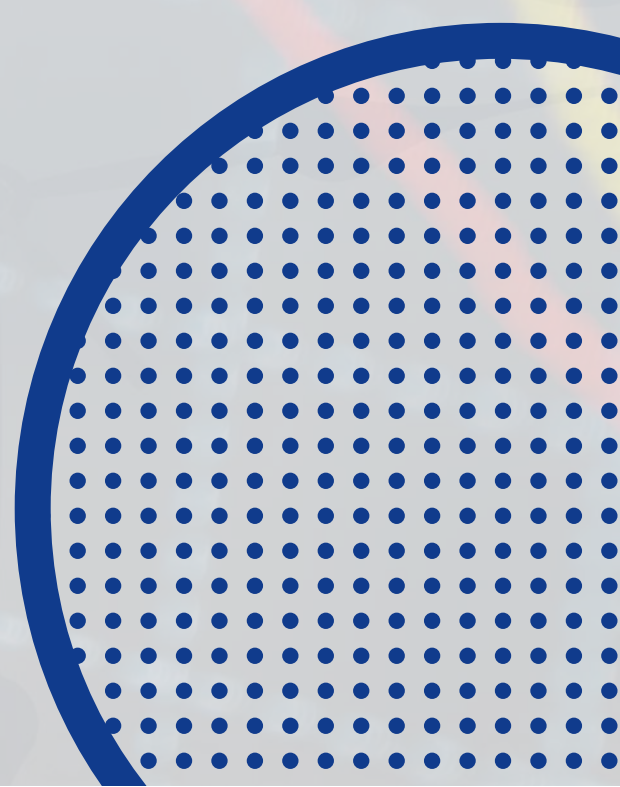




# Foreign Exchange Management (Overseas Investment) Rules, 2022





## ABOUT

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# Our Company

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Enterslice is a renowned management consultancy firm that has established itself as a market leader in serving corporate houses and entrepreneurs with their business setup, business management, advisory, financial planning and management, risk assurance (VCFO) and regulatory requirements.

We are a globally recognised Legal Tech and CPA firm backed by avant-garde Artificial Intelligence (AI) and Automation, known for its customer-centric, customised and peerless services to its clients worldwide.

Our team comprises seasoned Chartered Accountants, Company Secretaries, MBAs and Lawyers operating from our offices worldwide.

We act as an all-inclusive solution to our clients, helping them achieve their business goals and operating unhindered and compliantly. Our technology-driven solutions enable us to become your partner and help you grow your venture to superior heights of success.



# VISION & MISSION

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## Vision

*To Empower businesses to transform and achieve their goals by offering exemplary management and advisory solutions.*



## Mission

*To achieve excellence by setting standards of professionalism, morals and transparency. Being skilled and mature in approach and decision-making ability IS the cornerstone aptitude of our employees.*



# ABOUT NOTIFICATION

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On 22nd August 2022, the Reserve Bank of India (RBI), vide Notification No. FEMA 400/2022-RB issued the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

The recently enacted norms specify that the RBI has prescribed various modes of financial commitments by the Indian Entities, which are as follows -

- Modes other than Equity Capital
- Debt
- Guarantee
- Pledge or Charge

The norms in Foreign Exchange Management (Overseas Investment) Regulations, 2022 provide the Acquisition or Transfer of Equity, which acts as a deferred payment method called Overseas Direct Investment (ODI). The ODI also provides the obligations of a Person Resident in India and reporting requirements for ODI.

The essential highlights of the Foreign Exchange Management (Overseas Investment) Regulations, 2022 Notifications are as follows -

- Modifying the term "Financial Commitment"
- Implementing Modes of Financial Commitments by the Indian Entity
- Recognition for Acquisition or Transfer by way of Deferred Payment as Overseas Direct Investment (ODI)
- Obligations of a Person Resident in India
- Provides Reporting Requirements for ODI by a Principles for Responsible Investment (PRI)
- Introducing "Late Submission Fees"
- Restrictions on Financial Commitment or transfer by a PRI



# OVERVIEW

## of Foreign Exchange Management (Overseas Investment) Regulations, 2022

Under the Foreign Exchange Management (Overseas Investment) Regulations, 2022, the equity capital purchased from a foreign entity is to be reckoned as Overseas Direct Investment (ODI). The payment is to be deferred for a definite period as stated in the agreement between the "Foreign Entity" and the "Indian Entity".

As there is rapid growth in the Indian Market, there is a high demand for Indian Companies to be part of the global chain. On 22nd August 2022, the Ministry of Finance notified the Foreign Exchange Management (Overseas Investment) Rules, 2022 in suppression of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015.

The purpose of enacting such rules was to provide a framework for regulating Overseas Investments, simplifying and aligning with developing business policies and economic conditions. Overseas Direct Investment and Overseas Investment Portfolio Investment process has been simplified; the status of various related transactions under the approval stage is now being automatically converted into the automatic approval route.



# KEY HIGHLIGHTS

## of the FEM (Overseas Investment) Regulations, 2022

### **Modifying the term "Financial Commitment"**

In accordance with the new regulations, 'Financial Commitment' is to be defined as stated in the FEM (Overseas Investment) Rules, 2022.

In accordance with Rule 2(f), the term 'Financial Commitment' means the aggregate amount of investment made by a person resident in India –

- Through Overseas Direct Investment.
- Debt apart from Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made.
- To include the non-fund-based facilities extended by such person to or on behalf of such Foreign Entities.

As per the regulations, the term 'Financial Commitment' means the amount of direct investment by contribution to equity and loan and fifty per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.



## **Implementing Various Modes of Financial Commitments by the Indian Entity**

The Reserve Bank of India (RBI) has implemented Various Modes of Financial Commitments by the Indian Entity, which are as follows -

- Modes other than Equity Capital
- Debt
- Guarantee
- Pledge or Charge

### **Obligations of a Person Resident in India**

A Person Resident in India acquiring equity capital in a Foreign Entity needs to fulfil the provided obligations –

- Submitting Share Certificates to the AD bank or any other document as a form of evidence for investing through ODI within 6 months from the date of effecting the remittance.
- Obtaining a Unique Identification Number or “UIN” from the Reserve Bank of India for the foreign entity in which the ODI is intended to be made before sending outward remittance or acquisition of equity capital in a foreign entity, whichever is earlier.
- Designate AD bank and route all transactions relating to a particular UIN through such AD
- Repatriate to India all dues receivable from a foreign entity within 90 days of its falling due or from the date of transfer or disinvestment



Remittance towards earnest money deposit or obtain a bid bond guarantee from an AD bank for participation in bidding or tender procedure for the acquisition of a foreign entity

## **Provides Reporting Requirements for ODI by a Principles for Responsible Investment (PRI)**

A person resident in India who has made an ODI or financial Commitment or disinvestment in a foreign entity is required to report the following –

<b>PARTICULARS</b>	<b>THE TIME PERIOD OF REPORTING</b>
Financial Commitment	At the time of sending outward remittance or making a financial commitment whichever is earlier
Disinvestment	Within 30 days of receipt of disinvestment proceeds
Restructuring	Within 30 days from the date of restructuring

## **Introducing "Late Submission Fees"**

Where a person resident in India responsible for submitting evidence or making filings related to ODI fails to make such submissions or filings, can make submissions or filings along with the Late Submission Fee in the manner as RBI may direct. This facility can be availed within a maximum period of 3 years from the date of publication of these regulations in the Official Gazette.





## **Restrictions on Financial Commitments or transfers by a PRI**

A person resident in India is prohibited to make any further financial commitment towards a foreign entity or transfer any investment until any reporting delay is regularised.

# **ESSENTIAL TERMS**

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## **of Foreign Exchange Management (Overseas Investment) Regulations, 2022**

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### **Financial Commitment**

In accordance with Section 2 (f) of the Foreign Exchange Management (Overseas Investment) Regulations, 2022, Financial Commitment is defined as the total amount of investment made by a Person Resident in India by way of -

- Overseas Direct Investment
- Debt, apart from Overseas Portfolio Investment (OPI) in a foreign entity
- The entities in which the ODI is made
- Non-Fund-Based Facilities extended by a person to or on behalf of foreign entities



## Eligible Modes of Financial Commitment

There are 4 Eligible Modes of Financial Commitment applicable under Foreign Exchange Management (Overseas Investment) Regulations, 2022 -

### Modes Other Than Equity Capital

Any Indian Entity is allowed to lend or invest in any Foreign Entity's Debt Instrument as long as the principle of lending and investing is subject to the following conditions -

- The Indian entity is eligible to Make ODI
- The Indian entity has made Overseas Direct Investment in the Foreign Entity
- The Indian entity has substantial control over the foreign entity when making such a commitment

### Debt

Any Indian Entity is allowed to invest or lend in any Foreign Entity's debt instrument as long as the loans are mentioned in a loan agreement where the interest rate is to be charged on an arm's length basis.

### Guarantee

Any Indian Entity is allowed to acquire a financial commitment way of guarantee in accordance with the Foreign Exchange Management (Overseas Investment) Regulations, 2022. The guarantee is to be issued to or on behalf of a foreign entity in which the Indian Entity Acquires Control via Foreign entities through the following mentioned reasons -



<b>Sl. No.</b>	<b>REASON</b>
1.	Corporate or Performance guarantee by the Indian entity where the guarantee amount is to be 50% of the financial limits of the Indian entity.
2.	Corporate/Performance guarantee by a group of companies where the amount of guarantee is to be calculated independently of the financial limits of the group company.
3.	A promoter group company where The amount of guarantee is to be calculated independently of the financial limits of the Indian entity.
4.	A guarantee personal given by the resident individual promoter of such an Indian entity where the guarantee amount is to be 100% of the individual limits of the Indian entity.
5.	Any bank Guarantee which is backed by a counter guarantee or ay collateral where the guarantee amount is to be determined by the appropriate authorities.

## **Pledge of Charge**

### **Pledge**

An Indian entity can pledge the equity capital of the foreign entity in which it has made ODI in favour of:

- The AD bank
- A public financial institution in India
- An overseas lender



## Charge

An Indian entity may create a charge by way of:

- Mortgage
- Pledge
- Hypothecation
- Any other Identical Mode

These charges can be created on the following:

1. Assets held by the Indian Entity in India, Including the assets of its Group Company or associate company, promoter or director.
2. Overseas assets of the foreign entity in which it has made ODI.

## Modes of Payment

The payment for Overseas Investment by a person resident in India shall be made by way of -

- Remittances made through Banking Channels
- From Funds Held in an Account
- Swap of Securities
- Proceeds of ADR( American Depository Receipts) or GDR (Global Depository Receipts) or stock swap of such receipts
- External borrowings

## Share Certificate Submissions

A resident person investing in ODI is required to designate a AD Bank. It is mandated for all the transactions to flow from the bank.



A resident person investing in ODI is required to designate a AD Bank. It is mandated for all the transactions to flow from the bank. A person who acquires equity capital by investment in a foreign entity has to submit to the AD Bank all the share certificates or any other relevant documents as evidence. This process shall be completed within six months from the date of remittance toward the investment. The bank, on the successful submission of the documents, shall allot a UIN or Unique Identification Number.

Any amount received on account of the following is to be repatriated to India within 90 days of receiving the benefits -

- Dues
- Consideration
- Disinvestment
- The proceeds of assets on account of liquidation

## **Process for reporting Requirements of Overseas Investment**

The person resident in India who is interested in making investment or disinvestment or any financial commitments in a foreign entity shall report to the following -

### **Financial Commitment**

At the time of making outward remittance or making a financial commitment, whichever is earlier.



## **Disinvestment**

The disinvestment proceeds shall take place Within 30 days.

## **Restructuring**

The restructuring shall take place within 30 days from the date of such restructuring.

The report is directed to be given within 60 days from the date of such transfer by the resident individual. A person resident in India who is holding equity capital in a foreign entity has to file an Annual Performance Report or APR for such investment. The report shall be given due regard to the procedure and should be submitted to the Department of Statistics and Informative Management, RBI.

## **Fine for Late Submission**

This section had made both individuals and entities responsible liable for the non-submission of a report evidencing the investment. Suppose any person resident in India has failed to report or provide information as regarded. In that case, the person is made liable to file that report or information along with the Late submission fee.

## **Delay in Reporting**

The Foreign Exchange Management (Overseas Investment) Regulations, 2022, makes a provision for the delay in the reporting. The person resident in India is not allowed to make further investments, whether fund-based or non-fund based, if there is a delay in reporting until the reporting is regularised.



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