

MINISTRY OF FINANCE

(Department of Economic Affairs)

NOTIFICATION

New Delhi, the 22nd August, 2022

G.S.R. 646(E).—In exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 and sub-section (3) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:

1. Short title and commencement.— (1) These rules may be called the Foreign Exchange Management (Overseas Investment) Rules, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.— (1) In these rules, unless the context otherwise requires,—

(a) “Act” means the Foreign Exchange Management Act, 1999 (42 of 1999);

- (b) “Authorised Dealer Category-I bank or “AD bank” means a person authorised as such under sub-section (1) of section 10 of the Act and for the purposes of these rules, shall mean only the domestic branches of such AD bank;
- (c) “control” means the right to appoint majority of the directors or to control 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 them to ten per cent. or more of voting rights or in any other manner in the entity;
- (d) “disinvestment” means partial or full extinguishment of right, title or possession of equity capital acquired under these rules;
- (e) “equity capital” means equity shares or perpetual capital or instruments that are irredeemable or contribution to non-debt capital of a foreign entity in the nature of fully and compulsorily convertible instruments;
- (f) “financial commitment” means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the non-fund-based facilities extended by such person to or on behalf of such foreign entity or entities;
- (g) “financial service regulator” means a financial service regulator established under any law in force in India and include the Reserve Bank, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority and the Pension Fund Regulatory and Development Authority;
- (h) “foreign entity” means an entity formed or registered or incorporated outside India, including International Financial Services Centre that has limited liability:
 Provided that the restriction of limited liability shall not apply to an entity with core activity in a strategic sector;
- (i) “host country” or “host jurisdiction” means the country or jurisdiction, including the International Financial Services Centre, in which the foreign entity is formed, registered or incorporated, as the case may be;
- (j) “Indian entity” means—
- (i) a company defined under the Companies Act, 2013 (18 of 2013);
- (ii) a body corporate incorporated by any law for the time being in force;
- (iii) a Limited Liability Partnership duly formed and incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009); and
- (iv) a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932).
- (k) “International Financial Services Centre” or “IFSC” shall have the same meaning as assigned to it in clause (g) of section 3 of the International Financial Services Centres Authority Act, 2019 (50 of 2019);
- (l) “last audited balance sheet” means audited balance sheet as on date not exceeding eighteen months preceding the date of the transaction;
- (m) “listed foreign entity” means a foreign entity whose equity shares or any other fully and compulsorily convertible instrument is listed on a recognised stock exchange outside India;
- (n) “listed Indian company” means an Indian company that has equity shares or any of its fully and compulsorily convertible instruments listed on a recognised stock exchange in India and the expression “unlisted Indian company” shall be construed accordingly;
- (o) “mutual fund” means any fund registered as such with the Securities and Exchange Board of India;

- (p) “net worth” shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.— For the purposes of this clause, “net worth” of registered partnership firm or Limited Liability Partnership 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;

- (q) “Overseas Direct Investment” or “ODI” means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity;

Explanation.— For the purposes of this clause, where an investment by a person resident in India in the equity capital of a foreign entity is classified as ODI, such investment shall continue to be treated as ODI even if the investment falls to a level below ten per cent. of the paid-up equity capital or such person loses control in the foreign entity;

- (r) “Overseas Investment” or “OI” means financial commitment and Overseas Portfolio Investment by a person resident in India;
- (s) “Overseas Portfolio Investment” or “OPI” means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

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

Explanation.— For the purposes of this clause, the expression “debt instruments” means the instruments specified as such in clause (A) of rule 5;

- (t) “relative” shall have the same meaning as assigned to it in clause (77) of section 2 of the Companies Act, 2013, (18 of 2013);
- (u) “resident individual” means a person resident in India who is a natural person;
- (v) “Resident Foreign Currency Account” or “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;
- (w) “SEBI” means the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (x) “Society” means a society registered under the Societies Registration Act, 1860 (21 of 1860);
- (y) “Subsidiary” or “step down subsidiary” of a foreign entity means an entity in which the foreign entity has control;
- (z) “strategic sector” shall include energy and natural resources sectors such as oil, gas, coal, mineral ores, submarine cable system and start-ups and any other sector or sub-sector as deemed necessary by the Central Government;
- (za) “sweat equity shares” means such equity shares as are issued by an overseas entity 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;
- (zb) “Trust” means a trust registered under the Indian Trust Act, 1882 (2 of 1882);
- (zc) “Venture Capital Fund” means a fund registered as such with the SEBI.

(2) The words and expressions used but not defined in these rules shall have the meanings respectively assigned to them in the Act or the rules or regulations made thereunder.

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

4. Non-applicability of rules and regulations relating thereto in certain cases.— Nothing in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022 shall apply to—

- (a) any investment made outside India by a financial institution in an IFSC;
- (b) acquisition or transfer of any investment outside India made,—
 - (i) out of Resident Foreign Currency Account; or
 - (ii) out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
 - (iii) in accordance with sub-section (4) of section 6 of the Act.

Explanation.— For the purposes of this rule, the expression “financial institution” shall have the same meaning as assigned to it in the International Financial Services Centres Authority Act, 2019 (50 of 2019).

5. Debt instruments and non-debt instruments.— The following shall be the debt instruments and non-debt instruments as determined by the Central Government under sub-section (7) of section 6 of the Act, namely:—

(A) Debt instruments:

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by firms through loans; and
- (v) depository receipts whose underlying securities are debt securities;

(B) Non-debt instruments:

- (i) all investments in equity in incorporated entities (public, private, listed and unlisted);
- (ii) capital participation in Limited Liability Partnerships;
- (iii) all instruments of investment as recognised in the Foreign Direct Investment policy from time to time;
- (iv) investment in units of Alternative Investment Funds and Real Estate Investment Trust and Infrastructure Investment Trusts;
- (v) investment in units of mutual funds and Exchange-Traded Fund which invest more than fifty per cent in equity;
- (vi) the junior-most layer (i.e. equity tranche) of securitisation structure;
- (vii) acquisition, sale or dealing directly in immovable property;
- (viii) contribution to trusts; and
- (ix) depository receipts issued against equity instruments;

6. Continuity of certain investments.— Any investment or financial commitment outside India made in accordance with the Act or the rules or regulations made thereunder and held as on the date of publication of these rules in the Official Gazette, shall be deemed to have been made under these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

7. Rights issue and bonus shares.— (1) Any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder—

- (a) may invest in the equity capital issued by such entity as a rights issue; or
- (b) may be granted bonus shares subject to the terms and conditions under these rules.

(2) The person resident in India acquiring the rights under sub-rule (1) may renounce such rights in favour of a person resident in India or a person resident outside India.

8. Prohibition on investment outside India.— Save as otherwise provided in the Act or these rules or the regulations made or directions issued under the Act, no person resident in India shall make or transfer any investment or financial commitment outside India.

9. Overseas Investment.— (1) Save as otherwise provided in these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations:

Provided that the structure of such subsidiary or step down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity:

Provided further that Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

Explanation.— For the purposes of this sub-rule, “bonafide business activity” shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction, as the case may be:

(2) Notwithstanding anything contained in these rules or Foreign Exchange Management (Overseas Investment) Regulations 2022 –

- (i) the Central Government may, on an application made to it through the Reserve Bank, permit financial commitment in strategic sectors or geographies, above the limits laid down in these rules and subject to such terms and conditions as it considers necessary.
- (ii) the Reserve Bank may, on an application made to it through the designated AD bank 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:

Provided that Overseas Investment by a person resident in India shall not be made in a foreign entity located in a country or jurisdiction as may be decided by the Central Government from time to time.

(3) The Reserve Bank, if it considers necessary may, in consultation with the Central Government,—

- (i) stipulate the ceiling for the aggregate outflows during a financial year on account of financial commitment or Overseas Portfolio Investment;
- (ii) stipulate the ceiling beyond which the amount of financial commitment by a person resident in India in a financial year shall require its prior approval.

10. No Objection Certificate.—

(1) Any person resident in India who,—

- (i) has an account appearing as a non-performing asset; or
- (ii) is classified as a wilful defaulter by any bank; or

- (iii) is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office,

shall, before making any financial commitment or undertaking disinvestment under these rules or the Foreign Exchange Management (Overseas Investment) Regulations, 2022, obtain a No Objection Certificate from the lender bank or regulatory body or investigative agency by making an application in writing to such bank or regulatory body or investigative agency concerned:

Provided that where the lender bank or regulatory body or investigative agency concerned fails to furnish the certificate within sixty days from the date of receipt of such application, it may be presumed that there was no objection to the proposed transaction.

- (2) The No Objection Certificate issued under sub-rule (1) shall be addressed by the lender bank or regulatory body or investigative agency concerned to the designated AD bank with an endorsement to the applicant.

11. Manner of making Overseas Direct Investment by Indian entity.— An Indian entity may make Overseas Direct Investment in the manner and subject to the terms and conditions prescribed in Schedule I.

12. Manner of making Overseas Portfolio Investment by an Indian entity.— An Indian entity may make Overseas Portfolio Investment in the manner and subject to the terms and conditions prescribed in Schedule II.

13. Manner of making Overseas Investment by resident individual.— A resident individual may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule III.

14. Overseas Investment by person resident in India other than Indian entity and resident Individual.— A person resident in India, other than an Indian entity and a resident individual, may make Overseas Investment in the manner and subject to the terms and conditions prescribed in Schedule IV.

15. Overseas Investment in IFSC by person resident in India.— A person resident in India may make Overseas Investment in an IFSC in India in the manner and subject to the terms and conditions prescribed in Schedule V.

16. Pricing guidelines.— (1) Unless otherwise provided in these rules, the issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall be subject to a price arrived on an arm's length basis.

- (2) The AD bank, before facilitating a transaction under sub-rule (1), shall ensure compliance with arm's length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

17. Transfer or liquidation.— (1) Unless otherwise provided in these rules, a person resident in India holding equity capital in accordance with these rules may transfer such investment, in compliance with the limits and subject to the conditions for such investment or disinvestment, pricing guidelines or documentation and reporting requirements, in the manner provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022.

- (2) 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, or to a person resident outside India.

(3) 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, shall have the approval of the competent authority as per the applicable laws in India or the laws of the host country or host jurisdiction, as the case may be.

- (4) Where the disinvestment by a person resident in India pertains to ODI—

- (i) the transferor, in case of full disinvestment other than by way of liquidation, shall not have any dues outstanding for receipt, which such 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 must have stayed invested for at least one year from the date of making ODI:

Provided that the above conditions shall not be applicable in case of a merger, demerger or amalgamation between two or more foreign entities that are wholly-owned, directly or indirectly, by the Indian entity or where there is no change or dilution in aggregate equity holding of the Indian entity in the merged or demerged or amalgamated entity.

(5) The holding of any investment or transfer thereof in any manner shall not be permitted if the initial investment was not permitted under the Act.

18. Restructuring.— A person resident in India who 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 such person resident in India on account of 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 the case where the amount of such diminution exceeds twenty per cent of the total value of the outstanding dues towards the Indian entity or investor, the diminution in value shall be duly certified on an arm's length basis by a registered valuer as per the Companies Act, 2013 (18 of 2013) or corresponding valuer registered with the regulatory authority or certified public accountant 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 designated AD bank.

19. Restrictions and prohibitions.— (1) Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in—

- (a) real estate activity;
- (b) gambling in any form; and
- (c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

Explanation.— For the purposes of this sub-rule, the expression "real estate activity" means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

(2) Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

(3) No person resident in India shall make financial commitment 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, resulting in a structure with more than two layers of subsidiaries:

Provided that such restriction shall not apply to the following classes of companies mentioned in sub-rule (2) of rule 2 of the Companies (Restriction on Number of Layers) Rules, 2017 as may be amended from time to time, namely:-

- (a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

- (b) a non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank and considered as systematically important non-banking financial company by the Reserve Bank;
- (c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999); and
- (d) a Government company referred to in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

20. Requirements to be specified by Reserve Bank.— The mode of payment, deferred payment of consideration, reporting, realisation, and other requirements for any investment outside India by a person resident in India shall be as per the regulations made in this behalf by the Reserve Bank under the Act.

21. Restriction on acquisition or transfer of immovable property outside India.—

(1) Save as otherwise provided in the Act or this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank:

Provided that nothing contained in this rule 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 the 8th day of 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.

(2) Notwithstanding anything contained in sub-rule (1)—

(i) 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;

(ii) a person resident in India may acquire immovable property outside India from a person resident outside India—

- (a) by way of inheritance;
- (b) by way of purchase out of foreign exchange held in RFC account;
- (c) by way of purchase out of the remittances sent under the Liberalised Remittance Scheme instituted by the Reserve Bank:

Provided that such remittances under the Liberalised Remittance Scheme may be consolidated in respect of relatives if such relatives, being persons resident in India, comply with the terms and conditions of the Scheme;

- (d) jointly with a relative who is a person resident outside India;
- (e) out of the income or sale proceeds of the assets, other than ODI, acquired overseas under the provisions of the Act;

(iii) 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;

(iv) 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—

- (a) transfer such property by way of gift to a person resident in India who is eligible to acquire such property under these rules or by way of sale;
- (b) 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.

(3) The holding of any investment in immovable property or transfer thereof in any manner shall not be permitted if the initial investment in immovable property was not permitted under the Act.

Schedule I

[See rule 11]

Manner of making Overseas Direct Investment by Indian entity

1. Manner of making ODI.— (1) An Indian entity may make ODI by way of investment in equity capital for the purpose of undertaking bonafide business activity in the manner and subject to the limits and conditions provided in this Schedule.

(2) The ODI may be made or held by way of,—

- (i) subscription as part of memorandum of association or purchase of equity capital, listed or unlisted;
- (ii) acquisition through bidding or tender procedure;
- (iii) acquisition of equity capital by way of rights issue or allotment of bonus shares;
- (iv) capitalisation, within the time period, if any, specified 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 does not require prior permission of the Central Government or the Reserve Bank under the Act or any rules or regulations made or directions issued thereunder;
- (v) the swap of securities;
- (vi) merger, demerger, amalgamation or any scheme of arrangement as per the applicable laws in India or laws of the host country or the host jurisdiction, as the case may be.

2. ODI in financial services activity.— (1) An Indian entity 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, namely:--

- (i) the Indian entity has posted net profits during the preceding three financial years;
- (ii) the Indian entity is registered with or regulated by a financial services regulator in India;
- (iii) the Indian entity has obtained approval as may be required from the regulators of such financial services activity, both in India and the host country or host jurisdiction, as the case may be, for engaging in such financial services:

(2) An Indian entity not engaged in financial services activity in India may make ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, subject to the condition that such Indian entity has posted net profits during the preceding three financial years:

Provided that an Indian entity not engaged in the insurance sector may make ODI in general and health insurance where such insurance business is supporting the core activity undertaken overseas by such an Indian entity.

(3) If an Indian entity does not meet the net profits required under sub paragraph (1) & (2) of this paragraph due to the impact of Covid-19 during the period from 2020-2021 to 2021-2022, then the financial results of such period may be excluded for considering the profitability period of three years:

Provided that such period may be extended by the Reserve Bank in consultation with the Central Government, as it may deem necessary:

(4) Notwithstanding anything contained in this paragraph, Overseas Investment by banks and non-banking financial institutions regulated by the Reserve Bank shall be subject to the conditions laid down by the Reserve Bank under applicable laws in this regard.

3. Limit for financial commitment.— (1) The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent

of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

(2) The total financial commitment referred to in sub-paragraph (1) shall not include capitalisation of retained earnings for reckoning such limit but shall include—

- (i) utilisation of the amount raised by the issue of American Depository Receipts or Global Depository Receipts and stock-swap of such receipts; and
- (ii) utilisation of the proceeds from External Commercial Borrowings to the extent the corresponding pledge or creation of charge on assets to raise such borrowings has not already been reckoned towards the above limit:

Provided that the financial commitment made by Maharatna or Navratna or Miniratna or subsidiaries of such public sector undertakings in foreign entities outside India engaged in strategic sectors shall not be subject to the limits laid down under this paragraph.

Explanation.— For the purposes of this Schedule, a foreign entity shall 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.

Schedule II

[See rule 12]

Manner of making Overseas Portfolio Investment by an Indian entity

1. **OPI by an Indian entity.**— (1) An Indian entity may make OPI which shall not exceed fifty percent of its net worth as on the date of its last audited balance sheet, in the manner and subject to the conditions laid down in this Schedule.

(2) A listed Indian company may make OPI including by way of reinvestment.

(3) An unlisted Indian entity may make OPI only under clauses (iii), (iv), (v) and (vi) of sub-paragraph (2) of paragraph 1 of Schedule I.

Schedule III

[See rule 13]

Manner of making Overseas Investment by resident individual

1. **Manner of making OI.**— (1) Any resident individual may make ODI by way of investment in equity capital or OPI in the manner provided in this Schedule and unless otherwise provided hereunder, shall be subject to the overall ceiling under the Liberalised Remittance Scheme of the Reserve Bank.

(2) A resident individual may make or hold Overseas Investment by way of,—

- (i) ODI in an operating foreign entity not engaged in financial services activity and which does not have subsidiary or step down subsidiary where the resident individual has control in the foreign entity;
- (ii) OPI, including by way of reinvestment;
- (iii) ODI or OPI, as the case may be, by way of—
 - (a) capitalisation, within the time period, if any, specified for realisation under the Act, of any amount due from the foreign entity the remittance of which is permitted under the Act or does not require prior permission of the Central Government or the Reserve Bank;

- (b) swap of securities on account of a merger, demerger, amalgamation or liquidation;
- (c) acquisition of equity capital through rights issue or allotment of bonus shares;
- (d) gift as per the conditions laid down under this Schedule;
- (e) inheritance;
- (f) acquisition of sweat equity shares;
- (g) acquisition of minimum qualification shares issued for holding a management post in a
 - a. foreign entity;
- (h) acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme:

Provided that ODI in respect of clauses (e), (f), (g) and (h) may be made in a foreign entity whether or not such foreign entity is engaged in financial services activity or has subsidiary or step down subsidiary where the resident individual has control:

Provided further that the acquisition of less than ten per cent. of the equity capital, whether listed or unlisted, of a foreign entity without control under clauses (f), (g) and (h), shall be treated as OPI.

Explanation.— For the purposes of this Schedule, 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.

2. Acquisition by way of gift or inheritance.— (1) A resident individual may, without any limit, acquire foreign securities by way of inheritance from a person resident in India who is holding such securities in accordance with the provisions of the Act or from a person resident outside India.

(2) A resident individual, without any limit, may acquire foreign securities by way of gift from a person resident in India who is a relative and holding such securities in accordance with the provisions of the Act.

(3) A resident individual may acquire foreign securities by way of gift from a person resident outside India in accordance with the provisions of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010) and the rules and regulations made thereunder.

3. Acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares.— (1) A resident individual, who is an employee or a director of an office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or of an Indian entity in which the overseas entity has direct or indirect equity holding, may acquire, without limit, shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme or sweat equity shares offered by such overseas entity, provided that the issue of Employee Stock Ownership Plan or Employee Benefits Scheme are offered by the issuing overseas entity globally on a uniform basis.

Explanation.— For the purposes of this paragraph, the expression,—

- (i) “indirect equity holding” means indirect foreign equity holding through a special purpose vehicle or step down subsidiary;
- (ii) “Employee Benefit Scheme” means any compensation or incentive given to the directors or employees of any entity which gives such directors or employees ownership interest in an overseas entity through ESOP or any similar scheme.

(2) Notwithstanding anything contained in these rules, a resident individual may acquire Employee Stock Ownership Plans under any scheme of the Central Government.

Schedule IV

[See rule 14]

Overseas Investment by person resident in India other than Indian entity and resident Individual

1. ODI by Registered Trust or Society.— Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely:—

- (i) the foreign entity is 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, should 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 or rules or bye-laws in case of a Society shall permit the proposed ODI;
- (iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- (v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

2. OI by Mutual Funds or Venture Capital Funds or Alternative Investment Funds.— (1) A mutual fund or Venture Capital Fund or Alternative Investment Fund may acquire or transfer foreign securities as stipulated by SEBI from time to time in accordance with the provisions of these rules and subject to such other terms and conditions as may be laid down by the Reserve Bank and the SEBI under applicable laws from time to time:

Provided that the aggregate limit for such investment shall be decided by the Reserve Bank in consultation with the Central Government:

Provided further that the individual limits for such investments shall be as per the instructions issued by the SEBI from time to time.

(2) Every transaction relating to the purchase and sale of foreign security by the funds referred to in subparagraph (1) shall be routed through the designated AD bank in India:

(3) Notwithstanding anything contained in these rules, any investment under these rules by mutual funds, Venture Capital Funds and Alternative Investment Funds shall be treated as OPI.

Explanation.— For the purposes of this paragraph, “Alternative Investment Fund” means any fund registered as such with the SEBI.

3. Opening of Demat Accounts by clearing corporations of stock exchanges and clearing members.— Any person, being a SEBI approved clearing corporation of a stock exchange and its clearing members, may acquire, hold and transfer foreign securities, offered as collateral by foreign portfolio investors and, subject to the guidelines issued by the SEBI from time to time,—

- (i) open and maintain Demat Account 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. Acquisition and transfer of foreign securities by domestic depository.— A domestic depository may acquire, hold and transfer foreign securities of a foreign entity, being the underlying security to issue Indian Depository Receipts as may be authorised by such foreign entity or its overseas custodian bank and the person investing in Indian Depository Receipts may either sell or continue to hold foreign securities in accordance with the conditions provided in these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022 upon conversion of such depository receipts.

5. Acquisition and transfer of foreign securities by AD bank.— An AD bank including its overseas branch may acquire or transfer foreign securities in accordance with the terms of the host country or host jurisdiction, as the case may be, in the normal course of its banking business.

Schedule V

[See rule 15]

Overseas Investment in IFSC by person resident in India

1. Overseas Investment in IFSC by person resident in India.— (1) Subject to the provisions of these rules and the Foreign Exchange Management (Overseas Investment) Regulations, 2022, a person resident in India may make Overseas Investment in an IFSC in India within the limits provided in these rules .

(2) A person resident in India may make Overseas Investment in an IFSC in the manner as laid down in Schedule I or Schedule II or Schedule III or Schedule IV:

Provided that –

- (i) in the case of an ODI made in an IFSC, the approval by the financial services regulator concerned, wherever applicable, shall be decided within forty-five days from the date of application complete in all respects failing which it shall be deemed to be approved;
- (ii) an Indian entity not engaged in financial services activity in India, making ODI in a foreign entity, which is directly or indirectly engaged in financial services activity, except banking or insurance, who does not meet the net profit condition as required under these rules, may make ODI in an IFSC.
- (iii) a person resident in India may make contribution to an investment fund or vehicle set up in an IFSC as OPI;
- (iv) a resident individual may make ODI in a foreign entity, including an entity engaged in financial services activity, (except in banking and insurance), in IFSC if such entity does not have subsidiary or step down subsidiary outside IFSC where the resident individual has control in the foreign entity.

(3) A recognised stock exchange in the IFSC shall be treated as a recognised stock exchange outside India for the purpose of these rules.

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