



Frequently Asked Questions

Overseas Direct Investment (ODI)

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Overseas Direct Investment (ODI)

Definitions/ meaning of Terms:

(A) Direct investment outside India means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of a foreign entity [Joint Venture (JV) or Wholly Owned Subsidiary (WOS)] or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, by Indian Party (IP) or Resident Individual (RI) signifying their long-term interest in the foreign entity but doesn't include portfolio investment abroad.

(B) Portfolio investment abroad though is not explicitly defined; the following can be treated as guiding principles to identify what could be a portfolio investment.

Portfolio investment means,

- a) Not subscribing to the Memorandum of Association of the Overseas entity
- b) Investor shall not have undertaken any other financial commitments in the overseas entity e.g. investment in OCPS, loan, guarantee etc.
- c) The shares should have been acquired in an already existing entity & not in entity which is incorporated by investor.
- d) It should not be a Wholly Owned Subsidiary
- e) The Indian entity should not have held a majority % stake in the overseas entity. The investor should be a passive investor and not an active investor i.e. the portfolio investor should not be managing the affairs of the overseas entity
- f) Generally, the portfolio investment should be in a listed entity

(C) Indian Party (IP) means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009), making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank. **Provided that when more than one such company, body or entity make an investment in the foreign entity, all such companies or bodies or entities shall together constitute the "Indian Party";**

(D) 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 "IP" or "RI" makes a direct investment & where other **foreign promoters** are holding the stake along with the "IP"/ "RI".

(E) Wholly Owned Subsidiary (WOS) means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the entire capital is held by the one or more “IP”/ “RI” without any stake of foreign promoter.

(F) Core activity means an activity carried on by an Indian entity, turnover wherefrom constitutes not less than 50% of the total turnover in the previous accounting year.

(G) Financial Commitment means the amount of direct investments outside India by “IP” or “RI” -

- I. by way of contribution to equity shares or CCPS of the “JV”/“WOS” abroad
- II. contribution to the “JV”/ “WOS” as preference shares (for reporting purpose to be treated as loan)
- III. as loans to its “JV”/ “WOS” abroad
- IV. 100% of the amount of corporate guarantee issued on behalf of its overseas JV/WOS and
- V. 50% of the amount of performance guarantee issued on behalf of its overseas JV/WOS.
- VI. bank guarantee/standby letter of credit issued by a resident bank on behalf of an overseas JV / WOS of the Indian party, which is backed by a counter guarantee / collateral by the Indian party
- VII. amount of fund/ non fund-based credit facility availed by creation of charge (pledge / mortgage / hypothecation) on the movable / immovable property or other financial assets of the Indian party / its group Companies.
(Note: The amount and period of the guarantee should be specified upfront).

(H) Net Worth means paid up Capital & free reserves

(I) Real Estate Business means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges;

(J) Agricultural Operations means agricultural operations defined in NABARD Act, 1981.

(K) Automatic Route means the investments/ financial commitments in overseas “JV”/ “WOS” through Authorized Dealer (A.D.) Bank with certain conditions & ceiling prescribed by RBI from time to time. Under the Automatic Route, an IP/ RI does not require any prior approval from Reserve Bank for making overseas direct investments in a JV/WOS abroad. The Indian Party should approach an Authorized Dealer Category – I bank with an application in Form ODI and

the prescribed enclosures / documents for effecting the remittances towards such investments.

(L) Approval Route means the investments/ financial commitments in overseas “JV”/ “WOS” are permitted subject to approval of RBI. Proposals not covered by the conditions under the automatic route require prior approval of the Reserve Bank for which a specific application in Form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I banks.

FAQs

1. Q - Which Indian entities are eligible for ODI under Automatic Route?

Ans. A company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008 (6 of 2009) & Resident Individuals are eligible under ODI for establishing “JV”/ “WOS” & for making relative remittances/ financial commitments under Automatic Route.

2. Q - What is present eligible limit of investment (financial commitment) under Automatic Route?

Ans. (a) For “IP” - Within 400% of the net worth as per last audited balance sheet of IP
(b) For “RI” - Within the limit of Liberalized Remittances Scheme (LRS) of RBI

3. Q - What are the general permissions available to persons (individual) resident in India for purchase / acquisition of securities abroad?

Ans. General permission has been granted to persons (individual) resident in India for purchase / acquisition of securities as under:

- a) Out of funds held in the RFC account;
- b) As bonus shares on existing holding of foreign currency shares;
- c) When not permanently resident in India, from the foreign currency resources outside India.

General permission is also available to sell the shares so purchased or acquired.

A resident Indian can remit; up to the limit prescribed by the Reserve Bank from time to time, per financial year under the Liberalized Remittances Scheme (LRS), for permitted current and capital account transactions including purchase of securities and also setting up/acquisition of JV/WOS overseas with effect from August 5, 2013.

4. Q - What are other stipulations / conditions for considering request by AD Bank under Automatic route?

Ans.

- a) Any financial commitment exceeding USD 1 billion (or its equivalent) **in a financial year** would require prior approval of RBI even when the total financial commitment of the “IP” is within the eligible limit under automatic route (presently within 400% of the net worth as per last audited balance sheet)
- b) The “IP” may extend loan / guarantee only to an overseas “JV”/ “WOS” in which it has equity participation. **The “RI” is not permitted to extend loan or issue guarantee to “JV”/ “WOS” abroad.**
- c) The “IP” may offer any form of guarantee (corporate or personal) within the overall ceiling (including total financial commitments) provided that no guarantee should be open ended i.e. the amount & period of guarantee should be specified upfront.
- d) The “IP”/ “RI” should not be on the Reserve Bank’s Exporters' caution list / list of defaulters to the banking system circulated by the Reserve Bank / Credit Information Bureau (India) Ltd. (CIBIL) / or any other credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body.
- e) All transactions relating to a “JV”/ “WOS” should be routed through one branch of an Authorized Dealer bank to be designated by the IP.
- f) In case of partial / full acquisition of an existing foreign company, where the investment is more than USD 5 million, valuation of the shares of the company shall be made by a Category- I Merchant Banker registered with SEBI or an Investment Banker / Merchant Banker outside India registered with the appropriate regulatory authority in the host country; and, in all other cases by a Chartered Accountant or a Certified Public Accountant.
- g) In case of investment in overseas JV / WOS abroad by a registered Partnership firm, where the entire funding for such investment is done by the firm, it will be in order for individual partners to hold shares for and on behalf of the firm in the overseas JV / WOS if the host country regulations or operational requirements warrant such holdings.
- h) Investments / financial commitments in Nepal are permitted only in Indian Rupees. Investments / financial commitments in Bhutan are permitted in Indian Rupees as well as in freely convertible currencies. All dues receivable on investments (or financial commitment) made in freely convertible currencies, as well as their sale / winding up proceeds are required to be repatriated to India in freely convertible currencies only.
- i) Investments / financial commitments by an Indian Party are not permitted in an overseas entity located in the countries identified by the Financial Action Task Force (FATF) as “non- co-operative countries and territories” as per list available on FATF website www.fatf-gafi.org or as notified by RBI from time to time. Investments /

financial commitments in Pakistan by Indian Parties are permissible under the approval route.

5. Q - What is the procedure to be followed by an IP for making ODI in a JV/WOS under the Automatic Route?

Ans. The IP intending to make overseas direct investment under the automatic route is required to submit their request in writing to AD Bank mentioning full details of proposed venture abroad & its viability. The said request should accompany with duly filled in form ODI Part-I (signed on all pages), certified copy of the Board Resolution, Statutory Auditors certificate certifying net worth, Valuation report by Chartered Accountant (in case of acquisition of an existing company) as per the valuation norms, copy of incorporation certificate of overseas entity, copy of memorandum between IP & overseas entity, copy of PAN card, form A2, FEMA declaration, 15CACB.

All these supportive documents to be self-attested by IP.

6. Q - How to forward the proposal to RBI for making Overseas Direct Investment (ODI) under approval route?

Ans. The proposal received from applicant investor shall be submitted to Reserve Bank after due scrutiny and with the specific recommendation by designated AD bank along with supporting documents (as mentioned below)

The designated AD before forwarding the proposal should report the form ODI in on-line OID application under approval route and the transaction number generated by the application should be mentioned in their covering letter.

In case the proposal is approved, the AD bank should effect the remittance under advice to Reserve Bank so that the UIN is allotted.

For approval by Reserve Bank, following documents need to be submitted along with Section D and Section E of Form ODI - Part I by the designated Authorized Dealer:

a) A letter from the designated AD of the IP in a sealed cover mentioning the following details:

- Transaction number generated by the OID application.
- Brief details of the Indian entity.
- Brief details of the overseas entity.
- Background of the proposal, if any.
- Brief details of the transaction.
- Reason/s for seeking approval mentioning the extant FEMA provisions.
- Observations of the designated AD bank with respect to the following:

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- Prima facie viability of the JV/ WOS outside India;
 - Contribution to external trade and other benefits which will accrue to India through such investment;
 - Financial position and business track record of the IP and the foreign entity;
 - Expertise and experience of the IP in the same or related line of activity of the JV/ WOS outside India.
 - Recommendations of the designated AD bank.

- b) A letter from IP addressed to the designated AD bank.
- c) Board resolution for the proposed transaction/s.
- d) Diagrammatic representation of the organizational structure indicating all the subsidiaries of the IP horizontally and vertically with their stake (direct & indirect) and status (whether operating company or SPV).
- e) Incorporation certificate and the valuation certificate for the overseas entity (if applicable).
- f) Other relevant documents properly numbered, indexed and flagged.

7. Q - What are the other ODI transactions that require RBI approval?

Some of the proposals which require prior approval of RBI are as under:

- I. Overseas Investments in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet;
- II. Investments in Overseas Unincorporated entities in the oil sector by resident corporates exceeding the prescribed limit of their net worth as on the date of the last audited balance sheet provided the proposal has been approved by the competent authority and is duly supported by a certified copy of the Board Resolution approving such investment. However, Navaratna Public Sector Undertakings, ONGC Videsh Ltd and Oil India Ltd are allowed to invest in overseas unincorporated / incorporated entities in oil sector (i.e. for exploration and drilling for oil and natural gas, etc.), which are duly approved by the Government of India, without any limits, under the automatic route;
- III. **Overseas Investments by proprietorship concerns and unregistered partnership firms satisfying certain eligibility criteria;**
- IV. Investments by Registered Trusts / Societies (satisfying certain eligibility criteria) engaged in the manufacturing / educational / hospital sector in the same sector in a JV / WOS outside India;
- V. Corporate guarantee by the Indian Party to second and subsequent level of Step Down Subsidiary (SDS);
- VI. All other forms of guarantee which is offered by the Indian Party to its first and subsequent level of SDS;

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- VII. Restructuring of the balance sheet of JV/WOS involving write-off of capital and receivables in the books of listed/ unlisted Indian Company satisfying certain eligibility criteria mentioned under Regulation 16A of notification *ibid*;
 - VIII. Capitalization of export proceeds remaining unrealized beyond the prescribed period of realization will require the prior approval of the Reserve Bank; and
 - IX. Proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route based on the business requirement of the Indian Party and legal requirement of the host country in which JV/WOS is located.

8. Q - Where does one find the Form ODI?

Ans. Form ODI is available as an Annex to the Master Direction titled “Master Direction on Reporting under Foreign Exchange Management Act”.

With effect from April 13, 2016 Authorized Dealers Category – I banks have to file the revised ODI forms on-line in the Overseas Direct Investment Application with the Reserve Bank for allotment of UIN, reporting of subsequent remittances, filing of APRs, etc.. The revised procedures for submission of ODI forms has been issued vide A.P. (DIR Series) Circular No.62 dated April 13, 2016.

AD Category –I banks would continue to receive the ODI forms as also documents related to the post investment changes in the physical form from the IP. These should be preserved UIN wise, for submission to the Reserve Bank, if and when specifically required.

9. Q – What are prohibited activities under ODI?

Ans.

- a) Investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the Reserve Bank.
- b) An overseas entity, having direct or indirect equity participation by an “IP”, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank.

10. Q - What are the method of funding investment in an overseas JV/WOS?

Ans. The investment in JV/WOS may be funded out of one or more of the following sources.

- I. drawal of foreign exchange from an AD bank in India;

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- II. capitalization of exports;
 - III. swap of shares;
 - IV. proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
 - V. in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds (FCCB) and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued thereunder from time to time by the Government of India;
 - VI. balances held in EEFC account of the Indian Party and
 - VII. proceeds of foreign currency funds raised through ADR / GDR issues.

In respect of (vi) and (vii) above, the limit of financial commitment vis-à-vis the net worth will not apply.

Further, as mentioned earlier, General permission has been granted to persons resident in India for purchase/ acquisition of securities in the following manner:

- a) out of funds held in RFC account;
- b) as bonus shares on existing holding of foreign currency shares; and
- c) when not permanently resident in India, out of their foreign currency resources outside India

11. Q - What are the ways other than remittances (financial commitments) by which the IP/RI can acquire stake in overseas JV/WOS?

Ans.

- 1) IP/RI are permitted to capitalize the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Capitalization of export proceeds remaining unrealized beyond the prescribed period of realization will require prior approval of the Reserve Bank.
- 2) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software start-up company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank.

12. Q - Whether Indian Companies are allowed to make portfolio investments abroad?

Ans. Listed Indian companies are permitted to invest up to 50 per cent of their net worth as on the date of the last audited balance sheet in (i) shares and (ii) bonds/ fixed income securities, rated not below investment grade by accredited/ registered credit rating agencies, issued by listed overseas companies.

13. Q - Whether ODIs by proprietorship concerns, unregistered partnership firms and registered Trust/ Society are permitted?

Ans. The requests by proprietorship concerns, unregistered partnership firms & registered Trust/ Society are considered under approval route of RBI subject to below conditions.

(a) The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy issued by the Ministry of Commerce and Industry, Govt. of India from time to time;

(b) The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realization of the preceding three years and a consistently high export performance;

(c) The Authorized Dealer bank is satisfied that the proprietorship concern / unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;

(d) 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. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and

(e) The amount of proposed investment (or financial commitment) outside India does not exceed 10 per cent of the average of last three years' export realization or 200 per cent of the net owned funds of the proprietorship concern/ unregistered partnership firm in India, whichever is lower.

(f) Registered Trusts and Societies engaged in manufacturing/ educational/ hospital sector are allowed to make investment (or financial commitment) in the same sector(s) in a JV/WOS outside India, with the prior approval of the Reserve Bank.

Further, the eligibility criteria for Trust & Society is as under:

(a) Trust

- I. The Trust should be registered under the Indian Trust Act, 1882;
- II. The Trust deed permits the proposed investment overseas;
- III. The proposed investment should be approved by the trustee/s;
- IV. The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- V. The Trust has been in existence at least for a period of three years;
- VI. 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.

(b) Society

- I. The Society should be registered under the Societies Registration Act, 1860.
- II. The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body / council or a managing / executive committee.
- III. The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- IV. The Society has been in existence at least for a period of three years;
- V. The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc.

In addition to the registration, the special license / permission is to be obtained by the applicant in case the activities require special license / permission either from the Ministry of Home Affairs, Government of India or from the relevant local authority, as the case may be.

14. Q - What are the obligations of IP/RI under ODI?

Ans.

- a) To report RBI through A.D. Bank the details of diversification of activities / establishment of step-down subsidiary/ alteration of shareholding pattern in the overseas entity within 30 days of the approval of those decisions by the competent authority of the JV/WOS concerned and include the same in Annual Performance Report (APR).
- b) To receive share certificates or any other document as an evidence of investment in the foreign entity to the satisfaction of the Reserve Bank within six months, or such further period as Reserve Bank may permit, from the date of effecting remittance or the date on which the amount to be capitalized became due to the Indian Party or the date on which the amount due was allowed to be capitalized.
- c) Repatriate to India, all dues receivable from the foreign entity, like dividend, royalty, technical fees etc., within 60 days of its falling due, or such further period as the Reserve Bank may permit: and
- d) Submit to the Reserve Bank, through the designated Authorized Dealer, every year on or before December 31, an Annual Performance Report (APR) in Part II of Form ODI in respect of each JV or WOS outside India, and other reports or documents as may be prescribed by the Reserve Bank from time to time.
- e) All Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year are required to submit annual return on Foreign Liabilities and Assets (FLA) to the Director, External Liabilities and Assets Statistics Division, Department of Statistics and Information Management (DSIM), Reserve Bank of India.

15. Q - Whether the “IP” can transfer by way of sale of shares of JV/WOS to another “IP” or to a person resident outside India?

Ans. An Indian Party, without prior approval of the Reserve Bank, may transfer by way of sale to another Indian Party which complies with the provisions FEMA or to a person resident outside India, any share or security held by it in a JV or WOS outside India subject to the following conditions:

- a) the sale does not result in any write off of the investment (or financial commitment) made.
- b) the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- c) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
- d) the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
- e) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- f) the Indian Party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

16. Q - Whether the “IP” can transfer by way of sale of shares of JV/WOS involving write off of the investment (or financial commitment)?

Ans. IP may disinvest, without prior approval of the Reserve Bank, in any of the under noted cases where the amount repatriated after disinvestment is less than the original amount invested:

- a) in case where the JV / WOS is listed in the overseas stock exchange;
- b) in cases where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- c) where the Indian Party is an unlisted company and the investment (or financial commitment) in the overseas venture does not exceed USD 10 million. and
- d) where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment (or financial commitment) in an overseas JV/WOS does not exceed USD 10 million.

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- e) the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
 - f) if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
 - g) the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
 - h) the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
 - i) the Indian Party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India.

The Indian Party is required to submit details of such disinvestment through its designated AD category-I bank within 30 days from the date of disinvestment.

17. Q -Whether the “RI” is allowed the financial commitments of loan & guarantees under ODI?

Ans. “RIs” are not permitted the financial commitments of loan & guarantees under ODI

18. Q - Whether the “IP” can maintain Foreign Currency Account (FCA) abroad for the purpose of ODI & if yes then under what conditions?

Ans. Eligible IP may open, hold and maintain Foreign Currency Account (FCA) abroad for the purpose of overseas direct investments subject to the following terms and conditions:

- I. The host country regulations stipulate that the investments into the country are required to be routed through a designated account.
- II. FCA shall be opened, held and maintained as per the regulation of the host country.
- III. The remittances sent to the FCA by the Indian party should be utilized only for making overseas direct investment into the JV / WOS abroad.
- IV. Any amount received in the account by way of dividend and / or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- V. The Indian Party should submit the details of debits and credits in the FCA on yearly basis to the designated AD bank with a certificate from the Statutory Auditors of the Indian party certifying that the FCA was maintained as per the host country laws and the extant FEMA regulations / provisions as applicable.

The FCA so opened shall be closed immediately or within 30 days from the date of disinvestment from JV / WOS or cessation thereof.

19. Q - Whether the AD Bank is allowed to make remittance towards loan to the JV/WOS or to issue guarantee to/ on behalf of the JV/WOS on the request of “IP”?

Ans. Such requests for remittance towards loan to the JV/WOS or guarantee to/ on behalf of the JV/WOS are allowed on the request of “IP” only that has an equity stake in JV/WOS. The financial commitment of loan / guarantee is not allowed to “RI”.

20. Q - How the JV/ WOS are recognized?

Ans. JV/WOS are recognized through a Unique Identification Number (UIN) allotted in ODI system. The said UIN gets auto generated in the ODI online application of RBI once AD bank accepts the ODI application from the investor & enters the relevant details of it in ODI system.

21. Q - How the preference shares, other than the compulsorily convertible preference shares (CCPS), are to be treated for the purpose of ODI?

