

# Overseas Direct Investment

What new investors need to know



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# Overview



Overseas Direct Investment refers to the investments made in the Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) by way of:

- Subscription to the Memorandum of a foreign entity; or
- Purchase of existing shares of foreign entity either by market purchase or private placement or through stock exchange

**Overseas investments in JV or WOS have been recognised as important avenues for promoting global reach of Indian entrepreneurs.**

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To regulate the Overseas Direct Investment, RBI had notified: Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time. A Master Direction titled 'Master Direction on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) abroad' has been issued.

**NOTE: Investments / financial commitments in Pakistan by Indian Parties are permissible under the approval route. Investments / financial commitments in Nepal are permitted only in Indian Rupees. Investments / financial commitments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies.**

# Overseas Direct Investment by Indian Party



An **Indian Party** is eligible to make Overseas Direct Investment into a Joint Venture or Wholly Owned Subsidiary

"Indian Party" means

- a company incorporated in India or
- a body created under an Act of Parliament or
- a partnership firm registered under the Indian Partnership Act, 1932, or
- a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank

"Joint Venture (JV)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.

"Wholly Owned Subsidiary (WOS)" means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party



# Criteria for ODI under Automatic Route:

An Indian Party has been permitted to make investment / undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank from time to time

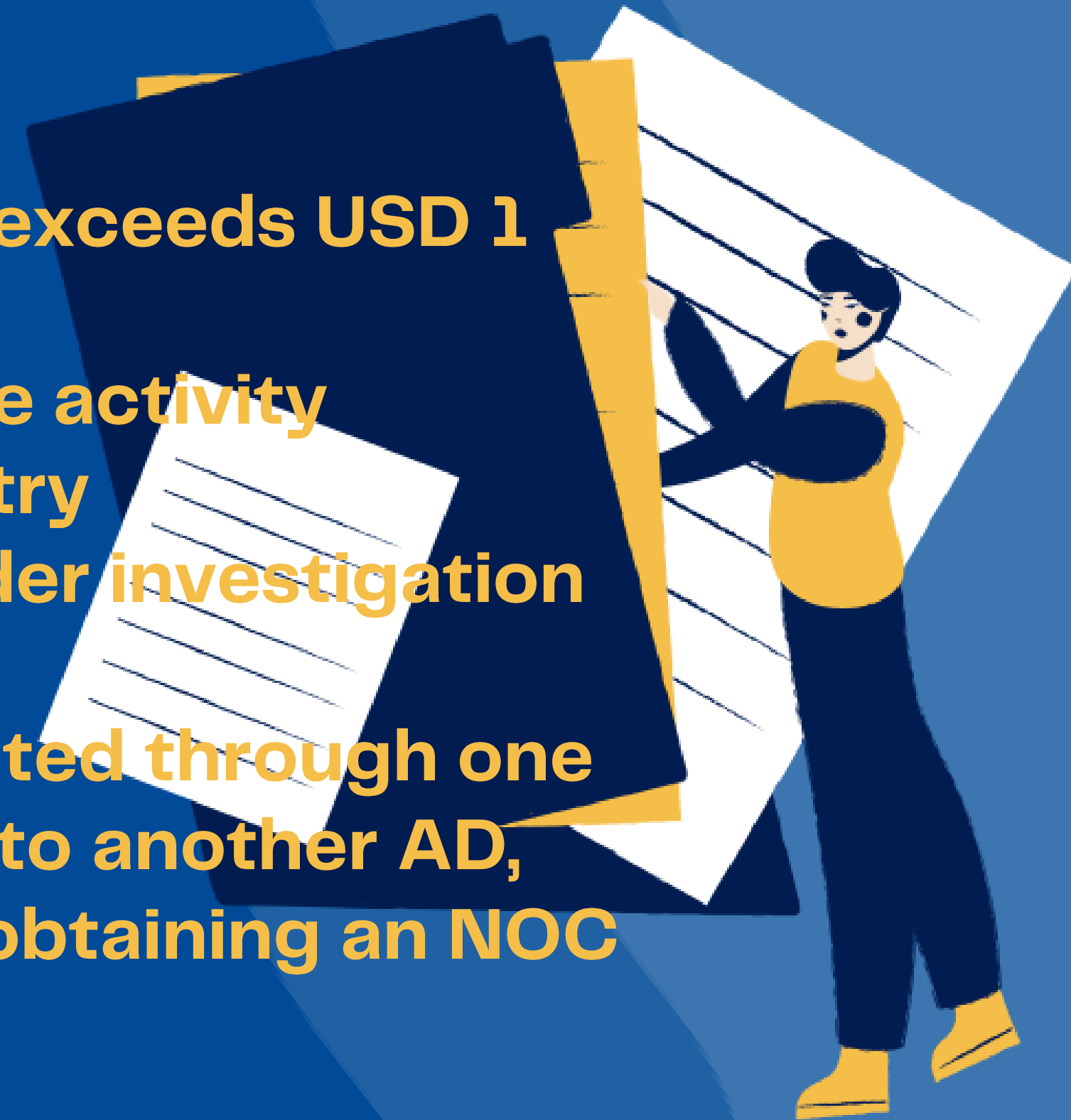
The total financial commitment\* (“FC”) of Indian Party in overseas JV/ WOS shall not exceed **400% of its net worth** (as per the last audited Balance Sheet)

Note: FC made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs will not be taken into consideration for the purpose of the aforesaid calculation. Hence, Maximum Limit would be:





- **Prior approval of RBI is required if the FC exceeds USD 1 Billion in a FY**
- **Overseas JV/ WOS shall carry out bonafide activity permitted as per the law of the host country**
- **Indian Party not on RBI's caution list / under investigation by enforcement agency**
- **All transactions relating to a JV / WOS routed through one branch of an AD bank. For switching over to another AD, an application shall be made to RBI after obtaining an NOC from the existing AD.**

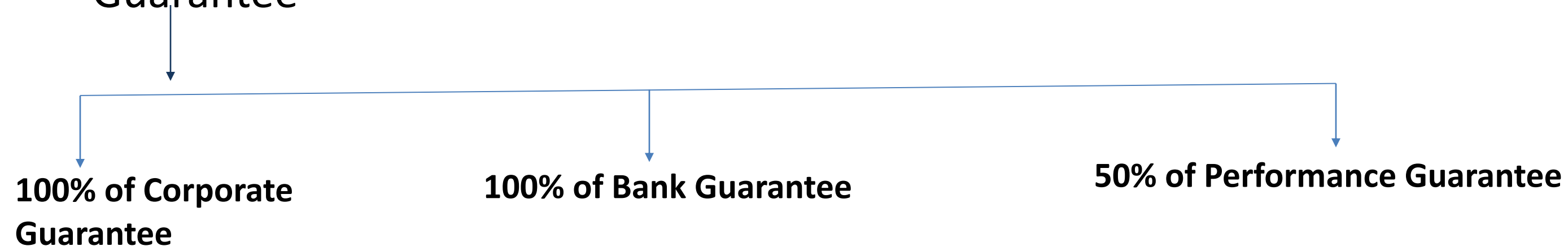




# Financial Commitment

**Financial Commitment:** Financial Commitment comprises of:-

- 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- 100% of the amount of other preference shares;
- 100% of the amount of loan
- Guarantee



**Note:** Indian Party can extend Loan and guarantee by way of Automatic Route to an overseas entity only if there is already **existing equity participation** by way of direct investment in such overseas entity. If there is no equity holding of Indian Party, then Loan and Guarantee can be granted by way of RBI Approval

# Method of Funding

- i. Drawal of foreign exchange from an AD bank in India;
- ii. Capitalisation of exports;
- iii. Swap of shares (valuation as mentioned in para B.1 (e) above);
- iv. Proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- v. 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 thereunder from time to time by the Government of India;
- vi. Balances held in EEFC account of the Indian Party and
- vii. Proceeds of foreign currency funds raised through ADR / GDR issues

In respect of (vi) and (vii) above, the limit of financial commitment vis-à-vis the net worth will not apply.

For any capitalization of exports, along with Form ODI, a custom certified copy of the invoice raised towards the export has to be submitted to RBI.



# Reporting Requirements

## In respect of Initial Investment:

**1.** An Indian Party shall submit **Part I of the Form ODI** within 30 days of Investment with designated Branch of Authorized Dealer Bank along with the following annexures:

- Certified Copy of Board Resolution approving the Investment Outside India
- Remittances Proofs i.e. Bank Documents of payments
- Statutory Auditor's Certificate
- Form A2 (Form A2 is submitted to Banks at the time of remittance Outside India)
- Valuation report for the value of shares

**2.** After receiving the aforesaid documents, AD Bank shall verify all the Documents and if found in order, forwards the same to RBI.

**3.** RBI then allots an Unique Identification Number (UIN) for that particular JV/WOS.

UIN No. is allotted by RBI to Indian Party in respect of each JV/WOS outside India.





### **In respect of Subsequent Investment:**

1. Report to the Authorized Dealer Bank by Submitting the **Part I of the Form ODI** within 30 days of Investment along with all documents as prescribed above.

2. An Indian Party shall quote the UIN No. as allotted by RBI in Part I of form ODI.

**Contents of Part I of the form ODI:-** All ODI forms are submitted to the AD Bank in physical. Part I of form is divided in sections which includes the following:

**Section A** – Details of the Indian Party (IP)/Resident Individual (RI)

**Section B** – Capital Structure and other details of JV/ WOS/ Step Down Subsidiary

**Section C** – Details of Transaction/Remittance/Financial Commitment of IP/RI

**Section D** – Declaration by the IP/RI

**Section E** – Certificate by the statutory auditors of the IP/ self certification by RI

### **Post Investment Obligations of Indian Party**

1. **Receive Share Certificates/Other Documentary Evidence:** An Indian Party shall Receive share certificates/ any other documentary evidence of investment in the overseas JV / WOS and submit the same to the designated AD within 6 months.

2. **Repatriation of Dues:** Repatriate to India all dues receivable from the overseas JV / WOS, like dividend, royalty, technical fees etc within 60 days of its falling due, or such further period as the Reserve Bank may permit.

3. **Submission of Annual Performance Report (APR) :** Submission of APR APR in Part II of Form ODI in respect of each JV or WOS outside India set up or acquired by the Indian party by 31 December every year.

4. **Repatriation of Sale Proceeds in case of Disinvestment:** On disinvestment, repatriate the sale proceeds immediately or not later than 90 days from the date of sale of the shares /securities.

5. **Submission of Return on Foreign Liabilities and Assets:** File Foreign Liabilities and Assets (FLA) return every year by 15 July.

# Disinvestment by Indian Party

Disinvestment by the Indian party from its JV / WOS abroad may be by way of:

- transfer / sale of equity shares
- liquidation of the JV / WOS abroad.
- merger / amalgamation of the JV / WOS abroad.



**Modes of Disinvestment:** An Indian Party may disinvest from JV/WOS either

1. without write off or
2. with write off

subject to the compliance of some conditions.



## **1. Disinvestment by Indian Party without write off:**

Indian Party may disinvest **without write off** under the automatic route subject to the following:

- the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
- the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
- the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India
- Other terms and conditions prescribed under ODI Regulations



## **2. Disinvestment by Indian Party with write off:**

Indian Party may disinvest **with write off** under the automatic route subject to the following:

- where the JV / WOS is listed in the overseas stock exchange;
- where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- where the Indian Party is an unlisted company and the investment in the overseas JV / WOS does not exceed USD 10 million; and
- where the Indian Party is a listed company with net worth of less than 100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.
- All other conditions as applicable in Disinvestment without write off shall mutatis mutandis apply for Disinvestment with write off.



## Writing off Capital or Other Receivables (Loan, Guarantee Amount, Royalty):

Indian Party may write off Capital or Other Receivables within permissible limit which are as follows:

- > Listed Indian companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS under the Automatic Route; and
- Unlisted companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS with prior approval of the Reserve Bank

## Compliances followed by the Indian Party:

- Reporting of **Part III of Form ODI** to AD Bank within 30 days of divestment.

On disinvestment, repatriate the sale proceeds immediately or not later than 90 days from the date of sale of the shares /securities.

# Overseas Direct Investments by Resident Individuals

- Two Routes for Outbound Investments by Resident Individuals – LRS (Liberalised Remittance Scheme) and ODI
- Investment in overseas JV / WOS only by way of equity / compulsorily convertible preference shares
- JV / WOS to be engaged in bonafide business activities except real estate / banking / financial services
- Limit of investment in JV / WOS as per LRS limit (currently USD 250,000 per person per annum).
- Investment made from EEFC / RFC account also included in prescribed LRS limit
- JV / WOS to be operating entity only – No step down subsidiary to be acquired or set up by JV / WOS
- Valuation /Reporting and Post investment obligations same as applicable to ODI by Indian Companies
- Write off not permitted in cases of disinvestments



# Overseas Direct Investment by Registered Trust and Societies

Registered Trusts and Societies engaged in manufacturing, educational and hospital sector are allowed to make investment in the same sector(s) in a JV/WOS outside India, with the **prior approval of the Reserve Bank.**



# TRUST



# Societies



# Eligibility Criteria for Trust

- (i) The Trust should be registered under the Indian Trust Act, 1882;
- (ii) The Trust deed permits the proposed investment overseas;
- (iii) The proposed investment should be approved by the trustees;
- (iv) The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- (v) The Trust has been in existence at least for a period of three years;
- (vi) The Trust has not come under the adverse notice of any Regulatory/ Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.



# TRUST



# Eligibility Criteria for Society

# Societies

- (i) The Society should be registered under the Societies Registration Act, 1860.
- (ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body/council or a managing/executive committee.
- (iii) The AD Category – I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- (iv) The Society has been in existence at least for a period of three years; (v) The Society has not come under the adverse notice of any Regulatory/Enforcement agency like the Directorate of Enforcement, CBI etc

Valuation /Reporting and Post investment obligations are same as applicable to ODI by Indian Companies



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