

FAQs on Overseas Investment (OI)

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Preamble

Setting up subsidiaries, making investments outside India by an Indian company, LLP, resident individual or pooled investment vehicles is very common. As it results in creation of asset or liability outside India in favour of a person in India, it becomes a capital account transaction and is governed under the provisions of [Foreign Exchange Management Act, 1999](#) ('FEMA Act').

With the enforcement of amendment proposed in the Finance Act, 2015 in October, 2019, powers vested with the Central Government ('CG') and Reserve Bank of India ('RBI') w.r.t. permissible Capital Account Transaction were revisited. Power to frame rules relating to Non-Debt instruments ('NDI') was vested with CG, and regulations relating to debt instruments were vested with RBI. The scope of NDI, *inter alia*, covers all investment in equity instruments in incorporated entities: public, private, listed and unlisted; acquisition, sale or dealing directly in immovable property.

RBI, w.e.f. August 22, 2022, has combined erstwhile [FEMA \(Transfer or Issue of Foreign Security\) Regulations, 2004](#) ('erstwhile ODI regulations') and [FEMA \(Acquisition and Transfer of immovable property outside India\) Regulations, 2015](#) into [FEMA \(Overseas Investment\) Rules, 2022](#) ('OI Rules') and [FEMA \(Overseas Investment\) Regulations, 2022](#) ('OI Regulations') and the erstwhile regulations stand superseded. The [draft rules and regulations](#) were rolled out for public comments on August 9, 2021. Our article on the draft regulatory framework is available on our [website](#). RBI has also issued the compiled [FEMA \(Overseas Investment\) Directions, 2022](#) ('OI Directions') covering the operational requirements under OI Rules and OI Regulations along with guidance on the interpretation, grouping the requirements under three categories *viz.* general provisions, specific provisions and other operational instructions to the AD Banks. It also provides for certain compliance requirements from the erstwhile ODI Master Directions, not covered in OI Rules or Regulations.

In these FAQs, we have tried to collate all the compliance requirements applicable to the persons resident in India while making investments outside India including the conditions of making investments, approval and reporting requirements.

These FAQs can be read with our article/ presentation:

[Revised ODI Norms: A step towards greater clarity & liberalization?](#)

[Lost in Layers: lower threshold for subsidiaries under ODI norms raises concern](#)

[Presentation on Overseas Investment Norms](#)

Scope and Applicability

1. What is the scope of the OI Rules, OI Regulations and OI Directions on overseas investment?

OI Rules provide the regulatory framework for making overseas investment covering the permissions, conditions for making overseas investment, restrictions from making Overseas Direct Investment ('ODI') and Overseas Portfolio Investment, pricing guidelines, transfer, liquidation and restructuring of ODI. While the OI Rules have been framed by CG, however, the same will be administered by the RBI as per Rule 3(1).

OI Regulations, on the other hand, provide only the operational part covering conditions for undertaking Financial Commitment, investment in debt instruments, consideration in case of acquisition or transfer of equity capital of a Foreign Entity, mode of payment, obligations of Persons Resident in India ('PRII'), reporting requirements, consequence of delay in reporting and restrictions on further FC/ transfer.

OI Directions are in the form of instructions to AD Bank.

2. Who is required to comply with the amended norms?

Any person or entity making or transferring existing investments outside India, including in IFSC, in securities or in immovable property is required to comply with the amended norms. The exclusions are provided in [Q.4](#).

3. What is the effective date?

The effective date of revised OI norms is 22nd August, 2022.

4. Whether there is any exclusion or carve out in terms of the applicability?

The OI norms are not applicable in following cases:

- (i) Investments made in IFSC by a financial institution;
- (ii) Acquisition/ transfer of any investment outside India out of Resident Foreign Currency Account;
- (iii) Acquisition/ transfer of any investment outside India out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years;
- (iv) Acquisition or transfer of any investment outside India made in accordance with Section 6 (4) of FEMA Act i.e., where the investment in the foreign security or any immovable property situated outside India was acquired when the person was resident outside India or inherited from a person who was resident outside India.

5. Who is regarded as an Indian Entity ('IE')?

Indian Entity ('IE') means a company, body corporate, limited liability partnership and registered partnership firm.

6. What is meant by a Foreign Entity ('FE')?

FE means an entity which is formed with limited liability and incorporated/ registered outside India or in IFSC. An entity engaged in core activities in a strategic sector need not necessarily be a limited liability entity. For the purpose of making overseas investment, the FE should be engaged in bonafide business activity.

The structure of subsidiary or step-down subsidiary of FE should also comply with the structural requirement of an FE.

7. What is meant by bonafide business activity?

Bonafide business activity means any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be.

8. Which sector is regarded as a strategic sector?

Energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups are regarded as strategic sector. The CG can add any other sector or sub-sector in strategic sector.

9. What is meant by IFSC?

IFSC means an International Financial Services Centre set up, before or after the commencement of The International Financial Services Centres Authority Act, 2019, under section 18 of the Special Economic Zones Act, 2005 (28 of 2005).

10. What impact will the present provisions have on existing financial commitments made to JVs and WOS?

No impact on the existing positions. In terms of Rule 6 of OI Rules, existing investment or financial commitments outside India will be deemed to have been made under the OI Rules and Regulations. Any further financial commitment in the existing JV or WOS will be governed by the amended OI norms.

Concepts relating to Overseas Investment

11. What is meant by Overseas Investment?

Overseas Investment means Financial Commitment and Overseas Portfolio Investment ('OPI') by a PRII.

12. What are the components of Financial Commitment?

Financial Commitment includes the following:

- Investment made by PRII by way of Overseas Direct Investment,
- Debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made,
- Non-fund-based facilities extended by PRII to or on behalf of such foreign entity or entities.

13. What are the non-fund-based facilities that form part of FCs?

The term 'non-fund-based facilities' is not defined under OI norms. But as the name suggests, it means any kind of facility where there is no cash outflow on the part of IE such as loan, guarantee, pledge or charge, letter of comfort, etc.

14. What is meant by Overseas Direct Investment ('ODI')?

ODI means investment by way of:

- In case of listed foreign entity:
 - Investment in 10% or more of the paid-up equity capital of a listed foreign entity; or
 - Investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.
- In case of unlisted foreign entity:
 - Acquisition of unlisted equity capital of a foreign entity; or
 - Subscription as a part of the memorandum of association of a foreign entity.

15. What is meant by equity capital?

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

16. What is meant by non-debt instrument?

Non-debt instruments include:

- (i) all investments in equity in incorporated entities (public, private, listed and unlisted);
- (ii) capital participation in LLPs;
- (iii) all instruments of investment as recognised in the FDI policy from time to time;

- (iv) investment in units of AIFs, REITs and Invits;
- (v) investment in units of MF and ETF which invest more than 50% in equity;
- (vi) the junior-most layer (i.e., equity tranche) of securitisation structure;
- (vii) acquisition, sale or dealing directly in immovable property;
- (viii) contribution to trusts; and
- (ix) depository receipts issued against equity instruments.

17. What is meant by a listed foreign entity?

Listed foreign entity means a foreign entity whose equity shares or any other fully and compulsorily convertible instrument is listed on a recognised stock exchange outside India.

18. What is the meaning of ‘Control’?

Control means the right

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

exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their

- shareholding rights; or
- management rights; or
- shareholders’ agreements; or
- voting agreements that entitle them to 10% or more of voting rights; or
- in any other manner in the entity.

19. Whether the concept of ‘Control’ is the same as in the Companies Act, 2013?

Yes, except that there is no threshold given for voting agreements.

20. What is the relevance of concept of ‘Control’ in OI norms?

The concept of control is relevant for determining eligibility to invest in debt instruments or lend to or provide guarantee to or on behalf of the foreign entity of subsidiaries and for identifying subsidiary and step-down subsidiary (‘SDS’) of a listed foreign entity. It is also relevant for resident individuals making investment by way of ODI in operating foreign entity.

21. What is meant by Overseas Portfolio Investment (‘OPI’)?

OPI means

- investment (other than ODI) in foreign securities,
- investment in any security issued by an IFSC

and excludes

- Investment in any unlisted debt instruments,
- Investment in any security issued by a PRII.

22. What is meant by debt instrument?

Debt instruments include:

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by firms through loans; and
- (v) depository receipts whose underlying securities are debt securities.

23. What is Financial Service Activity (FSA)?

FSA means an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.

24. Which authority is regarded as Financial Sector Regulator?

Financial service regulator means a financial service regulator established under any law in force in India and includes RBI, SEBI, IRDAI and the Pension Fund Regulatory and Development Authority.

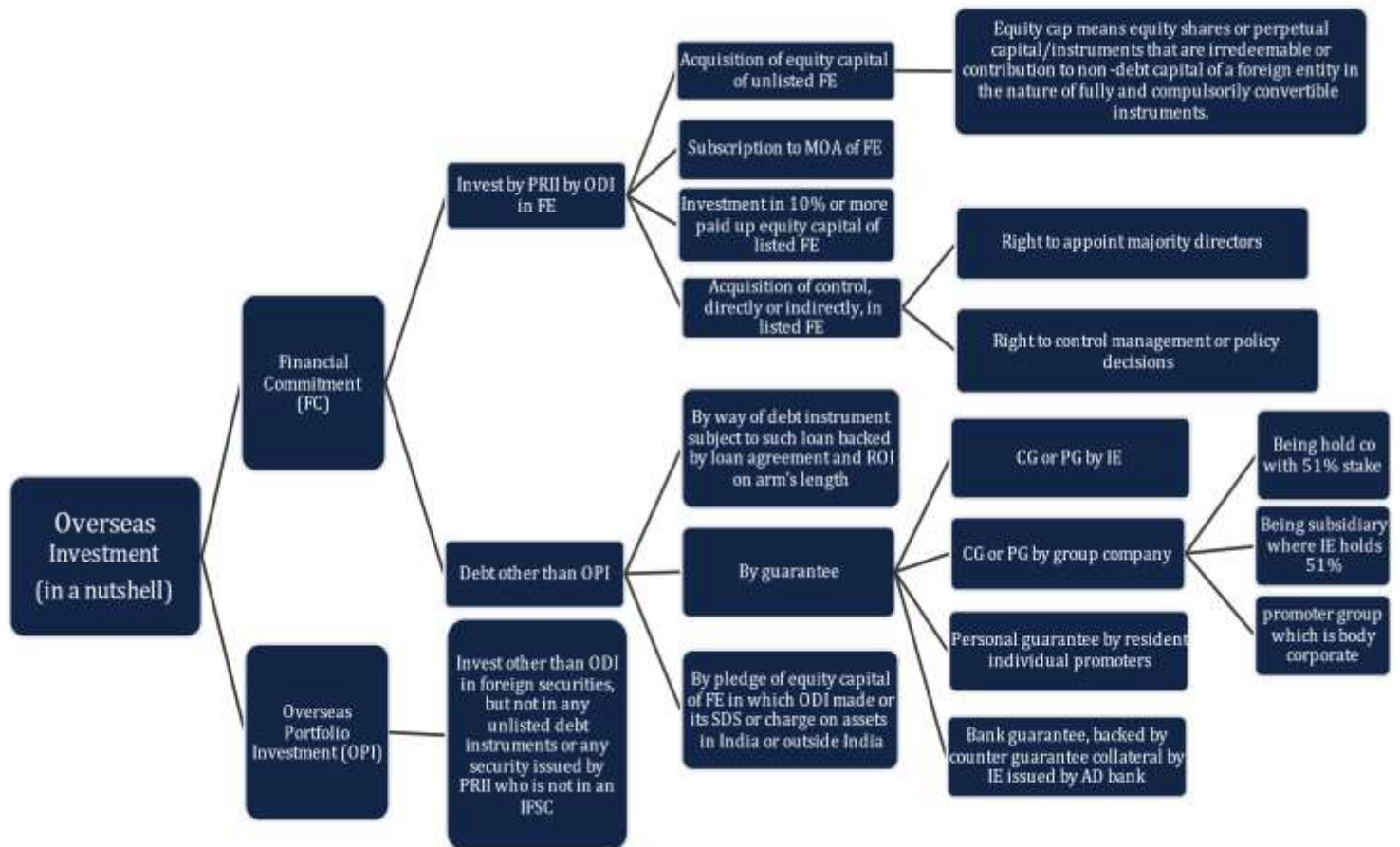


Figure: Overseas Investment (in a nutshell)

Conditions for making OI by IE

Manner of making ODI

25. What are the various modes of making ODI?

The various modes of making ODI is given under para 1(2) of Schedule I to the OI Rules. The ODI can be made by way of:

- (i) Subscribing to the memorandum of association or purchase of equity capital of listed or unlisted FE;
- (ii) acquisition through bidding or tender procedure;
- (iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;
- (iv) capitalization of any amount due towards the IE from the FE, subject to the following:
 - a. Such capitalization should be within the time period specified for realisation under the Act, if any;

- b. The remittance of which is permitted under the Act or does not require prior permission of the CG or RBI under the FEMA Act or any rules or regulations made or directions issued thereunder;
- (v) the swap of securities;
- (vi) 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.

26. What are the prohibited activities for ODI?

As per Rule 19 of OI Rules, the ODI cannot be made in FE which is engaged in the following activities:

- a. real estate activity;
- b. gambling in any form; and
- c. dealing with financial products linked to the Indian rupee without specific approval of RBI.

27. Which activities are covered under ‘real estate activity’?

‘Real estate activity’ means buying and selling of real estate or trading in Transferable Development Rights, but excludes development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

28. Is there any specific condition for making ODI in start-ups?

In terms of rule 19(2), any ODI can be made only in those start-ups which are recognized under the laws of the host country. In case the investment is being made by an IE, it shall be made only from the internal accruals whether from the IE or its group or associate companies in India. Where the investment is being made by resident individuals, it should be from own funds of such an individual.

A certificate, from statutory auditor in case of IE and chartered accountant in case of resident individual, will be required to be submitted to the AD Bank for facilitating the transaction.

Manner of making ODI in FSA?

29. Who is eligible to make ODI in FSA?

An Indian entity, whether engaged in FSA or not, is eligible to make ODI in FSA, subject to compliance of conditions discussed in later questions. A resident individual is eligible to make ODI in FSA if it is pursuant to following:

- (a) inheritance;
- (b) acquisition of sweat equity shares;
- (c) acquisition of minimum qualification shares issued for holding a management post in a foreign entity;

- (d) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme

In case of entity in IFSC, a resident individual can make ODI in a foreign entity engaged in FSA (except in banking and insurance). Where the resident individual has control in such entity, then it should not have subsidiary or step down subsidiary outside IFSC.

30. What are the conditions for making ODI by IE engaged in FSA?

An IE engaged in FSA can make ODI in FE, which is directly or indirectly engaged in FSA by after fulfilling the following conditions as given under para 2(1) of Schedule I:

- (i) the IE should have net profits during the preceding 3 FYs;
- (ii) the IE should be registered with or regulated by financial services regulator in India;
- (iii) the IE should have obtained requisite approvals financial services regulator, both in India and the host country for engaging in such financial services.

However, banks and non-banking financial institutions can make ODI in terms of the conditions laid down by RBI under applicable laws in this regard.

The summary of making ODI in FSA is given in [Annexure I](#).

31. What are the conditions for making ODI by IE not engaged in FSA?

An IE which is not engaged in FSA can make ODI in FE, which is directly or indirectly engaged in FSA, except banking or insurance, subject to the condition that such IE should have net profits in the preceding 3 FYs.

The summary of making ODI in FSA is given in [Annexure I](#).

32. Is there any relaxation or carve out from net profit requirement?

Yes, if the IE could not meet net profits during FY 2020-21 and 2021-22 due to the impact of Covid-19, then the financial results of such period can be excluded for considering the profitability period of 3 years.

For e.g., the IE earned net profit in FY 2018-19 and 2019-20 but incurred loss in FY 2020-21 and 2021-22, then the profit of FY 2019-20 will be considered.

33. What are the additional conditions for making ODI by banks under the Banking Regulation Act, 1949?

Under the provisions of Section 19(1) of the Banking Regulation Act, 1949, banks may form subsidiary companies for undertaking types of banking business which they are otherwise permitted to undertake [under Section 6 (1) (a) to (o) of the Banking Regulation Act, 1949],

carrying on the business of banking exclusively outside India and for such other business purposes as may be approved by the Central Government. Prior approval of the Reserve Bank of India is required to be taken by a bank to set up a subsidiary company.

34. What are the conditions for making ODI by NBFCs under the RBI Master Directions?

The NBFCs will be required to comply with Chapter XII of [Master Direction – NBFC-ND-SI \(Reserve Bank\) Directions, 2016](#) and Chapter X of [Master Direction – NBFC-ND-NSI \(Reserve Bank\) Directions, 2016](#) dealing with Opening of Branch/ Subsidiary/ Joint Venture/ Representative Office or Undertaking Investment Abroad by NBFCs.

35. Whether the NBFCs can make ODI in FE not engaged in FSA?

No, the NBFCs are prohibited from investing in non-FSA FEs in terms of the RBI Master Directions applicable to them.

36. What are the conditions for making ODI in insurance business?

An IE not engaged in FSA or insurance sector can make ODI only in health and general insurance, subject to the following conditions:

- a. such IE should have net profits in the preceding 3 FYs;
- b. such insurance business should support the core activity undertaken overseas by IE.

37. What are the additional conditions/ relaxations for making ODI in IFSC?

For IE engaged in FSA making ODI in IFSC – the approval by concerned financial services regulator shall be decided within 45 days from the date of application complete in all respects, failing which it shall be deemed to be approved.

For IE not engaged in FSA making ODI in IFSC – the requirement of net profit given under para 2(2) of Schedule I (refer [Q.31](#)) will not apply.

The summary of making ODI in FSA is given in [Annexure I](#).

38. What is the limit for making ODI?

Kindly refer to [Q.39](#) for the limit on FC.

Financial Commitment by IE

39. What is the limit for FC?

The total FC made by IE in **all the FEs taken together** at the time of undertaking such FC shall not exceed 400% of the net worth of IE as on the date of the last audited balance sheet.

40. Which amounts will be included for reckoning the limits of FC?

Following shall be included for reckoning the limit of FC:

- (i) utilisation of amount raised by issue of ADR or GDR and stock-swap of such receipts;
- (ii) utilisation of proceeds from External Commercial Borrowings to the extent the corresponding pledge or charge created on assets to raise such borrowings has not already been reckoned towards the above limit;
- (iii) utilisation of balances held in EEFC account.

41. Which amounts will be excluded for reckoning the limits of FC?

Capitalisation of retained earnings will be excluded for reckoning the limits of FC.

42. Which class of companies are exempted from the applicability of limits of FC?

If the ODI is made by Maharatna, Navratna, Miniratna and its subsidiaries in the FEs engaged in **strategic sectors**, then the limits of such FC shall not apply to them.

43. What are the various modes of making FC other than by way of ODI?

The IE can make FC by way of the following:

- (i) Lending to FE;
- (ii) Investing in any debt instrument issued by FE;
- (iii) Extending non-fund-based facility to or on behalf of FE including overseas SDS.

44. What are the conditions for making FC other than by way of ODI?

Following are the conditions for making FC other than by way of ODI:

- (i) the IE should be eligible to make ODI;
- (ii) the IE has made ODI in such FE;
- (iii) the IE has acquired control in such FE at the time of making such FC.

45. What are the conditions for making FC by way of loans?

An IE can make FC may way of lending or investing in the debt instruments issued by FE subject to the condition that such loans should be duly backed by a loan agreement and the rate of interest shall be charged on an arm's length basis.

46. What are the conditions for making FC by way of guarantee?

The entity extending guarantee should be eligible under OI Regulations. It can either be the Indian entity or resident individual promoter (provided the IE is a part of the promoter group) or holding company (that holds atleast 51% in the IE) or a subsidiary in which IE holds atleast 51% or a group company. Further, the guarantee cannot be open ended.

47. What are the various forms of guarantee which may be issued as a part of FC?

The following guarantees may be issued to or on behalf of the FE or any of its SDS in which the IE has acquired control through FE:

- (i) corporate or performance guarantee by IE;
- (ii) corporate or performance guarantee by a group company of such IE;
- (iii) personal guarantee by the resident individual promoter of such IE;
- (iv) bank guarantee, which is backed by a counter-guarantee or collateral by IE or its group company and issued by a bank in India.

48. Which entities form part of group companies?

Holding company, subsidiary company and a promoter group company forms part of group companies.

49. Whether guarantee can be issued to any SDS of FE irrespective of its level?

In terms of the erstwhile regulations, giving of guarantee to an entity beyond the first level step down subsidiary required RBI approval. Under the new regime, guarantee can be extended to any SDS of FE if the IE has control over such FE.

50. Whether the guarantee can be issued for an indefinite period?

No, the guarantee can be issued for a specific tenure. It should not be open ended.

51. Whether roll over of guarantee is permitted? Is it covered in FC?

Yes, the rollover of guarantee is permitted under the OI norms. If the amount of roll over does not exceed the amount of original guarantee, it will not be covered in FC. If the same exceeds the amount of original guarantee, the excess amount will be considered in FC.

52. In case of guarantee issued by a group company, how will the FC limit be computed?

In case of guarantee issued by a group company, it will be counted towards the utilisation of its FC limit independently. Further, any fund-based exposure to or from the IE will be deducted from the net worth of such group company for computing its FC limit.

53. In case of guarantee issued by a resident individual promoter, how will the FC limit be computed?

In case of guarantee issued by a resident individual promoter, it will be counted towards the FC limit of the IE. Further, if the guarantee is issued by a promoter which is a body corporate or an individual, the IE shall be a part of the promoter group.

54. In case the guarantee is extended jointly or severally by two or more IEs, how will the FC limit be computed?

In case the guarantee is extended jointly and severally by two or more IEs, 100% of the amount of such guarantee will be reckoned towards the individual limits of each of such IEs.

55. In case of performance guarantee, how is the FC limit computed?

In case of performance guarantee, 50% of the amount of guarantee shall be reckoned towards FC limit.

56. In case of invocation of guarantee, what will be the impact on FC?

In case of invocation of guarantee, it will cease to be a part of non-fund-based commitment, but will be considered as lending.

57. What is the manner of computing FC limit in case of pledge?

If the non-fund-based facility is being availed for the FE or its SDS, the value of pledge/ charge or the amount of facility, whichever is less, shall be reckoned as FE, whereas, if the facility is being availed by the IE, it will not be treated as IE.

The same is summarized below:

Security by IE	In favour of	Facility availed for	Amount reckoned for FC
Pledge of equity capital of FE or SDS	AD bank or PFI in India or overseas lender	IE	Nil
		FE/ its SDS	Value of pledge or amount of facility, whichever is less.
	Debenture trustee registered with SEBI	IE	Nil
Charge on assets in India (including assets of group company, associate company, promoter, director)	AD bank or PFI in India or overseas lender	IE	Nil
Charge on assets in India (including assets of group company, associate company, promoter, director)		FE/ its SDS	Value of pledge or amount of facility, whichever is less.
Charge on assets of FE/ its SDS outside India	AD bank or PFI in India or overseas lender	IE	Nil
		FE/ its SDS	Value of pledge or amount of facility, whichever is less.

Security by IE	In favour of	Facility availed for	Amount reckoned for FC
	Debenture trustee registered with SEBI	IE	Nil

58. What are the additional conditions for pledge?

The additional conditions for pledge under OI norms are:

- The overseas lender in whose favour such pledge/ charge is created shall not be from any country or jurisdiction in which FC is not permissible under the OI Rules;
- The creation/ enforcement of such pledge/ charge shall be in accordance with the FEMA Act or rules or regulations made, or directions issued thereunder;
- The assets on which charge is being created should not be securitised;
- The period of charge, if not specified upfront, shall be the same as the period of facility for which charge has been created;
- In the event of enforcement of charge created on domestic assets, such domestic assets shall be transferred by way of sale to PRII only.

59. Are there any specific conditions for pledge of shares of IE?

Yes, the pledge of shares of IE in favour of an overseas lender shall be in compliance with FEMA (Non-Debt Instruments) Rules, 2019 ('NDI Rules') as detailed below:

- the period of such pledge shall be co-terminus with the maturity of the underlying facility;
- in case of invocation of pledge, transfer shall be made in accordance with entry routes, sectoral caps or investment limits, pricing guidelines and other attendant conditions at the time of creation of pledge, given under the NDI Rules;
- the statutory auditor should certify that the borrowing company shall utilise or has utilised the proceeds of facility for the permitted end-use only;
- NOC shall be obtained from an AD bank that the above conditions have been complied with.

ODI-FDI structure

60. What was the requirement under the earlier regime?

In the past, as provided in a [FEMA compounding order](#) of 2016, receipt of FDI under an ODI transaction was regarded as violation of Regulation 6 (2) (ii) of erstwhile FEMA (Transfer or Issue of any Foreign Security) Regulations, 2004 as that was not regarded as a bona fide business activity. In another compounding order of 2019, RBI regarded the ODI-FDI structure in contravention of Regulation 5 (1) of erstwhile FEMA (Transfer or Issue of any Foreign Security) Regulations, 2004 as the investment was not in accordance with the Regulations and made without RBI approval.

Around May 2019 RBI had inserted a critical requirement in its FAQs on ODI that prohibited an India Party to set up an Indian subsidiary(ies) through its foreign WOS or JV and also prohibited an Indian Party to acquire a WOS or invest in JV that already had direct/indirect investment in India under the automatic route.

61. What is the requirement under the amended norms?

Under the amended norms, the prohibition is applicable only where it results in a structure with more than two layers of subsidiaries.

62. From which level the layer is to be computed?

From which level the layer is to be considered has not been expressly provided, however, it seems that the entity after the foreign entity should be the first layer as the investment in the foreign entity is direct.

63. Whether any exemption or carve out exists for certain class of companies?

The exemption is provided to the following entities covered under Rule 2 (2) of Companies (Restriction on Number of Layers) Rules, 2017:

- (i) A banking company as defined in clause (c) of section 5 of the Banking Regulation Act 1949;
- (ii) A non-banking financial company as defined in clause (f) of Section 45I of the RBI Act, 1934 which is registered with the RBI and considered as systematically important non-banking financial company by the RBI;
- (iii) An insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 and the Insurance Regulatory Development Authority Act, 1999;
- (iv) A Government company referred to in clause (45) of section 2 of the Act.

64. Whether the restriction of layers is applicable in case of subsidiaries incorporated only outside India?

No. The restriction is attracted only where the financial commitment is being made in an FE that has invested or invests in India. It will be ascertained at the time of making financial commitment or any time thereafter. There seems to be no restriction in one-directional trip of money outside India irrespective of the opacity it results through multiple layers. It is only in case of round tripping that the restriction kicks in.

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%

- (iii) the swap of securities;
- (iv) 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.

69. What are the modes of making OPI by listed entity?

A listed Indian company may make OPI, including by way of reinvestment, in accordance with schedule II of the OI Rules.

‘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 as per [Notification No. FEMA 9\(R\)/2015-RB](#) namely, Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.

The time specified for realization and repatriation are:

- a. Where the amount due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift - within 7 days from the date of its receipt;
- b. in all other cases within 90 days from the date of its receipt.

70. In which securities/ instruments OPI cannot be made?

As per sub-clause (a) of clause (ix) of para 1 of part I of the OI Directions, OPI cannot be made in the following:

- (i) any unlisted debt instruments; or
- (ii) any security which issued by a PRII who is not in an IFSC; or
- (iii) any derivatives unless otherwise permitted by RBI; or
- (iv) any commodities including Bullion Depository Receipts (BDRs).

71. What are the limits for making OPI?

The maximum limit of making OPI is 50% of the net worth of IE as on the date of its last audited balance sheet.

72. What will be the impact of exceeding the limit or making investment in the given modes?

The same will be included in FC limit of 400% of net worth.

Acquisition by way of rights issue/ bonus issue

73. Whether a general permission exists for acquisition of shares pursuant to rights issue?

Yes, OI rules grant general permission to PRII India who already hold equity shares of the FE to acquire further shares through rights issue. The OI rules also allow the PRII to renounce the shares in favour of a PRII or a PROI.

74. Whether a general permission exists for acquisition of shares pursuant to bonus issue?

Yes, OI rules grant general permission to PRII who already hold equity shares of the FE to acquire further shares through bonus issue.

75. Whether acquisition of shares through rights or bonus issue will be considered as FC?

The acquisition of shares through rights issue will be considered as FC, however, acquisition through bonus issue will not be treated as fresh FC.

76. What are the reporting requirements in case of acquisition through rights or bonus issue?

The acquisition of shares through rights issue will be reported in Form FC. However, the renouncement of rights will not require reporting. Similarly, since acquisition through bonus issue is not a fresh FC, it will not require any reporting.

Acquisition through bidding or tender procedure

77. What is the procedure/ conditions for remittance of funds for acquisition of FE through bid or tender?

A PRII can remit the funds in the following two ways:

- (i) Apply to AD bank by filing Form A2 which will allow remittance towards earnest money deposit
- (ii) Obtain a bid bond guarantee from AD bank for participation in bidding or tender procedure.

On winning the bid, the PRII will file Form FC with AD bank which will facilitate further remittances to the FE.

78. What will be the actionables if the PRII loses the bid?

If the PRII does not win the bid, it shall repatriate the amount remitted in accordance with Para 6 of FEMA ([Realisation, Repatriation and Surrender of Foreign Exchange](#)) Regulations, 2015 i.e., within a period of 60 days from the date of purchase/ acquisition of such amount from the AD bank.

Approval requirements

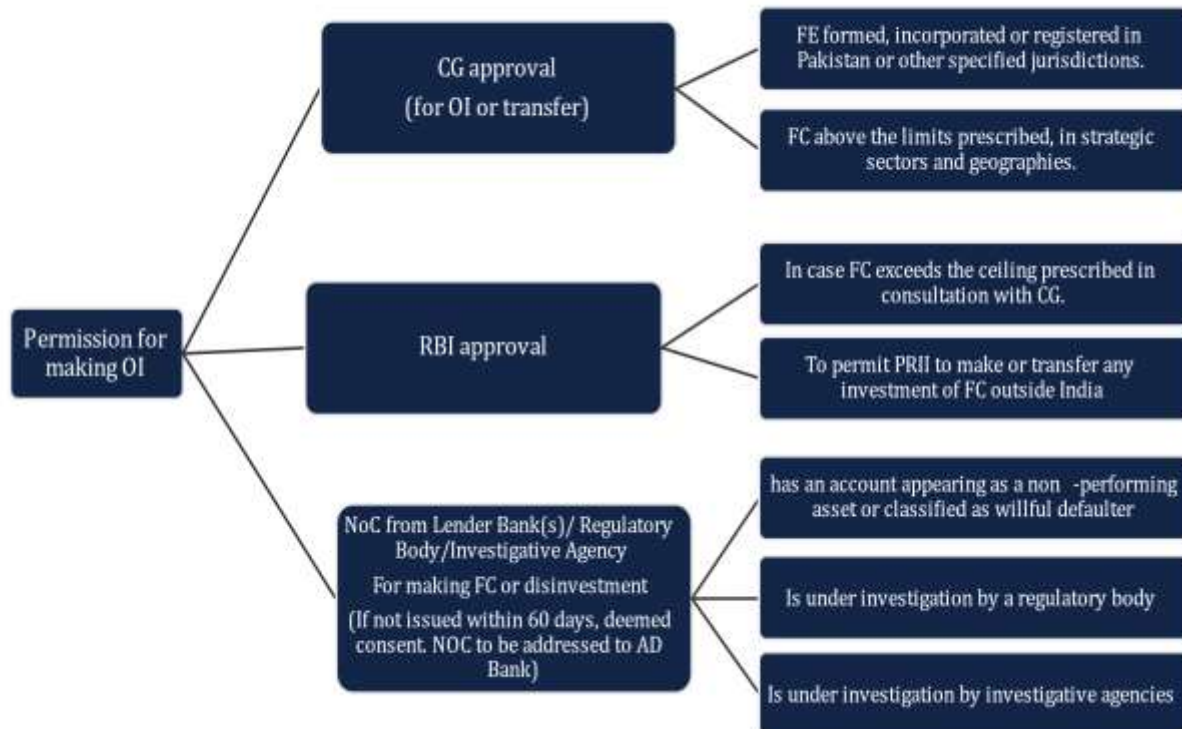


Figure: Approval requirements

79. Whether any approval is required from CG to make OI?

In general, approval from CG is not required to make OI except for following:

- For making FC beyond the limits i.e. 400% of net worth in strategic sectors or geographies;
- For making overseas investment/financial commitment in Pakistan/other jurisdiction as may be advised by the Central Government.

80. What is the process of obtaining approval from CG? (para 3.3. of OI Directions)

The applicant who is intending to make FC shall file Form FC. The applicant shall also approach the AD bank who shall forward the details of the proposal to RBI along with its observations and specific recommendations. The RBI shall forward the same to CG.

81. Which documents are required to be submitted along with the proposal to RBI?

Following documents will be required to be submitted:

- Background and brief details of the transaction;
- Reason(s) for seeking approval mentioning the extant FEMA provisions;

- Observations of the AD bank w.r.t. the following:
 - Prima facie viability of the FE;
 - Benefits which may accrue to India through such investment;
 - Financial position and business track record of the IE and FE;
 - Any other material observation;
- Recommendations of the AD bank with confirmation that the applicant's board resolution, for the proposed transaction is in place;
- Diagrammatic representation of the organizational structure indicating all the subsidiaries of IE horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV);
- Valuation certificate for FE (if applicable);
- Other relevant documents properly numbered, indexed and flagged.

82. Whether any approval is required from RBI to make OI?

Under automatic route, approval from RBI is not required except in case where FC by an IE exceeds USD 1 billion in a financial year even though the total FC is within the limits allowed under automatic route.

83. Whether there is any requirement to obtain NOC for making OI?

The following persons shall be required to obtain NOC for making OI:

- Whose account is appearing as a non-performing asset;
- Who is classified as a wilful defaulter by any bank;
- Who is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation (CBI) or Directorate of Enforcement (ED) or Serious Frauds Investigation Office (SFIO).

Other obligations of IE for making ODI

84. Whether the proof of investments is required to be submitted to AD bank?

Yes, any document which is evidence of investment in a foreign entity e.g., share certificate, etc. is to be submitted to AD bank within 6 months from the date of effecting remittance or the date on which the dues to FE are capitalized or the date on which the amount due was allowed to be capitalized, as the case may be.

85. When should the UIN be obtained?

The UIN shall be obtained before sending outward remittance or acquisition of equity capital in a FE, whichever is earlier.

86. Whether OI can be made in an FE by different AD bank?

Before making ODI, the applicant has to obtain UIN from RBI for making investments in FE. The UIN is FE specific, therefore investments made by different investors has to be reported through same UIN. The person making investment shall designate AD bank and shall route all the transactions for a particular UIN through that AD bank only.

87. What is the timeline to realise and repatriate the dues from the FE?

All dues receivable from the FE is to be realized and repatriated to India within 90 days from the date when such receivables fall due.

Transfer/ liquidation/ disinvestment/ restructuring of OI

88. What are the conditions for transfer of equity capital by IE?

In case the transferee is a PRII, such person should be eligible to make investments as per OI norms. In case the transferee is a person resident outside India there are no conditions.

89. What kind of transfers will require approval of competent authority in India or host country?

Transfers in the following cases shall require approval of competent authority in India or host country:

- Merger,
- Amalgamation,
- Demerger,
- Buyback, and
- Liquidation.

90. Whether there is any carve-out from the approval requirements?

Under two circumstances the approval shall not be required:

- In case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or indirectly, by the Indian entity &
- There is no change in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

91. What are the conditions for disinvestment by IE?

There are two conditions for disinvestment by IE:

- The IE must not have any outstanding dues from foreign entity as an investor in equity capital and debt;
- The IE must have remained invested for at least one year from the date of making ODI

92. What is the consequence of making initial investment in contravention of OI norms?

As a consequence of making initial investment in contravention of OI norms, the holding of any investment or transfer thereof shall not be permitted.

93. Whether restructuring of balance sheet of FE is under approval route?

Erstwhile regime

1. Under the erstwhile regime, restructuring of balance sheet was under the approval route.
2. A listed IE, having a WOS or holding 51% stake in overseas JV, could write off the capital (i.e., equity/preference shares) and other receivables (such as loans, royalty, technical know-how fees and management fees) in respect of the JV/WOS upto 25% of the equity investment in the JV WOS.
3. The listed IE was required to make an application to the AD Bank and submit the following documents:
 - (i) A certified copy of the balance sheet showing the loss in the overseas JV/WOS set up by the Indian Party; and
 - (ii) Projections for next five years indicating benefit accruing to the Indian Party consequent to such write off/restructuring.
4. The listed IE was required to report such write-off/ restructuring to RBI through the AD Bank within 30 days of such write-off/ restructuring.
5. In case of an unlisted IE, it was permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS under the Approval Route.

New regime

1. Under the new regime, the restructuring of balance sheet does not require any kind of approval.
2. The IE may permit restructuring of the balance sheet of FE, subject to the following conditions:
 - a. The FE should have incurred losses for the previous two years as evidenced by its last audited balance sheets;
 - b. the IE should ensure compliance with reporting, documentation requirements
 - c. the diminution in the total value of the outstanding dues towards IE on account of investment in equity and debt, after such restructuring should not exceed the proportionate amount of the accumulated losses.
 - In case the amount of original investment is more than USD 10 million or the amount of diminution exceeds 20% of the total value of the outstanding dues towards the IE, then the arm's length certification for diminution in value will be required by the registered valuer under Companies Act, 2013 or corresponding valuer registered with the regulatory authority or certified public accountant in the host jurisdiction.

- Such certificate should not be older than 6 months from the date of transaction and should be submitted to the AD bank.
 - Such certificate should mention the following:
 - amount of accumulated losses as per the audited balance sheet of FE,
 - the proportionate amount of accumulated losses based upon the share of the IE,
 - the amount of diminution in the value of the outstanding dues towards the IE post restructuring
 - that such diminution does not exceed the proportionate amount of accumulated losses.
3. The aggregate investment in both equity and debt of the FE should be taken into consideration for computing the proportionate amount of accumulated losses. However, in case the restructuring involves only equity, investment only in equity may be taken into consideration.
4. The IE should report the restructuring to RBI through AD Bank within 30 days of such restructuring in Form FC (Section F).

94. Is there any condition for diminution in total value of outstanding dues?

The diminution in the total value of the outstanding dues towards person resident in India on account of investment in equity and debt, after such restructuring shall not exceed the proportionate amount of the accumulated losses.

95. Whether every diminution requires arm's length certificate?

No, arm's length certificate is required only in following two cases;

- The amount of corresponding original investment is more than USD 10 million or
- The amount of diminution exceeds 20% of the total value of the outstanding dues towards the Indian entity or investor.

96. Is there a validity of the said certificate?

The certificate is valid for six months.

97. Whether the requirements are applicable even in case of revaluation of assets by the IE?

No, the requirements stated above are not applicable in case of revaluation of assets.

Mode of payment for ODI

98. What are the various modes of payment for OI?

The payment for OI can be made by any of the following ways:

- (i) by remittance made through banking channels;
- (ii) from funds held in an account maintained in accordance with the provisions of FEMA Act;
- (iii) by swap of securities;

- (iv) by using the proceeds of ADR or GDR or stock-swap of such receipts or ECB raised in accordance with the provisions of the FEMA Act and the rules and regulations made thereunder.

99. In which cases is the option of deferred payment available?

The option of deferred payment is available in the following cases:

- (i) PRII acquires equity capital by way of subscription to an issue; or
- (ii) PRII acquires equity capital by way of purchase from PROI; or
- (iii) PROI acquires equity capital by way of purchase from PRII.

In all of the above cases, equity capital should be reckoned as ODI.

100. Whether the payment can be deferred indefinitely?

While there is no ceiling on the time limit for deferred payment, it cannot be deferred indefinitely. The time period should be documented upfront.

101. What are the conditions for deferred payment?

Following are the conditions to opt for deferred payment:

- (i) the foreign securities equivalent to the amount of total consideration shall be transferred or issued upfront by the seller to the buyer;
- (ii) the full consideration finally paid shall be compliant with the applicable pricing guidelines.

102. How will the deferred part be treated while will reckoning the FC limit?

The deferred part of the consideration will be treated as non-fund-based commitment.

103. Is there any condition w.r.t. price of issuance or transfer of equity capital of FE?

The price of issue of equity capital or transfer of equity capital of FE - (i) from a PROI or PRII to PRII or (ii) from PRII to PROI shall be on an arm's length basis. The arm's length price shall be determined taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

104. In which cases, valuation is not required?

Valuation will not be required in the following cases:

- (i) transfer on account of merger, amalgamation or demerger or liquidation, where the price is approved by the competent Court/ Tribunal as per the laws in India and/or the host jurisdiction; or
- (ii) price is readily available on a recognised stock exchange, etc.

105. Whether the IE can open foreign currency account? If yes, then what are the conditions?

Yes, the IE can open foreign currency account abroad for the purpose of making OI in accordance with the terms and conditions provided under reg. 5(D) of [FEMA \(Foreign Currency Accounts by a resident in India\) Regulations, 2015](#), namely:

- (i) The IE is eligible for making OI;
- (ii) The host country regulations stipulate that the investment into the country is required to be routed through a designated account;
- (iii) The account shall be opened, held and maintained as per the regulation of the host country;
- (iv) The remittances sent to the account by the IE should be utilized only for making OI into JV/ WOS abroad.
- (v) Any amount received in the account by way of dividend and/ or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- (vi) The IE shall submit the details of debits and credits in the account on yearly basis to the AD bank with a certificate from the statutory auditors of the IE certifying that the account was maintained as per the host country laws and the extant FEMA regulations / provisions as applicable.
- (vii) The account so opened shall be closed immediately or within 30 days from the date of disinvestment from JV/ WOS or cessation thereof.

Reporting requirements in OI

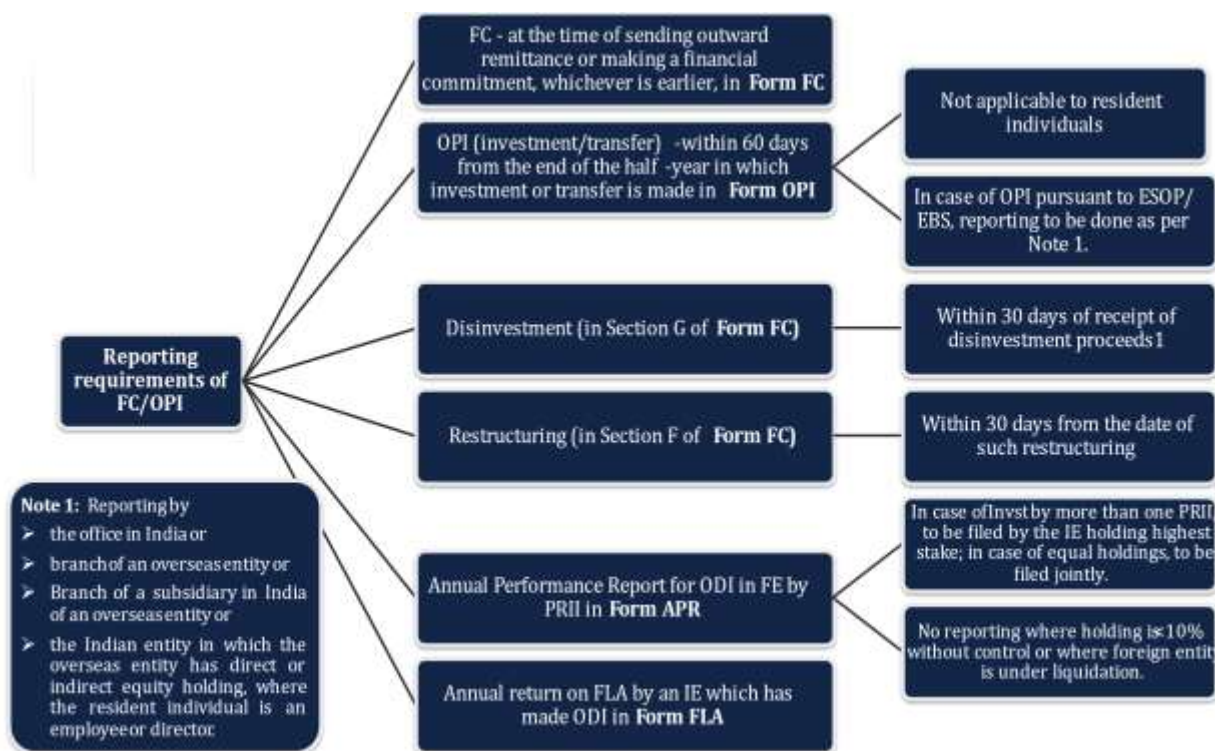


Figure: Reporting requirements

106. What are the reporting requirements for ODI?

Events	Forms	Time limit
Financial Commitment (including ODI or any FC, whether reckoned towards the FC limit or not)	Section C, D and E of Form FC	the time of sending outward remittance or making a financial commitment, whichever is earlier.
Undertaking any restructuring	Section F of Form FC	within 30 days from the date of such restructuring.
Undertaking Disinvestment	Section G of Form FC	within 30 days of receipt of disinvestment proceeds.

107. What are the reporting requirements for OPI?

A person resident in India, other than a resident individual, making any OPI or transferring such investment by way of sale, is required to report the same in Form OPI within 60 days from the end of the half-year in which such investment or transfer was made.

108. What are the reporting requirements for ESOPs issued by FE?

Section A.(B) of Form OPI is required to be filed.

109. Which entity is required to do the reporting?

The reporting is required to be done any of the following:

- a. by the office in India; or
- b. by the branch of an overseas entity; or
- c. by a subsidiary in India of an overseas entity; or
- d. by the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.

110. What are the annual reporting requirements?

The following forms are required to be submitted by IEs who have made ODI

Name of the Form	Time limit	Remarks
Foreign Assets and Liabilities (FLA)	On or before July 15 of subsequent financial year.	To be submitted directly by all the Indian entities which have made ODI in the previous year(s) including the current year, to the Department of Statistics and Information Management (DSIM), RBI. The form FLA is available on RBI's website viz. www.flair.rbi.org.in .
Annual Performance Report (APR)	Submit to RBI through AD bank, on or before 31 st December of subsequent financial year	<ol style="list-style-type: none"> 1. This form captures the change in the share-holding pattern, financial position of the foreign entity, repatriation from the foreign entity and details of step-down subsidiaries. 2. The APR shall be based on the audited financial statements of the foreign entity¹. 3. No such reporting shall be required where— <ol style="list-style-type: none"> (i) a person resident in India is holding less than 10% of the equity capital without control in the foreign entity and there is no other financial commitment other than by way of equity capital; or

¹ Except where the person resident in India does not have control in the foreign entity and the laws of the host country or host jurisdiction, as the case may be, do not provide for mandatory auditing of the books of accounts. In such cases, the APR may be submitted based on unaudited financial statements certified as such by the statutory auditor of the Indian entity or by a chartered accountant where the statutory audit is not applicable.

		(ii) a foreign entity is under liquidation
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111. In case of ODI made by more than 1 IE in the same FE, who is required to file APR?

In case more than one person resident in India have made ODI in the same foreign entity, the person resident in India holding the highest stake in the foreign entity will be required to submit APR.

112. What additional details of the FE or the SDS are required to be reported in the APR?

The person resident in India is required to report the details regarding acquisition or setting up or winding up or transfer of a step down subsidiary or alteration in the shareholding pattern in the foreign entity during the reporting year in the APR.

113. What are the Consequences of delay in reporting?

A. Payment of LSF:

In case a person responsible for any submission or filing under the provisions of FEMA, delays to make such submission/filing within the specified time, such person shall liable for late submission fee (LSF) as per the following matrix:

Sr. No.	Type of Reporting delays	LSF Amount
1	Form OPI, evidence of investment or any other return which capture flows or any other periodic reporting.	7500
2	Form FC or any other return which captures flows or returns which capture reporting of non-fund transactions or any other transactional reporting.	$[7500 + (0.025\% * A * N)]$

Notes:

“N” is the number of years of delay in submission rounded-upwards to the nearest month and expressed up to 2 decimal points.

“A” is the amount involved in the delayed reporting

B. Prohibition on further FC:

The person resident in India who has made a financial commitment in an FE in accordance with the Act or rules or regulations made thereunder, will not make be eligible to make any further financial commitment, whether fund-based or non-fund-based, directly or indirectly, towards such FE or transfer such investment till any delay in reporting is regularised.

114. Is there any maximum time period in which the reporting delays can be regularized?

The facility for opting for LSF shall be available up to three years from the due date of reporting/ submission.

115. Whether reporting pending to be made under erstwhile norms can be regularized under amended norms?

Yes. The reporting pending under the erstwhile norms can be regularized within a maximum period of three years from the date of publication of these regulations in the Official Gazette i.e. August 22, 2022.

Conditions for making OI by Resident Individuals (RIs)

116. What are the permissible modes of Overseas Investment by an RI?

Following are the permissible modes of making Overseas Investment by RI:

- (i) ODI in an operating FE not engaged in FSA and which does not have subsidiary or step down subsidiary where the RI has control in the FE;
- (ii) OPI, including by way of reinvestment;
- (iii) ODI or OPI, as the case may be, by way of—
 - a. capitalisation, within the time period, if any, specified for realisation under the FEMA Act, of any amount due from the FE the remittance of which is permitted under FEMA or does not require prior permission of CG or RBI;
 - b. swap of securities on account of a merger, demerger, amalgamation or liquidation;
 - c. acquisition of equity capital through rights issue or allotment of bonus shares;
 - d. gift as per the conditions laid down under Schedule III;
 - e. inheritance;
 - f. acquisition of sweat equity shares;
 - g. acquisition of minimum qualification shares issued for holding a management post in a foreign entity;
 - h. acquisition of shares or interest under Employee Stock Ownership Plan (ESOP) or EBS.

117. How is the investment classified as ODI or OPI in case of an RI?

The Overseas Investment by way of capitalisation, swap of securities, rights/ bonus, gift, and inheritance will be categorised as ODI or OPI based on the nature of the investment.

Where the investment, whether listed or unlisted, by way of sweat equity shares, minimum qualification shares and shares/ interest under ESOP/ EBS does not exceed 10% of the paid-up capital of FE **and** does not lead to control, such investment will be categorised as OPI.

118. What is the limit for making overseas investment by an RI?

The RI can make overseas investment subject to the overall ceiling given under the Liberalised Remittance Scheme (LRS) of RBI i.e., USD 2,50,000 per financial year.

Acquisition by way of inheritance or gift will not be reckoned towards the LRS limit. In case of acquisition by way of ESOP/ EBS or sweat equity shares, though there is no limit on the amount of remittance, such remittances will be reckoned towards the LRS limit.

119. Whether an RI can make OI in FE engaged in FSA?

The RI can make investment in the FE engaged in FSA only by way of the following modes:

- a. inheritance;
- b. acquisition of sweat equity shares;
- c. acquisition of minimum qualification shares issued for holding a management post in FE;
- d. acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme.

120. Whether an RI can acquire foreign securities by way of gift or inheritance?

Yes, the RI can acquire foreign securities by way of gift or inheritance subject to the following:

Mode of acquisition	Transferor	Remarks
Inheritance	PRII	The transferor should have held securities as per the provisions of FEMA
Inheritance	PROI	-
Gift	PRII	<ul style="list-style-type: none">• The transferor should be a relative.• The transferor should have held securities as per the provisions of FEMA
Gift	PROI	The transfer should be in accordance with Foreign (Contribution) Regulation, Act, 2010

121. Whether RI can acquire shares under ESOP or sweaty equity shares?

The RI, who is an employee or a director of –

- an office in India or
- branch of an overseas entity or
- a subsidiary in India of an overseas entity or
- of an IE in which the overseas entity has direct or indirect equity holding (through special purpose vehicle or step down subsidiary)

may acquire, without limit, shares or interest under ESOP or EBS or sweat equity shares offered by such overseas entity. However, such issue should be offered by the issuing overseas entity globally on a uniform basis.

122. What are the other conditions of making overseas investment by RI?

- Where the RI has made ODI without control in FE that subsequently acquires or sets-up a subsidiary/SDS, such RI shall not acquire control in such FE.
- In case of swap of securities both the legs of the transaction should be in compliance with FEMA provisions, as applicable. However, where swap of securities results in acquisition of any equity capital which is not in conformity with the OI Rules/ Regulations, e.g., ODI in FE engaged in FSA, FE having a subsidiary/SDS, etc., such equity capital must be disinvested within 6 months from the date of such acquisition.
- RIs cannot transfer any OI by way of gift to PROI.

123. What are the reporting requirements for RI?

Events	Forms	Time limit
ODI	Section C, D and E of Form FC	the time of sending outward remittance or making a financial commitment, whichever is earlier.
Annual Compliance	Annual Performance Report (APR)	on or before 31 st December of subsequent financial yeae

124. What are the other obligations of RI?

The RI making ODI is required to comply with the following:

1. Any document which is evidence of investment in FE e.g., share certificate, etc. is to be submitted to AD bank within 6 months from the date of effecting remittance or the date on which the dues to FE are capitalized or the date on which the amount due was allowed to be capitalized, as the case may be.
2. The UIN shall be obtained before sending outward remittance or acquisition of equity capital in a FE, whichever is earlier.
3. The UIN is FE specific, therefore investments made by different investors has to be reported through same UIN. The person making investment shall designate AD bank and shall route all the transactions for a particular UIN through that AD bank only.
4. All dues receivable from the FE is to be realized and repatriated to India within 90 days from the date when such receivables fall due.

Conditions for making OI by non-IE or non-RI

125. Which entities, other than IE or RI, are eligible to make overseas investment?

Following entities are eligible in terms of Rule 14 read with Schedule IV:

- a. Registered Trust or Society;
- b. Mutual Funds (MFs), Venture Capital Funds (VCFs) and Alternative Investment Funds (AIFs);
- c. Clearing corporations of stock exchanges and clearing members;
- d. Domestic depository;
- e. Authorised Dealer (AD) Bank;
- f. Sole proprietorship;
- g. unregistered partnership firms.

126. What are the conditions for overseas investment by registered trust or society?

A registered trust or a registered society engaged in the educational sector or which has set up hospitals in India may make ODI in FE with prior approval of RBI, subject to the following conditions:

- (i) the FE should be engaged in the same sector that the Indian Trust or Society is engaged in;
- (ii) the Trust or the Society should have been in existence for at least 3 financial years before the year in which such investment is being made;
- (iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society should permit the proposed ODI;
- (iv) such investment should have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- (v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission should be obtained and submitted to the AD bank.

127. What are the conditions for overseas investment by MFs, VCFs or AIFs?

- The MF or VCF or AIF may acquire or transfer foreign securities as stipulated by SEBI in accordance with the provisions of OI Rules and subject to such other terms and conditions as may be laid down by RBI and the SEBI under applicable laws.
- The aggregate limit for such investment will be decided by RBI in consultation with the CG.
- The individual limits for such investments shall be as per the instructions issued by the SEBI from time to time.
- Every transaction relating to the purchase and sale of foreign security by MF or VCF or AIF will be routed through the AD bank.
- Any investment MF or VCF or AIF will be treated as OPI.

- The MF can invest within an overall cap of USD 7 billion and VCF/ AIF can invest within an overall cap of USD 1.5 billion. Further, a limited number of qualified MFs are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI.

128. What are the conditions for holding/ investing in foreign securities by clearing corporations of SE and clearing members?

A SEBI approved clearing corporation of a stock exchange and its clearing members can acquire, hold and transfer foreign securities, offered as collateral by foreign portfolio investors and subject to the guidelines issued by the SEBI from time to time,—

- (i) open and maintain Demat Account with foreign depositories;
- (ii) remit the proceeds arising due to such action, if any; and
- (iii) liquidate such foreign securities and repatriate the proceeds thereof to India.

129. What are the conditions for acquisition/ transfer of foreign securities by domestic depository?

A domestic depository may acquire, hold and transfer foreign securities of a foreign entity, being the underlying security to issue Indian Depository Receipts as may be authorised by such FE or its overseas custodian bank. The person investing in Indian Depository Receipts may either sell or continue to hold foreign securities in accordance with the conditions provided in OI Rules and OI Regulations upon conversion of such depository receipts.

130. What are the conditions for acquisition/ transfer of foreign securities by sole proprietorship or unregistered partnership firms?

Any overseas investment by the sole proprietorship or unregistered partnership firms may be made by the proprietor concerned or the individual partners concerned within their limit available under the LRS. If the proposed investment is in strategic sector, any application for making overseas investment in excess of the LRS limit may be made under the government approval route.

131. What are the conditions for acquisition/ transfer of foreign securities by AD bank?

An AD bank including its overseas branch may acquire or transfer foreign securities in accordance with the terms of the host country or host jurisdiction, as the case may be, in the normal course of its banking business. The provisions contained in OI Rules/Regulations will not apply to such acquisition or transfer of foreign securities by an AD bank.

Acquisition/ transfer of Immovable property outside India

132. What are the restrictions applicable on acquisition or transfer of immovable property outside India?

No person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

133. What are the situations in which Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations will not apply?

- Immovable property held by PRII India who is a national of a foreign State;
- Immovable property acquired by PRII on or before 8th July 1947 and continued to be held by him with the permission of RBI;
- Immovable property acquired on lease for a period not exceeding 5 years.

134. What are the modes in which a person can acquire an immovable property situated outside India from a PROI?

Following are the modes of acquisition of immovable property outside India:

- by way or inheritance;
- by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account;
- by way of purchase out of remittance under LRS;
- jointly with a relative who is a PROI and there is no outflow of funds from India;
- out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the FEMA Act;
- An IE having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by RBI from time to time.

135. What are the modes in which a person can transfer an immovable property situated outside India from a PROI?

- by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;
- create a charge on such property in accordance with the Act or the rules or regulations made thereunder or directions issued by RBI from time to time.

136. What is the consequence of non-compliance?

The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Act

137. What are the limits for initial and recurring expenses in case of immoveable properties acquired by IE having overseas office?

Limits for initial expense for acquisition of immovable property by IE - 15% of the average annual sales/ income or turnover of the IE during the last 2 financial years or up to 25% of the net worth, whichever is higher.

Limit for recurring expense - 10% of the average annual sales/income or turnover during the last 2 financial years.

Annexure I – Summary of making ODI in FSA

Indian Entity	ODI in Foreign Entity	Other remarks	ODI in IFSC
Engaged in FSA	Engaged in FSA	<ul style="list-style-type: none"> • IE should have NP net profits during preceding 3 FYs; • IE should be registered with or regulated by financial services regulator in India; • IE should have obtained requisite approvals financial services regulator, both in India and the host country. 	Requisite approval by financial services regulator shall be decided within 45 days from the date of receipt of application, failing which it shall be deemed to be approved.
Engaged in FSA	Not engaged in FSA	Subject to the guidelines issued by respective regulator.	
Not engaged in FSA	Not engaged in FSA, except banking and insurance.	IE should have net profits in preceding 3 FYs.	Requirement of net profit in preceding 3 FYs is not applicable.
Not engaged in FSA	Engaged in general and health insurance.	<ul style="list-style-type: none"> • IE should have net profits in preceding 3 FYs. • Such insurance business should support the core activity undertaken overseas by such IE. 	