OVERSEAS DIRECT INVESTMENT

(ODI)

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2. India's Footprints Abroad

Year 2007 was a year of mergers and acquisitions for corporate India. The value of foreign acquisitions by Indian companies exceeded that of inbound acquisitions as well as overall foreign direct investment (FDI) coming into the country during 2007.

- The total Direct Investment Abroad as on March 31, 2007 reached a sky high of Rs. 104494.38 Crore.
- India Inc spent US$ 32.73 billion for its overseas M&A deals, against US$ 15 billion bill footed by foreign firms for acquisitions in India and an estimated US$ 16 billion of FDI.

Investment is a core area of any business segment to make the money worth and multiply it to further. Investment is an asset deployed in form of cash or capital to increase the stake of company in other body corporate(s) to control it or support to extend the business activities. The Indian entrepreneurs are making huge cross-border investment as a part of their long term strategic investment whether in terms of setting up joint –ventures / wholly owned subsidiaries or acquiring the existing companies overseas. In all these events, the relevant country as whole, have significant advantage also. We recently in last year have seen the mega deal executed by Ratan Tata acquiring Corus.

Indian companies are acquiring international firms in an effort to acquire new markets and maintain its growth momentum, buy cutting-edge technology, develop new product mixes, improve operating margins and efficiencies, and take worldwide competition head-on. Some of major oveseas investments executed last year by India Inc. are:

Acquirer	Target	Deal Size
Tata Steel	Corus	US$ 12.59 billion.
Suzlon Energy Ltd	Repower Systems A G	US$ 1.7 billion.
United Spirits	Whyte & Mackay	US$ 1.11 billion
Tata Power	PT Kaltim Prima Coal and PT Arutmin Indonesia	US$ 1.1 billion.
Essar Group	Algoma Steel	US$ 1.55 billion.
Hindalco	Novelis	US$ 6 billion.
JSW Steels	Jindal United Steel Corp, Saw Pipes USA and Jindal Enterprises LLC	US$ 940 million.

While pharmaceuticals, IT and energy were the prominent sectors attracting investments by Corporate India, significant Indian investment has also flown into metals, industrial goods, automotive components, beverages, cosmetics, mobile communications, software and financial services.

Legislations helping hand

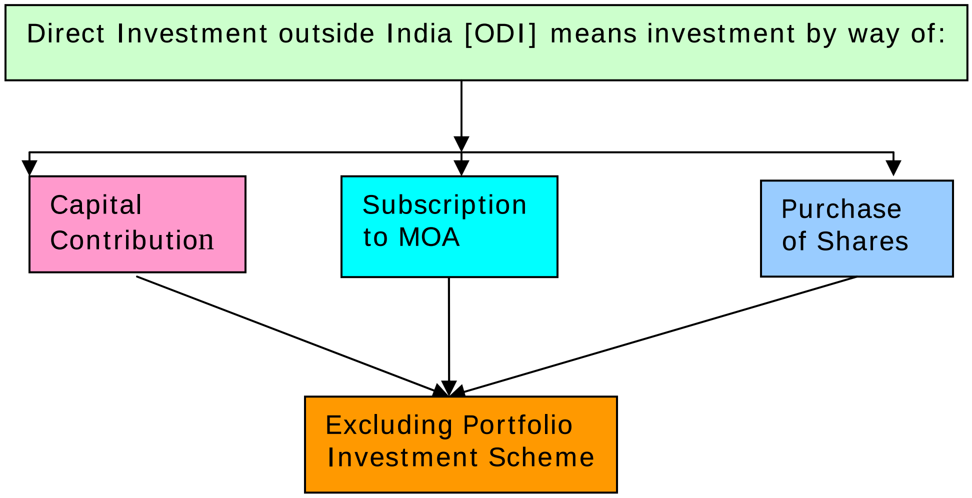
In a bid to give further impetus to overseas investments, the Reserve Bank of India has further liberalised overseas investment norms for both direct and portfolio investment. It has:

- hiked the overseas investment limit from 300 per cent of the net worth to 400 per cent of the net worth;
- hiked the limit on overseas portfolio investment by Indian companies from 35 per cent of their net worth to 50 per cent of their net worth;
- allowed Indian residents to remit up to US$ 2,00,000 per financial year, from US$ 1,00,000 previously, for any current or capital account transaction or a combination of both.
- allowed mutual funds to make an aggregate investment to the tune of US$ 5 billion in overseas avenues, from an earlier cap of US$ 4 billion.

With the acceleration of overseas Indian investment, it is estimated that FDI outflows in 2007-08 are likely to overtake FDI inflows into India. Recognising the tide of overseas Indian investment, UNCTAD in its annual World Investment Report (WIR) notes India's emergence as a major player in terms of FDI outflows. Similarly, according to a joint finding by two European investment bodies from France and Germany (Invest in France and Invest in Germany), the FDI outflow from India to the European Union (EU) can cross the US$ 40-billion mark this year from an estimated US$ 16 billion in 2006.

As India Inc increases its global foothold through both mergers and acquisitions and greenfield investment projects, India could emerge as the next generation of global brands.

2. ODI – MEANING AND NEED



Globalization and non-discriminatory multilateral trade have opened new doors for Indian corporates. Earlier, there was an accent on inward flows - FDI, portfolio investments, joint ventures and collaborations to tap the growing Indian market, and also technology transfers for enhancing competitiveness of Indian firms. Exports were predominantly the main door to step out towards globalization.

Now, the scenario has changed. There is a growing realization that the future growth of Indian companies will be influenced by the share that they can garner in the world market, not only by producing in the country and exporting, but also by acquiring overseas assets, including intangibles like brands and goodwill, to establish overseas presence and to upgrade their competitive strength in the overseas markets.

The overseas acquisitions, which started of on a small scale, have reached to globally visible levels with big ticket acquisitions being announced by large corporates regularly. *A report of the Boston Consulting Group (BCG) on the emerging multinationals in the world puts 21 Indian companies among the top 100 such multinationals. Only China with 44 companies is ahead of India. Tata group, Bharat Forge, Infosys, Wipro, ONGC, Ranbaxy and such Indian companies are venturing overseas and expanding at breakneck speed.*

Industrial goods, steel, automotive components, resource extraction, beverages, cosmetics, pharmaceuticals, mobile communications, software and financial services are some of the sectors where considerable interest has been shown by Indian corporates.
The BCG research has shown that 88% of the emerging market global players are driven by the need to gain access to new markets and profit pools. Overseas markets are expected to bring higher margins, revenue and volumes, besides

opportunities for further growth. Energy security is another driving force behind global acquisitions.

The factors letting India Inc. to make cross-border deals include:

- Liberalised guidelines for overseas investment coupled with lower interest rate hitherto facilitated Indian corporates to invest overseas.

- The capex undertaken by Indian industry coupled with buoyancy in economy has strengthened the balance sheet of corporates enabling them to look for inorganic growth by way of acquisitions outside India.

- The confidence shown by the global business community, particularly, availability of foreign funds at competitive rates and acceptance of managerial skills of Indian workforce has led to surge in LBO activities.

- Another trend which is prominent in India's overseas investment is market access. By undertaking overseas acquisition transactions, Indian corporates are gaining entry into regulated market of developed countries.

- Transfer of technology is another issue driving for overseas investments. The manufacture of certain products requires technology that is not available to the Indian companies.

- Indian companies are also going abroad to obtain a new product mix or to acquire products that will otherwise require huge investments and a long time to manufacture indigenously.

- Deployment of excess production resources or better yield on assets is another driving force. The Indian corporates engaged in oil exploration / drilling / rig manufacturing are getting good returns on their assets by deploying their assets in the companies acquired in the high yield market.

- Development of natural resources like mining, oil exploration etc. has given an opportunity to Indian corporates, rich with cash and need for energy, to expand their wings in unchartered territory.

- Post quota regime has also given an impetus to Indian corporates to look for overseas ventures for enhancing their R&D and logistics to cater to developed markets.

- The IT industry, showcase of emergence of Indian economy, has its presence across the globe by way of subsidiaries to cater to business in a particular region. The acquisitions made by IT companies are primarily for backward or forward value addition in their product profile.

3. GOVERNING LAWS

The provisions regulating the Overseas Direct Investments are:

1. The Foreign Exchange Management Act, 1999
2. Notifications and Circular issued by Reserve Bank of India.
3. The Companies Act, 1956 (for Corporates)
4. SEBI Guidelines (for ESOP etc.) (for Corporates)
5. Compliance of laws of relevant Country

The Foreign Exchange Management Act, 1999

Overseas Investment is permitted by Section 6(3)(a) of the Act , re-produced as under:

6. Capital account transactions. *- (1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorized person for a capital account transaction.*

(2) The Reserve Bank may, in consultation with the Central Government, specify-

(a) any class or classes of capital account transactions which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions: Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary courts of business.

(3) Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following-

(a) transfer or issue of any foreign security by a person resident in India;

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Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004, as amended vide different Circulars. (FEMA 120/RB-2004 dated July 02, 2004)

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Master Circular No. 1/2007-08 dated July 02, 2007 (a consolidated circular on the subject) + AP (DIR Series) Circular No. 11 dated September 26, 2007(the last update).

Important Circulars & Notifications

List of Circulars/Notifications for Investment in Joint Ventures/ Wholly Owned Subsidiaries Abroad:

Sl. No.	Notifications	Date
1.	FEMA.120/RB-2004	July 07, 2004
2.	FEMA.132/RB-2005	March 31, 2005
3.	FEMA.135/RB-2005	May 17, 2005
4.	FEMA.139/RB-2005	August 11, 2005
5.	FEMA.150/RB-2006	August 21, 2006
Sl. No.	**Circulars**	**Date**
1.	AP (DIR Series) Circular No.14	October 01, 2004
2.	AP (DIR Series) Circular No.32	February 09, 2005
3.	AP (DIR Series) Circular No.42	May 12, 2005
4.	AP (DIR Series) Circular No.9	August 29, 2005
5.	AP (DIR Series) Circular No.29	March 27, 2006
6.	AP (DIR Series) Circular No.30	April 05, 2006
7.	AP (DIR Series) Circular No. 3	July 03, 2006
8.	AP (DIR Series) Circular No.6	September 06, 2006
9.	AP (DIR Series) Circular No. 11	November 16, 2006
10.	AP (DIR Series) Circular No. 41	April 20, 2007
11.	AP (DIR Series) Circular No. 49	April 30, 2007
12.	AP (DIR Series) Circular No. 50	May 04, 2007
13.	AP (DIR Series) Circular No.53	May 08, 2007
14.	AP (DIR Series) Circular No.68	June 01, 2007
15.	AP (DIR Series) Circular No. 72	June 08, 2007
16.	AP (DIR Series) Circular No.75	June 14, 2007
17.	AP (DIR Series) Circular No.76	June 19, 2007
18.	Master Circular No. 1/2007-08	July 02, 2007
19.	AP (DIR Series) Circular No. 11	September 26, 2007

If we come across the legal development, we can demarcate a line of before 2003 and after 2003. Have a look:

The Legal Development

The Pre 2003 Policy Regime

- In December 1969, the Govt. of India for the first time issued formal guidelines for overseas direct investment. Indian parties were permitted minority articipation in turnkey projects involving no cash remittances.

- In April 1978, an Inter - Ministerial Committee in the Ministry of Commerce was set up to clear proposals for Overseas Investments. There was a requirement for repatriation of dividend of 50% of the declared profits.

- In 1992 an Automatic Route for overseas investments was introduced, and cash remittances were allowed for the first time. The total value was restricted to $2 million with a cash component not exceeding $0.5 million in a block of 3 years.

- In 1995 the work relating to overseas investment was transferred from Ministry of Commerce to RBI in 1995 to provide a single window, while laying down a policy framework. In terms of the policy, a fast track route was introduced where limits were raised from $ 2 million to $ 4 million and linked to average export earnings of the preceding three years. Cash remittance continued to be restricted to $0.5 million. Beyond USD 4 million, approvals are considered under Normal Route at the Special Committee level. Investment proposals in excess of US $15.00 million were considered by MoF with the recommendations of the Special Committee and generally approved if the required resources were raised through the GDR route.

- In March 1997, Exchange Earners other than exporters were also brought under the Fast track Route Indian promoters were allowed to set up second and subsequent generation companies, provided the first generation company was set up under the Fast Track Route. A series of measures to encourage the software industry in India to expand capacity, reduce costs, improve quality and also invest abroad were put in place.

- In 2000, the introduction of FEMA changed the entire perspective on foreign exchange. The revised policies reflected this. The limit for investment up to US$ 50 million, which was earlier available in a block of three years, made available annually without any profitability condition.

- Companies were allowed to invest 100 per cent of the proceeds of their ADR/GDR issues for acquisitions of foreign companies and direct investments in JVs and WOSs.

- In March 2002, Automatic route was further liberalised wherein Indian parties investing in JVs / WOSs outside India were permitted to invest an amount not exceeding USD 100 million as against the earlier limit of USD 50 million in a financial year. Also the investments under the 4 automatic route could be funded by withdrawal of foreign exchange from an AD not exceeding 50% of the net worth of the Indian party.

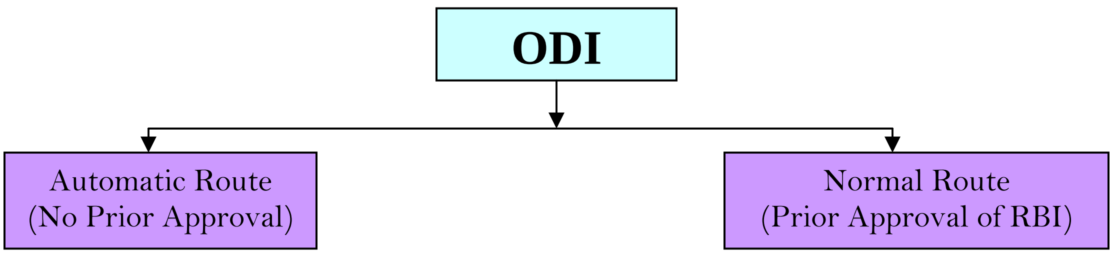
Post 2003 Regime

In March 2003, Automatic Route was significantly liberalized to enable Indian parties to fund to the extent of 100% of their net worth, which was later increased to 300% (now it is 400%). As per a recent FICCI study, While India Inc's international acquisitions were rising gradually till 2004, the liberalization in the policy regime for outward investment in 2005, which allowed Indian firms to invest in entities abroad up to 200% of their net worth in a year, triggered a sharp rise in cross-border acquisitions with the number of acquisitions rising from 46 in 2004 to a whopping around 300 in 2007.

4. Setting up Joint Venture / WOS Abroad

With regard to the subject, we have already discussed the legal provisions governing the transactions. The most important notification/circular that regulates the topic is;

1. ***Notification No. FEMA 120/RB-2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 dated July 07, 2004] (herein after "Notification / Regulations); AND***
2. ***Master Circular 1/2007-08 dated July 02, 2007.***



AUTOMATIC ROUTE

General Permission	In terms of Regulation 4 of the Notification, general permission has been granted to residents for purchase / acquisition of securities in the following manner: - out of funds held in RFC account; - as bonus shares on existing holding of foreign currency shares; and - when not permanently resident in India, out of their foreign currency resources outside India. **General permission is also available to sell the shares so purchased or acquired.**
Who can invest	1. Resident Corporate entities 2. Registered Partnership Firm
Where to Invest	In any bonafide business activity.
Prohibition	- Real Estate (excluding development of township, and construction works). - Banking. - The Indian party should not be on the Reserve Bank's Exporters caution list / list of defaulters to the banking system circulated by the Reserve Bank / The Credit Information Bureau (India) Ltd

	(CIBIL) or under investigation by any investigation / enforcement agency or regulatory body.
Limits	In terms of Regulation 6 of the Notification, an Indian party has been permitted to make investment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as under: -upto ***400 per cent of the net worth of the Indian party (corporates) as on the date of the last audited balance sheet.*** -upto ***200 per cent of the net worth of the Indian party (registered partnership firms) as on the date of the last audited balance sheet.*** The above ceiling will include contribution to the capital of the overseas JV / WOS, loan granted to the JV / WOS, and 100 percent of guarantees issued to or on behalf of the JV/WOS.
Net Worth	As per Regulation 2(0) the Net Worth means **Paid-up Capital + Free Reserve.** *"for the purpose of reckoning net worth, the net worth of its holding company (holding 51% stake) or its subsidiary (holding 51% stake) may be taken into account to the extent not availed by the holding or subsidiary independently + Letter of Disclaimer to the investing co."*
Exception	This ceiling will not be applicable: - where the investment is made out of balances held in Exchange Earners' Foreign Currency account of the Indian party or - out of funds raised through ADRs / GDRs. The Indian party should approach an Authorised Dealer Category - I bank with an application in Form ODI and prescribed enclosures / documents for effecting remittances towards such investments.
Pre - conditions	Such investments are subject to the following conditions: **a) LOAN / GUARANTEE** - The Indian entity may extend loan / guarantee to an overseas concern *only in which it has equity participation*. Indian entities may offer any form of guarantee - corporate or personal / primary or collateral / guarantee by the promoter company / guarantee by group company, sister concern or associate company in India; provided that

	i) All financial commitments including all forms of guarantees are within the overall ceiling prescribed for overseas investment by the Indian party i.e. currently within 400/200 percent of the net worth of the Indian party, as the case may be. ii) No guarantee is 'open ended' i.e. the amount of the guarantee should be specified upfront, and iii) As in the case of corporate guarantees, all guarantees are required to be reported to Reserve Bank, in Form ODI Part II. Guarantees issued by banks in India in favour of WOSs /JVs outside India, would be outside this ceiling and would be subject to prudential norms issued by Reserve Bank from time to time***.*** **b) NO DEFAULT** - The Indian party should not be on the Reserve Bank's Exporters caution list / list of defaulters to the banking system circulated by the Reserve Bank / The Credit Information Bureau (India) Ltd (CIBIL) or under investigation by any investigation / enforcement agency or regulatory body. **c) A.D.** - All transactions relating to a JV / WOS should be routed through one branch of an authorised dealer bank to be designated by the Indian party. **d) VALUATION** - In case of partial / full acquisition of an existing foreign company, where the investment is more than USD 5.00 million, valuation of the shares of the company shall be made by a Category I Merchant Banker registered with SEBI or an Investment Banker / Merchant Banker outside India registered with the appropriate regulatory authority in the host country; and, in all other cases by a Chartered Accountant or a Certified Public Accountant. **VALUATION IN SWAP CASES** - However, in cases of investment by way of swap of shares, in all cases irrespective of the amount, valuation of the shares will have to be by a Category I Merchant Banker registered with SEBI or an Investment Banker outside India registered with the appropriate regulatory authority in the host country. Approval of the Foreign Investment Promotion Board (FIPB)

	will also be a precondition. **SWAP THROUGH ADR / GDR ISSUE** - An Indian party is also permitted to acquire shares of a foreign company engaged in a bonafide business activity, in exchange of ADRs/GDRs issued to the latter in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued there under from time to time by the Central Government, provided: (a) ADRs/GDRs are listed on any stock exchange outside India; (b) The ADR and/or GDR issue for the purpose of acquisition is backed by underlying fresh equity shares issued by the Indian party; (c) The total holding in the Indian entity by persons resident outside India in the expanded capital base, after the new ADR and/or GDR issue, does not exceed the sectoral cap prescribed under the relevant regulations for such investment under FDI; (d) Valuation of the shares of the foreign company shall be (i) as per the recommendations of the Investment Banker if the shares are not listed on any recognized stock exchange; or (ii) based on the current market capitalisation of the foreign company arrived at on the basis of monthly average price on any stock exchange abroad for the three months preceding the month in which the acquisition is committed and over and above, the premium, if any, as recommended by the Investment Banker in its due diligence report in other cases. The Indian Party is required to report such acquisition in form ODI to the AD Bank for report to the Reserve Bank within a period of 30 days from the date of the transaction. **Note:** *Investments in Nepal are permitted only in Indian rupees. Investments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. All dues receivable on investments 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. ***The automatic route facility is not available for investment in Pakistan.***
Method Of Funding	Investment in an overseas JV / WOS may be funded out of one or more of the following sources: - - drawal of foreign exchange from an AD Bank in India; - capitalisation of exports; - swap of shares - utilisation of proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs); - in exchange of ADRs/GDRs issued in accordance with the scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued there under from time to time by the Central Government - balances held in EEFC account of the Indian party; and - utilisation of proceeds of foreign currency funds raised through ADR / GDR issues *In respect of last two, the ceiling of 400/200 per cent (as applicable), of net worth will not apply.* However, in respect of investments in the financial sector, they will be subject to compliance of Regulation 7 of the Notification ibid, irrespective of the method of funding.
Procedure	Eligible Indian Party is required to file the Form ODA supported by Documents mentioned therein like: - CTC of Board Resolution, - Statutory Auditors Certificate, - Valuation Report, Through the Authorised Dealer.
Authorised Dealer	- ADs (Banks) Governed by the provisions of Section 10, 11, and 12 of the FEM Act, 1999. - All transactions should be routed through one Designated AD, authorised for particular JV/WOS. - If JV/WOS in various countries, appoint different branches of the different ADs in different countries. - One JV/WOS must have only one AD to route all transactions.
Step Down Subsidiaries	Investing companies can set up second generation company within overall limits. **SPV** - Direct investment through the medium of a SPV is

	permitted under the automatic route.
Obligations Of Indian Entity	An Indian party which has made direct investment abroad is under obligation to: - receive share certificate or any other document as an evidence of investment, - repatriate to India the dues receivable from foreign entity and - submit the documents / Annual Performance Report to the Reserve Bank, in accordance with the provisions specified in Regulation 15 of the Notification.
Investment in Financial Sector	In terms of Regulation 7 of the Notification, an Indian party seeking to make investment in an entity engaged in the financial sector should also fulfill the following additional conditions: - be registered with the appropriate regulatory authority in India for conducting the financial sector activities; - have earned net profit during the preceding three financial years from the financial services activities; - have obtained approval for investment in financial sector activities abroad from regulatory authorities concerned in India and abroad; and - have fulfilled the prudential norms relating to capital adequacy as prescribed by the regulatory authority concerned in India. **Regulated entities in the financial sector making investments in any activity overseas are required to comply with the above guidelines**. It is clarified that unregulated entities in the financial services sector in **India may invest in non financial sector activities** subject to compliance with the provisions of Regulation 6 of the Notification. *It is further clarified that trading in Commodities Exchanges overseas and setting up JV/WOS for trading in overseas exchanges will be reckoned as financial services activity and require clearance from the Forward Markets Commission.*

NORMAL ROUTE

Prior approval of the Reserve Bank would be required in all other cases of direct investment abroad, called Normal Route. For this purpose, application together with necessary documents should be made in Form ODI submitted through their Authorised Dealer.

Reserve Bank, would inter alia, take into account the following factors while considering such applications:

- Prima facie viability of the JV / WOS outside India;
- Contribution to external trade and other benefits which will accrue to India through such investment;
- Financial position and business track record of the Indian party and the foreign entity;
- Expertise and experience of the Indian party in the same or related line of activity of the JV / WOS outside India.

OTHER REQUIREMENTS

I.	**Post Investment Changes/Additional Investment In Existing JV / WOS** A JV / WOS set up by the Indian party as per the Regulations may diversify its activities / set up step down subsidiary / alter the shareholding pattern in the overseas entity (subject to compliance of Regulation 7 in the case of financial services sector companies) subject to the Indian party reporting to the AD Bank for onward reporting to the Reserve Bank, the details of such decisions taken by the JV / WOS within 30 days of the approval of those decisions by the competent authority concerned of such JV / WOS in terms of local laws of the host country, and, include the same in the Annual Performance Report (APR—Part III of ODI) required to be forwarded annually to the AD Bank.
II.	**Acquisition of a Foreign Company through Bidding or Tender Procedure:** An Indian party may remit earnest money deposit or issue a bid bond guarantee for acquisition of a foreign company through bidding and tender procedure and also make subsequent remittances through an AD Bank in accordance with the provisions of Regulation 14 of the Notification.
III.	**Disinvestment** Indian parties may also disinvest *without prior approval of the Reserve Bank*, in the under noted categories:

	- in case where the JV / WOS is listed in the overseas stock exchange; - in cases where the Indian promoter company is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore; - where the Indian promoter is an unlisted company and the investment in overseas venture does not exceed USD 10 million. **Intimation -** The Indian entity is required to submit details of the disinvestment through its designated Authorised Dealer bank within 30 days from the date of investment. **Approval -** An Indian party, which does not satisfy the conditions laid down, shall have to apply to the Reserve Bank for prior permission. **Documentation -** - Letter giving reasons for disinvestment. - Latest Annual Performance Report (APR) - Board Resolution approving disinvestment. - Letter of offer from the Purchaser. - Consent from the partner in case of disinvestment of share in a JV abroad. - Valuation certificate on the value of shares of the JV/WOS. - CA Certificate that no dues are outstanding to the Indian party or details of dues, if any, from the JV/WOS to the Indian party.
IV.	**Hedging Of Overseas Direct Investment** Resident entities having overseas direct investments are permitted to hedge the exchange risk arising out of such investments. →Clause (v) of sub-regulation (2) of Regulation 6 provides that all transactions relating to investment in a JV / WOS are to be routed through only one designated branch of an AD bank designated by the Indian party. →AD banks should allow remittance towards loan to the JV / WOS and / or issue guarantee to / on behalf of the JV / WOS abroad only after ensuring that the Indian party has an equity stake in the JV / WOS.
V.	**Unique Identification Number** On receipt of the form ODI from the AD Bank, the RBI will allot a unique identification number to each JV or WOS abroad, which is required to be quoted in all correspondences with RBI. AD Banks may allow additional investment in an existing overseas concern set up by an Indian party, in terms of Regulation 6 only after the RBI has allotted necessary identification number to the overseas party.

5. Investment other than JV / WOS Abroad

I.	**Investment in Equity of Companies Registered Overseas / Rated Debt Instruments:** **(i) Investment by Individuals** Resident individuals are permitted to invest in equity and in rated bonds / fixed income securities of overseas companies as permitted in terms of the limits and conditions specified under the Liberalised Remittance Scheme. Resident individuals are permitted to remit upto US $ 200000 per financial year for any permitted current or capital account transaction through Category – I banks. **(ii) Investment by Mutual Funds** Mutual Funds are permitted to invest in ADRs / GDRs of the Indian and foreign companies, rated debt instruments, equity of listed overseas companies, ETFs and overseas mutual funds that make nominal investments (say, to the extent of 10 per cent of net asset value) in unlisted overseas securities, within an overall cap USD 5 billion (). Domestic Venture Capital Funds registered with SEBI may invest in equity and equity linked instruments of off-shore Venture Capital Undertakings, subject to an overall limit of USD 500 million. Accordingly, Mutual Funds/ Venture Capital Funds desirous of availing of this facility may approach SEBI for necessary permission. General permission is available to the above categories of investors for sale of securities so acquired.
II.	**Overseas Investments by Proprietorship Concerns:** With a view to enabling recognized star exporters with a proven track record and a consistently high export performance to reap the benefits of globalization and liberalization, proprietorship concerns and unregistered partnership firms are allowed to set up a JV / WOS outside India with prior approval of the Reserve Bank subject to satisfying certain eligibility criteria. An application in form ODI may be made to the Chief General Manager, Reserve Bank of India, Foreign Exchange Department, Overseas Investment Division, Central Office, Amar Building 3rd Floor, Fort, Mumbai 400 001, through the AD Banks. AD Banks may forward such investment proposals, with their comments and recommendations, to the Reserve Bank for consideration. Investments by established proprietorship or unregistered partnership exporter firms will be subject to the following criteria: - The Partnership / Proprietorship firm is a DGFT recognized Star Export House (export exceeding Rs.15 crore) per annum. - The AD bank is satisfied that the exporter is KYC (Know Your Customer) compliant, is engaged in the proposed business and has turnover as indicated. - Exporter has proven track record i.e. export outstanding does not exceed 10 per cent of the average export realization of preceding three financial years.

	- The exporter has not come under adverse notice of any Government agency like Enforcement Directorate, CBI and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India. - The amount of investment outside India does not exceed 10 per cent of the average of three financial years export realization or 200 per cent of the net owned funds of the firm, whichever is lower.
III.	**Acquisition of Foreign Company Through Bidding or Tender Procedure:** An Indian party may remit earnest money deposit or issue a bid bond guarantee for acquisition of a foreign company through bidding and tender procedure and also make subsequent remittances through an AD Bank in accordance with the provisions of Regulation 14 of the Notification.
IV.	**Pledge of Shares:** An Indian party may pledge the shares of JV / WOS to an AD Bank or a public financial institution in India for availing of any credit facility for itself or for the JV / WOS abroad in terms of Regulation 18 of the Notification. Indian Parties may also transfer by way of pledge, the shares held in overseas JV/WOS, to an overseas lender, provided the lender is regulated and supervised as a bank and the total financial commitments of the Indian Parties remain within the limit stipulated by Reserve Bank for overseas investments, from time to time.
V.	**Capitalization of Exports and Other Dues:** a) Indian parties are also permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other entitlements due from the foreign entity for supplying technical know-how, consultancy, managerial and other services within the ceilings applicable. Export proceeds remaining unrealised beyond a period of six months from the date of export will require the prior approval of the Reserve Bank before capitalisation. **Investments under Regulation 11 of Notification No. FEMA 120/2004- RB dated July 7, 2004.** In terms of Regulation 11, Indian parties are permitted to make direct investment in JV / WOS abroad by way of capitalisation of exports or other dues/entitlements like royalties, technical knowhow fees, consultancy fees, etc. In such cases also, the Indian party is required to submit details of the capitalisation in form ODI to the designated branch of the AD bank. Such investments by way of capitalisation are also to be reckoned while computing the cap of 300 per cent (200 per cent in case of registered partnership firms) prescribed in terms of Regulation 6.

	(i) In terms of Regulation 14 of the Notification, AD banks may, on being approached by an Indian party which is eligible for investment under Regulation 6, allow remittance towards Earnest Money Deposit (EMD) to the extent eligible after obtaining Form A2 duly filled in or may issue bid bond guarantee on their behalf for participation in bidding or tender procedure for acquisition of a company incorporated outside India. On winning the bid, AD banks may remit the acquisition value after obtaining Form A2 duly filled in and report such remittance (including the amount initially remitted towards EMD) to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 3rd floor, Mumbai 400 001 in form ODI. AD banks, while permitting remittance towards EMD should advise the Indian party that in case they are not successful in the bid, they should ensure that the amount remitted is repatriated in accordance with Foreign Exchange Management (Realisation, Repatriation & Surrender of Foreign Exchange) Regulations, 2000 (cf. Notification No. FEMA 9/2000- RB dated 3rd May 2000). (ii) In cases where an Indian party, after being successful in the bid / tender decides not to proceed further with the investment, AD banks should submit full details of remittance allowed towards EMD / invoked bid bond guarantee, to the Chief General Manager, Foreign Exchange Department, Central Office, Overseas Investment Division, Amar Building, 3rd floor, Mumbai 400 001. (iii) In case the Indian party is successful in the bid, but the terms and conditions of acquisition of a company outside India are not in conformity with the provisions of Regulations in Part I, or different from those for which approval under sub-regulation (3) was obtained, the Indian entity should obtain approval from the Reserve Bank by submitting form ODI. b) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software startup company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank.
VI.	**Investment in Equity of Companies Registered:** Listed Indian companies are permitted to invest abroad in companies,

	(a) listed on a recognized stock exchange and (b) which has the share holding of at least 10 per cent in an Indian company listed on a recognized stock exchange in India (as on 1st January of the year of the investment). They are also permitted to invest in rated bonds / fixed income securities of such companies. Such investments shall not exceed 50 percent of the Indian company's net worth as on the date of the latest audited balance sheet. Accordingly, listed Indian companies can now invest upto 50% of their net worth as on the date of last audited Balance Sheet, in (i) shares and, (ii) rated bonds / fixed rating agencies, issued by listed overseas companies. *General permission is available to the above categories of investors for sale of securities so acquired.*
VII.	**Transfer Of A Foreign Security By A Person Resident In India** The shares acquired by persons resident in India in accordance with the provisions of Foreign Exchange Management Act, 1999 or Rules or Regulations made thereunder are allowed to be pledged for obtaining credit facilities in India from an AD Bank / Public Financial Institution.
VIII.	**General Permission in Certain Cases:** Residents are permitted to acquire a foreign security, if it represents – a) **QUALIFICATION SHARES** - qualification shares for becoming a director of a company outside India provided it does not exceed 1 per cent of the paid up capital of the overseas company and the consideration for the acquisition does not exceed USD 20,000/- in a calendar year; b) **RIGHT SHARES** - rights shares provided that the rights shares are being issued by virtue of holding shares in accordance with the provisions of law for the time being in force; c) **PURCHASE OF SHARES BY EMPLOYEE/DIRECTOR** - purchase of shares of a JV / WOS abroad of the Indian promoter company by the employees/directors of Indian promoter company which is engaged in the field of software where the consideration for purchase does not exceed USD 10,000 or its equivalent per employee in a block of five calendar years; the shares so acquired do not exceed 5 per cent of the paid-up capital of the JV / WOS outside India; and after allotment of such shares, the percentage of shares held by the Indian promoter company, together with shares allotted to its employees is not less than the percentage of shares held by the Indian promoter company prior to such allotment; d) **STOCK OPTIONS** - purchase of foreign securities under ADR / GDR linked stock option schemes by resident employees of Indian companies in the

	knowledge based sectors, including working directors provided purchase consideration does not exceed USD 50,000 or its equivalent in a block of five calendar years.
IX.	**Other Investments In Foreign Securities** **Permission for purchase / acquisition of foreign securities in certain cases** General permission has been granted to a person resident in India who is an individual – a) to acquire foreign securities as a gift from any person resident outside India; or b) to acquire shares under Cashless Employees Stock Option Scheme issued by a company outside India, provided it does not involve any remittance from India; or c) to acquire shares by way of inheritance from a person whether resident in or outside India; d) to purchase equity shares offered by a foreign company under its ESOP Schemes if he is an employee, or, a director of an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle (SPV), is not less than 51 per cent. AD Banks are permitted to allow remittances for purchase of shares by eligible persons under this provision irrespective of the method of operationalisation of the scheme i.e where the shares under the scheme are offered directly by the issuing company or indirectly through a trust / a Special Purpose Vehicle (SPV) / step down subsidiary, provided - the company issuing the shares effectively, directly or indirectly, holds in the Indian company, whose employees / directors are being offered shares, not less than 51 per cent of its equity, - the shares under the ESOP Scheme are offered by the issuing company globally on uniform basis, and - An Annual Return (Annex A, Part II, item 11) is submitted by the Indian company to the Reserve Bank through the AD Bank giving details of remittances / beneficiaries /etc. A person resident in India may transfer by way of sale the shares acquired as stated above provided that the proceeds thereof are repatriated immediately on receipt thereof and in any case not later than 90 days from the date of sale of such securities. e) Foreign companies are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided (i) the shares were issued in accordance with the Rules / Regulations framed under Foreign Exchange Management Act, 1999, (ii) the shares are being repurchased in

	terms of the initial offer document and, (iii) An annual return is submitted through the AD Bank giving details of remittances / beneficiaries, etc. f) In all other cases, not covered by general or special permission, approval of the Reserve Bank is required to be obtained before acquisition of a foreign security.

6. Tax-Heaven Countries

Sl. No.	Countries
1.	Andorra
2.	Anguilla
3.	Antigua
4.	Aruba
5.	Bahamas
6.	Barbodas
7.	Belize
8.	British Virgin Islands
9.	Campione d'Italia
10.	Cayman Islands
11.	Cook Islands
12.	Cyprus
13.	Dubai
14.	Gibraltar
15.	Hong Kong
16.	Ireland
17.	Luxemburg
18.	Macau
19.	Malta
20.	Mauritius
21.	Macedonia
22.	Monaco
23.	Nauru
24.	Netherland Antiles
25.	Nevis
26.	New Zealand
27.	Norfolk Island
28.	Panama
29.	Russia
30.	Samoa
31.	San Marino
32.	Sark
33.	Switzerland
34.	Turks
35.	UK
36.	Uruguay
37.	US Virgin Islands
38.	Vantau

THANKS