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*Guide*

*For*

*Indian Residents*

*Wanting to Do Business Abroad*

**Indian Regulations**

February 2025 Edition  
(Ninth Edition)

*Anil Chawla Law Associates LLP*  
*Business Lawyers, Strategic Advisors and Insolvency Professionals*

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## *Table of Contents*

	Description	Page No.
1.	For whom is this Guide useful	1
2.	Resident in India vs. citizen of India	2
3.	Prohibited sectors	7
4.	Some key concepts for overseas investment	9
5.	Investments under automatic approval route	13
6.	RBI approval route	24
7.	Obligations of Indian party making overseas investment	26
8.	Disinvestment / transfer of shares in overseas entity	29
9.	Offices and representatives and accounts abroad	31
	About Us	37

Notes:

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This Guide is an academic exercise. It does not offer any advice or suggestion to any individual or firm or company.

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**Guide for Creating a Global Structure : Focus – Indian Entrepreneurs** useful.

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*Guide*

*For*

*Creating a Global Structure*

Focus – Indian Entrepreneurs  
February 2025 Edition  
(9th Edition)

*Anil Chawla Law Associates LLP*  
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## **1. For whom is this Guide useful**

This Guide is meant for Indian entrepreneurs and companies, who want to step out. Indian dynamism, entrepreneurship and enthusiasm are seeking new horizons across the globe. We, Anil Chawla Law Associates LLP, salute the Indian entrepreneurs who have the ability to succeed in the most adverse circumstances and dedicate this Guide to them.

This Guide is for the entrepreneur who has a hands-on-approach to business. It is not for large corporate houses or banks or financial institutions that have a battery of lawyers to advise them. It is also not for businessmen who are looking to play foreign stock markets.

Typically, if you are planning an investment abroad in the range of less than USD Two Million, this Guide should be useful for you. This Guide is for Indian resident entities and individuals who are planning to set up businesses abroad using the automatic approval route of Reserve Bank of India or using the Liberalized Remittance Scheme.

The Guide takes an entrepreneur's view of every matter. It is practical and down-to-earth. It is not intended to be an academic treatise and is surely not a text book either. It is written by a law firm that is entrepreneur-driven and prides itself on taking a hardcore pragmatic perspective on every matter.

An entrepreneur is one who makes possible and profitable what seems impossible and unviable to everyone else. We, Anil Chawla Law Associates LLP, are committed to making your global dreams not just possible, but smooth, easy and profitable too. We seek to be your friend in your journey across the continents.

This Guide is the first step in our relationship with you on the path of your global dreams. It will help you get an overall view of the Indian regulations that one needs to comply with.

Of course, anyone stepping into a foreign land must take care of the laws, rules and regulations of the host country. Each country is different and keeping abreast of the laws of different countries can indeed be a challenge. Our best wishes to all the entrepreneurs who take up these challenges and take the Indian flag to every part of the world.

In all your endeavors across the globe, you may count on us as your friend and guide. However, please remember that good advice never comes cheap. We shall like to assure you that our services are always value-for-money since our motto is to add value to your business. Please feel free to contact us for professional advice and support, but not for free answers to your queries.

## **2. Resident in India vs. citizen of India**

Reserve Bank of India controls and regulates investment in foreign entities by persons who are residents of India. A person may be a citizen of India and resident outside India. A citizen who is not resident of India will not be governed by Reserve Bank of India regulations.

An Indian resident is free to invest in foreign assets out of the income received when he/she was resident outside India. The following extract from section 6 of The Foreign Exchange Management Act, 1999 (**FEMA Act**) is relevant:

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The definition of person is very wide and includes all types of legal entities as can be seen from this definition under section 2 of FEMA Act:

(u) "person" includes-

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by such person;

The conditions for a person to be resident of India are as follows under section 2(v) of the FEMA Act:

(v) "person resident in India" means-

- (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include-
  - (A) a person who has gone out of India or who stays outside India, in either case-
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or

- (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, otherwise than-
  - (a) for or on taking up employment in India, or
  - (b) for carrying on in India a business or vocation in India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
- (ii) any person or body corporate registered or incorporated in India,
- (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
- (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

It is important to note that **under the FEMA Act, the intention to stay outside or inside India for an uncertain period is important.** This is different from the provisions under section 6 of Income Tax Act. To be a resident under Income Tax Act, an individual has to only stay in India for a specified number of days. So, **an individual may be non-resident under Income Tax Act during a year and may be resident as per the FEMA Act, during the same year.**

Relevant provisions of section 6 of Income Tax Act are reproduced here:

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**Section 6 - Residence in India**

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For the purposes of this Act, -

- (1) An individual is said to be resident in India in any previous year, if he -
  - (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or
  - (b) [Omitted by the Finance Act, 1982, with effect from 1st April, 1983] ;
  - (c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

<sup>6</sup>[(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature;]

<sup>9</sup>[Explanation.--For the removal of doubts, it is hereby declared that this clause shall not apply in case of an individual who is said to be resident in India in the previous year under clause (1).]

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

<sup>4</sup>[(3) A company is said to be resident in India in any previous year, if--

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

Explanation.--For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.]

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India,

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

<sup>1</sup>[(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is –

- (a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less ; or

(b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine <sup>2</sup>[days or less; or.

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation 1 to clause (1), who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation.--For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) <sup>2</sup>[and which is not deemed to accrue or arise in India].]

The above extracts from Income Tax Act are to help Indian citizens and persons of Indian origin to plan whether to be resident in India or abroad. **Section 6** of the Income Tax Act divides the assessable persons into three categories

- Ordinary Resident;
- Resident but Not Ordinarily Resident; and
- Non-Resident.

Notably, residential status is a term coined under Income Tax Act and has nothing to do with nationality or domicile of a person. An Indian, who is a citizen of India can be non-resident for Income-tax purposes, whereas an American who is a citizen of America can be resident of India for Income-tax purposes. Residential status of a person depends upon the territorial connections of the person with this country, i.e., for how many days he has physically stayed in India.

Residential status of different types of persons is determined differently and is to be determined each year with reference to the "previous year". One must determine the status during the previous year and not in the assessment year.

### **Important Points:**

1. **Residential Status in a previous year** - Residential status is to be determined for each previous year. It implies that—
  - a. Residential status of assessment year is not important.



- b. A person may be resident in one previous year and a non-resident in India in another previous year, e.g., Mr. A is resident in India in the previous year 2024-25 and in the very next year he becomes a non-resident in India.
- 2. **Duty of Assessee** - It is assessee's duty to place relevant facts, evidence and material before the Income Tax Authorities supporting the determination of Residential status.
- 3. **Dual Residential Status is possible** - A person may be resident of one or more countries in a relevant previous year e.g., Mr. X may be resident of India during previous year 2024-25 and he may also be resident/non-resident in England in the same previous year.



### **3. Prohibited sectors**

Indian parties are prohibited from investing in a foreign entity engaged in real estate activities. It has to be noted that construction activities or development of townships are not prohibited. The foreign entity should not be engaged in buying and selling of real estate or instruments that relate to rights in real estate.

Investment in foreign banks can be done only with the prior approval of Reserve Bank of India.

In addition, activities that are illegal in host country are prohibited. Strangely, the law does not mention about prohibition of investing in an activity that is illegal in India but legal in host country.

Prohibition related to investing in foreign entities appears in Foreign Exchange Management (Overseas Investment) Rules, 2022 as follows:

**19. Restrictions and prohibitions.**– (1) Unless otherwise provided in the Act or these 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.*– For the purposes of this sub-rule, 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.

The above prohibitions are specifically for overseas investments. A more general list relates to current account transactions which are prohibited. The list of Transactions which are prohibited under Foreign Exchange Management (Current Account Transactions) Rules, 2000 (as amended up to 26<sup>th</sup> May 2015) is as follows:

**Schedule - I**

<sup>18</sup>[Transactions which are Prohibited  
(See Rule 3)]

1. Remittance out of lottery winnings,
2. Remittance of income from racing / riding etc. or any other hobby,
3. Remittance for purchase of lottery tickets, banned / proscribed magazines, football pools, sweepstakes etc.,
4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies,
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable,
- <sup>11</sup>[6. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.]
7. Payment related to "Call Back Services" of telephones,
8. Remittance of interest income on funds held in Non Resident Special Rupee Account Scheme.

## 4. Some key concepts for overseas investment

### 4.1. Foreign Entity

Master Direction – Overseas Investment dated 24<sup>th</sup> July 2024 issued by Reserve Bank of India define “foreign entity” as follows:

- (i) **“foreign entity”** - the extant concept of Joint Venture (JV) and Wholly Owned Subsidiary (WOS) is substituted under the new regime with the concept of foreign entity, which means an entity formed or registered or incorporated outside India, including in International Financial Services Centre (IFSC) in India, that has limited liability. ‘Limited liability’ would mean a structure such as a limited liability company, limited liability partnership, etc. where the liability of the person resident in India is clear and limited. In case of a foreign entity being an investment fund or vehicle, duly regulated by the regulator for the financial sector in the host jurisdiction and set up as a trust outside India, the liability of the person resident in India shall be clear and limited not exceeding the interest or contribution in the fund in any manner. Further, the trustee of such fund shall be a person resident outside India.

Based on the above definition, it can be said that an Indian individual / entity can invest only in foreign structures with limited liability. Investment in proprietorship firms or such other unlimited liability structures is not permitted except in strategic sectors which are defined below.



RBI/FED/2024-25/121  
FED Master Direction No.15/2024-25

July 24, 2024

To  
All Authorised Dealer Category – I banks  
Madam/Sir

**Master Direction - Overseas Investment**

## **4.2. Strategic Sector**

The following sectors have been defined as strategic sectors: Oil, Gas, Coal, Mineral Ores, Submarine Cable System, Start-ups and any other sector / sub-sector deemed fit by the Central Government. Relevant extract from the Foreign Exchange Management (Overseas Investment) Rules, 2022 is as follows:

- (z) “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 necessary by the Central Government;

Relevant extract from Master Direction (referred above) is as follows:

- (ii) **“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.

Notably, overseas investment may be made in entities with unlimited liability or unincorporated entities in strategic sectors.

## **4.3. Overseas Direct Investment (ODI)**

Overseas Direct Investment (ODI) is defined in Master Direction (referred above) as follows:

- (vi) **“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.

*Explanation:* Once an investment in a foreign entity 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 foreign entity.

Notably, investment in a listed foreign entity with less than 10% paid-up equity without control is not classified as ODI and is classified as OPI.

#### **4.4. Overseas Portfolio Investment (OPI)**

Any investment other than ODI is classified as OPI. Relevant definition in Master Direction (referred above) is as follows:

- (ix) **“Overseas Portfolio Investment (OPI)”** means investment, other than ODI, in foreign securities. The following is further provided:
  - a) 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).

#### **4.5. Indian Entity**

Indian Entity is defined under Foreign Exchange Management (Overseas Investment) Rules, 2022 as follows

- (j) “Indian entity” means–
  - (i) a company defined under the Companies Act, 2013 (18 of 2013);
  - (ii) a body corporate incorporated by any law for the time being in force;
  - (iii) a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009); and
  - (iv) a partnership firm registered under the Indian Partnership Act, 1932 ( 9 of 1932).

Automatic Approval Route is available only to Indian Entities. Persons who are not covered by the definition of Indian Entities include societies, trusts, association of persons.

#### **4.6. Financial Commitment**

Financial Commitment is the total of investments, loans and facilities extended by an Indian resident to all foreign entities. The definition as provided in Master Direction (referred above) is as follows:



(viii) “**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:

- a) the Indian entity is eligible to make ODI;
- b) the Indian entity has made ODI in the foreign entity;
- c) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment.

Notably, the above definition provides the conditions for an Indian resident to invest in debt of a foreign entity.

## 5. Investments under automatic approval route

Investment by persons resident in India does not need any approval in any of the following cases:

- a) Under **Liberalized Scheme** by individuals up to USD 250,000 per annum
- b) Under **General Permission** for funds held in foreign currency accounts
- c) Under **Automatic Approval Route** – not exceeding 400 per cent of net worth (financial commitment to be below USD 1 billion in a financial year)

### 5.1. Liberalized Scheme

Under this Scheme, Authorised Dealers (AD) (Banks dealing in foreign exchange) freely allow remittances by resident individuals up to USD 250,000 per financial year (April-March) for any permitted current or capital account transactions or a combination of both. The facility is available to all resident individuals including minors. In case of remitter being a minor, the relevant form must be signed by both, the minor and the minor's natural guardian.

Resident individuals are also permitted to acquire and hold immovable property using this scheme. In addition, the scheme may be used to purchase shares (of listed companies or otherwise) or debt instruments or any other asset outside India without prior approval of the Reserve Bank.

Limit under LRS has been revised from time to time as under:

*(Amount in USD )*

Date	Feb 4, 2004	Dec 20, 2006	May 8, 2007	Sep 26, 2007	Aug 14, 2013	Jun 3, 2014	May 26, 2015
LRS limit (USD)	25,000	50,000	1,00,000	2,00,000	75,000	1,25,000	2,50,000

The following points need to be noted about the LRS:

- a) Limit under LRS is per financial year per individual.



- b) Even a minor can take benefit of the scheme.
- c) Remittance can be consolidated in respect of family members subject to some conditions.
- d) An Indian resident cannot gift under LRS to another resident of India.
- e) Permissible capital account transactions under LRS are as follows:
  - Opening of foreign currency account abroad with a bank;
  - Acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Master Direction - Overseas Investment, 2024;
  - Extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013;



भारतीय रिज़र्व बैंक  
**RESERVE BANK OF INDIA**  
[www.rbi.org.in](http://www.rbi.org.in)

**RBI/FED/2017-18/3**

**FED Master Direction No. 7/2015-16**

**January 1, 2016**

(Updated as on September 06, 2024)

(Updated as on December 22, 2023)

(Updated as on August 24, 2022)

(Updated as on August 23, 2022)

(Updated as on June 20, 2018)

(Updated as on August 02, 2017)

(Updated as on April 12, 2017)

(Updated as on February 11, 2016\*)

To,

All Authorised Persons in Foreign Exchange

Madam / Sir,

**Master Direction - Liberalised Remittance Scheme (LRS)**

- f) The LRS limit includes capital account as well as permitted current account transactions. Examples of current account transactions are private visit, gift / donation, going abroad on employment, emigration, maintenance of relatives abroad, business trip, medical treatment abroad and studies abroad.

- g) Individuals can also open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the scheme without prior approval of Reserve Bank of India.
- h) Banks are not permitted to extend credit facilities for transactions under LRS.
- i) The scheme is **not available for capital account remittances to countries identified as non-cooperative countries and territories** by Financial Action Task Force (FATF). The FATF puts together a list of non-cooperative countries which it categorizes as high risk and other monitored nations. This list changes from time to time on the basis of the nations' cooperation with the FATF. **Jurisdictions with strategic deficiencies** as on October 2024 are Algeria, Angola, Bulgaria, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Democratic Republic of Congo, Haiti, Kenya, Lebanon, Mali, Monaco, Mozambique, Namibia, Nigeria, Philippines, South Africa, South Sudan, Syria, Tanzania, Venezuela, Vietnam, Yemen. As on October 2024, only Iran, Myanmar and North Korea were on the high-risk list. It is advised to check the position at the time of undertaking any transaction. The lists are available at [www.fatf-gafi.org](http://www.fatf-gafi.org). Bank branch making the remittance under LRS will be able to advise in this regard. Notably, the restriction is only on capital account transactions with the non-cooperative countries. There is no restriction on any revenue account transaction with these countries. So, if you have a relative in Iran and you want to send her money under LRS, you can do so.
- j) The scheme is not available for corporates, partnership firms, HUF and trusts.
- k) A resident individual can remit up-to USD 2,50,000 per FY towards maintenance of close relatives ['relative' as defined in Section 2(77) of the Companies Act, 2013] abroad.

For the purpose of LRS, **relative** is as defined under the Companies Act, 2013. As per section 2(77) of the said Act read with the relevant rules (The Companies (Specification of Definitions Details) Rules, 2014), relative means one of the following:

- i) Members of HUF (Hindu Undivided Family)
- ii) Husband or wife
- iii) Father including step-father
- iv) Mother including step-mother
- v) Son including step-son
- vi) Son's wife
- vii) Daughter

- viii) Daughter's husband
- ix) Brother including step-brother
- x) Sister including step-sister

Notably, uncles and aunts as well as cousins are not included. For some reason that lesser mortals like us cannot understand, even step-daughter is not included. In the Indian legal schema, grandchildren are also not one's relatives.

Some operational points to be noted for making remittances under LRS are as follows:

- All remittances under LRS by an individual should be made through only one branch of a bank.
- It is mandatory to have PAN to make all remittances under LRS.
- Bank branch, which receives the request for making remittance under LRS may ask for such documents as it deems necessary.
- Bank branch may want to ensure that TDS requirements under Income Tax Act are duly complied with before making remittance.
- Bank branch will ensure that KYC (Know Your Consumer) norms have been duly complied in respect of the individual making the remittance.
- Bank branch will also ensure that Anti-Money Laundering Rules are duly complied with.
- Bank branch will generally do remittance under LRS if the individual has been banking with them for at least one year. If the account is new, the Bank may do due diligence including getting copies of Income Tax Assessment Order or Return.
- Bank branch will often like to see the source of funds being remitted under LRS and will not accept cash deposits in the account for remittance under LRS.
- Bank Branch will ask the individual wanting to remit funds under LRS to fill and sign Form A2, which is a very simple two-page form. There are no other formalities connected with remittance under the LRS.

Any investment in a foreign entity will be subject to a lock-in period of one year from the date of investment.

For entrepreneurs who wish to invest up to approximately Rs. Ten Crores (Rs. 10,00,00,000-) (approximately USD 1.14 million) in ventures abroad, this is an easy and convenient route. The key points about this scheme are as follows:

- Available only to individuals (including minors)

- Limit of USD 250,000- per financial year (including any withdrawals for travel, etc.)
- Any bank branch dealing in foreign exchange can release funds without any approvals / permissions from Government of India or Reserve Bank of India.

For making investment of say Rs. Ten Crores, an entrepreneur may choose from the following alternatives:

- a) Invest in the names of different family members with each investing about Rs. Two Crores in one financial year.
- b) Invest in two or more financial years.

Let us take the case of an Indian resident named say Mr. Singh who has a wife and two kids aged three years and six months. Mr. Singh may invest approximately Eight Crores in one financial year by investing about Rs. Two Crores in the name of each family member. In the next financial year, he may invest the balance sum of Rs. 2 Crores in the same manner.

For details of the Liberalised Remittance Scheme, please refer to the following Master Direction of Reserve Bank of India

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/03MD945692290C104C5595AEDAC89AE78788.PDF>

Though the Liberalised Scheme is very easy and convenient, it cannot be used by companies and firms. So, if your company wants to set up a Joint Venture / Subsidiary / New Company abroad, this scheme is not suitable for you.

## **5.2. General Permission**

In case someone has earned any money when one was not resident of India, one may invest the said money even after becoming an Indian resident. This is the basis of General Permission.

The general rule is that if any foreign currency, security or property was acquired, held or owned outside India, the same may be held, owned and transferred without any permission or approval from Reserve Bank of India or any other authority in India. Relevant sub-section 6(4) of the FEMA Act reads as follows:

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

Corresponding provision in the Foreign Exchange Management (Overseas Investment) Rules, 2022 reads as follows:

**4. Non-applicability of rules and regulations relating thereto in certain cases.**– Nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to–

- (a) any investment made outside India by a financial institution in an IFSC;
- (b) acquisition or transfer of any investment outside India made,–
  - (i) out of Resident Foreign Currency Account; or
  - (ii) out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
  - (iii) in accordance with sub-section (4) of section 6 of the Act.

*Explanation.*– For the purposes of this rule, the expression “financial institution” shall have the same meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019).

Relevant portion of the Master Direction - Overseas Investment, dated 24<sup>th</sup> July 2024 is reproduced below:

## **2. Exemptions from applicability of OI Rules/Regulations/Directions**

The provisions contained in the OI Rules/Regulations/Directions shall not apply, and general permission shall be available for acquisition or transfer of any investment outside India made as per rule 4 of the OI Rules.

### **5.3. Automatic Approval Route**

Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investments in a foreign entity. The Indian Party should approach an Authorized Dealer Category – I bank for effecting the remittances towards such investments.

Any Indian Entity may make investments in a foreign entity abroad under the Automatic Route. “Indian Entity” includes any of the following:

- A company incorporated in India
- A body created under an Act of Parliament
- A partnership firm registered under the Indian Partnership Act, 1932
- A limited liability partnership incorporated under the Limited Liability Partnership Act, 2008



It should be noted that **individuals / societies / trusts are not allowed to invest under the Automatic Route.**

Some Indian Entities need to get a No Objection Certificate before investing overseas under the Automatic Route. Relevant Rule from Foreign Exchange Management (Overseas Investment) Rules, 2022 is as follows:

**10. No Objection Certificate.—**

(1) Any person resident in India who,—

- (i) has an account appearing as a non-performing asset; or
- (ii) is classified as a wilful defaulter by any bank; or
- (iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office,

shall, before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, obtain a No Objection Certificate from the lender bank or regulatory body or investigative agency by making an application in writing to such bank or regulatory body or investigative agency concerned:

Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.

(2) The No Objection Certificate issued under sub-rule (1) shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

In the same context, relevant extract from Master Direction - Overseas Investment dated 24<sup>th</sup> July 2024 is as follows:

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

(1) 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 in accordance with rule 10 of OI Rules, before making financial commitment or undertaking disinvestment.

(2) 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.

The Indian Party / entity may extend **loan / guarantee only to a foreign entity in which it has made ODI and in which it has control**. Control is defined as follows under Master Direction - Overseas Investment dated 24<sup>th</sup> July 2024 as follows:

(iii) **“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.

Relevant provision is given in Schedule I of Foreign Exchange Management (Overseas Investment) Rules, 2022 as follows:

**3. Limit for financial commitment.**– (1) 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.

(2) The total financial commitment referred to in sub-paragraph (1) 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 Depository Receipts or Global Depository 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:

Notably, the limit of 400 percent of net worth relates to total financial commitment made by an Indian entity and includes ODI, OPI, debt and facilities. The total limit includes sub-limit for OPI which is 50 percent of the net worth of the entity. Relevant provision is given in Schedule II of Foreign Exchange Management (Overseas Investment) Rules, 2022 as follows:

**1. OPI by an Indian entity.**– (1) An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet, in the manner and subject to the conditions laid down in this Schedule.

(2) A listed Indian company may make OPI including by way of reinvestment.

(3) An unlisted Indian entity may make OPI only under clauses (iii), (iv), (v) and (vi) of sub-paragraph (2) of paragraph 1 of Schedule I.

#### **5.4. General Conditions Applicable to ODI**

The most important provision applicable to all ODI, whether through LRS or automatic route, is that all investment should be routed through banking channels with appropriate declarations made in the relevant forms. No payment should ever be made in cash. It often happens that



while travelling in a foreign country one meets some professional who can set up a company there at a nominal cost (say USD 100). One is inclined to put one's hand in one's pocket and pull out USD 100 to give to that professional who puts forward some forms for signature. One returns to India pleased with oneself that one has incorporated a company on a pleasure trip. However, this is not correct and can lead to significant troubles in the years ahead. It becomes extremely difficult or rather impossible to bring the company so formed under the ODI regulations of Reserve Bank of India.

The following extract from the Master Direction – Overseas Investment dated July 2024 is relevant:

#### **11. Mode of Payment**

The mode of payment by a person resident in India for making overseas investment shall be in accordance with regulation 8 of the OI Regulations. It is further provided that:

- (i) Overseas investment by way of cash is not permitted.
- (ii) In terms of Regulation 5(B) of Notification No. FEMA 10(R)/2015-RB, namely, [Foreign Exchange Management \(Foreign Currency Accounts by a resident in India\) Regulations, 2015](#), 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 [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.

Regulation 8 of the OI Regulations reads as follows:

**8. 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 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.

## **5.5. Investment in Start-ups**

An Indian Entity may invest in an unincorporated overseas start-up. However, it is necessary that the start-up be recognized as a start-up under the laws of the host country. Relevant extracts from Foreign Exchange Management (Overseas Investment) Rules, 2022 and Master Direction – Overseas Investment, 2024 are as follows:

(2) 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.

Sub-Rule 19(2)

### **9. ODI in startups**

Any ODI in startups in accordance with rule 19(2) of OI Rules 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.

Master Direction – Overseas Investment, 2024

## **5.6. Restriction on Layers**

An Indian person is not allowed to invest in a foreign entity that has invested into India resulting in a structure with more than two layers of subsidiaries. Relevant sub-rule 19(3) from Foreign Exchange Management (Overseas Investment) Rules, 2022 reads as follows:

(3) 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:

Provided that such restriction shall not apply to the following classes of companies mentioned in sub-rule (2) of rule 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 (10 of 1949);
- (b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 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 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and
- (d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

## **5.7. Pricing Guidelines**

For all overseas transactions involving investment, the general rule is of arm's length pricing. Relevant extracts regarding Pricing Guidelines from Foreign Exchange Management (Overseas Investment) Rules, 2022 and Master Direction, 2024 are as follows:

**16. Pricing guidelines.**— (1) Unless otherwise provided in these rules, the issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall be subject to a price arrived on an arm's length basis.

(2) The AD bank, before facilitating a transaction under sub-rule (1), shall ensure compliance with arm's length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

### **12. Pricing Guidelines**

(1) The AD bank, before facilitating an overseas investment related transaction, shall ensure compliance with the provisions contained in rule 16 of OI 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.

(2) 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.



## **6. RBI approval route**

Prior approval of the Reserve Bank is required in all other cases (except the ones covered in previous chapter - LRS route or Automatic Approval) of direct investment abroad. Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall also 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.

In respect of any case under the approval route, the applicant shall approach their designated Authorized Dealer 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, in addition to the online reporting. 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.

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.
- 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.
- 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).
- Valuation certificate for the foreign entity (if applicable).
- Other relevant documents properly numbered, indexed and flagged.

The proposal shall be submitted to the following address:

The Chief General Manager,  
Reserve Bank of India,  
Foreign Exchange Department,  
Overseas Investment Division,  
Amar Building, 5th Floor,  
Sir P. M. Road, Fort,  
Mumbai 400001.

A registered Trust or Society wanting to make overseas investment can do so only with the prior approval of Reserve Bank of India. Relevant Rule from Schedule IV of Foreign Exchange Management (Overseas Investment) Rules, 2022 is as follows:

**1. 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.

## **7. Obligations of Indian party making overseas investment**

An Indian Party which has made direct investment abroad (whether under LRS or automatic route or approval route) is under obligation to:

- (a) Receive share certificate or any other document as evidence of investment within six months. The share certificate or any other document as evidence of investment has to be submitted to and retained by the bank, who is required to monitor the receipt of such documents and satisfy themselves about the bonafides of the documents.
- (b) Obtain Unique Identification Number (UIN) from Reserve Bank of India for the foreign entity for which investment is intended to be made before sending outward remittance.
- (c) Repatriate to India the dues receivable from foreign entity within 90 days of its falling due.
- (d) Submit Annual Performance Report in Part II of Form ODI to the Reserve Bank through the Bank handling the transfer of funds every year on or before 31st December.

Relevant extract from Foreign Exchange Management (Overseas Investment) Regulations, 2022 regarding obligation of Indian person investing abroad is as follows

**9. Obligations of person resident in India.**– (1) A person resident in India acquiring equity capital in a foreign entity, which is reckoned as ODI, shall submit to the AD bank share certificates or any other relevant documents as per the applicable laws of the host country or the host jurisdiction, as the case may be, as an evidence of such investment in the foreign entity within six months from the date of effecting remittance or the date on which the dues to such person are capitalised or the date on which the amount due was allowed to be capitalised, as the case may be.

(2) A person resident in India, through its designated AD bank, shall obtain a Unique Identification Number or "UIN" from the Reserve Bank for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.

(3) A person resident in India making ODI shall designate an AD bank and route all transactions relating to a particular UIN through such AD:

Provided that where more than one person resident in India makes financial commitment in the same foreign entity, all such persons shall route all transactions relating to that UIN through the AD bank designated for that UIN.

(4) A person resident in India having ODI in a foreign entity, wherever applicable, shall realise and repatriate to India, all dues receivable from the foreign entity with respect to investment in such foreign entity, 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 foreign entity 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.

### **Reporting Requirements**

Reporting requirements for ODI as outlined in Foreign Exchange Management (Overseas Investment) Regulations, 2022 are as follows:

**10. Reporting requirements for Overseas Investment.**– (1) Unless otherwise provided in these regulations, all reporting by a person resident in India, as specified, shall be made through the designated AD bank in the manner provided in this regulation and in the format provided by the Reserve Bank.

(2) 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.

(4) A person resident in India acquiring equity capital in a foreign entity which is reckoned as ODI, shall submit an Annual Performance Report (APR) with respect to each foreign entity every year by 31<sup>st</sup> December and where the accounting year of such foreign entity ends on 31<sup>st</sup> December, the APR shall be submitted by 31<sup>st</sup> December of the next year:

Provided that no such reporting shall be required where–

- (i) a person resident in India is holding less than 10 per cent. of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or
- (ii) a foreign entity is under liquidation.



*Explanation.*– For the purposes of this sub-regulation–

- (a) the APR shall be based on the audited financial statements of the foreign entity:

Provided that where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable;

- (b) in case more than one person resident in India have made ODI in the same foreign entity, the person holding the highest stake in the foreign entity shall be required to submit APR and in case of holdings being equal, APR may be filed jointly by such persons;

- (c) the person resident in India shall report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

- (5) An Indian entity which has made ODI shall submit an Annual Return on Foreign Liabilities and Assets within such time as may be decided by the Reserve Bank from time to time, to the Department of Statistics and Information Management, Reserve Bank of India.

**Reporting requirements for OPI are as follows:**

- (3) 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.

## **8. Disinvestment / transfer of shares in overseas entity**

Disinvestment of equity shares held by an Indian resident in a foreign entity is freely permitted subject to pricing being on arm's length basis. Relevant extracts from Master Direction - Overseas Investment, 2024 and Rules, 2022 are as follows:

### **13. Transfer or liquidation**

A person resident in India holding equity capital in accordance with OI Rules may transfer such investment in accordance with rule 17 of OI Rules. 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.

**17. Transfer or liquidation.**– (1) Unless otherwise provided in these rules, a person resident in India holding equity capital in accordance with these 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.

(2) 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.

(3) 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.

(4) Where the disinvestment by a person resident in India pertains to ODI–

- (i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which such transferor is entitled to receive from the foreign entity as an investor in equity capital and debt;
- (ii) the transferor, in case of any disinvestment must have stayed invested for at least one year from the date of making ODI:

Provided that the above conditions shall not be applicable in case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or indirectly, by the Indian entity or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

(5) The holding of any investment or transfer thereof in any manner shall not be permitted if the initial investment was not permitted under the Act.



In case the foreign entity in which investment has been made is incurring losses and is restructured, the Indian investor may permit the restructuring subject to the following provisions of Master Direction - Overseas Investment, 2024 and Rule 18 of Foreign Exchange Management (Overseas Investment) Rules, 2022:

#### **14. Restructuring**

- (1) A person resident in India who has made ODI in a foreign entity, may permit restructuring of the balance sheet by such foreign entity in accordance with rule 18 of OI Rules. The aggregate investment in both the equity and debt of the foreign entity shall be taken into consideration for computing the proportionate amount of accumulated losses. However, in case the restructuring involves only equity, investment only in equity of the foreign entity may be taken into consideration for computing proportionate losses.
- (2) The certificate required to be furnished in accordance with rule 18 of OI Rules 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.
- (3) These 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.

**18. 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:

Provided 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 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction:

Provided further that the certificate dated not more than six months before the date of the transaction shall be submitted to the designated AD bank.

## **9. Offices, representatives and accounts abroad**

Many Indian companies wish to open a bank account abroad. This is often felt necessary for the purpose of collecting payments from customers either through bank transfers or through online transactions. Unfortunately, this is not as simple as it sounds. Many Indian companies have opened subsidiaries abroad when all that they required was a collection bank account. Reserve Bank of India, strangely, is positively inclined towards Indians opening companies abroad but does not seem inclined to encourage Indians to open collection accounts in foreign banks.



**भारतीय रिज़र्व बैंक**  
**RESERVE BANK OF INDIA**

[www.rbi.org.in](http://www.rbi.org.in)

RBI/FED/2015-16/9

FED Master Direction No.14/2015-16

January 1, 2016

(Updated as on January 16, 2025)

(Updated as on January 9, 2020\*)

To,

All Authorised Dealer Category – I banks and Authorised banks

Madam / Sir,

### **Master Direction - Deposits and Accounts**

RBI's Master Direction dated 16 January 2025 should be referred to for the restrictions regarding opening accounts outside India. Some relevant extracts from the Master Directions are as follows:

4.1 The following persons can open a foreign currency account with a bank outside India for carrying on normal business and incidental transactions.

- a. An authorized dealer in India with its branch/ head office/ correspondent outside India.
- b. A branch outside India of a bank incorporated in India.
- c. An Indian shipping or airline company.

- d. <sup>14</sup>Insurance/ reinsurance companies registered with Insurance Regulatory and Development Authority of India (IRDA) to carry out insurance/ reinsurance business.
- e. An India firm/ company/ body corporate in the name of its foreign office/ branch or its representative posted outside India.
- f. An exporter who is exporting services and engineering goods on deferred payment terms or executing a turnkey project or a construction contract abroad.

4.2 A person resident in India who has gone abroad for studies may open a foreign currency account with a bank outside India during his stay abroad. All credits to the account from India should be made in accordance with FEMA and the rules and regulations made thereunder. <sup>15</sup>On the student's return to India after completion of studies, the account will be deemed to have been opened under the Liberalised Remittance Scheme.

4.3 A person resident in India who is on a visit to a foreign country may open a foreign currency account with a bank outside India during his stay abroad. The balance in the account should be repatriated to India on return of the account holder to India.

4.4 A person going abroad to participate in an exhibition/ trade fair may open a foreign currency account with a bank outside India for crediting the sale proceeds of goods. The balance should be repatriated to India within one month from the date of closure of the exhibition/ trade fair.

4.5 The following persons can open a foreign currency account outside India for remitting/ receiving their entire salary payable to him in India.

- a) A foreign citizen resident in India, <sup>16</sup>being an employee of a foreign company, on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India;
- b) An Indian citizen, being an employee of a foreign company, on deputation to the office/ branch/ subsidiary/ joint venture/ group company in India
- c) A foreign citizen resident in India employed with an Indian company;

4.6 An Indian Party [as defined in Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004, as amended from time to time] may open a foreign currency account abroad for making overseas direct investment provided the overseas regulator mandates opening of such an account.

4.7 A resident individual can open a foreign currency account with a bank outside India for the purpose of sending remittances under the Liberalized Remittance Scheme.



4.8 Subject to compliance with the conditions in regard to raising of External Commercial Borrowings (ECB) or raising of resources through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs), the funds so raised may, pending their utilisation or repatriation to India, be held in deposits in foreign currency accounts with a bank outside India.

<sup>17</sup>4.9 Indian startup, having an overseas subsidiary, may open a foreign currency account with a bank outside India for the purpose of crediting to the account the foreign exchange earnings out of exports/ sales made by the said startup or its overseas subsidiary. The balances held in such accounts, to the extent they represent exports from India, shall be repatriated to India within the period prescribed for realization of exports, in Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 dated January 12, 2016, as amended from time to time.

Permissible bank accounts by Indian residents in foreign banks can be classified into three categories:

- a) Account by a company/ firm in the name of its office/ branch/ representative outside India
- b) Exporter's bank account
- c) Bank account for Overseas Direct Investment

A quick brief glance at the three is as follows:

### **Branch office account**

**RESERVE BANK OF INDIA  
FOREIGN EXCHANGE DEPARTMENT  
CENTRAL OFFICE  
MUMBAI 400 001**

**Notification No. FEMA 10 (R) /2015-RB**

**January 21, 2016  
(Amended upto January 15, 2025)  
(Amended upto November 19, 2024)  
(Amended upto April 23, 2024)  
(Amended upto February 27, 2019)  
(Amended upto June 01, 2016)**

**Foreign Exchange Management (Foreign currency accounts by a person  
resident in India) Regulations, 2015**

A firm or a company registered or incorporated in India may open, hold and maintain in the name of its office or its branch set up outside India or its representative posted outside India, a foreign currency account with a bank outside India by making remittances from India for the purpose of normal business operations of the branch or representative;

Provided that –

- (a) the overseas branch/ office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;
- (b) the total remittances made by the Indian entity to all such accounts in an accounting year shall not exceed
  - i. 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher, where the remittances are made to meet initial expenses of the branch or office or representative; and
  - ii. 10 per cent of such average annual sales/ income or turnover during the last financial year where the remittances are made to meet recurring expenses of the branch or office or representative;

(This is not applicable in case when remittances are from an EEFC account and when the Indian entity is a 100% Export Oriented Unit (EOU) or a unit in Export Processing Zone (EPZ) or in a Hardware Technology Park or in a Software Technology Park, within two years of establishment of the Unit)

- (c) the overseas branch/ office/ representative shall not enter in any contract or agreement in contravention of Indian laws related to foreign exchange;
- (d) the account so opened, held or maintained shall be closed,
  - i. if the overseas branch/ office is not set up within six months of opening the account, or
  - ii. within one month of closure of the overseas branch/ office, or
  - iii. where no representative is posted for six months,

and the balance held in the account shall be repatriated to India;

Branch / office / representative may buy office equipment and other assets required for normal business operations. Funds required for this may be remitted by the Indian entity from India as a current account transaction.

However, transfer or acquisition of immovable property outside India, other than by way of lease not exceeding five years, by the overseas branch/ office/ representative will be subject to RBI regulations.





भारतीय रिज़र्व बैंक  
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January 1, 2016

[Updated as on September 01, 2022]

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[Updated as on April 11, 2018]

[Updated as on February 4, 2016\*]

To,

All Category - I Authorised Dealer banks and Authorised Banks

Madam/ Sir

**Master Direction – Acquisition or Transfer of Immovable Property under  
Foreign Exchange Management Act, 1999**

Notably, the above facility cannot be used by e-commerce companies who are, for example, in the business of providing an e-commerce platform to foreign sellers and buyers and wish to establish a collection account in a foreign country without establishing a branch office or representative in that country.

### **Exporters**

An Indian exporter who has undertaken a construction contract or a turnkey project outside India or who is exporting services or engineering goods from India on deferred payment terms may open, hold and maintain a Foreign Currency Account with a bank outside India, provided that -

- a. approval as required under the Foreign Exchange Management (Export of goods and services) Regulations, 2015 (as amended up to date) has been obtained for undertaking the contract/ project/ export of goods or services, and
- b. the terms and conditions stipulated in the letter of approval have been duly complied with.

### **For making Overseas Direct Investment**

An Indian Party may open, hold and maintain Foreign Currency Account abroad for the purpose of making overseas direct investments subject to the following terms and conditions:

- a. The Indian Party is eligible for making overseas direct investment.
- b. The host country regulations stipulate that the investment into the country is required to be routed through a designated account.

- c. The account shall be opened, held and maintained as per the regulation of the host country.
- d. The remittances sent to the account by the Indian Party should be utilized only for making overseas direct investment into the Foreign Entity.
- e. Any amount received in the account by way of dividend and/ or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- f. The Indian Party should submit the details of debits and credits in the account on yearly basis to the designated Authorized Dealer (bank) with a certificate from the Statutory Auditors of the Indian Party certifying that the account was maintained as per the host country laws and the extant FEMA regulations / provisions as applicable.
- g. The account so opened shall be closed immediately or within 30 days from the date of disinvestment from Foreign Entity or cessation thereof.

### **Other Cases**

Some other relevant cases where Indian residents are allowed to maintain bank accounts abroad are as follows:

- 1. Funds raised by External Commercial Borrowings (ECB) or through American Depository Receipts (ADRs) or Global Depository Receipts (GDRs)
- 2. Resident individuals may open, maintain and hold foreign currency accounts with a bank outside India for making remittances under the Liberalised Remittance Scheme. The account may be used for routing all transactions connected with or arising from remittances eligible under LRS.
- 3. A person resident in India who has gone out of India to participate in an exhibition/ trade fair outside India may open, hold and maintain a Foreign Currency Account with a bank outside India for crediting the sale proceeds of goods on display in the exhibition/ trade fair. Provided that the balance in the account is repatriated to India through normal banking channels within a period of one month from the date of closure of the exhibition/ trade fair.
- 4. A person resident in India who is on a visit to a foreign country may open, hold and maintain a Foreign Currency Account with a bank outside India during his stay outside India, provided that on his return to India, the balance in the account is repatriated to India.

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