

OVERSEAS DIRECT INVESTMENTS (ODI)



What is ODI?

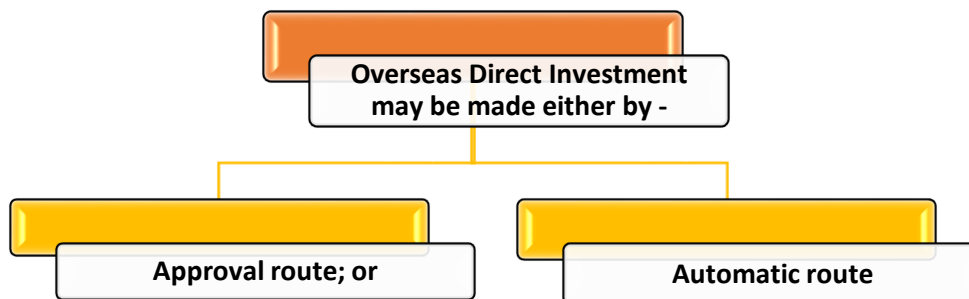
ODI means Investments made in the overseas entities –

- a) by way of contribution to their capital or
- b) subscription to the Memorandum of Association of a foreign entity or
- c) by way of purchase of existing shares of a foreign entity through market purchase or
- d) by way of purchase of shares of a foreign entity through private placement



Advantages of ODI –

- economic and business co-operation between India and other countries
- Transfer of technology and skill
- sharing of results of R&D,
- access to wider global market,
- promotion of brand image,
- generation of employment
- Foreign exchange earnings,



Important Definitions –

1) Financial Commitment –

“Financial Commitment” means the amount of direct investment by way of contribution to –

- a) equity,
- b) loan,
- c) 100% of the amount of corporate guarantees,
- d) 50% of the performance guarantees

issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

2) Joint Venture (JV) –

“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.

3) Wholly Owned Subsidiary (WOS) –

“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;

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).



Meaning of India Party –

“Indian Party” means –

- a) a company incorporated in India or
- b) a body created under an Act of Parliament or
- c) a partnership firm registered under the Indian Partnership Act, 1932, or
- d) a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008



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

- 100% of the amount of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS);
- 100% of the amount of other preference shares;
- 100% of the amount of loan;
- 100% of the amount of guarantee issued by the Indian Party;
- 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian
- 50% of the amount of performance guarantee issued by the Indian Party

Permissible Sources for Funding Overseas Direct Investment –

Funding for ODI can be made by one or more of the following sources –

- 1) Drawal of foreign exchange from and AD bank in India;
- 2) SWAP of shares;
- 3) Capitalization of exports;
- 4) Proceeds of External Commercial Borrowings (ECB) / Foreign Currency Convertible Bonds (FCCB);
- 5) American Deposit Receipts (ADRs) and Global Deposit Receipts (GDRs);
- 6) Balance in Exchange Earners Foreign Currency account of Indian Party.

Indian company making investment in a JV/WOS abroad in the financial services sector –

Only an Indian company engaged in financial services sector activities can make investment in a JV/WOS abroad in the financial services sector. Before making investment it should fulfill the following conditions –

- has earned net profit during the preceding 3 financial years from the financial services activities;
- is registered with the appropriate regulatory authority in India for conducting financial services activities;
- has obtained approval from regulatory authority in India and abroad;
- has fulfilled the capital adequacy norms prescribed by regulatory authority.

Overseas Investments by Proprietorship Concerns –

What is proprietorship concern?

- a) proprietorship concern;
- b) unregistered partnership firm



Conditions for making investment –

- 1) Investment should be made under approval route;
- 2) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy
- 3) The proprietorship concern / unregistered partnership firm in India has a proven track record
Proven track record means, the export outstanding does not exceed 10% of the average export realisation of preceding three years and a consistently high export performance;
- 4) KYC guidelines should be followed;
- 5) The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc
- 6) The proprietorship concern / unregistered partnership firm in India does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India
- 7) The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.

Conditions for Overseas Investments by Trust –

- 1) Investment should be made under approval route;
- 2) The Trust should be registered under the Indian Trust Act, 1882;
- 3) The Trust deed permits the proposed investment overseas;
- 4) The proposed investment should be approved by the trustee/s;
- 5) The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer)
- 6) The Trust has been in existence at least for a period of **3 years**;

- 7) 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.

Note –

Application should be made in form ODI to AD Category-1 bank who shall forward the application to Chief General Manager, RBI for approval.

Conditions for Overseas Investments by Trust –

- 1) The Society should be registered under the Societies Registration Act, 1860.
- 2) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment
- 3) The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer)
- 4) The Society has been in existence at least for a period of 3 years;
- 5) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

Note –

Application should be made in form ODI to AD Category-1 bank who shall forward the application to Chief General Manager, RBI for approval.

Acquisition/Sale of Foreign Securities by Resident Individual in India –

Resident individuals can acquire/sell foreign securities without prior approval in the following cases –

- As a gift from a person resident outside India;
- By way of ESOPs issued by a company incorporated outside India under Cashless Employees Stock Option Scheme which does not involve any remittance from India;
- 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
- As inheritance from a person whether resident in or outside India;
- By purchase of foreign securities out of funds held in the Resident Foreign Currency Account;
- By way of bonus/rights shares on the foreign securities already held by them.

Resident individual acquiring shares of a foreign company in the capacity as Director –

Reserve Bank has given general permission to a resident individual to acquire foreign securities to the extent of the minimum number of qualification shares required to be held for holding the post of Director.

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 –

- ADRs / GDRs of the Indian and foreign companies;
- Equity of overseas companies listed on overseas stock exchanges;
- Foreign debt securities with fully convertible currencies;
- Money market investments
- Government securities

- Derivatives traded on overseas stock exchanges
- Short term deposits with overseas banks
- Units / securities issued by overseas Mutual Funds or Unit Trusts registered with overseas regulators

An Indian Party which has made ODI is required to comply with the following –

- ✓ Receive share certificates or any other documentary evidence of investment in the foreign JV / WOS as an evidence of investment and submit the same to the designated AD within 6 months;
- ✓ Repatriate to India, all dues receivable from the foreign JV / WOS, like dividend, royalty, technical fees etc.;
- ✓ Submit to the Reserve Bank through the designated Authorized Dealer, every year, an Annual Performance Report in Part II of Form ODI