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# Global Investments (Inbound and Outbound)

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## Professional Opportunities

# Structure of Presentation



1 Overview of Foreign Investment Framework

2 FDI in certain Key Sectors

3 FDI in Limited Liability Partnership

4 Highlights on Foreign Exchange Management Regulation, 2017

5 Outbound Investments (ODI) – Regulatory Framework

6 External Commercial Borrowings (ECB) – Regulatory Framework

A low-angle, upward-looking photograph of several modern glass skyscrapers. The buildings are framed by a white, semi-transparent geometric shape that resembles a stylized '1' or a series of overlapping lines. The sky is blue with scattered white clouds. The overall aesthetic is clean, modern, and professional.

# 01

## Overview of Foreign Investment Framework

# Foreign Direct Investments (FDI)

- ▶ Foreign Investments is regulated by Govt.'s FDI Policy
- ▶ Administered under Ministry of Commerce and Industry
- ▶ Regulated by Department of Industrial Policy & Promotion
- ▶ Administrative and compliance aspects monitored by RBI
- ▶ Inbound investments are regulated under **Automatic** and **Government approval** route

Intent and objective is to promote FDI to supplement domestic capital, technology and skills for accelerated economic growth.

# Automatic Route

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- Investment by a person resident outside India does not require the prior approval of RBI or the Government.
- In the case of Foreign Portfolio Investment (FPI),
  - a foreign investment limit of up to 49% of paid-up capital on a fully diluted basis or
  - the sectoral cap limits
  - whichever is lower, will not require Government approval

# Government approval route

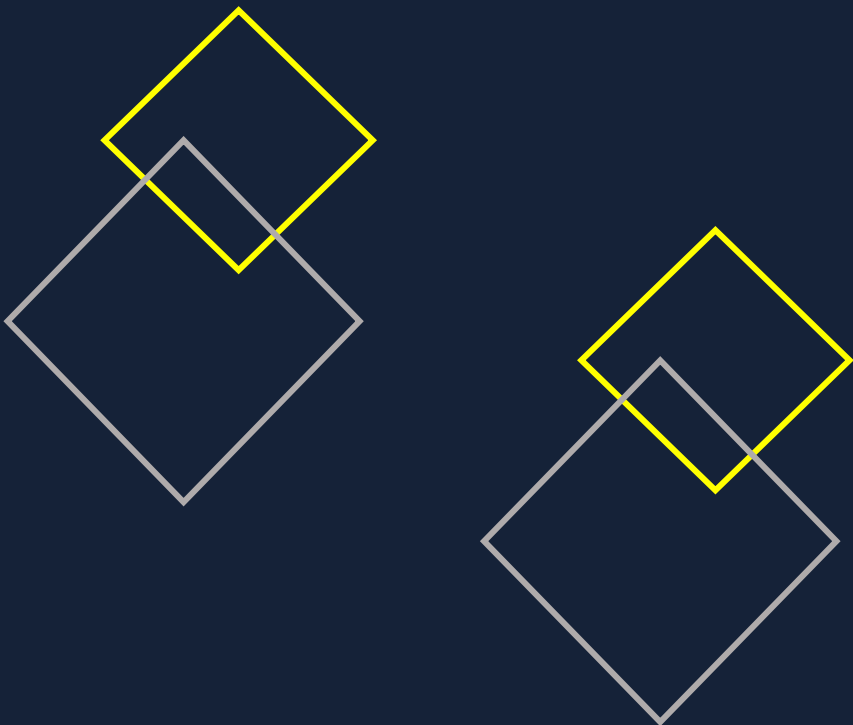
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- Investment by a person resident outside India requires prior Government approval in accordance with the conditions stipulated by the Government in its approval.
- Prior Government approval is required in some sectors
- DIPP has notified Standard Operating Procedure (SOP) for processing FDI proposals which require Govt. approval (No. 1/8/2016-FC-1 dated 29.6.2017)
- Online application to be filed on the portal [www.fifp.gov.in](http://www.fifp.gov.in)
- *Digital applications / Time bound processing of applications / Entrusted authorities for granting approval*

# Government approval route (Sectors)

- Mining
- Arms and Ammunition
- Broadcasting and Print Media
- Civil Aviation
- Satellites
- Telecommunications
- Private Security Agencies And Applications (conditional)
- Trading (Single brand, multi brand and food product retailing)
- Financial Services (where not already regulated)
- Investment in Core Investment Company or an Indian company engaged only in investing in capital of other company
- Banking (Public and Private)
- Pharmaceuticals

# Prohibited Sectors



FDI is prohibited in the following sectors:

- ▶ Lottery Business
- ▶ Gambling and Betting including casinos etc.
- ▶ Chit funds
- ▶ Nidhi company
- ▶ Trading in Transferable Development Rights (TDRs)
- ▶ Real Estate Business or Construction of Farmhouses
- ▶ Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- ▶ Activities / sectors not open to private sector investment e.g. Atomic Energy and Railway Transport (other than Paras dealing with Railway Infrastructure).



# 02

## FDI in certain key sectors

# Ecommerce

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- E-commerce is “buying and selling of goods and services including digital products over digital & electronic network.”
- **Inventory-based model** of e-commerce means an e-commerce activity where the inventory of goods and services is owned by an e-commerce entity and is sold to the consumers directly.
- **Marketplace-based model** of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

FDI in B2B e-commerce  
100% through automatic route  
(not permitted in B2C)

FDI in Marketplace model: 100%

*[Think Amazon]*

FDI in Inventory based model: not permitted

## Significant Prescribed Conditions Continued:

- In the marketplace model goods/services made available for sale electronically on the website should clearly provide the name, address, and other contact details of the seller. Postsales, delivery of goods to the customers, and customer satisfaction will be the responsibility of the seller.
- In the marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- In the marketplace model, any warrantee/ guarantee of goods and services sold will be the responsibility of the seller.
- E-commerce entities providing a marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain a level playing field
- Guidelines on cash and carry wholesale trading as given in Para 5.2.15.1.2 of Consolidated FDI policy will apply for B2B e-commerce



# 03

## FDI in LLP



## FDI in LLP

- ▶ FDI up to 100% is permitted under the automatic route
- ▶ LLPs operating in sectors or activities where 100 per cent FDI is allowed under the automatic route
- ▶ FDI in legal profession continues to be prohibited.

# Downstream Investment by LLP

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- LLP receiving foreign investment would be permitted to make downstream investment in another company or LLP in sectors in which 100 % FDI is permitted under the automatic route and there are no FDI - linked performance conditions. However, the LLP must notify the SIA, DIPP, and the FIPB in the prescribed format within 30 days of such investment.
- Issue / transfer / pricing / valuation shall be in accordance with RBI guidelines
- For making downstream investments, LLP having non-resident shareholding should bring in funds from abroad and not leverage funds from the domestic market. This restriction does not apply to operating LLP's , which may raise funds for the om domestic market.
- Downstream investment through internal accruals (profits transferred to Reserve after payment of taxes) is however permitted, but these are subject to sectoral caps.



Increase in number of conversions of Private companies into LLP's



Increase in FDI through foreign investments into LLP format particularly in the small scale and medium scale activities



A big boost for the LLP format of doing business, which is in line with India's vision to promote "Ease of doing business"

## KEY IMPACTS

**04**

Foreign Exchange Management  
(transfer or issue of security by a  
person resident outside India)  
Regulations, 2017



# Important new Definitions

**Capital Instruments(Regulation 2(v))** – Capital Instruments means equity shares, debentures, preference shares, and share warrants issued by an Indian company. Explanation added to provide for conditions in case of partly paid-up shares and Warrants.

**Convertible Note (Regulation 2(vi))** -means an instrument issued by a startup company evidencing receipt of money initially as debt, which is repayable at the option of the holder, or which is convertible into a such number of equity shares of such startup company, within a period not exceeding five years from the date of issue of the convertible note, upon the occurrence of specified events as per the other terms and conditions agreed to and indicated in the instrument.

**Foreign Direct Investment (Regulation 2(xvii))** - means investment through capital instruments by a person resident outside India in an unlisted Indian company; or in 10 percent or more of the post issue paid-up equity capital on a fully diluted basis of a listed Indian company;

# Important new Definitions

**Investment Vehicle (Regulation 2(xxix))** - means an entity registered and regulated under relevant regulations framed by SEBI or any other authority designated for the purpose and shall include Real Estate Investment Trusts (REITs) governed by SEBI (REITs) Regulations, 2014, Infrastructure Investment Trusts (Inv Its) governed by SEBI (InvIts) Regulations, 2014 and Alternative Investment Funds (AIFs) governed by SEBI (AIFs) Regulations, 2012

**Start-Up (Regulation Xli)** - means an entity which complies with the conditions laid down in Notification No. G.S.R 180(E) dated February 17, 2016 issued by DIPP, Ministry of Commerce and Industry, Government of India

**Start Up Company (Regulation Xlii)** - means a private company incorporated under the Companies Act, 2013 and recognized as such by DIPP.

# Restriction on making and Receiving Investment

**Regulation 3** - Save as otherwise provided in the Act, or rules or regulations made thereunder, no person resident outside India shall make any investment in India.

- **Provided** that an investment made in accordance with the Act or the rules or the regulations framed thereunder and held on the date of commencement of these Regulations shall be deemed to have been made under these Regulations and shall accordingly be governed by these Regulations.
- **Provided further** that RBI may, on an application made to it and for sufficient reasons, permit a person resident outside India to make any investment in India subject to such conditions as may be considered necessary.

**Regulation 4** - Save as otherwise provided in the Act, or rules or regulations made thereunder, an Indian entity or an investment vehicle, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern shall not receive any investment in India from a person resident outside India or record such investment in its books

- **Provided** that the Reserve Bank may, on an application made to it and for sufficient reasons, permit an Indian entity or an investment vehicle, or a venture capital fund or a Firm or an Association of Persons or a proprietary concern to receive any investment in India from a person resident outside India or to record such investment subject to such conditions as may be considered necessary.

# Investment by a person resident outside India (Regulation 5)

Schedule No.	Nature of Investment by a Person Resident Outside India (Non Resident)
1	Purchase/ Sale of capital instruments of an Indian company by a Non-Resident
2	Purchase/ Sale of capital instruments of a listed Indian company on a recognized stock exchange in India by Foreign Portfolio Investors
3	Purchase/ Sale of Capital Instruments of a listed Indian company on a recognized stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis
4	Purchase or Sale of Capital Instruments or convertible notes of an Indian company or Units or contribution to the capital of an LLP by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on Non-Repatriation basis
5	Purchase and sale of securities other than capital instruments by a Non-Resident
6	Investment in a LLP
7	Investment by a Foreign Venture Capital Investor (FVCI)
8	Investment by a Non-Resident in an Investment Vehicle
9	Investment in a Depository Receipt (DR) by a Non-Resident
10	Issue of Indian Depository Receipts (IDR) by Companies Incorporated outside India

# Purchase/Sale of Capital Investments – Schedule I

## Key Changes :-

- ▶ A WOS set up by a Non-Resident Entity operating in a sector where 100% FDI is allowed through an automatic route and where there are no FDI-linked Performance conditions may issue capital instruments to such Non-resident entity up to 5% of its Authorised Capital or USD 500,000, whichever is less :-
  - The Indian company filing within 30 days from the date of issue of capital instruments, but not later than 1 year from incorporation date or such time as RBI or Central Government permits, report the transaction in FCGPR.
  - The Indian company obtains a certificate from its statutory auditors that the amount of pre-incorporation/ pre-operative expenses against which capital instruments have been issued has been utilized for the purpose for which it was received and this should be submitted with the Form FC-GPR.

# Purchase/Sale of Capital Investments – Schedule I

## Key Changes :-

- ▶ An Indian company may issue equity shares against any funds payable by it to a Non-Resident, the remittance of which is permitted under the Act or the rules and regulations framed or directions issued thereunder or does not require prior permission of the Central Government or RBI under the Act or the rules and regulations framed or directions issued thereunder or has been permitted by the RBI under the Act or the rules and regulations framed or directions issued thereunder.
- Provided in the case where permission has been granted by RBI for making remittance, the Indian company may issue equity shares against such remittance provided all regulatory actions with respect to the delay or contravention under FEMA or the rules or the regulations framed thereunder have been completed.

# Foreign Portfolio Investments – Schedule 2

<p><b>Limit up to which Foreign Portfolio Investor may invest in capital instruments on a recognized SE</b></p>	<p><b>Holding of each FPI or an investor group has meaning as defined in SEBI FPI regulations &lt; 10% of paid-up equity on a fully diluted basis or &lt; 10% of paid-up value of each series of debentures or preference shares or share warrants issued by an Indian Company AND Total holdings of all FPI's shall be &lt;=24% of paid-up equity on a fully diluted basis or of each series, as the case may be</b></p>
<p>If investee company seeks to cross the limit of 24%</p>	<p>Then it has to pass Board resolution and also obtain shareholder approval through Special Resolution. However, the maximum limits as per sectoral cap / statutory ceiling would apply</p>
<p>If 10% is exceeded, then the total investment made by FPI will be classified as FDI – then</p>	<p>Reporting requirements as per Regulation 13 with respect to FDI will be applicable to the investee company</p>
<p>Mode of Investment by FPI</p>	<ul style="list-style-type: none"> <li>- Public Offer</li> <li>- Private Placement</li> </ul>
<p>Pricing in case of Public Offer</p>	<p>Not less than the price at which the shares are issued to residents</p>
<p><b>Pricing in case of Private Placement</b></p>	<p><b>Not less than the fair price worked out as per internationally accepted pricing methodology for valuation of shares on arms' length basis by a Merchant Banker or CMA or CA</b></p>
<p>Short selling, lending or borrowing</p>	<p>Is allowed but subject to such conditions as may be stipulated by SEBI and / or RBI</p>

# Foreign Portfolio Investments – Schedule 2 Continued...

<p><b>Limit up to which Foreign Portfolio Investor may invest in capital instruments on a recognized SE</b></p>	<p><b>Holding of each FPI or an investor group has meaning as defined in SEBI FPI regulations &lt; 10% of paid-up equity on a fully diluted basis or &lt; 10% of paid-up value of each series of debentures or preference shares or share warrants issued by an Indian Company AND Total holdings of all FPI's shall be &lt;=24% of paid-up equity on a fully diluted basis or of each series, as the case may be</b></p>
<p>If investee company seeks to cross 10%</p>	<p>Then it has to pass Board resolution and also obtain shareholder approval through Special Resolution. However, the maximum limits up to which NRI's and OCI's put together can invest cannot exceed 24%, even with board resolution and special resolution</p>
<p>Other conditions</p>	<p>NRI and OCI are allowed to purchase and sell capital instruments. However, consideration for investment shall be through normal banking channels or by debit to NRE account with Authorised Dealer (AD) Such NRE account shall be designated as NRE (PIS) Account and shall be used exclusively for putting through transactions covered in this schedule. Sale proceeds of capital instruments (net of taxes) shall be remitted outside India or credited to NRE (PIS) account of the person concerned.</p>



# Investment in Non-Repatriation Basis – Schedule 4

**Permitted Investments** : Following Investments by an NRI or OCI, including a company, a trust, and a partnership firm incorporated outside India and owned and controlled by NRI's or OCI on a Non-Repatriation basis shall be deemed to be domestic investments at par with investments made by residents :-

- ▶ Any capital instrument issued by a company without any limit either on the stock exchange or outside it.
- ▶ Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
- ▶ The capital of a Limited Liability Partnership without any limit.
- ▶ Capital of a firm or a proprietary concern in India.
- ▶ Convertible notes issued by a startup company in accordance with these Regulations.

**Prohibited Investments** : Following investments in capital instruments or units by above mentioned persons on a Non-Repatriation basis is however prohibited, above mentioned :-

- ▶ of a Nidhi company or
- ▶ a company or a firm engaged in agricultural/ plantation activities or real estate business or construction of farmhouses or dealing in Transfer of Development Rights.

# Investment in LLP – Schedule 4

- ▶ A Non-Resident (other than a citizen of Pakistan or Bangladesh) other than a Foreign Portfolio Investor (FPI) or FVCI may contribute to the capital of LLP operating in sectors where 100% foreign investments are permitted under automatic route and there are no FDI linked performance conditions.
- ▶ Investment by way of 'profit share' will fall under the category of reinvestment of earnings
- ▶ Investment in LLP is subject to compliance of the conditions of LLP Act, 2008
- ▶ Inter-se conversion ie. Company to LLP or LLP to company is permitted provided the entity is operating in a sector where 100% foreign investments are permitted under automatic route and there are no FDI-linked performance conditions.
- ▶ Investment by way of capital contribution or by way of acquisition/transfer of profit shares should not be less than fair price worked out as per internationally accepted/adopted market practice supported by a valuation certificate from CA or CMA or approved valuer of a panel maintained by the Central Government
- ▶ In the case of transfer by Non-Resident to a Resident, the consideration for such the transfer shall not be more than the fair price worked out and supported by a valuation certificate (as aforesaid)

# Investment by FVCI – Schedule 4

- ▶ Subject to conditions as may be laid down by RBI, FVCI may purchase :
  - securities, issued by an Indian company engaged in any sector mentioned at para 4 of this Schedule and whose securities are not listed on a recognized stock exchange at the time of issue of the said securities;
  - securities issued by a startup;
  - units of a Venture Capital Fund (VCF) or of a Category I Alternative Investment Fund (Cat-IAIF) or units of a scheme or of a fund set up by a VCF or by a Cat-I AIF. Provided if the investment is in capital instruments, then the sectoral caps, entry routes and attendant conditions shall apply;
- ▶ An FVCI may purchase the securities/ instruments mentioned above either from the issuer of these securities/ instruments or from any person holding these securities/instruments. The FVCI may invest in securities on a recognized stock exchange subject to the provisions of SEBI (FVCI) Regulations, 2000.
- ▶ The FVCI may acquire, by purchase or otherwise, from, or transfer, by sale or otherwise, to, any person resident in or outside India, any security/ instrument it is allowed to invest in, at a price that is mutually acceptable to the buyer and the seller/ issuer. The FVCI may also receive the proceeds of the liquidation of VCFs or of Cat-I AIFs or of schemes/ funds set up by the VCFs or Cat-I AIFs

# Issue of Shares under ESOP- Regulation 7

An Indian company may issue “employees’ stock option” and/ or “sweat equity shares” to its employees/ directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/subsidiaries who are resident outside India, provided that:

- The scheme has been drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be;

- The “employee’s stock option”/ “sweat equity shares” so issued under the applicable rules/ regulations are in compliance with the sectoral cap applicable to the said company;
- Issue of “employee’s stock option”/ “sweat equity shares” in a company where investment by a person resident outside India is under the approval route shall require prior Government approval. Issue of “employee’s stock option”/ “sweat equity shares” to a citizen of Bangladesh/ Pakistan shall require prior Government approval.

Provided an individual who is a person resident outside India exercising an option which was issued when he/ she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

# Issue of Convertible Notes by Start-Up Co.- Regulation 8

- ▶ A Non-Resident (other than an individual who is a citizen of Pakistan or Bangladesh or an entity which is registered/ incorporated in Pakistan or Bangladesh), may purchase convertible notes issued by an Indian startup company for an amount of Rs. 25 lakhs or more in a single tranche.
- ▶ A startup company, engaged in a sector where investment by a Non-Resident requires Government approval, may issue convertible notes to a person resident outside India only with such approval. Further, the issue of equity shares against such convertible notes shall be in compliance with the entry route, sectoral caps, pricing guidelines, and other attendant conditions for foreign investment.
- ▶ A startup company issuing convertible notes to a Non-Resident shall receive the amount of consideration by inward remittance through banking channels or by debit to the NRE/ FCNR (B)/Escrow account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016. Repayment or sale proceeds may be remitted outside India or credited to NRE/ FCNR (B) account maintained by the person concerned in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.
- ▶ An NRI or an OCI may acquire convertible notes on non-repatriation basis in accordance with Schedule 4 of these Regulations.
- ▶ A Non-Resident may acquire or transfer by way of sale, convertible notes, from or to, a person resident in or outside India, provided the transfer takes place in accordance with the entry routes and pricing guidelines as prescribed for capital instruments.

# Merger / Demerger / Amalgamation – Regulation 9

## ▶ Issue of Capital Instruments by Transferee Company-

- ▶ Scheme is approved by NCLT or competent authority
- ▶ Transfer or issue of capital instruments is in compliance with entry routes, sectoral caps or investment limits and other attendant conditions are complied with by the Non-resident investor, otherwise transferor or transferee company must obtain necessary Government approval
- ▶ Transferor / Transferee Company shall not engage in any sector prohibited for non-resident investment.

## ▶ Issue of Non-convertible redeemable preference or debentures as bonus out of general reserves to non-resident shareholders-

- ▶ original issue is in accordance with these regulations and in compliance of the relevant schedule.
- ▶ Issue is in accordance with provisions of CA 2013 and as per scheme approved by NCLT / competent authority
- ▶ Indian companies shall not engage in any sector prohibited for non-resident investment.

# Pricing Guidelines– Regulation 11

	Circumstances	Pricing Guideline
1	Issue by Indian Company	<p>Listed company – As per SEBI</p> <p>Unlisted – Internationally accepted pricing methodology * Valuation by Cat I Merchant Banker or CA or CMA</p>
2	Transfer from Resident to Non Resident	<p>Listed company – As per SEBI Unlisted –Not less than price as determined by Internationally accepted pricing methodology * Valuation by Cat I Merchant Banker or CA or CMA</p>
3	Transfer from Non-Resident to Resident	<p>Listed company – As per SEBI Unlisted – Not more than price as determined by Internationally accepted pricing methodology * Valuation by Cat I Merchant Banker or CA or CMA</p>
4	Swap of capital instruments	Valuation by SEBI registered Merchant Banker or Investment Banker registered abroad with appropriate authority in the host country
5	Non-Subscription to M/A of Indian Company	At face value, subject to entry route and sectoral caps
6	Warrants	Pricing and Price / conversion formula should be determined upfront

*05*

Outbound Investment



# Governing Law

- ▶ Section 6(3)(a) of FEMA, 1999 read with FEM(Permissible capital Account Transactions), Regulations, 2000
- ▶ FEM (Transfer or issue of any Foreign security) Regulations, 2000 popularly referred as (FEMA 120)
- ▶ AP(DIR Series) Circulars issued by RBI from time to time
- ▶ Master Direction on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) abroad (issued on January 1, 2016 updated up to January 4, 2018)
- ▶ FAQ on Overseas Direct Investment released by RBI (as updated from time to time)
- ▶ FAQ on Liberalized Remittance Scheme – Applicable for resident Individuals

# Important new Definitions

**“Direct Investment Outside India”** means investments in any of the following manner :-

- Contribution to capital of foreign entity or
- Subscription to M/A of foreign entity or
- Purchase of existing shares of a foreign entity (Market or private placement or through stock exchange) But does not include Portfolio investment

**“Indian Party”** means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank:

**Provided** that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party"

# Important new Definitions

**"Joint Venture (JV)"** means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment

**"Wholly Owned Subsidiary (WOS)"** means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party

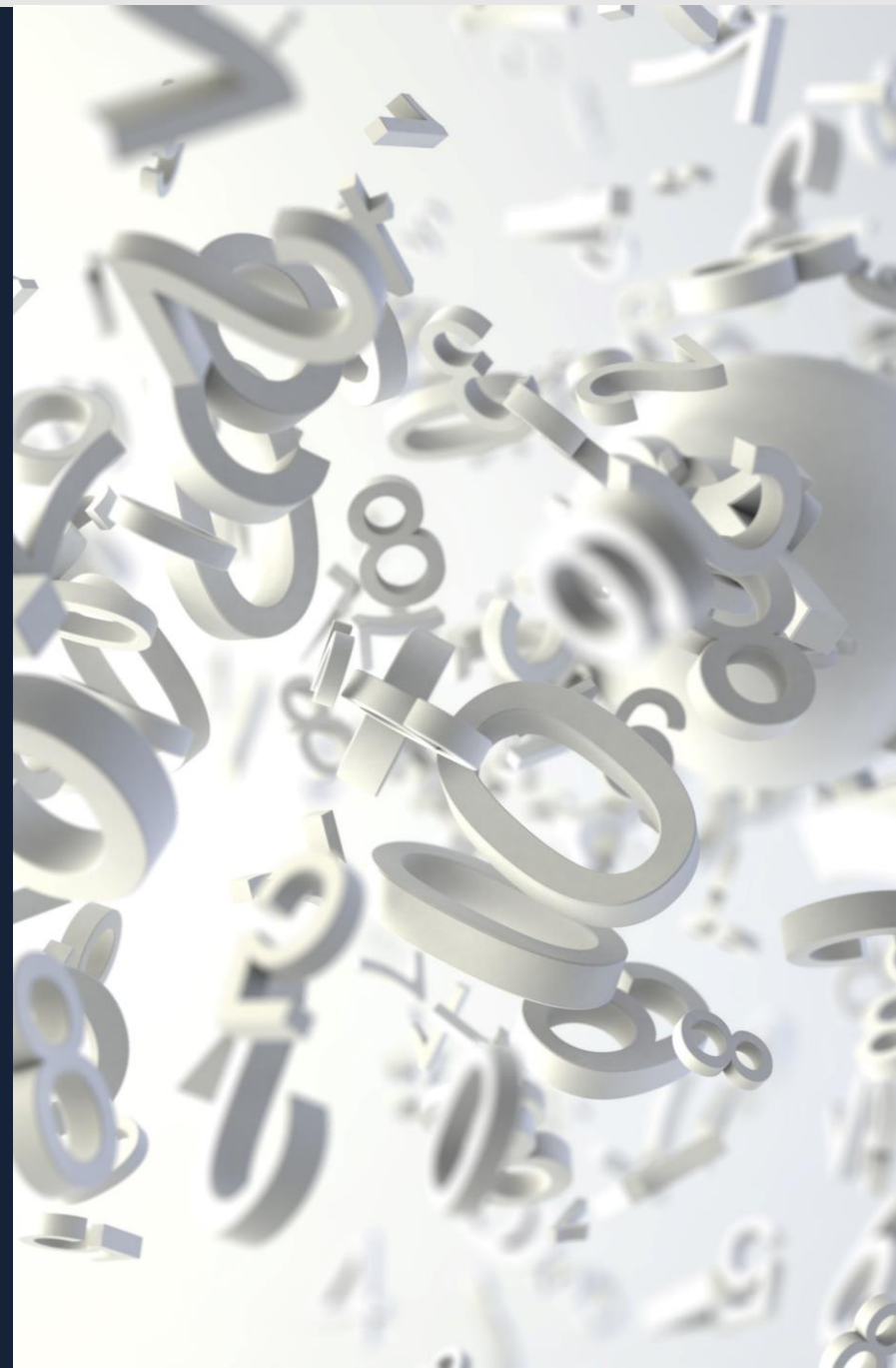
**"Financial Commitment"** means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary

**"Net Worth"** means paid up capital and free reserves

# Prohibited Investments / Financial Commitments

**Real Estate / Banking :** Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the Reserve Bank.

**Financial Products linked to Indian Market :** An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. nondeliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank. Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999.



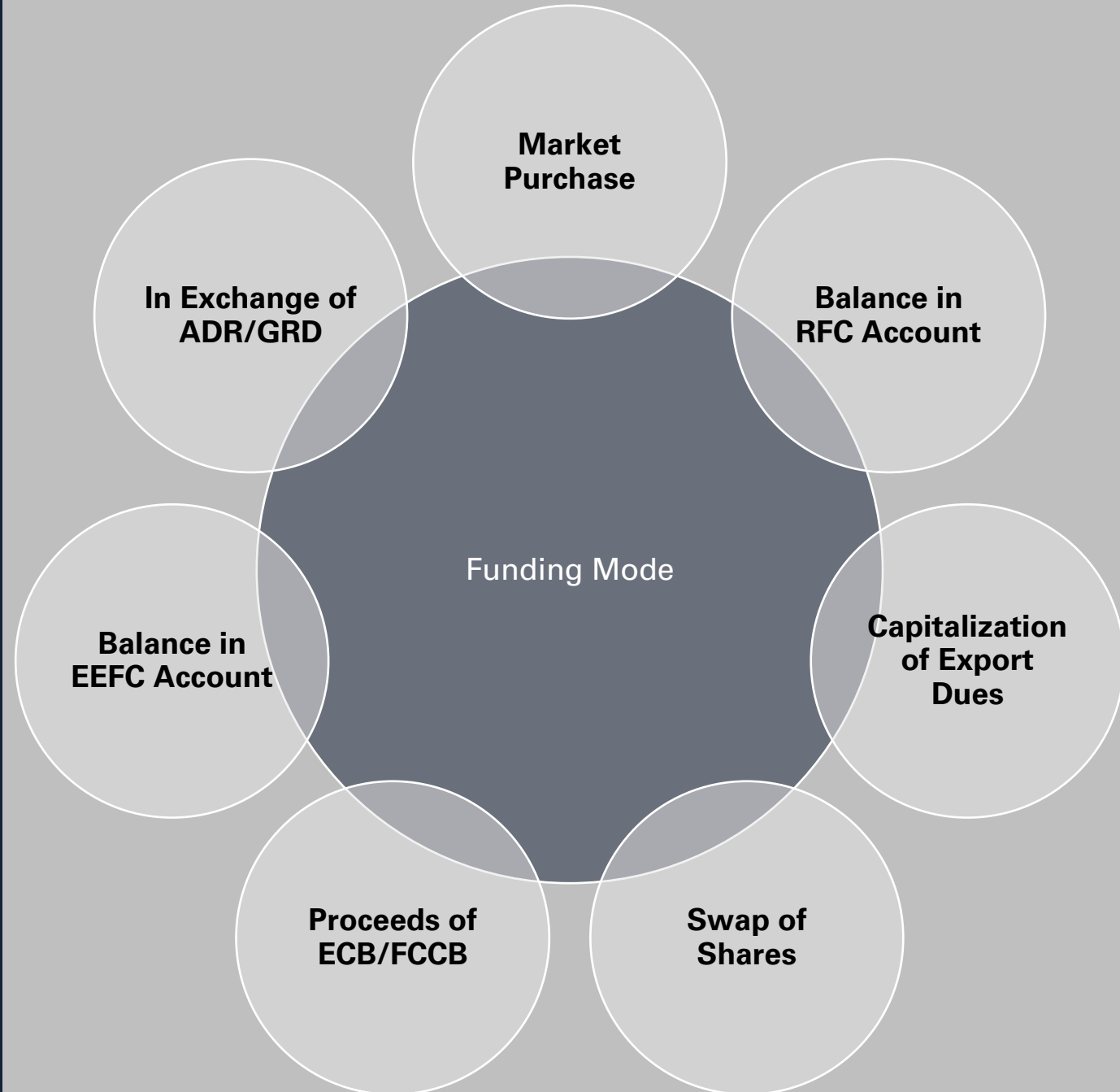
# General Permission

General permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner:

- ▶ out of the funds held in RFC account;
- ▶ as bonus shares on existing holding of foreign currency shares; and
- ▶ when not permanently resident in India, out of their foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

# Mode of Funding



# Financial Commitment

Financial Commitment means the amount of direct investments outside India by an Indian party

- 100% - By way of contribution to equity shares or equity linked instruments of the JV/ WOS abroad ;
- 100% - By way of subscribing to other preference shares
- 100% -as loans to its JV/WOS abroad;
- 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS;
- 50% of the amount of performance guarantee issued on behalf of its overseas JV/ WOS;
- Bank guarantee/standby letter of credit issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/ collateral by the Indian party; and
- Guarantee given on behalf of the first step down subsidiary

## Investment by Proprietary Concerns & Unregistered Firms

Investment by proprietary firm/unregistered partnership firms are allowed under approval route provided:

- ▶ Proprietary firm/unregistered partnership firm is recognised Star export House
- ▶ Having proven track records i.e. Export outstanding does not exceed 10% of average export realisation of past three years
- ▶ AD Bank has satisfied itself about the KYC compliance of the firm and is engaged in the Proposed business and has the turnover indicated
- ▶ Exporter has not come under adverse notice of any Government agency like ED, CBI, Income Tax dept etc.
- ▶ The amount of investment does not exceed 10% of the average of three years export realisation or 200% of the net owed funds of the firm, whichever is lower





# Liberalised Remittance Scheme (LRS)

## Salient Features of LRS

- Introduced in February 2004 as step towards liberalisation of foreign exchange facility for resident Individuals
- Available to all Resident individuals (RI) including minors
- Resident Individual can remit overseas up to USD 2.50 lakhs (revised w.e.f 26.5.2015) per FY for any permissible current/capital account transactions or combination of both
- This limit is over and above the permissible current account transaction limit (except gift and donation)
- Resident Individual can acquire shares or any other asset outside India without prior approval of RBI
- Acquisition of immovable property abroad not allowed under this scheme from 14th August, 2013
- Payment for acquisition under ESOP is permitted.

# Valuation

Indian party can make Overseas Direct Investment by acquiring overseas existing companies:

- ▶ Valuation of shares of overseas entity is required
- ▶ Where investment exceeds USD 5 million – Valuation from Category I merchant banker registered with SEBI in India or outside India with appropriate authorities
- ▶ Where investment is less than USD 5 million – Valuation from Indian CA or CPA of the overseas country allowed
- ▶ In case of investment in WOS by Indian promoter at premium or discount

# Obligation Of Indian Party

The Indian Party / Resident Individual:

- Should receive share certificates or other document evidencing investment within 6 months
- Repatriate to India all dues receivable from the foreign entity like dividend, royalty, fees etc. within 60 days of their falling due or such further period as RBI may allow.
- Submit to RBI (through AD) every year an Annual Performance Report (APR) in Part II of Form ODI in respect of each JV / WOS on or before December 31:
  - APR so required to be submitted has to be based on annual audited accounts of the JV/WOS unless specifically exempted by RBI.
  - **Certification of APR by Statutory Auditor or CA need not be insisted upon by AD. The AD may accept self-certification.**



# Transfer of Shares of JV without Write Off

An Indian Party may transfer by way of sale to another Indian Party which complies with Regulation 6 of FEMA 120 or to a Person Resident Outside India, without any approval of RBI, if

- Sale does not result in write off of investment
- Sale is through the stock exchange
- **In case not listed entity, transfer is not happening at prices less than determined by CPA or CA**
- No outstanding dues from overseas entity
- Overseas entity is in operation for a period more than one year and the requisite APR form has been filed.
- Indian party is not under investigation by CBI/ED/SEBI/IRDA or any other regulatory authority in India



# *Thank You*

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Omnifin Valuation Services (OPC) Pvt Ltd is a private limited company registered under the Companies Act, 2013 [U74999WB2021OPC242865]. It is also a Registered Valuer Entity under Insolvency and Bankruptcy Board of India [IBBI/RV-E/01/2022/160].