

Centre Revamps Overseas Investment Framework

Relaxes norms for domestic entities wanting to invest in overseas cos or securities

Our Bureau

New Delhi: India on Monday announced a revamp of the overseas investment framework, including easing the rules for domestic entities wanting to invest in companies or securities abroad.

Under the new rules, the government has provided a specific definition for overseas portfolio investment (OPI), making it clear that such investments can be made in both listed and unlisted space.

The government also eased the 'round-tripping' rules by allowing Indian entities to invest in foreign companies that may route this investment back into India provided certain transparency conditions are met. The latest rules made approval of lenders compulsory for any person or entity having non-performing assets wanting to make an overseas investment.

Acquiring a gift of foreign securities has been allowed from any non-resident

UNFOLDING A LIBERAL REGIME...

Foreign investment up to **10%** allowed under portfolio route in unlisted cos

Round-tripping only with one layer of overseas entity

Portfolio investment by **unlisted co** only through right, bonus, restructuring & swap

Indian cos can invest

up to **50%** of their net worth via OPI route

Investment in fin services overseas only in profitable cos

Indian co may invest up to **4 times** net worth in foreign co

Acquiring a gift of foreign securities has been allowed from any non-resident



...WITH SOME CHECKS

RBI nod must for investments into foreign entities in real estate, gambling or with fin products linked to rupee

Cos with accounts declared NPAs, wilful defaulters need NOC from lender prior to financial commitment

Cos probed by investigative agencies also need NOC

outside India — previously, this was allowed only from relatives. Such transactions are subject to compliance under the Foreign Contribution (Regulation) Act, 2010.

The Foreign Exchange Management (Overseas Investment) Rules, 2022 will subsume regulations pertaining to Overseas Investments and Acquisition and Transfer of Immovable Property Outside India Regulations, 2015.

May Impact M&A Decisions >> 4

CCI Tracking PEs Taking up Board Seats in Rival Cos



The Competition Commission of India (CCI) is keeping a watch on private equity funds taking up board seats in rival companies in the same sector, saying such arrangements may adversely impact the competition landscape, reports **Pavan Burugula**. >> 9

May Impact M&A Decisions

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The consolidated rules, notified on Monday, bring in a host of changes that could impact merger and acquisition decisions of Indian residents, including startups.

"In view of the evolving needs of businesses in India, in an increasingly integrated global market, there is a need for Indian corporates to be part of the global value chain. The revised regulatory framework for overseas investment provides for simplification of the existing framework for overseas investment and has been aligned with the current business and economic dynamics," the finance ministry said in a statement.

These changes have been brought about in consultation with the Reserve Bank of India.

"The new regulations are a welcome move as this (notification) clarifies some prolonged industry issues — especially outbound-inbound structures, gift of shares between residents and non-residents, clarity

on portfolio investment through introduction of 10% threshold and control," said Neha Aggarwal, director, Pricewaterhouse & Co.

LIBERALISING RULES

Until now, OPI was not defined explicitly and hence industry took a conservative approach that OPI was allowed only in listed foreign companies.

The government has defined OPI as an investment in a foreign company where the Indian entity owns less than 10% of equity. This would allow wealthy Indian investors and corporates to make passive investments in foreign companies.

"The concept of overseas portfolio investment has been widened and would now be available to unlisted companies as well," said Moin Laddha, partner, Khaitan & Co.

The government has also eased the rules for overseas direct investment (ODI) and foreign direct investment (FDI) structures. Say an Indian entity invests in a foreign entity and the foreign company has business operations in India through a subsidiary —

such investments were not allowed by Indian regulators on suspicions of round tripping and tax evasion. This is because Indian entities were taking money out of the country for investment through an ODI, and the investee company could bring the same money back into India through FDI in its Indian subsidiary.

In fact, in the draft rules published by the RBI, there was a condition that such transactions should be allowed only if it was amply clear that they were meant for bona fide purposes and not for tax evasion. But in the final rules, this condition has been removed.

"The final rules, however, provide that a person resident in India cannot make a financial commitment (including ODI and other debt) 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," said Sandeep Jhunjhunwala, partner, Nangia Andersen.

The new rules allow Indian entities to invest via the ODI route in the International Financial Services Centre (IFSC), provided the investment will be counted under the overseas investment limits. Also, any investment made into the IFSC through the ODI route will be given approval within 45 days of making the application. The government has also permitted alternative investment funds (AIFs) to make ODI investments as per market regulator's guidelines.

"There was a need to re-examine our ODI regulations and fine tune them in line with India's growing presence at the international stage and the need for Indian business to expand and grow internationally," said Dhruv Singhal, Partner, Cyril Amarchand Mangaldas.

SOME CHECKS

The government also introduced a rule that says any Indian resident whose account has been classified as non-performing assets, or who has been declared as a wilful defaulter, by any bank will need a no-objection certificate from the lenders before making a financial commitment for ODI investments.