and Bhutan shall be done in a manner as provided in the 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.

Pricing Guidelines

The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions of Overseas Investment Rules. With respect to the documents to be taken by the AD bank, they shall be guided by their board approved policy, which may, *inter alia*, provide for taking into consideration the valuation as per any internationally accepted pricing methodology for valuation. The AD bank shall put in place a board approved policy within two months from the date of these directions.

Such policy may also provide for scenarios where the valuation may not be insisted upon, such as:

- (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price has been approved by the competent Court/Tribunal as per the laws in India and/or the host jurisdiction; or

- (ii) price is readily available on a recognised stock exchange, etc.

The policy shall also clearly provide for additional documents such as the audited financial statements of the foreign entity, etc. that may be taken by the AD banks for ascertaining the bona fides in cases involving write-off of the investment.

Transfer or Liquidation

A person resident in India holding equity capital in accordance with OI Rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules, or to a person resident 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 foreign entity, 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.

It is clarified that where the transferor is required to repatriate all the dues before disinvestment, such requirement shall not apply to the dues that do not arise on account of investment in equity or debt like export receivables, etc.

Restructuring

A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person resident in India on account of investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses.

It may be noted that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 or corresponding valuer registered with the regulatory authority or certified public accountant in the host country.

Jurisdiction

The certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank. The certificate shall mention the amount of accumulated losses as per the audited balance sheet of the foreign entity, the proportionate amount of accumulated losses based upon the share of the Indian entity/investor, the amount of diminution in the value of the outstanding dues towards the Indian entity/investor post restructuring and that such diminution does not exceed the proportionate amount of accumulated losses.

The above stated provisions shall not be used where the assets are simply revalued in the books of the Indian entity without any restructuring of the balance sheet of the foreign entity.

Opening of Foreign Currency Account abroad by an Indian entity

An Indian entity may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of making ODI in accordance with the provisions contained in Foreign Exchange Management (Foreign Currency Accounts by a resident in India) Regulations, 2015.

Obligations of the Person Resident in India

1	A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit the evidence of investment to the AD bank within six months, failing which the funds remitted overseas shall be repatriated within the said period of six months.
2	The evidence of investment shall be retained by the designated AD bank, who shall monitor the receipt of required documents and satisfy themselves about the bona fides of the documents so received.
3	Form FC shall be submitted along with requisite documents to AD bank for obtaining UIN on or before making initial ODI.
4	The AD bank after due verification shall report the details in the OID application for allotment of UIN.
5	Any remittance towards a foreign entity shall be facilitated by the AD bank only after obtaining the necessary UIN for such entity.
6	The allotment of UIN does not constitute an approval from the Reserve Bank for the investment made/to be made in the foreign entity.
7	The issue of UIN only signifies taking on record of the investment for maintaining the database.

Manner of making Overseas Direct Investment by Indian entity***Manner of making ODI***

An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and prescribed conditions.

The ODI may be made or held by way of,—

- (i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
- (ii) acquisition through bidding or tender procedure;
- (iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;
- (iv) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
- (v) the swap of securities;
- (vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

ODI in Financial Services Activity

An Indian entity engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, subject to the following conditions, namely:—

- (i) the Indian entity has posted net profits during the preceding three financial years;
- (ii) the Indian entity is registered with or regulated by a financial services regulator in India;
- (iii) the Indian entity has obtained approval as may be required from the regulators of such financial services

activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services.

An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years:

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions laid down by the Reserve Bank under applicable laws in this regard.

Limit for Financial Commitment

The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

The total financial commitment shall not include capitalisation of retained earnings for reckoning such limit but shall include—

- (i) utilisation of the amount raised by the issue of American Depositary Receipts or Global Depositary Receipts and stock-swap of such receipts; and
- (ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit.

It may be noted that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down above.

Overseas Investment by Person Resident in India Other than Indian Entity and Resident Individual

ODI 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 a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely:—

- (i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
- (ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
- (iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;
- (iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- (v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

Overseas Investment in IFSC by Person Resident in India

Subject to the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India.

Provided that –

- (i) A person resident in India, being an Indian entity or a resident individual, may make investment (including sponsor contribution) in units or any other instrument (by whatever name called) issued by an investment fund or vehicle set up in an IFSC, as OPI. Accordingly, in addition to listed Indian companies and resident individuals, unlisted Indian entities also may make such investment in IFSC.
- (ii) in the case of an ODI made in an 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;
- (iii) an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, 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 Overseas Investment Rules, may make ODI in an IFSC;
- (iv) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;
- (v) a resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step down subsidiary outside IFSC where the resident individual has control in the foreign entity.

A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

Reporting

All reporting with respect to overseas investment by a person resident in India shall be made through the designated AD bank in the prescribed manner and in the format provided by the Reserve Bank.

A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely:–

- (a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;
- (b) disinvestment within thirty days of receipt of disinvestment proceeds;
- (c) restructuring within thirty days from the date of such restructuring.

A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall 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 Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

Any acquisition of foreign securities through conversion of Indian Depository Receipts (IDRs) shall be duly

reported as ODI or OPI, as applicable.

The Annual Performance Report (APR) shall be certified by a chartered accountant where the statutory audit is not applicable, including in case of resident individuals. It is also clarified that where APR is required to be filed jointly, either one investor may be authorised by other investors for filing APR, or such persons may jointly file the APR.

Delay in Reporting

In case a person resident 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 in accordance with OI Regulations.

Restriction on Further Financial Commitment or Transfer

A person resident in India who has made a financial commitment in a foreign entity in accordance with the Act or rules or regulations made thereunder, shall not make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such foreign entity or transfer such investment till any delay in reporting is regularised.

AD bank shall not facilitate any outward remittance/further financial commitment by a person resident in India towards a foreign entity until any delay in reporting is regularised.

Restrictions and Prohibitions

Unless otherwise provided in the FEMA or these ODI Rules, no person resident in India shall make ODI in a foreign entity engaged in –

- (a) real estate activity;
- (b) gambling in any form; and
- (c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Explanation.– the expression “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.

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 an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

No person resident in India shall make financial commitment in a foreign entity 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.

It may be noted that such restriction shall not apply to the following classes of companies mentioned in Rule 2(2) of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:-

- (a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;
- (b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;

- (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory and Development Authority Act, 1999; and
- (d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013.

Restriction on Acquisition or Transfer of Immovable Property Outside India

(1)	A person resident in India shall not acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank. However, following property excluded–	
	(a)	held by a person resident in India who is a national of a foreign State;
	(b)	acquired by a person resident in India on or before the 8th day of July, 1947 and continued to be held by such person with the permission of the Reserve Bank;
	(c)	acquired by a person resident in India on a lease not exceeding five years.
(2)	A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition. Further, a person resident in India may acquire immovable property outside India from a person resident outside India–	
	(a)	by way of inheritance;
	(b)	by way of purchase out of foreign exchange held in RFC account;
	(c)	by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank. Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;
	(d)	jointly with a relative who is a person resident outside India;
	(e)	out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act.
(3)	An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time.	
(4)	A person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may–	
	(a)	transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;
	(b)	create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by the Reserve Bank from time to time.
(5)	The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Foreign Exchange Management Act.	

LESSON ROUND-UP

- Overseas investments by persons resident in India enhance the scale and scope of business operations of Indian entrepreneurs by providing global opportunities for growth. Such ventures through easier access to technology, research and development, a wider global market and reduced cost of capital along with other benefits increase the competitiveness of Indian entities and boost their brand value.
- Foreign entity means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability.
- Overseas Direct Investment (ODI) means (i) acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or (ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.
- A person resident in India may make or transfer any investment or financial commitment outside India under general permission/automatic route subject to the provisions contained in the Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022.
- Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.
- Any Overseas Direct Investment in start-ups shall not be made out of funds borrowed from others. The AD bank, before facilitating the transaction, shall obtain necessary certificate in this regard from the statutory auditors/chartered accountant of the Indian entity/investor.
- All reporting with respect to overseas investment by a person resident in India shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What is financial commitment?
2. What is the procedure to be followed for overseas investment proposed to be made under Normal Route?
3. Can an Indian company make investment in a Trust/Society abroad?
4. Discuss the restriction on acquisition or transfer of immovable property outside India.
5. What are the prohibited activities for overseas investment?

LIST OF FURTHER READINGS

- Bare Act - Foreign Exchange Management Act, 1999 (FEMA), Foreign Exchange Management (Overseas Investment) Rules, 2022 and other rules and regulations made thereunder.
- Foreign Exchange Management Manual – Snow White

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- <https://www.rbi.org.in/scripts/Fema.aspx>
- <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12380&Mode=0>

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