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For Private Circulation Only

GETTING GLOBAL THROUGH OUTBOUND INVESTMENT

An Indian Party can make overseas direct investment in any bonafide activity except those are specifically prohibited such as real estate and banking. The phenomenal success of Indian business entities has created a need for them to invest abroad by setting up their overseas offices. Such offices can do trading activities or non-trading activities such as liaison work, marketing etc. Broadly speaking, Indian companies can set up there overseas presence by:

1. Branch Office:

Large Indian companies often need to set up overseas operations for marketing their products and services and also for expansion of their business. Government approval is needed for such an overseas presence and it is generally a requirement that it corresponds with the core activity of the parent company.

2. Representative office:

Indian business entities can set up trading as well as non-trading overseas offices. Posting of representatives outside India is considered as setting up a non-trading overseas office for the purpose of Reserve Bank procedures. The costs of setting up and running these offices may be remitted from India.

Many Indian companies are opening their off-shore offices in places like Hong Kong, Dubai etc for trading and 3rd country exports, which allow them to have various, tax and other benefits.

3. Project Office:

Indian firms / companies executing contracts / projects abroad with the approval of the appropriate authority are permitted under a general permission granted by Reserve Bank to set up site / project offices abroad provided that such offices are maintained out of project receipts and remittances from India are not required. These offices are required to be closed down and surplus foreign exchange earnings repatriated to India after completion of the project.

The general terms and conditions for opening the offices abroad normally are:

- (a) The overseas office should not create any financial liabilities contingent or otherwise for the head Office in India.
- (b) Exchange released by the authorised dealer should be strictly utilized for the purpose(s) for which it is released. They unused exchange may be repatriated to India under advice to the authorised dealer.
- (c) The details of bank account opened in the overseas countries should be promptly reported to authorised dealer.



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- (d) The approval granted for the purpose should be made valid for 6 months from the date thereof, within which time the applicant should open its overseas office or post representative abroad. In case the overseas office is not opened or the representative is not posted abroad within this period, intimation in writing to the effect should be sent to the authorised dealer immediately after expiry of 6 months period. Fresh application for release of exchange should be submitted to the authorised dealer as and when the overseas office is desired to be opened.
- (e) Profits, if any, earned by the overseas office/s should be repatriated to India.
- (f) The following statements should be submitted by the applicant to the authorized dealer:
 - (a) A statement showing details of initial expenses incurred together with suitable documentary evidence, wherever possible, within three months from the date of release of exchange for that purpose.
 - (b) Annual account of trading/non-trading office abroad duly certified by statutory Auditors/Chartered Accountants.

4. JV & WoS:

Indian Companies can set up overseas joint ventures or subsidiaries under an automatic scheme for investments up to a government determined amount in any financial year, provided the investment is in the core activity of the Indian company. Further, the present investment limit is the 400% of the net worth of Company as per last Audited balance Sheet.

The contribution of the Indian business may be in cash or in the form of exports of equipment or goods to the foreign entity or by way of royalties and know-how payments due to the Indian business from the foreign entity. The annual limit includes capital contributions, loans and guarantees.

Investments not covered by the General Permission require prior approval from the Reserve Bank, which takes into account the viability of the proposed overseas venture, the likely benefits to India from the investment, the track records of the Indian and foreign entities and the expertise and experience of the Indian company in line of the proposed business. Overseas investment in finance sector activities is subjected to a number of additional restrictions.

There are two routes to set up JV or WoS of Indian companies abroad –

- A) Automatic route: Under the Automatic Route, an Indian Party does not require any prior approval from the Reserve Bank of India for setting up a JV/WoS abroad but Investment should be in a lawful activity permitted by that host country and comply certain criteria.



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B) Normal route: Proposal, which is not covered by the conditions under the automatic route, requires the prior clearance of the Reserve Bank; comes under normal route. A Request under the normal route are considered by taking into account inter-alia the prima facie viability of the proposal, business track record of the promoters, experience and expertise of the promoters, benefits to the country etc for which a specific application in form ODI with the documents prescribed therein is required to be made to Reserve Bank of India.

Restrictions:

1. Only (a) Public Ltd. Company (b) Private Limited Company is allowed to invest for JV and WoS. Individual, partnership firms etc. are not allowed to invest.
2. Investment in banking business and real estate business are not allowed.
3. Investment can be by way of equity, debentures, loans and guarantees.
4. Remittance can be by way of cash or export of goods and services.
5. Dividends, royalties etc. due to Indian investor should be repatriated to India.

Exceptions:

- (1) Real estate and Banking are the prohibited sectors for overseas direct investment. However, Indian banks operating in India can set up JVs/WoS abroad provided they obtain clearance under the Banking Regulation Act 1949, from DBOD (Distribution Board of Directors).
- (2) Only an Indian Company engaged in financial sector activities can make investment in the financial services sector, provided it fulfills additional norms.