

CHAPTER

6

OVERSEAS DIRECT INVESTMENTS (ODI)

Covering-

- Overseas Direct Investments
- Route for ODI
- Eligibility to make overseas direct investment under the automatic route
- ODI Transactions that require RBI Approval
- Permissible source for funding overseas direct investment
- Eligibility criteria for trust
- Eligibility criteria for society
- Advance Your Knowledge
- Self Test Questions

**EXPECTED
MARKS COVERAGE**
(1 to 5)

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OVERSEAS DIRECT INVESTMENTS (ODI)

OVERSEAS INVESTMENTS

Overseas investments (or financial commitment) in **Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS)** have been recognised as important avenues for promoting **global reach of Indian entrepreneurs**. Joint Ventures are perceived as a medium of economic and business co-operation between India and other countries.

"Financial Commitment" means the **amount of direct investment** by way of contribution to **equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees** issued by an **Indian Party** to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

"Direct investment outside India" means **investments**, either under the **Automatic Route** or the **Approval Route**, by way of **contribution to the capital or subscription to the Memorandum** of a **foreign entity** or by way of *purchase of existing shares of a foreign entity* either by market purchase or **private placement** or **through stock exchange**, signifying a long-term interest in the foreign entity (JV or WOS).

ROUTE FOR ODI

The Government has adopted **two way approach** to the approval of direct investment, i.e. Automatic Route and Approval Route.

Under the **Automatic Route**, an Indian Party **does not require any prior approval from the Reserve Bank** for making direct investments in a JV/WOS abroad. The Indian Party should **approach an Authorized Dealer Category – I bank** with an application in **Form ODI** and the prescribed enclosures / documents for effecting the remittances towards such investments.

However, in case of **investment in the financial services sector**, *prior approval is required* from the regulatory authority concerned, both in India and abroad.

Proposals not covered by the conditions under the automatic route **require prior approval of the Reserve Bank** for which a specific application in **Form ODI** with the documents prescribed therein is required to be made through **Authorized Dealer Category – I banks**.

INVESTMENT IN JV/WOS / TOTAL FINANCIAL COMMITMENT

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

The total financial commitment of the Indian Party in all the Joint **Ventures / Wholly Owned Subsidiaries shall comprise of the following:**

- | |
|--|
| a. 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS); |
| b. 100% of the amount of other preference shares ; |
| c. 100% of the amount of loan ; |

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d. 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party;
e. 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party.
f. 50% of the amount of performance guarantee issued by the Indian Party

INDIAN MUTUAL FUNDS FOR INVESTMENT ABROAD

Indian Mutual Funds registered with SEBI are permitted to invest **within the overall cap of USD 7 billion in:**

a. ADRs / GDRs of the Indian and foreign companies;
b. Equity of overseas companies listed on recognized overseas stock exchanges; initial and follow on public offerings for listing at recognized overseas stock exchanges;
c. Foreign debt securities- short term as well as long term with rating not below investment grade - in the countries with fully convertible currencies ;
d. Money market investments not below investment grade; repos where the counter party is not below investment grade ;
e. Government securities where countries are not rated below investment grade;
f. Derivatives traded on recognized stock exchanges overseas only for hedging and portfolio balancing with underlying as securities;
g. Short term deposits with banks overseas where the issuer is rated not below investment grade; and
h. Units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators.

ACQUISITION/SALE OF FOREIGN SECURITIES BY RESIDENT INDIVIDUAL IN INDIA

Resident Individuals can acquire/sell foreign securities **without prior approval in the following cases:—**

i. As a gift from a person resident outside India;
ii. By way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which <i>does not involve any remittance from India</i> ;
iii. By way of ESOPs issued to an employee or a director of Indian office or branch of a foreign company or of a subsidiary in India of a foreign company or of an Indian company irrespective of the percentage of the direct or indirect equity stake in the Indian company;
iv. As inheritance from a person whether resident in or outside India;
v. By purchase of foreign securities out of funds held in the Resident Foreign Currency Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Account) Regulations, 2000; and
vi. By way of bonus/rights shares on the foreign securities already held by them.

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PERMISSIBLE SOURCES FOR FUNDING OVERSEAS DIRECT INVESTMENT

Funding for overseas direct investment can be made by one or more of the following sources:

1. Drawal of foreign exchange from an AD bank in India
2. Swap of shares (refers to the acquisition of the shares of an overseas JV/WOS by way of exchange of the shares of the Indian party).
3. Capitalization of exports and other dues and entitlements
4. Proceeds of External Commercial Borrowings/Foreign Currency Convertible Bonds.
5. In exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and the guidelines issued by Government of India in the matter.
6. Balance held in Exchange Earners Foreign Currency account of the Indian Party maintained with an Authorized Dealer
7. Proceeds of foreign currency funds raised through ADR/GDR issues

ELIGIBILITY CRITERIA FOR TRUST

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

ELIGIBILITY CRITERIA FOR SOCIETY

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

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Answers to be analysed in Classroom

Q. 1.

Answer to Question No. 1:-



Answers to be analysed in Classroom

Q. 2.

Answer to Question No. 2:-