

OVERSEAS DIRECT INVESTMENT

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ADVOCATE

OVERSEAS DIRECT INVESTMENT

- **PROHIBITION** – Real Estate OR Banking Business
- **GENERAL PERMISSION** –
- RFC A/c
- Bonus shares on ‘existing’ holding
- When not permanently resident in India, out of Foreign currency resources outside India

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I AUTOMATIC ROUTE

- Structure: - Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) formats only
- Financial Limits. Not exceeding 400 per cent of the net worth of the Indian party as on the date of the last audited balance sheet. The said ceiling limits will not be applicable for EEFC A/c or funds raised through ADR / GDR
- The above ceiling will include contribution to the capital of the overseas JV / WOS, loan granted to the JV / WOS, and 100 per cent of guarantees issued to or on behalf of the JV/WOS.
- ODI – also includes investment through Loans, Guarantees.

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ODI – Additional conditions:-

- ❑ Loan / Guarantee are permissible if only there is existing Equity investment.
- ❑ No 'open-ended' guarantee
- ❑ Reporting in Form ODI – Part II
- ❑ Indian Party should not be in RBI Caution list or defaulters list. Setting up overseas SPV also permitted for ODI in IV / WOS
- ❑ All Transactions only through one Branch of AD

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- If partial or full acquisition of foreign company exceeds US 5 million, then valuation by Category I Merchant Banker registered with SEBI or Investment Banker / Merchant Banker registered outside India with appropriate Regulatory Authority. In other cases valuation by CPA.
- Swap of shares requires additionally FIPB approval
- Form ODI - Reporting

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- Capitalizations of Export receivables is permissible within ceiling limits of investments if export proceeds are realizable within the prescribed period.

FINANCIAL SECTORS

- Investment in Financial Sectors are permissible subject to additional norms such as fulfillment of prudential norms, registration with regulatory authorities in India, approval from regulatory authorities in & outside India, three year profitability requirements etc.

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II RBI APPROVAL ROUTE

- Cases other than those under Automatic Route may be invested by seeking prior permission from RBI.
- Reserve Bank would, inter alia, take into account the following factors while considering such applications:
 - a) Prima facie viability of the JV / WOS outside India;
 - b) Contribution to external trade and other benefits which will accrue to India through such investment;
 - c) Financial position and business track record of the Indian party and the foreign entity; and
 - d) Expertise and experience of the Indian party in the same or related line of activity of the JV / WOS outside India.

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- ODI by proprietorship concern (who are star exporters) are permitted for ODI subject to prior approval from RBI.
- Registered Trust, Society engaged in manufacturing, Educational or hospital sectors are permissible to invest abroad in the same sectors, subject to prior approval from RBI.

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POST INVESTMENT CHANGES

- Diversify activities
- Create step-down subsidiary
- Alter shareholding pattern --- all these can be done by reporting in APR

OBLIGATIONS OF INDIAN PARTY

- Receiving Share Certificate
- Repatriating all receivable, such as dividend etc.
- Submit APRs annually

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TRANSFER OF SHARES BY WAY OF SALE OF SHARES OF JV/WOS

(1) Indian parties may also disinvest without prior approval of the Reserve Bank, in any of the under noted categories:

- ❖ i) In case where the JV / WOS is listed in the overseas stock exchange;
- ❖ ii) 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; and
- ❖ iii) Where the Indian promoter is an unlisted company and the investment in the overseas venture does not exceed USD 10 million.

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(2).The disinvestment shall be subject to the following conditions:

- ❖ (i) The sale does not result in any write-off of the investment made;
- ❖ (ii) The sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- ❖ (iii) 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;
- ❖ (iv) 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;

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- ❖ (v) The overseas concern has been in operation for at least one full year and the Annual Performance Report has been submitted to the Reserve Bank; and
- ❖ (vi) The Indian party is not under investigation by CBI / DOE/ SEBI / IRDA or any other regulatory authority in India.
- ❖ The Indian entity is required to submit details of the disinvestment through its designated AD Category – I bank within 30 days from the date of disinvestment. An Indian party, which does not satisfy the conditions laid down, shall have to apply to the Reserve Bank for prior permission.

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Transfer by way of sale of shares of a JV / WOS involving Write off of the investment

Indian Parties may disinvest, without prior approval of the Reserve Bank, in any of the under noted cases where the amount repatriated after disinvestment is less than the original amount invested:

- (1) in case where the JV / WOS is listed in the overseas stock exchange;
- (2) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;

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3. where the Indian Party is an unlisted company and the investment in the overseas venture does not exceed USD 10 million. and

4. where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.