



Overseas Direct Investment by Residents under FEMA

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Views expressed are views of the presenter and not of Wipro Ltd

Investment in India Vs Investment Overseas

- Investment by Non residents in India- also called Foreign Direct Investment (FDI)
 - [FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000]
- Investment made by Residents outside India also called Overseas Direct Investment (ODI)
 - [FEMA (Transfer or Issue of any Foreign Security) Regulations, 2000]

[combined Master Circular on Direct Investment by Residents in JV/ WOS abroad]

Basics of ODI

- ODI is Direct Investment outside India - by contribution to Capital or purchase of shares, of foreign entity, either by market purchase or private placement but excluding Portfolio Investment [cl 2(e)]
- Who can Invest ?-
 - Indian Companies (ownership not relevant)
 - Registered Partnership firms
 - Resident Individuals
 - Registered Trusts/ Societies
 - Any other entity notified by RBI[cl 2(k)]

Other forms of Investment Overseas

- Setting up of branch overseas
 - No equity investment
 - Extension of the Head office
 - No separate entity
 - Liabilities could be passed on to Indian Company
 - Subject to local country laws
 - Countries in Middle East generally prohibit setting branches, prefer JV with a local partner
 - Current Account Transactions under FEMA

Regulations: FEMA (Export of Goods and Services), Regulations, 2000/ Master Cir on Export of Goods and Services

Type and Nature of Investment (ODI)

- Investment in a Wholly Owned subsidiary (WOS) or JV (other than WOS) outside India [cl 2(k)]
 - Investment as Loans/ Debt
 - Investment as Equity/ Preference shares
 - Investment as Guarantees to WOS/ JVs

(Loan/ Equity and Guarantee Called Financial Commitment)

Type and Nature of Investment (ODI contd)

- Separate Entity (WOS/ JV)
 - Liability stays with WOS/ JV
 - Independence of objects clause of Holding company
 - Meets local law requirements in certain countries prohibiting branch set up
- Financial Commitment by Indian Party
 - AUTOMATIC ROUTE (para B 1 of Master Circular)
 - Upto 400 % of Net worth of Indian entity
 - [400% limits not applicable for Investment from EEFC account or ADR/ GDR proceeds]
 - (400% on standalone basis and not consolidated for the Group as per last audited B/S of Indian Party)*

Prohibited/ Restricted Investments

- Restrictions under FEMA
 - No Investment in Real Estate or banking business without RBI approval
 - Investment in Pakistan not permitted (similar to restrictions on FDI- no Pakistani Citizen can hold any shares in an Indian Company)
 - Indian Party should not be in RBI's caution list / list of defaulters
 - Indian Party should have filed all APRs for all its WOS / JV
 - Indian Party should have routed all transactions through one Authorised Dealer (banker) (branches may be different for various WOS/ JVs)

Prohibited/ Restricted Investments (contd..)



- No Investment in Financial Services Sector without Regulator's approval (example Insurance with IRDA approval, banking with RBI approval) plus RBI's approval
- No Investment in WOS/ JVs for Commodities Trading without Forward Markets Commission's approval
- Other Investments not falling under Automatic Route will fall under Approval Route requiring prior approval of RBI [para B7 of Master Circular]

Source of Investment [B3 (i)]

- Open Market Purchase of Forex from rupee balances
- Capitalisation of Export receipts
- ECB borrowing
- EEFC (Export Earner's Foreign Currency a/c)
- Share Swap (with FIPB approval)
- Issue proceeds of ADR/ GDR abroad
- ADR/ GDR swap in overseas acquisition
- Export of Plant and machinery
- Others (to give details) like IP, etc

400% limits do not apply to proceeds of ADR/ GDR and investment from EEFC account

Other Laws relating to Overseas Investment



SECTIONS	APPLICABILITY
Section 292 of Companies Act	Investments to be approved by Board in a Board meeting
372A	Investments in other corporates to be approved by unanimous Board Resolution with exceptions like 100% subsidiaries etc More than 60% of net worth or > 100% of Reserves (whichever is higher) to be with shareholder's approval by Special Resolution (includes both investment as well as loans given)
Overseas Laws	Local Corporate laws- merger and squeeze out rights (90%), 100% direct acquisition etc
Competition/ Anti Trust laws	In India and overseas
Clause 36 and 49 of Listing Agreement	Intimation to stock exchanges/ Corporate Governance

Procedure for Overseas Investment through Acquisitions



- Entering into Term Sheet or Letter of Intent
- Board's approval subject to Due Diligence
- Completion of Due Diligence
- Signing of Acquisition agreements with Seller
- Clearance from Competition Commission of India (for Targets whose Assets > Rs 250 cr or Turnover > Rs 750 cr) if combined Acquirer/ Target Size exceeds thresholds
- Intimation to Board of Directors
- Announcement to Stock Exchanges preferably during non trading hours
- Announcement to Media

(joint investment also possible by two or more Indian parties)

Procedure for Remittance

- Finalise source of finance
- Copy of Board Resolution
- Get Valuation Certificate
 - More than \$ 5mn investment - Merchant banker valuation
 - \$ 5 mn or less - CA valuation
- Form ODI duly certified by statutory auditors for limits, areas of investment etc
- Investment in Financial Sector requires additional certification from auditor/ CA
- Audited Accounts of the Indian Party
- Form A 2 for remittance
- Bank instructions for DD/ Wire Transfer

Post Investment restructuring (to be changed)

- Winding up as per overseas laws
- Setting up step down subsidiary investments
- Merger with another overseas company or with Indian Company (with RBI approval)
- Transfer of Shares in Overseas entity
 - If overseas entity is a listed entity
 - If Indian entity is a listed entity with net worth of Rs 100 cr +
 - If Indian entity is unlisted investment is more than \$ 10 mn
 - Sale not to result in write offs
 - Sale at a price determined by Valuer
 - No dues on account of royalty, Export proceeds etc from the WOS/ JV
 - Overseas entity is at least in operation for one year

Restrictions on Guarantees

- Guarantee to overseas WOS/ JV in which Indian Party has equity stake
 - Guarantee to customers
 - Guarantee to third parties
 - Guarantee to banks
- Guarantee cannot be open ended, has to have a finite limits
- Guarantee to have a fixed period
- Guarantee counted alongwith investment for 400% limit

Restrictions on Guarantees (Continued)

- Form ODI to be submitted at par with investments
- Guarantee permitted to be given to WOS/ JV and to first level step down operation subsidiary
- RBI approval required for guarantees to subsidiaries beyond one level operational subsidiary

Other Investments

- Portfolio Investments by Indian Companies
- Investments by Resident Individuals
- Investments by Mutual Funds

General Permission and limits for other Investments



- Investments by Residents
 - Portfolio Investments in listed companies securities not below 'Investment Grade' rating
 - Limit upto 50% of net worth
- Investments by Mutual Funds
 - In ADR/ GDRs
 - In shares of listed companies overseas-
 - Primary and secondary market purchase
 - Foreign Debt securities not below Investment Grade rating
 - Money market instruments like T bills etc not below Investment Grade Rating
 - Derivatives for hedging
 - Overseas Govt securities not below Investment Grade Rating
 - Limits for investment in ETFs and Investments by VCs

General Permission and limits for other Investments



- Investments by Resident individuals
 - Shares in overseas entity gifted by non residents
 - Acquisition of shares under a 'Cash less' route – no outward remittance
 - Assets inherited outside India
 - Shares of Foreign Company by Indian employees
 - Sale of those shares allowed
 - Repatriation of forex within 90 days
 - In Qualification shares for overseas Directorships
 - Investment in Rights issue from existing investment
 - Esops of WOS/ JV
 - ADR/ GDR Esops of the Indian Companies
 - Limit of \$ 50 K in a block of five years
 - In any other investment upto \$ 200K in a FY – Permitted Capital and current account transactions- General approval

Post Investment Regulatory filings

- Getting UIN (Unique Identification Number)
- Submitting Share Certificates or similar documents
- Filing Annual Performance Report (Form APR)
- Periodical ODI forms for Follow-on investments
- Intimation of Step Down Investments
- Intimation regarding winding up within 30 days and remittance of sale/ liquidation proceeds within 90 days
- Filing form APR every year
 - (CA certified - to be filed within 3 months of final accounts of WOS/ JV being finalised (*Forex denominated financials*))

(Three sets of accounts in some cases-Indian GAAP under Sec 212, Local GAAP in some countries like Singapore, UK, Mauritius etc and Forex denominated Indian GAAP for APR)

Hedging of Investments



- 100% forex hedging of overseas investment risk permitted
- Cancellation of hedge also possible-
 - 50% of cancelled contracts allowed to be rebooked
- Rebooking possible on maturity of hedge
- Decrease in value of investment- hedging value readjusted for decrease in valuation on rebooking

ADR/ GDR issues- for Issuers

- Covered by FDI Regulations
- Depository Receipts traded overseas against underlying Indian Shares
- Indian Company should be eligible to issue shares in Indian market
- Types of DRs
 - Traded in US markets called ADRs
 - Traded in other markets called GDRs
- Unlisted companies to do simultaneous listing in India and overseas
- Existing companies listing ADR/ GDR overseas required to do Indian listing within 3 years of listing or immediately on making profits- examples- Rediff, WNS etc
- Proceeds of ADR/ GDR not for investment in Real Estate, Agriculture or stock market operations



Thank You