

# NEW REGIME FOR OVERSEAS INVESTMENTS FROM INDIA

Key highlights of new regime for overseas investment from India seeks to simplify the existing framework as stated below:

Sr.	Particulars	Key highlights
1	Introduction of concept of Strategic Sector	The restriction of limited liability structure of foreign entity shall not be mandatory for entities with core activity in any Strategic Sector. Strategic Sector is defined specifically which also includes Start-ups
2	Definition of Overseas Direct Investment ('ODI')	Investment by way of - <ul style="list-style-type: none"> <li>• Acquisition of unlisted equity capital or subscription to memorandum of association of foreign entity; or</li> <li>• Investment in 10% or more of the paid-up equity capital of a listed foreign entity; or</li> <li>• Investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity</li> </ul>
3	Limit for making ODI	Overall investment limit of 400% of net worth remain unchanged, however, 100% of the value of guarantees issued (against erstwhile 50%) by the Indian entity to overseas subsidiaries or step-down subsidiaries will be forming part of the overall limit
4	Definition of Overseas Portfolio Investment ('OPI')	Investment, other than ODI, in foreign securities, but does not include investments in – <ul style="list-style-type: none"> <li>• Unlisted debt instruments; or</li> <li>• Security issued by a person resident in India who is not in an IFSC</li> </ul>
5	OPI	OPI means investment, other than ODI, up to 10% of equity capital in an unlisted company have been permitted, subject to specified conditions
6	Overseas investment by entities in financial service sectors	Indian entity engaged / not engaged in financial services activities in India may make ODI in a foreign entity provided that the Indian entity has reported profits in the preceding three financial years and subject to other specified conditions
7	Transfer or liquidation	Provisions in relation to merger / amalgamation / demerger have been eased out and aligned with the current business needs

8	Acquisition or transfer of immovable property outside India	An Authorised Dealer ('AD') bank may allow an Indian entity having an overseas office to acquire immovable property outside India for the business and residential purposes of its staff, provided total remittances do not exceed specified respective limits laid down for initial and recurring expenses						
9	Acquisition by way of gift or inheritance	<p>A resident individual in India may acquire foreign securities without any limit:</p> <table border="1" data-bbox="648 406 1285 913"> <tr> <td data-bbox="648 406 886 609">Inheritance (without any limit)</td> <td data-bbox="886 406 1285 609">From a person resident in India who has acquired in accordance with the provisions of the Foreign Exchange Management Act, 1999 ('FEMA') or from a person outside of India</td> </tr> <tr> <td data-bbox="648 609 886 743">Gift (without any limit)</td> <td data-bbox="886 609 1285 743">From a person resident in India who is a relative and holding such securities in accordance with FEMA</td> </tr> <tr> <td data-bbox="648 743 886 913">Gift</td> <td data-bbox="886 743 1285 913">From a person resident outside in India in accordance with Foreign Contributions (Regulations) Act, 2010 and rules and regulations made thereunder</td> </tr> </table>	Inheritance (without any limit)	From a person resident in India who has acquired in accordance with the provisions of the Foreign Exchange Management Act, 1999 ('FEMA') or from a person outside of India	Gift (without any limit)	From a person resident in India who is a relative and holding such securities in accordance with FEMA	Gift	From a person resident outside in India in accordance with Foreign Contributions (Regulations) Act, 2010 and rules and regulations made thereunder
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10	Investment/disinvestment by persons resident in India under investigation by any investigative agency/regulatory body	Requirement of approval from Reserve Bank of India ('RBI') has been dispensed with. Such person is now required to obtain a No Objection Certification ('NOC') from the lender bank / regulatory body / investigative agency before making any financial commitment						
11	Investment by Resident Individuals	A resident individual may make ODI by way investment in equity capital or OPI, subject to the overall ceiling limit under the Liberalized Remittance Scheme ('LRS') – the current limit is USD \$2,50,000 per financial year (i.e., April to March)						
12	Restriction on financial commitment in a foreign entity by a person resident in India	A person resident in India allowed to make financial commitment in a foreign entity that has invested or invests into India, on or after the date of making such financial commitment, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries						

13	Financial commitment by Indian entity by modes other than equity capital	<p>The Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund-based commitment to or on behalf of a foreign entity including overseas step-down subsidiaries of such Indian entity subject to the following conditions:</p> <ul style="list-style-type: none"> <li>• The Indian entity is eligible to make Overseas Direct Investment;</li> <li>• The Indian entity has made Overseas Direct Investment in the foreign entity;</li> <li>• The Indian entity has acquired control in such foreign entity at the time of making such financial commitment</li> </ul>
14	Financial commitment by Indian entity by way of debt	An Indian entity may lend or invest in any debt instruments issued by a foreign entity subject to the condition that such loans are duly backed by a loan agreement where the rate of interest shall be charged on an arm's length basis
15	Issuance of Corporate guarantee	Requirement of approval from RBI has been dispensed for issuance of corporate guarantees to or on behalf of second or subsequent level step down subsidiary
16	Financial commitment by way of guarantee	<ul style="list-style-type: none"> <li>• The following guarantees may now be issued to or on behalf of the foreign entity or any of its step-down subsidiary in which the Indian entity has acquired control through the foreign entity namely:</li> <li>• Corporate or performance guarantee by a promoter group company of such Indian entity in India;</li> <li>• Personal guarantee by the resident individual promoter of such an Indian entity;</li> <li>• Bank guarantee, which is backed by a counter-guarantee or collateral by the Indian entity's group company</li> </ul>
17	Deferred payment of consideration	The payment of amount of consideration for the equity capital acquired by person resident in India may be deferred for such definite period from the date of the agreement as provided in such agreement subject to specified conditions

New regime for overseas investments from India shall now be governed, effective from August 22, 2022, by the provisions of 'Foreign Exchange Management (Overseas Investment) Rules, 2022' and 'Foreign Exchange Management (Overseas Investment) Regulations, 2022' read with Foreign Exchange Management (Overseas Investment) Directions, 2022.

Notification No. FEMA 120/2004-RB dated July 07, 2004 - Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 and Notification No. FEMA 7 (R)/2015-RB dated January 21, 2016 - Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015 have been superseded.