

# Draft Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021

## CHAPTER I PRELIMINARY

### 1. Short Title and Commencement

- (i) These rules shall be called the Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021.
- (ii) Save as otherwise provided in these rules, they shall come into force from the date of their publication in the Official Gazette.
- (iii) These rules shall not apply to any investment made outside India by a unit set up in an "International Financial Services Centre (IFSC)".

### 2. Definitions

In these rules, unless the context otherwise requires:

- (i) "Act" means Foreign Exchange Management Act, 1999 (42 of 1999).
- (ii) "Authorised Dealer Category-I bank (AD bank)" means a person authorised as such under sub-section (1) of section 10 of the Act and for these rules shall include only the domestic branches of such AD bank.
- (iii) "Control" means the right to appoint the majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders' agreements or voting agreements that entitle to ten percent or more of voting rights or in any other manner in the foreign entity.
- (iv) "Disinvestment" means transfer by way of sale of right, title or possession of equity capital acquired under these rules and includes liquidation thereof.
- (v) "EEFC Account" shall have the same meaning as assigned to it in the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, as amended from time to time.
- (vi) "Financial Commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment (ODI), debt other than Overseas Portfolio Investment (OPI) in a foreign entity(ies) in which the ODI is made and shall include the non-fund-based facility(ies) extended by such person to or on behalf of such foreign entity(ies).
- (vii) "Foreign Entity" means (a) an entity incorporated and registered outside India under the laws of the host country, or (b) an unincorporated entity engaged in a strategic sector and formed under the laws of the host country;  
Provided that in case of any ODI in an unincorporated entity engaged in a non-strategic sector and existing as on the date of notification of these rules, no further investment shall be made after six months from the date of notification unless the structure of the foreign entity is modified in compliance with these rules.
- (viii) "Host Country/jurisdiction" means the country or jurisdiction, including IFSC, in which the foreign entity is formed, registered or incorporated, as the case may be.
- (ix) "Indian Entity" means a company incorporated under the Companies Act, 2013, as amended from time to time, or a body corporate incorporated by any Act for the time being in force or a Limited Liability Partnership having perpetual succession duly formed and incorporated under the Limited Liability Partnership Act, 2008, as amended from time to time, or a Partnership firm registered under the Indian Partnership Act, 1932, as amended from time to time, and includes any other entity in India as may be prescribed by the Central Government.
- (x) International Financial Services Centre (IFSC)" shall have the same meanings as assigned to it in Section 3(g) of the International Financial Services Centres Authority Act, 2019.

- (xi) "Last Audited Balance Sheet" means audited balance sheet as on date not exceeding 18 months preceding the date of the transaction.
- (xii) "Listed Foreign Entity" means foreign entity whose equity shares or any other fully and compulsorily convertible instruments that are listed on a recognized stock exchange outside India.  
Explanation: A recognised stock exchange in the International Financial Services Centre (IFSC) in India shall be treated as a recognized stock exchange outside India
- (xiii) "Listed Foreign Security" means any foreign security of a foreign entity listed on a recognized stock exchange outside India and the expression "Unlisted Foreign Security" shall be construed accordingly.  
Explanation: A recognised stock exchange in the International Financial Services Centre (IFSC) in India shall be treated as a recognized stock exchange outside India.
- (xiv) "Listed Indian Company" means an Indian company which has equity shares or any of its fully and compulsorily convertible instruments listed on a recognized stock exchange in India and the expression "Unlisted Indian Company" shall be construed accordingly.
- (xv) "Mutual Fund" means any fund established or incorporated in India under SEBI (Mutual Funds) Regulations, 1996, as amended from time to time.
- (xvi) "Net Worth" of Indian entity shall have the same meaning as assigned to it under sub-section (57) of section 2 of the Companies Act, 2013, as amended from time to time.  
Explanation: In case of a Registered Partnership firm or LLP, 'Net Worth' shall be the sum of the capital contribution of partners and undistributed profits of the partners after deducting therefrom the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the last audited balance sheet.
- (xvii) "Overseas Direct Investment (ODI)" means investment by way of acquisition of equity capital of an unlisted foreign entity, or subscription to the Memorandum of Association of a foreign entity, or investment in ten percent or more of the paid-up equity capital of a listed foreign entity, or where the person resident in India making such investment has or acquires control, directly or indirectly, in the foreign entity. Any sponsor contribution made, directly or indirectly, by an Indian Entity to an Alternative Investment Fund/Investment vehicle set up in an overseas jurisdiction as per the laws of such host jurisdiction; or any acquisition outside India of 'participating interest/ right' in the energy sector or investment outside India in agricultural operations as provided under these rules and the FEM (OI) regulations shall also be treated as ODI by way of equity capital.  
Explanation: For the purpose of these rules:  
(a) Once an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, the investment shall continue to be treated as ODI even if such investment falls to a level below ten percent of the paid-up equity capital or such person resident in India loses control in the foreign entity.  
(b) "Agricultural Operations" means agriculture as defined in the National Bank for Agriculture and Rural Development Act, 1981.  
(c) "Alternative Investment Fund" for the purpose of above clause means a fund set up overseas as per the laws of the host jurisdiction that is similar to a fund set up under Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.  
(d) "Equity Capital" means equity shares or perpetual capital/instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments.
- (xviii) "Overseas Investment" means financial commitment and OPI by a person resident in India.
- (xix) "Overseas Portfolio Investment (OPI)" means investment, other than ODI, in foreign securities, including units of Exchange-traded Funds and depository receipts, which are listed, unless stated otherwise, on a recognized stock exchange outside India but not in any securities issued by a person resident in India (outside an IFSC).

Provided OPI by a person resident in India in the equity capital of a listed foreign entity shall, after its delisting, continue to be treated as OPI until any further investment is made by the Indian entity in such foreign entity.

- (xx) "FEM (OI) Regulations" means Foreign Exchange Management (Overseas Investment) Regulations framed by the Reserve Bank under section 47 of the Act.
- (xxi) "Relative" shall have the same meaning assigned to it in terms of section 2(77) of the Companies Act, 2013, as amended from time to time and in Rule 4 of the Companies (Specification of definitions details) Rules, 2014, as amended from time to time.
- (xxii) "Resident Individual" means a person resident in India who is a natural person.
- (xxiii) "RFC Account" shall have the same meaning as assigned to it in the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, as amended from time to time.
- (xxiv) "Society" means a Society registered under the Societies Registration Act, 1860.
- (xxv) "Step Down Subsidiary (SDS)" means a subsidiary of a foreign entity having ODI and in a case where the Indian entity has control in the foreign entity at the time of the creation of SDS, the structure of such SDS shall comply with the requirements of a foreign entity as prescribed in rule 2(vii).  
Explanation:
  - (a) For this clause, a subsidiary would not include an entity in which the foreign entity holds equity capital in the nature of listed securities and not exceeding 10% of the paid-up capital of the investee entity.
  - (b) A subsidiary of an SDS will also be an SDS.
- (xxvi) "Strategic Sector" shall include energy and natural resources sectors such as Oil, Gas, Coal and Mineral Ores or any other sector that may be advised by the Central Government subject to conditions as may be laid down under these rules by the Central Government.
- (xxvii) "Sweat Equity Shares" means such equity shares as are issued by a foreign entity, which is a company, to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights like intellectual property rights or value additions, by whatever name called.
- (xxviii) "Trust" means a trust registered under the Indian Trust Act, 1882.
- (xxix) "Venture Capital Fund" means a fund registered as such under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as amended from time to time.
- (xxx) "Write-Off" means any shortfall in the amount of consideration received by a person resident in India against the proportionate amount of equity capital at the time of partial disinvestment in the foreign entity and in case of full disinvestment, such short fall includes the amount of consideration received against the investment in equity capital and debt as due and outstanding on the date of such disinvestment from the foreign entity or the amount of diminution in the capital and other receivables on account of restructuring of the balance sheet of the foreign entity.
- (xxxi) The words and expressions used but not defined in these rules shall have the same meanings respectively assigned to them in the Act or rules or regulations.

## **2A. Administration of these Rules**

- (1) These rules shall be administered by the Reserve Bank.
- (2) While administering these rules, the Reserve Bank may interpret and issue such directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules.

## CHAPTER II GENERAL CONDITIONS APPLICABLE TO ALL INVESTORS

### **3. Restriction on Investment outside India by a Person Resident in India**

Save as otherwise provided in the Act or these rules or the FEM (OI) regulations or directions issued thereunder, no person resident in India shall make or transfer any investment or financial commitment outside India.

Provided that an investment or financial commitment outside India made in accordance with the Act or regulations made thereunder and held on the date of commencement of these rules shall be deemed to have been made under these rules; and shall accordingly be governed by these rules and the FEM (OI) regulations.

Provided further that the Reserve Bank may, on an application made to it and for sufficient reasons, permit a person resident in India to make or transfer any investment or financial commitment outside India subject to such conditions as may be laid down by it.

### **4. Permission for making Overseas Investment**

(A) Unless prescribed otherwise in these rules or the FEM (OI) regulations, any investment made by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through SDS, subject to the limits and the conditions prescribed in these rules and specified in the FEM (OI) regulations.

Explanation: For these rules, bona fide business activity shall mean any business activity legally permissible both in India and host jurisdiction.

#### **(B) Approval from the Central Government**

- (i) Any Overseas Investment or transfer of such investment in a foreign entity formed, incorporated, or registered in Pakistan or any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.
- (ii) The Central Government may, on an application made to it by persons engaged in strategic sectors, permit financial commitment above the limits prescribed, subject to such terms and conditions as it considers necessary.

#### **(C) Approval from the Reserve Bank**

- (i) Reserve Bank may, if it considers necessary, in consultation with the Central Government, stipulate the ceiling for the total aggregate outflow during a financial year on account of financial commitment or OPI.
- (ii) Reserve Bank may, if it considers necessary, in consultation with the Central Government, stipulate the ceiling beyond which the amount of financial commitment by an Indian entity in a financial year shall require its prior approval.

#### **(D) “No Objection Certificate (NOC)” from the Lender Bank(s)/Regulatory Body/Investigative Agency**

Where a person resident in India making any financial commitment or undertaking disinvestment of such financial commitment under these rules or the FEM (OI) regulations has an account appearing as a Special Mention Account- category 1/ Special Mention Account- category 2 /Non-Performing Asset (NPA)/wilful defaulter as per the information available with a Credit Information Company (CIC) registered under Credit Information Companies (Regulation) Act, 2005, or is under investigation by a regulatory body, viz., SEBI, Insurance Regulatory and Development Authority (IRDA) or Pension Fund Regulatory and Development Authority (PFRDA) or National Housing Bank (NHB) or any other regulator as may be prescribed by the Central Government, or is under investigation by investigative agencies in India, viz., Central Bureau of Investigation or Directorate of Enforcement or Income-tax Department or Serious Frauds Investigation Office or any other agency as advised by the Central Government, an NOC shall be obtained from the lender bank(s)/regulatory body/investigative agency concerned before making financial commitment or undertaking disinvestment of such financial commitment provided such financial commitment is in compliance with other provisions of these rules and FEM (OI) regulations.

Provided further where the lender bank(s)/regulatory body/investigative agency concerned failed to furnish the objection(s) within sixty days from the date of receipt of such request, it may be presumed that they have no objection to the proposed transaction.

Note: (i) The NOC shall be directly addressed by the lender bank(s)/regulatory body/investigative agency concerned to the concerned AD bank.

(ii) In case of approval route cases any reference for approval shall be made to the Reserve Bank or Central Government, as the case may be, only after obtaining the NOC as above, wherever applicable.

**(E)** A person resident in India is permitted to make OI as under:

- (i) An Indian entity may make ODI in the manner and subject to the terms and conditions prescribed in Schedule I.
- (ii) An Indian entity may make OPI in the manner and subject to the terms and conditions prescribed in Schedule II.
- (iii) A resident individual may make OI in the manner and subject to the terms and conditions prescribed in Schedule III.
- (iv) A person resident in India, other than an Indian entity or a resident individual, may make OI in the manner and subject to the terms and conditions prescribed in Schedule IV.

**Explanation:** A person resident in India, who has acquired and continues to hold equity capital of a foreign entity in accordance with the provisions of the Act, Rules or Regulations made thereunder, may invest in the equity capital issued by such entity as a rights issue or may be granted bonus shares subject to the terms and conditions as prescribed in these Rules.

## **5. Pricing Guidelines, transfer/liquidation and restructuring**

**(A) Pricing guidelines:** Unless prescribed otherwise in these rules the valuation of any equity capital shall be subject to the following conditions:

(1) In case of issue or transfer of equity capital from a person resident outside India to a person resident in India who is eligible to make such investment or from a person resident in India to another person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India:

- (i) In case of listed foreign securities, the price worked out in accordance with the concerned stock exchanges of the host country; or
- (ii) In case of Overseas Investment other than listed foreign securities, the price should be within 5 percent range of the fair value arrived on an arm's length basis as per any internationally accepted pricing methodology for valuation duly certified by a registered valuer as per the Companies Act 2013; or similar valuer registered with the regulatory authority in the host jurisdiction to the satisfaction of the AD bank.

(2) The valuation certificate dated not more than six months before the date of the transaction shall be submitted to the AD bank.

**(B) Transfer/Liquidation:** Unless prescribed otherwise in these rules or specified in FEM (OI) regulations, a person resident in India holding equity capital in accordance with these rules may transfer such investment, in compliance with and subject to adherence to investment limits and attendant conditionalities for such investment/disinvestment, pricing guidelines, documentation and reporting requirements prescribed in these rules and FEM (OI) regulations, in the following manner:

(1) A person resident in India may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment under these rules and FEM (OI) regulations, or to a person resident outside India;

(2) In case the transfer is on account of merger, amalgamation or demerger or on account of buyback of foreign securities, such transfer, or liquidation in case of liquidation of the foreign entity, should have the approval of the competent authority as per the laws in India and/or the host country, as the case may be;

(3) Where the disinvestment by the person resident in India pertains to ODI, the following conditions shall additionally apply:

- (i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which the transferor is entitled to receive from the foreign entity as an investor in equity capital and debt.
- (ii) the transferor, in case of any disinvestment other than by way of conversion to loan, should have stayed invested for at least a year from the date of making ODI;
- (iii) the transferor, in case of any disinvestment by way of conversion to loan, shall not lose control in the foreign entity and shall be compliant with the provisions for lending/investment as stipulated in FEM (OI) regulations, post such conversion.

Provided that where the original investment was not permitted under the Act or these rules or FEM (OI) regulations, transfer thereof in any manner shall also be treated as a contravention under FEMA.

**(C) Restructuring:** An Indian entity which has made ODI in a foreign entity, may permit restructuring of the balance sheet by such foreign entity, which has been incurring losses for the previous two years as evidenced by its last audited balance sheets, subject to ensuring compliance with reporting, documentation requirements and subject to the diminution in the total value of the outstanding dues towards the Indian entity including investment in equity and debt, after such restructuring not exceeding the proportionate amount of the accumulated losses.

Provided that in case of such diminution where the amount of corresponding original investment is more than USD 10 million or in case where the amount of such diminution exceeds 10 percent of the total value of the outstanding dues towards the Indian entity, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act 2013 or similar valuer registered with the regulatory authority in the host jurisdiction.

Provided further that the certificate dated not more than six months before the date of the transaction shall be submitted to the AD bank.

## 6. Restrictions

Unless otherwise stated specifically in the Act or these rules or FEM (OI) regulations:

(1) A person resident in India is prohibited from making ODI in a foreign entity engaged in:

- (i) Real estate activity;
- (ii) Gambling in any form; and
- (iii) Offering financial products linked to Indian Rupee except for products offered in an IFSC

Explanation: "Real estate activity" means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include the development of townships, construction of residential/commercial premises, roads or bridges for selling or leasing.

(2) Overseas Investment by a person resident in India shall not be made in a foreign entity located in countries/ jurisdictions that are not FATF and IOSCO compliant country or any other country/ jurisdiction as may be prescribed by the Central Government.

Explanation:

- a) "Financial Action Task Force (FATF) Compliant Country" means a country that is a member of the FATF or a member of a FATF-Style Regional Body, and should not be a country identified in the public statement of the FATF as (i) A jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply, or (ii) A jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.
- b) "International Organisation of Securities Commission (IOSCO) Compliant Country" means a country whose securities market regulator is a signatory to the IOSCO's

Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the SEBI for information sharing arrangements.

(3) The Financial Commitment by a person resident in India in a foreign entity that has invested or invests into India, at the time of making such Financial Commitment or at any time thereafter, either directly or indirectly, which is designed for the purpose of tax evasion/ tax avoidance by such person is not permitted and any contravention under this rule shall be considered to be a contravention of serious/sensitive nature.

(4) The prohibitions laid down in these rules *mutatis mutandis* shall apply to SDS also.

#### **7. Requirements to be specified by the reserve Bank**

The mode of payment, deferred payment of consideration, reporting, realization, and other requirements for any investment outside India by a person resident in India shall be as specified by the Reserve Bank.

### **CHAPTER III ACQUISITION AND TRANSFER OF IMMOVABLE PROPERTY OUTSIDE INDIA**

#### **8. Restriction on Acquisition or Transfer of Immovable Property outside India**

Save as otherwise provided in the Act or these rules, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank.

#### **9. Exemptions**

Nothing contained in these rules shall apply to a property:

- (i) held by a person resident in India who is a national of a foreign state;
- (ii) acquired by a person resident in India on or before 8th July 1947 and continued to be held by such person with the permission of the Reserve Bank;
- (iii) acquired by a person resident in India on a lease not exceeding five years.

#### **10. Acquisition of Immovable Property outside India**

(1) A person resident in India may acquire immovable property outside India by way of inheritance or gift or purchase from a person resident in India who has acquired such property as per the foreign exchange provisions in force at the time of such acquisition.

(2) A person resident in India who is an individual may acquire immovable property outside India from a person resident outside India:

- (i) by way of inheritance;
- (ii) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, as amended from time to time;
- (iii) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme (LRS) instituted by the Reserve Bank of India;  
Explanation: Remittances under the LRS can be consolidated in respect of relatives as defined in these rules subject to such relatives being persons resident in India, are co-owners of the property acquired and individual family members complying with the terms and conditions of the LRS.
- (iv) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;
- (v) Out of the income/sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act.

(3) An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff, as per the directions issued by the Reserve Bank from time to time.

### **11. Transfer of Immovable Property outside India**

A person resident in India who has acquired any immovable property outside India in accordance with the foreign exchange provisions in force at the time of such acquisition may:

(1) transfer such property in compliance with these rules (i) by way of gift to a person resident in India who is eligible to acquire such property under these rules or (ii) by way of inheritance to an individual or (iii) by way of sale.

(2) create a charge on such property in accordance with the Act or the rules or regulations made thereunder, or directions issued by the Reserve Bank from time to time.

Provided that where the original investment in immovable property was not permitted under the Act or the rules or regulations made thereunder, transfer thereof in any manner shall also be treated as a contravention under the Act.

## **Schedule I**

### **Overseas Direct Investment by an Indian entity**

**[See Rule 4(E)(i)]**

1. An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bona fide business activity in the following manner and subject to the limits and conditions laid down in this Schedule.

#### **2. An Indian entity may make Overseas Direct Investment by way of:**

- (i) Subscription to/Purchase of equity capital, listed or unlisted;
- (ii) Acquisition through bidding or tender procedure;
- (iii) Acquisition of equity capital by way of rights issue/ allotment of bonus shares;
- (iv) Capitalization, within the time period, if any, prescribed for realisation under the Act, of any amount due towards the Indian entity from the foreign entity, the remittance of which is permitted under the Act or any rules or any regulations made or directions issued thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or any regulations made or directions issued thereunder;
- (v) The swap of securities provided the approval from the Central Government, wherever necessary, is obtained in accordance with these rules;
- (vi) Merger, demerger, amalgamation, or any scheme of arrangement as per the laws in India and/or the host country, as applicable.

#### **3. ODI in Financial Services Activity**

An Indian entity which is engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity subject to the following conditions:

- (i) Such Indian entity has posted net profits during the preceding three financial years;
- (ii) Such Indian entity is registered with or regulated by a financial services regulator in India, viz., the Reserve Bank, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Central Government for conducting financial services activity;
- (iii) Such Indian entity has obtained approval from the regulators of such financial services activity, both in India and abroad, if so required, for engaging in such financial services;

Explanation:

- (a) For this clause, a foreign entity will be considered to be engaged in the business of financial services activity if it undertakes an activity, which if carried out by an entity in India, requires registration with or is regulated by a financial sector regulator in India.



- (b) Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions prescribed by the Reserve Bank in this regard.
- (c) Banks regulated by the Reserve Bank may acquire the shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT), Belgium as per the by-laws of SWIFT, provided that such banking company has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as a member.

#### **4. ODI in technology ventures through an Overseas Technology Fund (OTF)**

An Indian entity listed on a recognized stock exchange in India and having a minimum net worth of Rs.500 crore based on the last audited balance sheet, may make ODI including by way of contribution in an Overseas Technology Fund, for the purpose of investing in overseas technology startups (startups as defined in terms of the host country's regulations) engaged in an activity which is in alignment with the core business of such Indian entity, subject to the following conditions:

- (i) Such Indian entity has posted net profits during the preceding three financial years;
- (ii) The amount to be invested in the OTF shall be from the internal accruals / group or associate companies in India and not borrowed from the banks/Financial Institutions or any other entity regulated by the Reserve Bank;

#### **5. Investment in Agricultural Operations outside India**

- (i) An Indian entity may engage in agricultural operations, including purchase of land incidental to such activity, either directly or through an office outside India.
- (ii) The valuation of the land shall be certified by a certified valuer registered with the appropriate valuation authority in the host country.

#### **6. Limit for financial commitment**

The total financial commitment made by an Indian entity, excluding capitalization of retained earnings, in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400% or as directed by the Reserve Bank from time to time, of its net worth as on the date of the last audited balance sheet.

Provided:

- (i) The financial commitment made by "Maharatna" PSUs or "Navratna" PSUs or subsidiaries of such PSUs in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down above.
- (ii) The limit shall not apply where the investment is made out of the balances held in its EEFC account.
- (iii) Utilisation of the amount raised by issue of American Depository Receipts (ADR)/ Global Depository Receipts (GDR) and ADR/ GDR stock-swap for making financial commitment shall also be reckoned towards the above limit.
- (iv) Utilisation of the proceeds from External Commercial Borrowings (ECB) for making financial commitment shall also be reckoned towards the above limit to the extent the corresponding pledge or creation of charge on assets to raise such ECB has already not been reckoned towards the above limit of the Indian entity.

### **Schedule II**

#### **Overseas Portfolio Investment by an Indian Entity**

**[See Rule 4(E)(ii)]**

An Indian entity may make OPI subject to the limit and conditions laid down in this schedule.

1. A listed Indian company may make OPI including by way of reinvestment within the limit of 50 percent of its net worth as on the date of its last audited balance sheet.
2. An Indian entity, which is a software exporter, or any other entity as may be prescribed by the Central Government in this regard, may receive foreign securities up to 25% of the value

of exports made to a foreign software company irrespective of whether such company is listed or not.

**Schedule III**  
**Overseas Investment by Resident Individuals**  
**[See Rule 4(E)(iii)]**

1. Unless otherwise stated specifically, a resident individual may make ODI by way of investment in equity capital or OPI in the following manner and within the overall ceiling prescribed for the resident individuals under the LRS in force at the time of investment.

Provided the investments made out of the following shall be outside the limit prescribed under LRS:

- (i) RFC Account maintained in accordance with the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, as amended from time to time;
- (ii) Foreign currency deposits held outside India in case of a person 'not permanently resident' in India. For this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

**2. A resident individual may make or hold Overseas Investment in a foreign entity by way of:**

- (i) ODI only in an operating foreign entity not engaged in financial services activity, provided such individual also acquires control, directly or indirectly, in such foreign entity. No subsidiary/SDS shall be acquired or set up by such foreign entity;
- (ii) ODI by way of capitalization, within the time period, if any, prescribed for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or any rules or any regulations made or directions issued thereunder or does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or any regulations made or directions issued thereunder;
- (iii) Overseas Portfolio Investment, including by way of reinvestment;
- (iv) Inheritance/gift as per the conditions contained in this schedule;
- (v) The swap of securities on account of a merger, demerger, amalgamation or liquidation of the foreign entity;
- (vi) Acquisition of equity capital by way of rights issue/ allotment of bonus shares;
- (vii) Acquisition of sweat equity shares;
- (viii) Acquisition of minimum qualification shares issued for holding a management post in a foreign entity;
- (ix) Acquisition of shares/interest under Employee Stock Ownership Plan ESOP/Employee Benefits Scheme.

**Explanations:**

- (a) The acquisition of equity capital under sub-clauses (iv) to (vi) above shall be treated as ODI or OPI based on the nature of investment acquired.
- (b) Notwithstanding the definition of ODI prescribed in these rules, the acquisition of equity capital under sub-clauses (vii) to (ix) above shall be treated as 'Overseas Portfolio Investment' if the shares/interest so acquired by such person does not exceed 10 percent of the paid-up capital/stock of the foreign entity.

**3. Acquisition by way of Gift or Inheritance**

(1) A resident individual may, without applicability of any limit, acquire Overseas Investment by way of inheritance from a person resident in India who is holding such Overseas Investment in accordance with the provisions of the Act or from a person resident outside India.

(2) A resident individual may acquire foreign securities by way of gift from a person referred to in sub-section (4) of Section 6 of the Act or from a person resident outside India, who is a

relative as defined in these rules subject to the limit stipulated by the Reserve Bank from time to time.

#### **4. Acquisition of Shares/interest under ESOP/Employee Benefits Scheme and Sweat Equity Shares**

(1) A person resident in India, being an individual, who is an employee or a director of an Indian office or branch of a foreign entity or a subsidiary in India of a foreign entity or of an Indian entity in which the foreign entity has direct or indirect equity holding, may acquire shares/interest under ESOP/Employee Benefits Scheme and/ or “sweat equity shares” offered by such foreign entity, not leading to control, provided that the issue of “ESOP/Employee Benefits Scheme” are offered by the issuing foreign entity globally on a uniform basis.

Explanation: For this paragraph, ‘indirect’ means indirect foreign equity holding through a special purpose vehicle/ an SDS.

(2) Outward remittance made under ESOP/Employee Benefit Schemes or for the acquisition of sweat equity shares shall be within the overall ceiling prescribed for the resident individuals under the LRS in force at the time of such remittance.

Explanation: Employee Benefit Scheme means any compensation given to the directors, officers or employees of an Indian entity or its holding company or subsidiary company which gives such directors, officers or employees ownership interest in a foreign entity through ESOP or any similar scheme.

### **Schedule IV**

#### **Overseas Investment by a Person Resident in India other than an Indian Entity and an Individual**

**[See Rule 4(E)(iv)]**

##### **1. ODI by Registered Trust or Society**

A registered trust or a registered society engaged in the educational sector or which has set up hospital(s) in India, with the prior approval of the Reserve Bank, may make ODI in a foreign entity subject to the following conditions:

- (i) The foreign entity shall be engaged in the same sector that the Indian trust or society is engaged in;
- (ii) The trust or the society, as the case may be, shall have been in existence for at least three financial years before the year in which such investment is being made;
- (iii) The trust deed in case of a trust, and the Memorandum of Association/rules/bye-laws in case of a society shall permit the proposed ODI;
- (iv) Such investment shall have the approval of the trustee(s) in case of trust and the governing body/ council or managing/ executive committee in case of a society;
- (v) In case the trust or the society, as the case may be, which require special license/ permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, such Trust/ Society shall ensure that such special license/ permission has been obtained and submitted to the AD bank.

##### **2. Mutual Funds, Venture Capital Funds and Alternative Investment Funds**

- (i) The purchase of foreign securities by a mutual fund or venture capital fund or AIF shall be subject to these rules and such other terms and conditions as may be notified by the Reserve Bank and SEBI from time to time;
- (ii) Mutual funds registered with the SEBI may invest within specified limits, in the shares or the rated bonds/fixed income securities of an overseas company listed on a recognized stock exchange or in exchange-traded funds, or other securities as may be stipulated by the Reserve Bank from time to time;
- (iii) Every transaction relating to purchase and sale of foreign security by such funds shall be routed through the designated branch of an AD bank in India.
- (iv) The individual limits for such investments shall be as per the instructions issued by SEBI in this regard;

- (v) The aggregate limit for such investment shall be decided by Reserve Bank with the concurrence of the SEBI.

Explanation:

- (a) Notwithstanding the definition of ODI or OPI prescribed in these rules but subject to the provisions contained in rule 6(3), any investment as per these rules by Mutual Funds, Venture Capital Funds and Alternative Investment Funds shall be treated as OPI.
- (b) "Alternative Investment Fund (AIF)" means any fund established or incorporated in India under Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

### **3. Opening of Demat Accounts by Clearing Corporations of Stock Exchanges and Clearing Members**

A person resident in India being a SEBI approved clearing corporation of stock exchange and its clearing members, subject to the guidelines issued by the SEBI from time to time, may acquire, hold, and transfer foreign securities, offered as collateral by foreign portfolio investors and in accordance thereof:

- (i) open and maintain Demat account(s) with foreign depositories;
- (ii) remit the proceeds arising due to such action, if any; and
- (iii) liquidate such foreign securities and repatriate the proceeds thereof to India.

4. A domestic depository may acquire, hold and transfer foreign securities of a foreign entity, being the underlying security to issue Indian Depository Receipts (IDRs) in accordance with Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, as amended from time to time, as may be authorised by such company or its overseas custodian bank and subject to the following conditions:

- (i) Indian entities/Indian mutual funds/AIFs may either sell or continue to hold the underlying shares in compliance with the conditions laid down in these rules;
- (ii) Resident individuals may hold the underlying shares only for sale within 90 days from the date of conversion of the IDRs into underlying shares.

5. An overseas branch of a bank regulated by the Reserve Bank under the provisions of the Banking Regulation Act, 1949, may acquire foreign securities and /or may transfer them in terms of host country regulations/ laws in the normal course of its banking business outside India.