

OVERSEAS INVESTMENT NORMS

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About Us



- ❑ Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
 - ❑ Based out of Kolkata, New Delhi & Mumbai
- ❑ We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline

- Scope and applicability
- Construct of the Rules, Regulations and Directions
- Concepts under the new regime
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- Pricing guidelines, transfers, disinvestment
- Restructuring of balance sheet
 - Under erstwhile regime
 - Under new OI norms
- Acquisition of immovable property outside India

Scope and Applicability

- ❑ Rules, Regulations and Directions for Overseas Investment effective from August 22, 2022
 - ❑ Rules will be administered by RBI.
 - ❑ Discussion in the High Level Advisory Group Report, 2019;
 - ❑ Draft rules rolled out in August, 2021 for public comments;
- ❑ Rules framed by CG and Regulations and Directions by RBI.
- ❑ Regulations superseded :-
 - ❑ Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004
 - ❑ Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015
- ❑ Applicability - ODI, OPI, FC by PRII
- ❑ Non - applicability
 - ❑ Investment outside India by financial institution in IFSC;
 - ❑ Acquisition or transfer of any investment outside India out of :-
 - ❑ Funds in Resident Foreign Currency Account
 - ❑ Foreign Currency resources held outside India by person employed in India for a specific duration, not more than 3 years
 - ❑ Investment in foreign security or immovable property acquired by inheritance or when person was PROI.



CONSTRUCT OF THE RULES, REGULATIONS AND DIRECTIONS



Overseas Investment Rules (21 Rules and 5 Schedules)

- ❑ Definitions, Power of RBI to administer and non-applicability of rules (R. 2 to 4);
- ❑ Classification of debt and non-debt instruments (R. 5);
- ❑ Existing investments and FC deemed in compliance with new regime (R.6)
- ❑ Rights issue and bonus shares (R. 7)
- ❑ Prohibition on investment (R. 8)
- ❑ Conditions for Overseas Investment (R. 9 to 15)
 - ❑ By Indian entity
 - ❑ By resident individual
 - ❑ By PRII other than two above
 - ❑ Registered Trust or Society
 - ❑ Mutual Funds or Venture Capital Funds or Alternative Investment Funds
 - ❑ clearing corporations of stock exchanges and clearing members
 - ❑ Domestic depositories
 - ❑ AD Bank
 - ❑ By PRII in IFSC
- ❑ Pricing guidelines (R. 16)
- ❑ Transfer of investment, liquidation - (R. 17)
- ❑ Restructuring (R. 18)
- ❑ Restrictions and prohibitions (R. 19)
- ❑ Contents of the regulations (R. 20)
- ❑ Acquisition and Transfer of immovable property outside India (R.21)
- ❑ Schedule I - Manner of making ODI by IE
- ❑ Schedule II: Manner of making OPI by IE
- ❑ Schedule III: Manner of OI by RI
- ❑ Schedule IV: OI by PRII other than IE and RI
- ❑ Schedule V: OI in IFSC by PRII

OI Regulations (12 Regulations) & OI Directions (4 Parts)

- ❑ Definitions (Reg. 2)
- ❑ FC by IE by modes other than equity capital, debt, guarantee, pledge or charge (Reg. 3 to 6)
- ❑ Acquisition or transfer by way of deferred payment (Reg.7)
- ❑ Mode of payment (Reg. 8)
- ❑ Obligations of PRII (Reg. 9)
- ❑ Reporting requirements for OI (Reg. 10)
 - ❑ The revised reporting forms and instructions for filling up the forms under the new regime provided in Part VIII of the Master Direction no. 18 on 'Reporting under Foreign Exchange Management Act, 1999' dated January 01, 2016.
- ❑ Delay in reporting and restriction on further FC or transfer (Reg. 11 & 12)
- ❑ Operational Instructions to AD Banks.
- ❑ Part I Definitions and associated details
- ❑ Part II - General Provisions
- ❑ Part III - Specific Provisions
 - ❑ FC by IE,
 - ❑ OI by RI,
 - ❑ OI by PRII other than RI and IE,
 - ❑ OI by PRII in IFSC
 - ❑ Acquisition or Transfer of Immovable Property outside India
- ❑ Part IV - Other operational instructions to AD Banks
- ❑ List of 52 circulars and ODI master direction superseded.



CONCEPTS UNDER THE NEW REGIME



Foreign entity- 1/2

- ❑ Entity formed or registered or incorporated outside India
 - ❑ Including IFSC
 - ❑ With limited liability
 - ❑ Means a structure where liability is clear and limited
 - ❑ FE being a regulated investment fund or vehicle set up as a trust outside India
 - Liability of the PRII should be clear and limited
 - Not exceeding the interest or contribution in the fund in any manner;
 - Trustee of such a fund shall be a PROI.
- ❑ Entity with core activity in Strategic Sector
 - ❑ Exemption from the condition of limited liability
 - ❑ ODI can be made in unincorporated entities as well.
- ❑ Components of strategic sector
 - ❑ energy and natural resources sectors such as oil, gas, coal, mineral ores;
 - ❑ submarine cable system;
 - ❑ start-ups; and
 - ODI in start-ups can be only from internal accruals from IE or group or associate companies
 - ODI in start-ups by RI can be from the own funds of the individual.
 - ❑ any other sector or sub-sector as deemed necessary by CG
- ❑ AD Banks to permit remittance only after IE has obtained requisite permission from competent authority

Foreign entity-2/2

- ❑ Should be engaged in *bona fide* business activity
 - ❑ Any business activity permissible under any law in force
 - ❑ in India and
 - ❑ host country or host jurisdiction.
 - Country or jurisdiction, including IFSC, in which FE is formed, registered or incorporated.
 - ❑ Structure of subsidiary/ SDS of FE should also comply with structural requirements of FE
 - ❑ Substitutes the concept of JV/WOS under the erstwhile regime.
- ❑ Prohibited sectors
 - ❑ Real estate activity
 - ❑ means buying and selling of real estate or trading in TDRs
 - ❑ but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.
 - ❑ Gambling in any form
 - ❑ Dealing with financial products linked to INR without specific RBI approval
 - ❑ non-deliverable trades involving foreign currency-INR exchange rates, stock indices linked to the Indian market, etc.

Overseas Direct Investment (ODI)

❑ In case of listed foreign entity

- ❑ Means FE with equity or fully & compulsorily convertible instrument listed on stock exchange outside India.

❑ Equity capital means equity shares, perpetual capital or instruments that are irredeemable or contribution to non-debt capital of FE in the nature of fully and compulsorily convertible instruments.

- ❑ Investment in 10% or more of paid-up equity capital;
- ❑ Investment less than 10% with Control.
- ❑ Once ODI, continues to be ODI despite holding falling below threshold.

❑ In case of unlisted foreign entity

- ❑ By way of acquisition
- ❑ By way of subscription to MoA

❑ Modes

- ❑ subscription to MOA
- ❑ purchase of equity capital, listed or unlisted.
- ❑ acquisition through bidding or tender procedure
- ❑ acquisition by way of rights issue or allotment of bonus shares
- ❑ capitalisation of amount due to the IE from FE
 - ❑ within the time period, if any, specified for realisation under the Act
 - ❑ the remittance of which is permitted under the Act or
 - ❑ does not require prior permission of the CG or RBI.
- ❑ swap of securities
- ❑ merger, demerger, amalgamation or any scheme of arrangement
 - ❑ as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

ODI in Financial Services Activity (FSA)

❑ FE to be engaged in FSA

- ❑ if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

❑ By IE engaged in FSA

- ❑ if posted net profits during preceding 3 FY;
 - ❑ If profits are not posted in 20-21 & 21-22 due to covid-19 impact, then results for such period may be excluded.
- ❑ If registered with or regulated by FSA regulator; and
- ❑ If approval obtained from FSA regulator in India and host country, as the case may be.
 - ❑ In case of investment in IFSC, FSA to decide within 45 days from the date of receipt of complete application.
 - ❑ Failing which, it will be deemed approved.
- ❑ Where IE is bank or non-banking financial institution
 - ❑ Conditions laid down by RBI also to be complied with.

❑ By IE not engaged in FSA

- ❑ ODI in FE engaged directly or indirectly in FSA
 - ❑ Except banking or insurance
- ❑ if posted net profits during preceding 3 FY;
 - ❑ If profits are not posted in 20-21 & 21-22 due to covid-19 impact, then results for such period may be excluded.
 - ❑ 3 year profit track record not needed where such investment in IFSC.
- ❑ If IE not engaged in insurance sector, ODI is permitted in general and health insurance
 - ❑ Where it is supporting the core activity undertaken overseas by the IE.
 - ❑ For instance, health insurance to support medical/hospital business, vehicle insurance to support the manufacturing/export of motor vehicles, etc.
- ❑ Position under erstwhile regime
 - ❑ No permission to IE not engaged in FSA
 - ❑ Capital adequacy norms compliance by IE
 - ❑ Unregulated entities in FSA could invest in non FSA only.

Overseas Portfolio Investment (OPI)

- ❑ Other than ODI
- ❑ Investment in foreign securities
 - ❑ Excludes investment in unlisted debt instruments
 - ❑ Debt instruments means
 - Government bonds
 - Corporate bonds
 - all tranches of securitisation structure which are not equity tranche;
 - borrowings by firms through loans; and
 - depository receipts whose underlying securities are debt securities;
 - ❑ Investment in Debt other than OPI to form part of FC
 - ❑ Excludes investment in security issued by a PRII
 - ❑ Unless in an IFSC
- ❑ OPI in listed entity to remain OPI even after delisting
 - ❑ Until further investment is made.
- ❑ Investment in units of any regulated investment fund overseas
 - ❑ Including sponsor contribution
 - ❑ Will be considered as OPI
 - ❑ In jurisdictions other than IFSC
 - ❑ Listed Indian companies and resident individuals permitted
 - ❑ In IFSC
 - ❑ Unlisted Indian entity also eligible in terms of Schedule V
- ❑ Any investment by MFs, VCF and AIFs will be considered as OPI.

Manner of making OPI

❑ Limit for OPI

- ❑ 50% of the net worth as on the date of its last audited balance sheet
 - ❑ Similar limit under earlier regime for portfolio investment by listed entities.
- ❑ For resident individuals - LRS limit

❑ Manner of making OPI

❑ Listed Indian Company

❑ Means equity listed Indian Company.

❑ Including by way of reinvestment.

- 'Reinvestment' means that the OPI proceeds are exempted from repatriation provisions as long as such proceeds are reinvested within the time specified for realisation and repatriation
- In FEMA (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.
- foreign exchange due or accrued as an income on assets held outside India, within 7 days from the date of its receipt.

❑ Unlisted Indian Company

- ❑ acquisition of equity capital by way of rights issue or allotment of bonus shares;
- ❑ capitalisation of amount due to the IE from FE
 - within the time period, if any, specified for realisation under the Act
 - the remittance of which is permitted under the Act or
 - does not require prior permission of the CG or RBI.
- ❑ the swap of securities;
- ❑ merger, demerger, amalgamation or any scheme of arrangement
 - as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

Financial Commitment (FC)

- ❑ Aggregate amount of investment made by PRII by way of
 - ❑ ODI
 - ❑ Debt other than OPI
 - ❑ In FEs in which ODI is made
 - ❑ Non-fund based facilities extended to FE
 - ❑ By way of corporate guarantee (100%)
 - Earlier, permitted only till first level SDS under Automatic Route.
 - Now, can be extended to any limit without RBI approval.
 - ❑ By way of performance guarantee (50%)
 - ❑ By way of bank guarantee (100%)
 - ❑ Value of the pledge or charge or the amount of the facility, whichever is less
 - Excluding cases where the facility has been availed by the Indian entity for itself.
- ❑ Conditions for FC by way of debt or non fund based commitment
 - ❑ IE is eligible to make ODI;
 - ❑ IE has made ODI in the FE;
 - ❑ IE has acquired control in the FE.
 - ❑ On or before making such FC.
 - ❑ Following not reckoned towards FC limit:
 - ❑ Negative pledge or negative charge by IE;
 - ❑ Bid-bond guarantee taken from AD Bank for participation in bidding or tender procedure for acquisition of FE.
- ❑ Overseas Investment (OI) = FC + OPI

Control

☐ Means

- ☐ the right to appoint majority of the directors; or
- ☐ to control management or policy decisions

☐ By a person

- ☐ acting individually; or
- ☐ acting in concert
 - ☐ Directly or indirectly

☐ By virtue of

- ☐ their shareholding; or
- ☐ management rights; or
- ☐ shareholders' agreements; or
- ☐ voting agreements that entitle them to 10% or more of voting rights; or
 - ☐ causing confusion.
 - ☐ Control under CA, 2013 only refers to voting agreements.
- ☐ in any other manner

☐ Relevance of establishment of control

- ☐ Ability to lend or invest in debt or undertake non-fund based commitment
- ☐ Identification of subsidiary/ step down subsidiary of FE
 - ☐ For IE, the test under CA, 2013 is relevant to determine subsidiaries.
- ☐ Impacts the modes of investment by resident individuals

☐ Major impact

- ☐ If RBI considers holding of 10% of voting rights as exercise of control, it will have far reaching effects.
 - ☐ This results in deviation from the usual interpretation.
 - ☐ Companies to ascertain if there are investments by JV/WOS that causes it to hold 10% or more of voting rights.
- ☐ Need for RBI to revisit.
- ☐ Control should be demonstrated either by way of
 - ☐ Right to appoint majority of directors; or
 - ☐ Control the management or policy decisions.

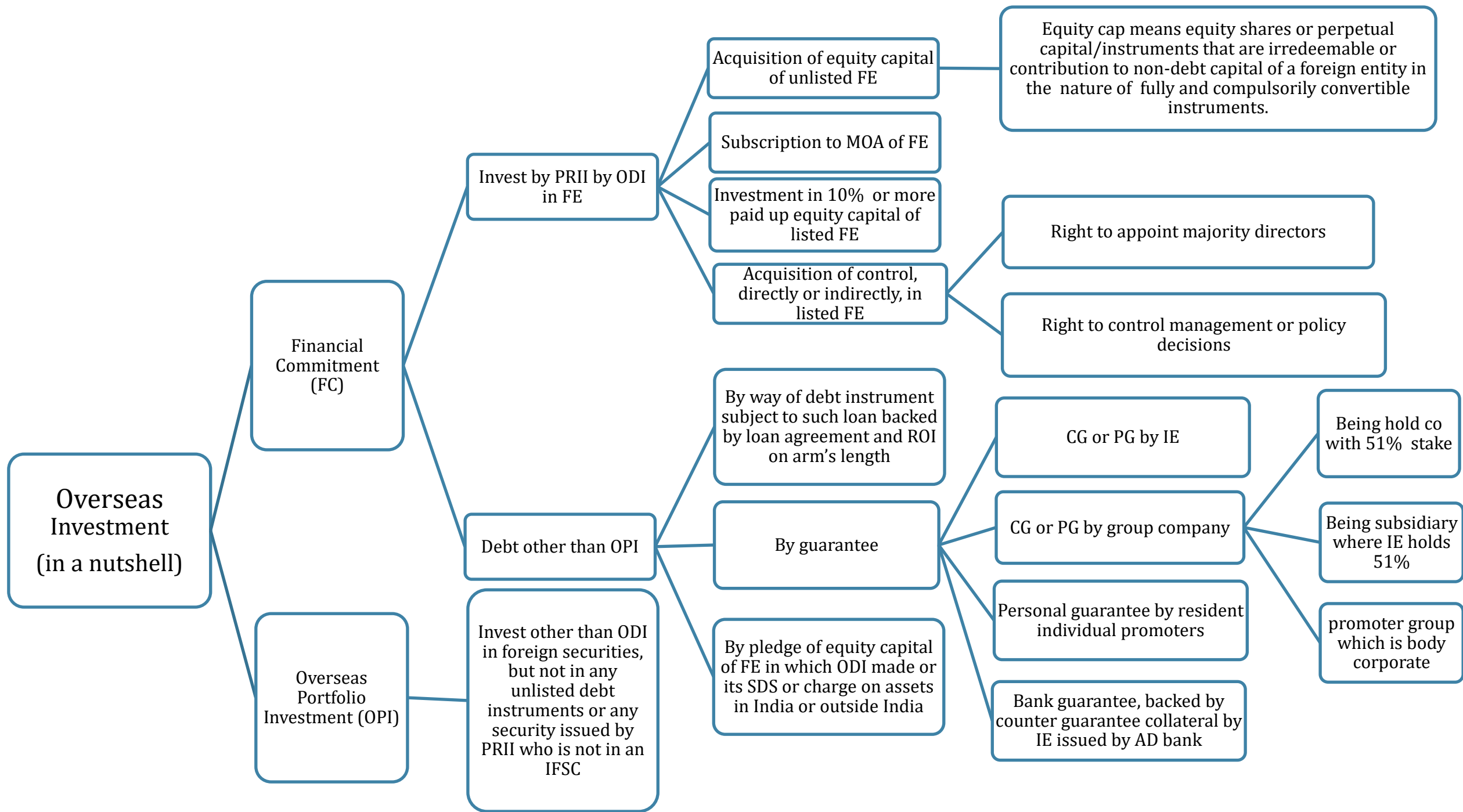
Limits on Financial Commitment by Indian Entity

- ❑ 400% of net worth of IE as on the date of the last audited balance sheet;
- ❑ FC exceeding USD 1 billion (or equivalent) in a FY shall require prior approval of RBI.
- ❑ Net worth as defined under CA, 2013
- ❑ Exemption to Maharatna or Navratna or Miniratna or subsidiaries of such PSU in FE engaged in strategic sectors.
- ❑ Exclusion for computation of limit
 - ❑ Capitalisation of retained earnings
 - ❑ Acquisition of bonus issue shall not be treated as fresh FC
- ❑ Inclusion for computation of limit
 - ❑ Utilization of the balances in the EEFC account;
 - ❑ Made after date of notification
 - ❑ Utilization of amount raised by issue of ADR/ GDR and stock swap of such receipts;
 - ❑ Made after date of notification
- ❑ Utilization of ECB proceeds
 - ❑ To the extent corresponding pledge or creation of charge on assets to raise, not already reckoned.
- ❑ Manner of tagging the FC limits in case of guarantee
 - ❑ If by group company eligible to make ODI - counted towards FC limit independently
 - ❑ Group Co means holding company (51% stake), subsidiary company (51% stake) or promoter group company, which is a body corporate.
 - ❑ Promoter group - as per SEBI (ICDR) Regulations, 2018.
 - ❑ Any fund based exposure to or from the IE to be deducted from net worth
 - ❑ If by resident individual promoter - counted towards FC limit of IE.
- ❑ Guarantees extended jointly and severally, by two or more IEs, 100% to be reckoned towards individual limits of each of such IEs

Other conditions for FC

- ❑ FC by way of debt
 - ❑ Loans should be backed by a loan agreement
 - ❑ Rate of interest to be charged on an arm's length basis
 - ❑ as if they were unrelated, to avoid conflict of interest.
- ❑ FC by way of guarantee
 - ❑ No guarantee to be open ended
 - ❑ Guarantee, to the extent invoked, shall cease to be part of the non-fund based commitment
 - ❑ Will be considered as lending.
 - ❑ In case of performance guarantee
 - ❑ 50% of the amount shall be reckoned towards FC limit.
 - ❑ Roll over of guarantee not treated as fresh FC
 - ❑ If the amount of roll over does not exceed original guarantee amount.
 - ❑ Other conditions for roll over under erstwhile regime, done away with.
- ❑ FC by way of pledge or charge
 - ❑ Summarised in next slide

Security by Indian entity	In whose favour	Facility availed	Amount reckoned towards financial commitment
A) Pledge the equity capital of the foreign entity /its SDS outside India.	AD bank or a public financial institution in India or an overseas lender.	Fund/non-fund based facilities for Indian entity.	Nil.
		Fund/non-fund based facilities for any foreign entity/its SDSs outside India.	The value of the pledge or the amount of the facility, whichever is less.
	A debenture trustee registered with SEBI in India.	Fund based facilities for Indian entity.	Nil.
B) Create charge on its assets (other than A above) in India [including the assets of its group company or associate company, promoter and / or director].	AD bank or a public financial institution in India or an overseas lender.	Fund/non-fund based facility for any foreign entity/its SDS outside India	The value of charge or the amount of the facility, whichever is less
	Overseas or Indian lender.	fund/non-fund based facilities for Indian entity.	Nil.
C) Create charge on the assets outside India of the foreign entity/ its SDS outside India.	An AD bank in India or a public financial institution in India.	Fund/non-fund based facility for any foreign entity/its SDS outside India.	The value of the charge or the amount of the facility, whichever is less.
		Fund/non-fund based facility for Indian entity.	Nil.
	a debenture trustee registered with SEBI in India.	fund based facilities for Indian entity.	Nil



ODI- FDI Structure or Round Tripping- Background – 1/2

- ❑ Erstwhile regime
 - ❑ Not regarded as a *bona fide* business activity
 - ❑ As per FEMA compounding orders.
 - ❑ RBI FAQs on ODI amended in May, 2019 prohibiting following under automatic route
 - ❑ IP to set up Indian subsidiary through JV/WOS; or
 - ❑ Acquisition of JV/WOS that had direct/ indirect investment in India
- ❑ Suggestion in the Report of the High Level Advisory Committee
 - ❑ Regarded it to stifle legitimate and *bona fide* business purposes
 - ❑ Considered technology, KYC and international coordination to alleviate such concerns
- ❑ Suggested condition for undertaking ODI in a structure which already has an FDI in India
 - ❑ Total value of existing FDI does not exceed 25% of the consolidated net worth of the FE in which ODI is being made; and
 - ❑ Any additional FDI should be allowed provided such funds are not directly or indirectly from India.
- ❑ Suggested condition for undertaking fresh FDI by entities where ODI made by IP
 - ❑ Total value of existing FDI does not exceed 25% of the consolidated net worth of the FE in which ODI has already been undertaken; and
 - ❑ Net worth of the FE should be atleast USD 10 million.

ODI- FDI Structure or Round Tripping- Background-2/2

- ❑ Suggested exemption to overseas listed companies
 - ❑ Those listed in FATF compliant jurisdictions;
 - ❑ With market capitalization of certain specified thresholds
 - ❑ To be permitted to invest in India, irrespective of PRII's shareholding.
- ❑ Draft rules for overseas investment
 - ❑ Prohibited FC by PROI in FE that invests or has invested in India
 - ❑ Designed for the purpose of tax evasion/ tax avoidance.
 - ❑ No restriction on bona fide business transactions resulting in FDI ODI structure.

ODI- FDI Structure or Round Tripping- Condition under the present regime

- ❑ Prohibition applicable only where it results in a structure of more than 2 layers of subsidiaries
 - ❑ Computation of layer will commence from the first FE.
 - ❑ Entity after FE will be layer 1
- ❑ Exemption to :
 - ❑ A banking company;
 - ❑ NBFC (systemically important, RBI registered)
 - ❑ Insurance company;
 - ❑ Government company.
- ❑ Determination of subsidiary
 - ❑ For Indian entity - as per Section 2 (87) of CA, 2013
 - ❑ For FE - on the basis of control
 - ❑ That refers to voting agreements entitling to 10% of voting rights.
 - ❑ Note given in Directions, 2022
- ❑ that subsidiary shall have the meaning as provided in the OI Rules i.e. an entity in which the foreign entity has control (**which includes a stake of 10% or more in an entity as per the OI Rules**).

ODI-FDI structures – some illustrations

a. If money doesn't come back to India despite several layers, there is no issue.

X Ltd -----> Y Inc -----> Z gmbh -----> A Pte -----> B FZ LLC = No restriction
Holds 51% Holds 51% Holds 51% Holds 51%

b. If money went overseas in a single layer outside and came back to India following with multiple layers in India

Case 1: X Ltd -----> Y Inc -----> Z Ltd -----> A Ltd = **No more Layers possible**
Holds 51% Holds 51% (L1) Holds 51% (L2)

Case 2: X Ltd -----> Y Inc -----> Z Ltd -----> A Ltd = **RBI to regard Z Ltd and A Ltd as SDS.**
Holds 51% Holds 10% (L1) Holds 10% (L2)
No more layers possible

OI by Resident Individuals

- ❑ Within the ceiling under the Liberalised Remittance Scheme
 - ❑ Limit of USD 2,50,000 per financial year
- ❑ ODI
 - ❑ in an operating FE, not engaged in FSA
 - ❑ Such FE should be without a subsidiary or SDS, where RI has control in the FE.
 - ❑ Exception, where ODI is pursuant to:
 - ❑ inheritance
 - ❑ acquisition of sweat equity shares
 - ❑ acquisition of minimum qualification shares issued for holding a management post in an FE
 - ❑ acquisition of shares or interest under ESOP or EBS
- ❑ OPI
 - ❑ Including by way of reinvestment.

Modes of OI by Resident Individuals

- ❑ capitalisation of amount due from FE
 - ❑ within the time period, if any, specified for realisation under the Act
 - ❑ the remittance of which is permitted under the Act or
 - ❑ does not require prior permission of the CG or RBI.
- ❑ the swap of securities on account of merger, demerger, amalgamation or liquidation;
- ❑ acquisition of equity capital by way of rights issue or allotment of bonus shares
- ❑ gift
 - ❑ from a relative, holding as per FEMA provisions; or
 - ❑ in accordance with FCRA
- ❑ inheritance
 - ❑ From PRII or PROI.
- ❑ acquisition of sweat equity shares
 - ❑ acquisition of less than 10% of equity capital, listed or unlisted, without control will be OPI
- ❑ acquisition of minimum qualification shares issued for holding a management post in an FE
 - ❑ acquisition of less than 10% of equity capital, listed or unlisted, without control will be OPI
- ❑ acquisition of shares or interest under ESOP or EBS
 - ❑ acquisition of less than 10% of equity capital, listed or unlisted, without control will be OPI.
 - ❑ RI who is employee or director of following
 - an office in India or
 - branch of an overseas entity or
 - a subsidiary in India of an overseas entity or
 - of an Indian entity in which the overseas entity has direct or indirect equity holding (through SDS or SPV)
 - ❑ may acquire, without limit, shares or interest under ESOP/ EBS or sweat equity shares offered by such overseas entity
 - If offered globally on a uniform basis.

ODI by Registered Trust/Society

- ❑ Permitted under RBI approval route
- ❑ Engaged in educational sector/ set up hospitals in India
 - ❑ Manufacturing was also permitted earlier.
- ❑ FE should be engaged in same sector
- ❑ Trust/ Society is registered
- ❑ Trust deed/ Society's MOA permits ODI
 - ❑ Approval of trustees in case of trust;
 - ❑ Approval of governing body or council or managing or executive committee in case of a Society
- ❑ Trust/ Society in existence for atleast 3 years
- ❑ Trust/ Society if requires special license or permission from MHA or CG or relevant local authority
 - ❑ Same should be obtained and submitted to AD Bank.

General Permission for OI by other PRII

- ❑ MFs, VCFs or AIFs
 - ❑ As stipulated by SEBI
 - ❑ Aggregate limit to be decided by RBI in consultation with CG
 - ❑ Individual limits by SEBI
 - ❑ Investment to be treated as OPI
- ❑ Clearing corporations of SE and clearing members
 - ❑ May acquire, hold and transfer foreign securities
 - ❑ Offered as collateral by FPIs
 - ❑ May open and maintain demat a/c with foreign depositories
 - ❑ Liquidate such foreign securities and repatriate proceeds
- ❑ Domestic depository
 - ❑ May acquire, hold and transfer foreign securities
 - ❑ Being underlying security to issue IDRs
 - ❑ As authorised by FE or its overseas custodian bank and person investing in IDRs.
- ❑ AD Bank including its overseas branch
 - ❑ May acquire, hold and transfer foreign securities
 - ❑ In accordance with terms of host country
 - ❑ In the normal course of banking business.

Pricing guidelines, transfers and disinvestments.

- ❑ Issue or transfer of equity capital of FE subject to arm's length pricing
 - ❑ PROI to PRII
 - ❑ PRII to PRII
 - ❑ PRII to PROI
- ❑ Certain transfers subject to approval of competent authority in India or host country
 - ❑ on account of merger, amalgamation or demerger; or
 - ❑ on account of buyback
- ❑ Liquidation of FE will be subject to approval of competent authority.
- ❑ Holding of any investment or transfer not permitted
 - ❑ If the initial investment was not permitted under the Act
- ❑ Conditions for disinvestment of ODI
 - ❑ The transferor must have stayed invested for at least 1 year
 - ❑ No dues outstanding from the FE, which the transferor is entitled to receive as investor in equity and debt.
 - ❑ Applicable in case of full disinvestment, other than by way of liquidation.
 - ❑ Condition not applicable in case of merger, demerger or amalgamation
 - ❑ between two or more foreign entities that are wholly-owned, directly or indirectly, by the IE; or
 - ❑ where there is no change or dilution in aggregate equity holding by the IE

Deferred payment of consideration

- ❑ Payment of consideration for ODI may be deferred by PRII
 - ❑ Deferment should be for a definite period
 - ❑ From the date specified in agreement
 - ❑ Should be decided upfront
 - No specific time limit.
 - ❑ Deferred part to be considered as non-fund based commitment
 - ❑ Security to be transferred upfront by the seller to buyer
 - ❑ Consideration payable to be compliant of applicable pricing guidelines
 - ❑ Valuation to be done upfront.
- ❑ Payment of deferred consideration in case of incorporation
 - ❑ Remittance for acquisition of equity capital may be made post subscription of MoA
 - ❑ Period to be defined in the underlying agreement/documents/applicable laws
 - Otherwise, remittance to be made on or before acquisition/ setting up.
- ❑ Subsequent payments to be reported in Form FC
 - ❑ As conversions from non-fund based FC to equity

Obligations of PRII in case of ODI

- ❑ Submission of share certificates/ relevant documents to AD Bank
 - ❑ Within 6 months
 - ❑ from the date of remittance
 - ❑ From the date dues were capitalized.
- ❑ UIN to be obtained from AD Bank
 - ❑ before sending outward remittance or acquisition of equity capital in a foreign entity,
 - ❑ whichever is earlier.
 - ❑ All transactions to be routed through same AD Bank
- ❑ Realize all dues and repatriate to India
 - ❑ Within 90 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.

Restructuring of balance sheet under erstwhile regime.

☐ Listed IE

- ☐ Holding atleast 51% stake in WOS or JV
- ☐ Write off
 - ☐ Capital (equity/preference);
 - ☐ other receivables
 - loans, royalty, technical know how, management fees
- ☐ Upto 25% of equity investment in JV/WOS
- ☐ Submission to AD Bank
 - ☐ Certified copy of B/S showing the loss in overseas JV/WOS
 - ☐ Projection for next 5 years indicating benefit accruing to IP consequent to such write off/ restructuring.
- ☐ To be reported to RBI
 - ☐ Within 30 days of WO/ restructuring.

☐ Unlisted IE

- ☐ Holding atleast 51% stake in WOS or JV
- ☐ Write off
 - ☐ Capital (equity/preference);
 - ☐ other receivables
 - loans, royalty, technical know how, management fees
- ☐ Upto 25% of equity investment in JV/WOS
 - ☐ Under approval of RBI

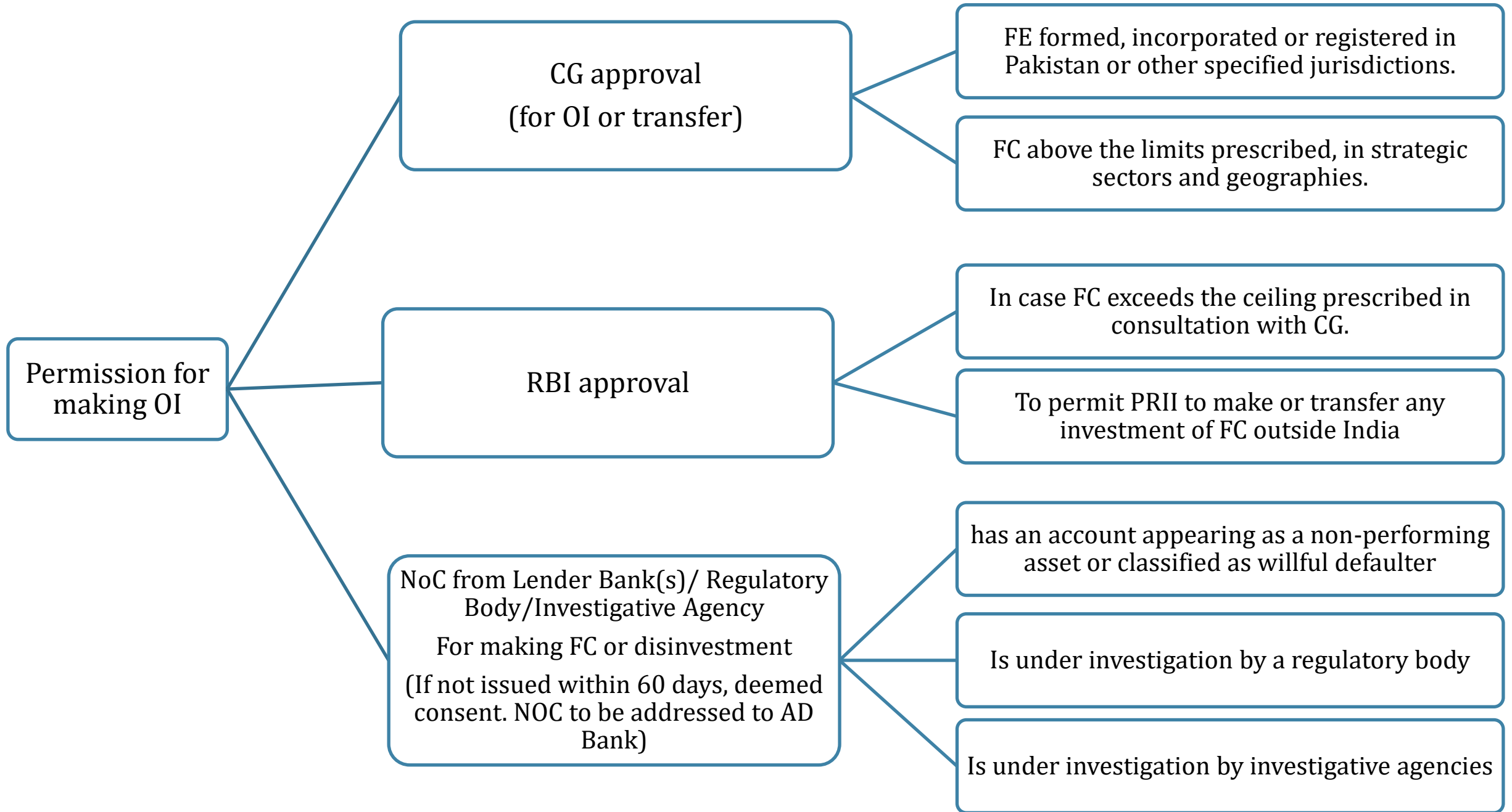
Restructuring of balance sheet under new OI norms

- ❑ Permitted for FE incurring losses for previous 2 years
 - ❑ As per last audited balance sheet
 - ❑ Subject to ensuring reporting, documentation compliance
- ❑ Diminution in the total value of the outstanding dues towards such PRII on account of investment in equity and debt, after such restructuring
 - ❑ should not exceed the proportionate amount of the accumulated losses
- ❑ Arm's length certification of diminution in value by registered valuer as per Act, 2013 or host jurisdiction, not older than 6 months before the date of transaction.
 - ❑ Where amount of original investment is more than USD 10 million; or
 - ❑ Where amount of such diminution exceeds 20% of total value of outstanding dues towards the IE



Approval Requirement







Reporting Requirement



Reporting requirements of FC/OPI

FC - at the time of sending outward remittance or making a financial commitment, whichever is earlier, in **Form FC**

OPI (investment/transfer) -within 60 days from the end of the half-year in which investment or transfer is made in **Form OPI**

Not applicable to resident individuals

In case of OPI pursuant to ESOP/EBS, reporting to be done as per Note 1.

Disinvestment (in Section G of **Form FC**)

Within 30 days of receipt of disinvestment proceeds

Restructuring (in Section F of **Form FC**)

Within 30 days from the date of such restructuring

Annual Performance Report for ODI in FE by PRII in **Form APR**

In case of Invst by more than one PRII, to be filed by the IE holding highest stake; in case of equal holdings, to be filed jointly.

Annual return on FLA by an IE which has made ODI in **Form FLA**

No reporting where holding is <10% without control or where foreign entity is under liquidation.

Note 1: Reporting by

- the office in India or
- branch of an overseas entity or
- Branch of 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.

Late Submission Fees (LSF) for delay in reporting

- ☐ LSF option available only for
 - ☐ Non-submission of evidence of investment within 6 months; or
 - ☐ Filing delays
- ☐ To be availed within a maximum period of 3 years from due date of such submission or filing
 - ☐ Any existing delays as on August 22, 2022 can be regularized by August 21, 2025
 - ☐ Else the person will be liable to penal actions.
- ☐ LSF to be paid within 30 days from the date of issue of advice
 - ☐ In case not paid and re-approached for payment for same delayed reporting
 - ☐ Date of receipt of such application will be considered for LSF computation afresh.
- ☐ LSF payable to RBI regional officer
 - ☐ Tagged in the UIN

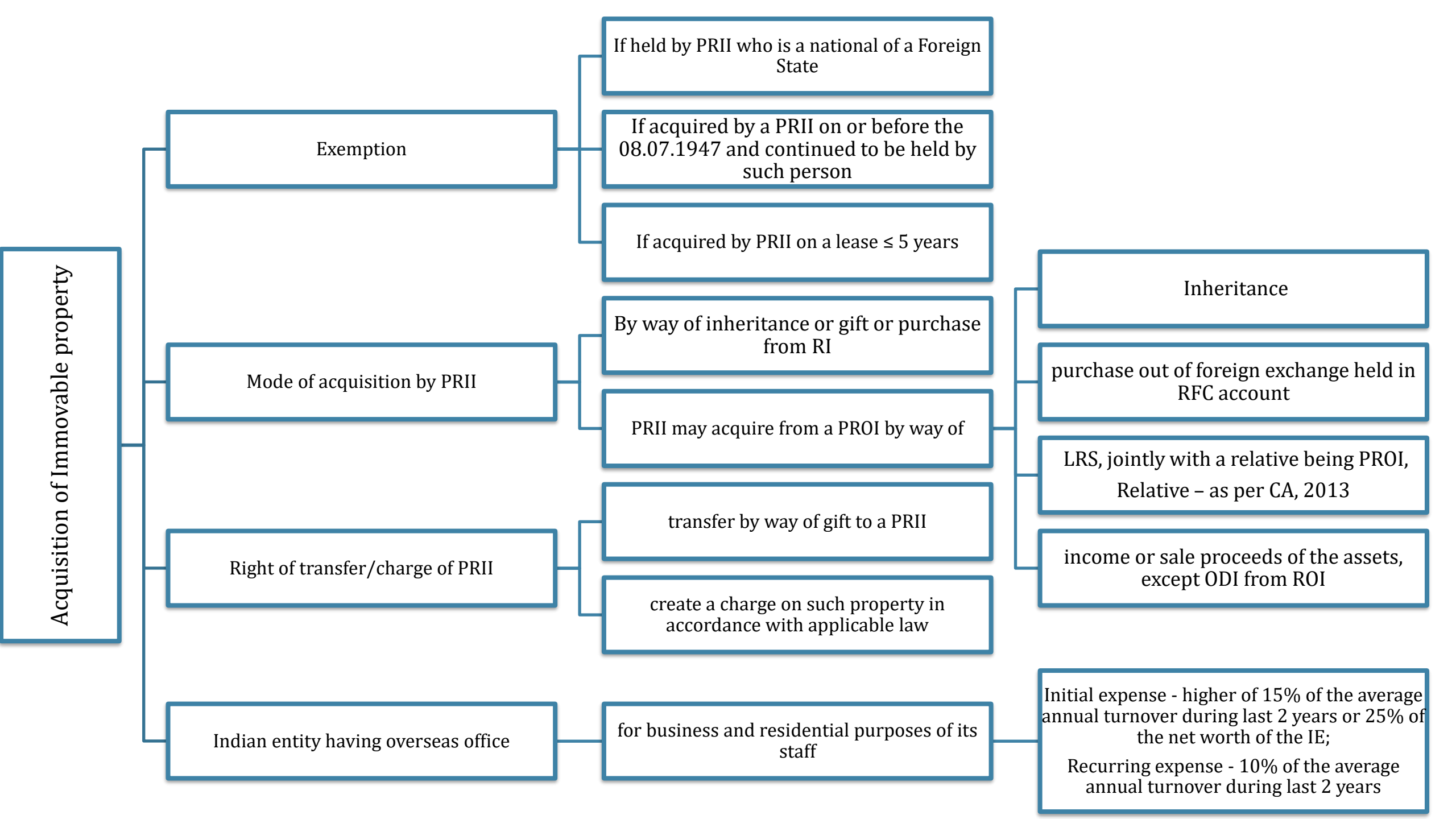
Sr. No.	Type of Reporting delays	LSF Amount (INR)
1	Form ODI Part-II/ APR, FLA Returns, Form OPI, evidence of investment or any other return which does not capture flows or any other periodical reporting	7500
2	Form ODI-Part I, Form ODI-Part III, Form FC, or any other return which captures flows or returns which capture reporting of non-fund based transactions or any other transactional reporting	$[7500 + (0.025\% \times A \times n)]$

- ☐ A = Amount involved in delayed reporting.
- ☐ n = number of years of delay rounded upwards to nearest month, upto 2 decimal points
- ☐ Maximum LSF will be limited to 100% of A.



Acquisition of immovable property







About EEFC and RFC account



Exchange Earner's Foreign Currency Account – EEFC Account

- ❑ Who can open – Exchange earners who is PRII
- ❑ Type of account – non-interest bearing account
- ❑ Withdrawal
 - ❑ permitted, amount withdrawn cannot be re-credited.
- ❑ Permitted credits
 - ❑ 100% of foreign exchange earnings by way of inward remittance through normal banking channel (except loans or investments);
 - ❑ payments received for the purpose of counter trade;
 - ❑ advance remittance towards export of goods or services;
 - ❑ Claims settled in rupees by ECGC/ insurance companies will not be an eligible credit.
 - ❑ professional earnings;
 - ❑ interest earned on the funds held in the account;
 - ❑ Re-credit of unutilised foreign currency earlier withdrawn;
 - ❑ repayment of trade related loans/ advances;
 - ❑ disinvestment proceeds received by resident account holder on conversion of shares held by him to ADRs/ GDRs; and
 - ❑ Payments received in foreign exchange by Indian startup arising out of sales/ export made by startup or its overseas subsidiaries.
- ❑ Permitted debits
 - ❑ Payment towards capital or current account transactions;
 - ❑ Payment towards cost of goods purchased from 100% EOU or Unit in EPZ/ Software Technology Park/ Electronic Hardware Technology Park;
 - ❑ payment of customs duty;
 - ❑ trade related loans/ advances;
 - ❑ payment in foreign exchange to PRII for supply of goods/ services
- ❑ Conversion in rupees
 - ❑ Accruals during the month to be converted on or before last day of next calendar month.
- ❑ Balance
 - ❑ Funded/ non-funded facilities not to be granted against balances
 - ❑ Exporters can repay packing credit advances from balances to the extent exports have actually taken place.
 - ❑ may be credited to NRE/ FCNR(B) Accounts, at the option of account holders upon change in status from RI to NRI.

Resident Foreign Currency Account – RFC Account

- ❑ Who can open – PRII
 - ❑ Can be held jointly with RI relative on 'former or survivor' basis. Such RI relative cannot operate the account during the life time of resident account holder.
- ❑ Permitted credits
 - ❑ Pension, superannuation benefits, other monetary benefits from his overseas employer;
 - ❑ by converting assets acquired by him when he was NRI or inherited from or gifted by PROI and repatriated to India;
 - ❑ before July 8, 1947 or any income arising or accruing thereon held outside India in pursuance of general or special permission granted by RBI;
 - ❑ received as proceeds of LIC claims/ maturity/ surrendered value settled in forex from an Indian insurance company permitted to undertake life insurance business by IRDAI.
 - ❑ Balance in NRE/ FCNR (B) Account can be credited when the status of NRI or PIO changes to that of RI.
- ❑ Permitted debits
 - ❑ Can be used for any permissible current/ capital account transactions.
- ❑ Balance
 - ❑ free from all restrictions regarding utilisation of foreign currency balances outside India.
- ❑ Withdrawal
 - ❑ permitted, amount withdrawn cannot be re-credited.



List of circulars repealed



List of the 53 circulars repealed – 1/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
1	<u>32</u>	February 09, 2005	Incorporates all amendments relating to overseas investment. The second one is a liberalisation in the ESOP scheme
2	<u>42</u>	May 12, 2005	Overseas Investment: Liberalisation
3	<u>14</u>	October 01, 2004	No RBI Permission for ADR/GDR linked ESOPs
4	<u>09</u>	August 29, 2005	Overseas Direct Investment in Bhutan
5	<u>29</u>	March 27, 2006	Overseas Investment – Liberalisation for guarantee, disinvestment and partnership concerns.
6	<u>30</u>	April 05, 2006	Overseas Investment – Liberalisation under ESOP scheme
7	<u>03</u>	July 26, 2006	Investment by Mutual Funds in Overseas Securities

List of the 53 circulars repealed – 2/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
8	<u>06</u>	September 06, 2006	Overseas Direct Investment by Regulated Entities in the Financial Sector- Additional conditions to be followed under Regulation 7 of Notification No. <u>FEMA120 / RB-2004</u> dated July 7, 2004
9	<u>41</u>	April 20, 2007	Rationalisation of Overseas Investment – Changes made in regulations relating to : a) Investment in a foreign security by swap or exchange of shares of an Indian company b) Pledge of shares of the overseas JV / WOS to an overseas lender
10	<u>49</u>	April 30, 2007	Overseas Investment by Venture Capital Funds (VCFs)
11	<u>50</u>	May 04, 2007	Clarification on Overseas Investment by Venture Capital Funds (VCFs) Circular no 49.

List of the 53 circulars repealed – 3/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
12	<u>59</u>	May 18, 2007	Investment by Navaratna Public Sector Undertakings (PSUs) in unincorporated entities in oil sector abroad
13	<u>68</u>	June 01, 2007	Overseas Direct Investment - Rationalisation of Forms and Reporting Forms and requirements.
14	<u>72</u>	June 8, 2007	Liberalisation of Investment by Mutual Funds in Overseas Securities
15	<u>75</u>	June 14, 2007	Liberalisation in relation to Overseas Investment.
16	<u>02</u>	July 19, 2007	Maintenance of collateral by FIIs for transactions in derivative segment- Opening of demat accounts by Clearing Corporations and Clearing Members
17	<u>11</u>	September 26, 2007	Overseas Direct Investment- Further Liberalisation pursuant to Circular No. 75

List of the 53 circulars repealed – 4/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
18	<u>12</u>	September 26, 2007	Liberalisation of Overseas Investment by Mutual Funds
19	<u>34</u>	April 03, 2008	Further liberalisation of overseas Investment in Mutual Funds.
20	<u>48</u>	June 03, 2008	Liberalisation of Overseas Investment in energy , oil and exports.
21	<u>53</u>	June 27, 2008	Overseas Direct Investment by Registered Trust / Society
22	<u>07</u>	August 13, 2008	Overseas Direct Investment by Registered Trust / Society, engaged in manufacturing / educational sector and satisfying the eligibility criteria
23	<u>14</u>	September 05, 2008	Overseas Investment – Rationalisation
24	<u>05</u>	July 22, 2009	Issue of Indian Depository Receipts (IDRs)

List of the 53 circulars repealed – 5/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
25	<u>36</u>	February 24, 2010	Overseas Investment Application - Online Reporting of Overseas Direct Investment in Form ODI
26	<u>45</u>	April 01, 2010	Liberalisation of OI in respect of companies to participate in a consortium with other international operators to construct and maintain submarine cable systems on co-ownership basis under the automatic route.
27	<u>69</u>	May 27, 2011	Liberalisation of OI in relation to guarantee, disinvestment and restructuring of balance sheet.
28	<u>73</u>	June 29, 2011	Consolidation of guidelines in relation to restating the various provisions relating to transfer by way of sales of a joint venture or wholly owned subsidiary (JV or WOS) outside India with and without write off
29	<u>96</u>	March 28, 2012	Liberalisation in relation to personal guarantee , charge creation , Fc without contribution to equity, etc.

List of the 53 circulars repealed – 6/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
30	<u>97</u>	March 28, 2012	Overseas Investments by Resident Individuals – Liberalisation / Rationalisation
31	<u>101</u>	April 02, 2012	To provide operational flexibility to the Indian party, it has been decided to liberalise the regulations pertaining to opening / holding / maintaining the Foreign Currency Account by Indian party outside India
32	<u>131</u>	May 31, 2012	Overseas Direct Investments by Indian Party - Online Reporting of Overseas Direct Investment in Form ODI
33	<u>133</u>	June 20, 2012	Annual return on Foreign Liabilities and Assets Reporting by Indian Companies – Revised format
34	<u>15</u>	August 21, 2012	Rationalisation of Form ODI
35	<u>25</u>	September 7, 2012	Overseas Investment by Indian Parties in Pakistan
36	<u>29</u>	September 12, 2012	Amending the guidelines relating to submission of Annual Performance Report (APR)

List of the 53 circulars repealed-7/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
37	<u>99</u>	April 23, 2013	Investment by Navratna Public Sector Undertakings (PSUs), OVL and OIL in unincorporated entities in oil sector abroad
38	<u>100</u>	April 25, 2013	Clarification on Overseas Investment
39	<u>08</u>	July 11, 2013	Overseas Investments – Shares of SWIFT
40	<u>23</u>	August 14, 2013	Reduction of limit for Overseas Direct Investment
41	<u>24</u>	August 14, 2013	Liberalised Remittance Scheme for Resident Individuals- Reduction of limit from USD 200,000 to USD 75,000
42	<u>41</u>	September 10, 2013	Amendment to the circular - <u>A. P. (DIR Series) Circular No. 69 dated May 27, 2011</u> on Overseas Direct Investment – Liberalization / Rationalization
43	<u>83</u>	January 3, 2014	Overseas Direct Investments – Rollover of Guarantees

List of the 53 circulars repealed – 8/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
44	<u>131</u>	May 19, 2014	Overseas Direct Investments – Limited Liability Partnership (LLP) as Indian Party
45	<u>01</u>	July 3, 2014	Financial Commitment (FC) by Indian Party under Overseas Direct Investments (ODI) – Restoration of Limit
46	<u>48</u>	December 09, 2014	Overseas Investments by Alternative Investment Funds (AIF)
47	<u>54</u>	December 29, 2014	Overseas Direct Investments by Indian Party – Rationalization / Liberalization with respect to creation of charge
48	<u>59</u>	January 22, 2015	Review of Direct Investments by proprietorship concern / unregistered partnership firm in India
49	<u>61</u>	April 13, 2016	Submission of Annual Performance Report
50	<u>62</u>	April 13, 2016	Rationalization and reporting of ODI Forms

List of the 53 circulars repealed – 9/9

Sr. no	A.P. (DIR Series) Circular No.	Date	Deals with
51	<u>28</u>	January 25, 2017	Prohibition on Indian Party from making direct investment in countries identified by the Financial Action Task Force (FATF) as “Non Co-operative countries and territories”
52	<u>04</u>	May 12, 2021	Sponsor Contribution to an AIF set up in Overseas Jurisdiction, including IFSCs
53	<u>RBI/FED/2015-16/10</u>	October 06, 2016	<u>FED Master Direction No. 15/2015-16</u> -Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad

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