

11

CHAPTER

Setting up of Business outside India and Issues Relating Thereto

Chapter Coverage

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11.1	List of Major Overseas Investments by Indian Companies
11.2	Laws/Authority Governing Setting up of Business Outside India
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Regulatory Framework Coverage

The Foreign Exchange Management Act, 1999

11.1 List of major overseas investments by Indian companies

Reliance Industries Ltd. (RIL) is going to invest US\$ 25 million in Israel-based **Jerusalem Innovation Incubator (JII)** which will focus on start-ups working in the field of big data, analytics, Internet of Things and other similar areas.

Adani Enterprises Ltd. has announced the final approval of the company's board to proceed with the US\$ 16.5 billion worth Carmichael mine and rail projects in Central Queensland, Australia which would be one of the largest single infrastructure and job creating developments in Australia's recent history.

Adani Enterprises has announced plan to develop 1,000 megawatt (MW) of solar power projects in Australia over the next five years.

Intas Pharma has announced purchase of two companies in UK and Ireland, Actavis UK Ltd. and Actavis Ireland Ltd., from Israeli pharma major Teva Pharmaceutical Industries Ltd. for an enterprise value of GBP 600 million.

India-focused private equity firm **Everstone Group through its Singapore arm Everise Services** has agreed to buy C3, a US-based global CRM solutions provider for an estimated deal value of US\$ 150 million.

India's third largest software services firm Wipro will be spending US\$ 500 million to acquire **US-based cloud services firm Appirio**.

Sun Pharmaceutical Industries Ltd., India's largest drug maker, has entered into an agreement with Switzerland-based Novartis AG to acquire the latter's branded cancer drug Odomzo for around US\$ 175 million.

WNS Global Services the Mumbai-based business process management company has announced its plans of acquiring Denali Sourcing Services a US-based business process outsourcing company for US\$ 40 million.

Aurobindo Pharma has bought Portugal based Generis Farmaceutica SA a generic drug company, for EUR 135 million.

Motherson Sumi Systems Ltd. an automobile components manufacturer has acquired Finland-based truck wire maker PKC Group Pic for EUR 571 million.

Question For Practice

Ques 1: List out major overseas investments by Indian companies?

Hint: Refer Topic 11.1 List of major overseas investments by Indian companies.

11.2 Laws /Authority governing Setting up of Business outside India

Reserve bank of India:

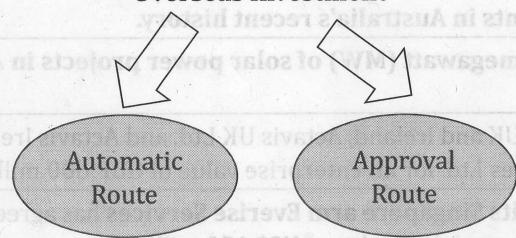
- ◆ Reserve Bank of India has started issuing Master Directions on all regulatory matters beginning January 2016.
- ◆ Master Directions consolidate instructions on rules and regulations framed by the Reserve Bank under various Acts including banking issues and foreign exchange transactions.
- ◆ The process of issuing Master Directions involves issuing One Master Direction for each subject matter covering all instructions on that subject.
- ◆ Master Directions will be updated suitably and simultaneously whenever there is a change in the rules/regulations or there is a change in the policy.
- ◆ All the changes will get reflected in the Master Directions available on the RBI website along with the dates on which changes are made.
- ◆ Explanations of rules and regulations will be issued by way of FAQs after issue of the Master Directions in easy to understand language wherever necessary.

Master Direction – Direct Investment by Residents in Joint Venture (JV)/Wholly Owned Subsidiary (WOS) Abroad:

- ◆ Transfer of technology and skill, sharing of results of R&D, access to wider global market, promotion of brand image, generation of employment and utilisation of raw materials available in India and in the host country are other significant benefits arising out of such overseas investments.
- ◆ Important drivers of foreign trade through increased exports of plant and machinery and goods and services from India and also a source of foreign exchange earnings by way of dividend earnings, royalty, technical know-how fee and other entitlements on such investments.
- ◆ In keeping with the spirit of liberalisation, which has become the hallmark of economic policy in general, and Foreign Exchange regulations in particular, the Reserve Bank has been progressively relaxing the rules and simplifying the procedures both for current account as well as capital account transactions.

11.3 Foreign Exchange Management Act, 1999 ----Overseas Investment

Overseas Investment



Legal Entities permitted to make Overseas investments "INDIAN PARTY":

- ◆ Company incorporated in India or a body created under an Act of Parliament,
- ◆ Limited Liability Partnership (LLP) registered under the Limited Liability Partnership Act, 2008,
- ◆ Partnership Firm registered under the Indian Partnership Act, 1932.
- ◆ Any other entity in India as may be notified by the Reserve Bank.

PROHIBITIONS FOR Overseas Investment

- ◆ Indian Parties are prohibited from making investment (or financial commitment)
- ◆ In a foreign entity engaged in real estate meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs)

METHOD OF FUNDING

Investment (or financial commitment) in an overseas 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; capitalisation of exports;

<ul style="list-style-type: none"> ◆ 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. ◆ An overseas entity having direct/indirect equity participation by an Indian Party shall not offer financial products linked to Indian Rupee without the specific approval of the Reserve Bank of India. ◆ Any incidence of such product facilitation would be treated as a contravention of the extant FEMA regulations and would consequently attract action under the relevant provisions of FEMA, 1999. 	<ul style="list-style-type: none"> ii. capitalisation of exports and other dues and entitlements; 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 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 (Exchange Earners Foreign Currency) account of the Indian Party maintained with an Authorised Dealer; and vii. proceeds of foreign currency funds raised through ADR / GDR issues. <p>General permission has been granted to persons resident in India for purchase/acquisition out of funds held in RFC account; bonus shares on existing holding of foreign currency shares and out of their foreign currency resources outside India when not permanently resident in India.</p>
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QUESTION

Ques 1: Discuss the method of funding of foreign direct investment under the Foreign Exchange Management Act, 1999.

Or

Divesh Digital Network LLP wants to expand its business through investment in an overseas Joint Venture (JV) or/and Wholly Owned Subsidiary (WOS). The partners of the firm seek your advice about the various sources/modes of funding through which overseas investment can be made. Advice them in the light of the provisions of the Foreign Exchange Management Act, 1999.

Or

Your Company proposes to enter into Joint Venture outside India and the Management of the Company wants to know from you various methods/modes available for funding the joint venture.

Hint: Refer Topic METHOD OF Funding In Topic 11.3 Foreign Exchange Management Act, 1999 -Overseas Investment.

Question For Practice

Ques 1: List out Legal Entities permitted to make Overseas investments?

Hint: Refer Topic Legal Entities permitted to make Overseas investments "INDIAN PARTY" In Topic 11.3 Foreign Exchange Management Act, 1999 ----Overseas Investment.

11.4 Foreign Exchange Management Act, 1999 -Automatic and Approval Route & Foreign Direct Investment Policy

INVESTMENTS UNDER AUTOMATIC ROUTE	INVESTMENTS UNDER APPROVAL ROUTE
<ul style="list-style-type: none"> ◆ An Indian Party has been permitted to make investment/undertake financial commitment in overseas Joint Ventures (JV) / Wholly Owned 	<ul style="list-style-type: none"> ◆ Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

<p>Subsidiaries (WOS) as per the ceiling prescribed by the Reserve Bank from time to time. Any financial commitment (FC)</p> <ul style="list-style-type: none"> ■ upto USD 1 (one) billion shall only come under the automatic approval. ■ eligible limit of investment under the automatic route is 400% of the net worth of the Indian Party as per the last audited balance sheet. <p>◆ For investment/undertaking financial commitment in overseas Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS), the Indian Party.</p> <ul style="list-style-type: none"> ■ should approach an Authorised Dealer Category - I bank with an application in Form ODI (Master Document on Reporting) and ■ prescribed enclosures / documents for affecting such remittances. 	<ul style="list-style-type: none"> ◆ For the above purpose, application together with necessary documents should be submitted in Form ODI through their AD Category - I banks with their specific recommendation. ◆ The designated AD before forwarding the proposal should submit Form ODI in the on-line OID application under approval route and the transaction number generated by the application should be mentioned in the letter. ◆ In case the proposal is approved, AD bank should affect the remittance under advice to Reserve Bank so that Unique Identification Number is allotted.
Factors by RBI for considering applications under Approval Route:	
Proposals which require prior approval of Reserve Bank of India	
<ul style="list-style-type: none"> ◆ Contribution to external trade and other benefits which will accrue to India through such investment. ◆ Financial position and business track record of the Indian Party and the foreign entity. ◆ Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India. ◆ <i>Prima facie</i> viability of the JV / WOS outside India. 	
<p>FOREIGN DIRECT INVESTMENT POLICY: Department for Promotion of Industry and Internal Trade (DPIIT) is the nodal Department for formulation of the policy of the Govt. on Foreign Direct Investment (FDI) and responsible for maintenance and management of data on inward FDI into India based upon the remittances reported by the RBI.</p>	

DPIIT plays an active role in the liberalization and rationalization of the FDI policy and has been constructively engaged in extensive stakeholder consultations on various aspects of the FDI Policy. FDI policy is reviewed on an ongoing basis with a view to making it more investor-friendly. With a view to attracting higher levels of FDI, Govt. has put in place a liberal policy on FDI under which upto 100% is permitted under the automatic route in most sectors.

Questions For Practice

Ques 1: Discuss factors for considering applications under Approval Route by RBI?

Hint: Refer Topic Factors by RBI for considering applications under Approval Route.

Ques 2: Discuss proposals which require prior approval of Reserve Bank of India?

Hint: Refer Topic Proposals which require prior approval of Reserve Bank of India.

11.5 Reporting requirement under Master Direction : Reporting under Foreign Exchange Management Act, 1999

Form ODI (Annex I)	An Indian Party and a Resident Individual making an overseas investment is required to submit form ODI.
Structure of the Form ODI comprise the following parts	<ul style="list-style-type: none"> ◆ Part I – Application for allotment of Unique Identification Number (UIN) and reporting of Remittances / Transactions: <ul style="list-style-type: none"> Section A – Details of the IP/RI. Section B – Capital Structure and other details of JV/ WOS/ SDS. Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI. Section D – Declaration by the IP/ RI. Section E – Certificate by the statutory auditors of the IP/ self-certification by RI. ◆ Part II - Annual Performance Report (APR). ◆ Part III – Report on Disinvestment by way of: <ul style="list-style-type: none"> ■ Closure/Voluntary Liquidation/Windingup/Merger/Amalgamation of overseas JV/WOS. ■ Sale/Transfer of the shares of the overseas JV/ WOS to another eligible resident or non-resident. ■ Closure / Voluntary Liquidation/Winding up/ Merger/ Amalgamation of IP. ■ Buy-back of shares by the overseas JV/ WOS of the IP / RI. ◆ An annual return on Foreign Liabilities and Assets (FLA) is required to be submitted directly by all the Indian companies duly filled-in, validated and sent by e-mail by July 15 every year. ◆ New reporting format has also been introduced for Venture Capital Fund (VCF)/ Alternate Investment Fund (AIF), Portfolio Investment and overseas investment by Mutual Funds as per the format in Annex II and Annex III of the Master Direction. ◆ In case of reporting purchase and repurchase of ESOPs, the AD banks may continue to report the same in the existing format (Annex IV): <ul style="list-style-type: none"> ■ Annual Statement shares allotted to Indian employees/ Directors under ESOP Schemes is required to be submitted to the Central Office of RBI by Indian Company through its AD bank. ■ Annual Statement of shares repurchased by the issuing foreign company from Indian employees/ Directors under ESOP Schemes is required to be submitted to the Central Office of the Reserve Bank of India by the Indian Company through its AD bank.

	<ul style="list-style-type: none"> ◆ Any post investment changes subsequent to the allotment of the UIN are required to be reported as indicated in the operational instructions on submission of Form ODI Part I (Annex I). ◆ In case of RI undertaking ODI certification of Form ODI Part I by statutory auditor or chartered accountant need not be insisted upon. Self-certification by the Resident Individual concerned may be accepted.
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11.6 Issues In Choosing Location Outside India

Geographical Location of business	<ul style="list-style-type: none"> ◆ Infrastructure (ports, airports, storage, specific storage types – such as cold-storage, secure storage). ◆ Access (transportation of goods, materials and personnel). ◆ Relevance to supply-chain (raw material sourcing, processing, despatch of finished produce). ◆ Availability of talent pool for productions (labour), services and management.
Economic aspects	<ul style="list-style-type: none"> ◆ Ease of doing business: entering, establishing, restructuring and closing the business, visa availability. ◆ Cost of doing business: return on investment computations <i>vis-à-vis</i> comparable locations. ◆ Laws relating to labour. ◆ Laws relating to taxation : investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as FATCA, TRC, etc.
Political Aspects	<ul style="list-style-type: none"> ◆ Friendly country, MFN status. ◆ Long-standing and established legislative precedents with companies going through regulatory recourse. ◆ Their relations with nearing countries and neighbours and your country.
Social Aspects	<ul style="list-style-type: none"> ◆ Trade bodies, interaction between commercial entities of both nations. ◆ Expatriate-friendliness of the nation for relocating key employee personnel.
Technological aspects	<ul style="list-style-type: none"> ◆ Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress. ◆ Power, communication, telecom – availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization.

QUESTION

Ques 1: Choice of business locations outside India involves consideration of many factors. Comment.

Hint: Refer Topic 11.6 ISSUES IN CHOOSING LOCATION OUTSIDE INDIA.

11.7: Recent initiatives for Setting up of a Business in New Zealand	
In Year 2014	Enforcing Contracts: New Zealand made enforcing contracts easier by improving its case management system to ensure a speedier and less costly adjudication of cases.
In Year 2015	Getting Credit: New Zealand improved access to credit information by beginning to distribute both positive and negative credit information.
In Year 2016	Getting Electricity: The utility in New Zealand reduced the time required for getting an electricity connection by improving its payment monitoring and confirmation process for the connection works.

In Year 2017	Paying Taxes: New Zealand made paying taxes easier by abolishing the cheque levy. New Zealand made paying less costly by decreasing the rate of accident compensation levy paid by employers. Payment of Taxes becomes more costly by raising property tax and road user levy rates.
In Year 2018	<ul style="list-style-type: none"> ◆ Paying Taxes: New Zealand made paying taxes easier by improving the online portal for filing and paying general sales tax. ◆ Enforcing Contracts: New Zealand made enforcing contracts more difficult by suspending the filing of new commercial cases before the Commercial List of the High Court of New Zealand during the establishment of a new Commercial Panel.
In Year 2019	Starting a Business: New Zealand made starting a business less expensive by reducing the fees for name search and company incorporation.

Question For Practice**Ques 1: Write Short Note On: 11.7: Recent initiatives for Setting up of a Business in New Zealand.***Hint: Refer Topic 11.7: Recent initiatives for Setting up of a Business in New Zealand.***11.8 Recent initiatives for Setting up of a Business in Singapore**

In Year 2017	<ul style="list-style-type: none"> ◆ Dealing with Construction Permits: Singapore made dealing with construction permits easier by streamlining procedures and improving the online one-stop shop. ◆ Registering Property: Singapore made it easier to transfer a property by introducing an independent mechanism for reporting errors on titles and maps. ◆ Paying Taxes: Singapore made paying taxes easier by introducing improvements to the online system for filing corporate income tax returns and VAT returns. At the same, the social security contribution rate paid by employers increased and the rebate of 30% on vehicle tax expired.
In Year 2018	<ul style="list-style-type: none"> ◆ Trading across Borders: Singapore made exporting and importing easier by improving infrastructure and electronic equipment at the port. ◆ Resolving Insolvency: Singapore made resolving insolvency easier by establishing a new scheme of arrangement procedure with features of the debtor-in-possession reorganization regime and introducing provisions applicable to pre-packaged restructurings. ◆ Employing Workers: Singapore adopted legislation that requires employers with more than 10 employees to notify the Ministry of Manpower if five or more employees are retrenched within any six-month period.
In Year 2019	<ul style="list-style-type: none"> ◆ Starting a Business: Singapore made starting a business easier by abolishing the corporate seals. ◆ Enforcing Contracts: Singapore made enforcing contracts easier by introducing a consolidated law on voluntary mediation.
In Year 2020	Dealing with Construction Permits: Singapore made dealing with construction permits easier by enhancing its risk-based approach to inspections, improving public access to soil information and streamlining the process to obtain a construction permit.

Question For Practice**Ques 1: Discuss Recent initiatives for Setting up of a Business in New Zealand?***Hint: 11.7: Refer Topic Recent initiatives for Setting up of a Business in New Zealand.***11.9 Recent initiatives for Setting up of a Business in Hong Kong SAR, China**

In Year 2015	<ul style="list-style-type: none"> ◆ Starting a Business: Hong Kong SAR, China, made starting a business more difficult by increasing the registration fee.
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	<ul style="list-style-type: none"> ◆ Protecting Minority Investors: Hong Kong SAR, China, strengthened minority investor protections by introducing requirements for directors to provide more detailed disclosure of conflicts of interest to the other board members.
In Year 2016	<ul style="list-style-type: none"> ◆ Starting a Business: Hong Kong SAR, China, made starting a business easier by eliminating the requirement for a company seal. ◆ Getting Electricity: The utility in Hong Kong SAR, China, made getting electricity easier by streamlining the process for reviewing connection application and for completing the connection works and meter installation. ◆ Getting Credit: Hong Kong SAR, China, improved access to credit by implementing a modern collateral registry. ◆ Paying Taxes: Hong Kong SAR, China made paying taxes easier and less costly for companies by simplifying compliance with the mandatory provident fund obligations and increasing the allowance for profit tax resulting in increasing the maximum contribution to mandatory provident fund and reduced the property tax waiver.
In Year 2017	<ul style="list-style-type: none"> ◆ Starting a Business: Hong Kong SAR, China made starting a business less costly by reducing the business registration fee. ◆ Getting Electricity: Hong Kong SAR, China, streamlined the processes of reviewing applications for new electrical connections and also reduced the time needed to issue an excavation permit.
In Year 2018	<ul style="list-style-type: none"> ◆ Starting a Business: Hong Kong SAR, China-made starting a business more expensive by reintroducing the business tax fee. ◆ Registering Property: Hong Kong SAR, China, improved the quality of its land administration system by enhancing its reliability and establishing a complaints mechanism.
In Year 2019	Getting Electricity: Hong Kong SAR, China; made the process of getting an electricity connection faster by establishing a specialized task force to undertake the trenching, excavation and reinstatement of the underground cable.
In Year 2020	Dealing with Construction Permits: Hong Kong SAR, China, made dealing with construction permits easier by enhancing its risk-based approach to inspections.
Question For Practice	
Ques 1: Write Short Note On: Recent initiatives for Setting up of a Business in Hong Kong SAR, China.	
<i>Hint: Refer Topic 11.9: Recent initiatives for Setting up of a Business in Hong Kong SAR, China.</i>	

11.10 Recent initiatives for Setting up of Business in New York City	
In Year 2011	Paying Taxes: In the United States the introduction of a new tax on payroll increased taxes on companies operating within the New York City metropolitan commuter transportation district.
In Year 2015	Starting a Business: In the United States starting a business became easier in New York City thanks to faster online procedures.
In Year 2018	Employing Workers: The United States – Los Angeles increased the maximum paid days of sick leave a year.
In Year 2019	Employing Workers: The United States (New York City) changed regulations pertaining to parental leave.
In Year 2020	<ul style="list-style-type: none"> ◆ Starting a Business: The United States made starting a business easier in California by introducing online filing of the statement of information for limited liability companies. This reform applies to Los Angeles. ◆ Paying Taxes: The United States made paying taxes less costly by decreasing the corporate income tax rate. This reform applies to both New York City and Los Angeles.

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| | <p>◆ Enforcing Contracts: The United States (Los Angeles) made enforcing contracts easier by introducing electronic filing and electronic payment of court fees.</p> |
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Question For Practice

Ques 1: Discuss Recent initiatives for Setting up of Business in New York City?

Hint: Refer Topic 11.10: Recent initiatives for Setting up of Business in New York City.