



# Overseas Investment

CA Chirag Chordia | 20 June 2026

# Agenda

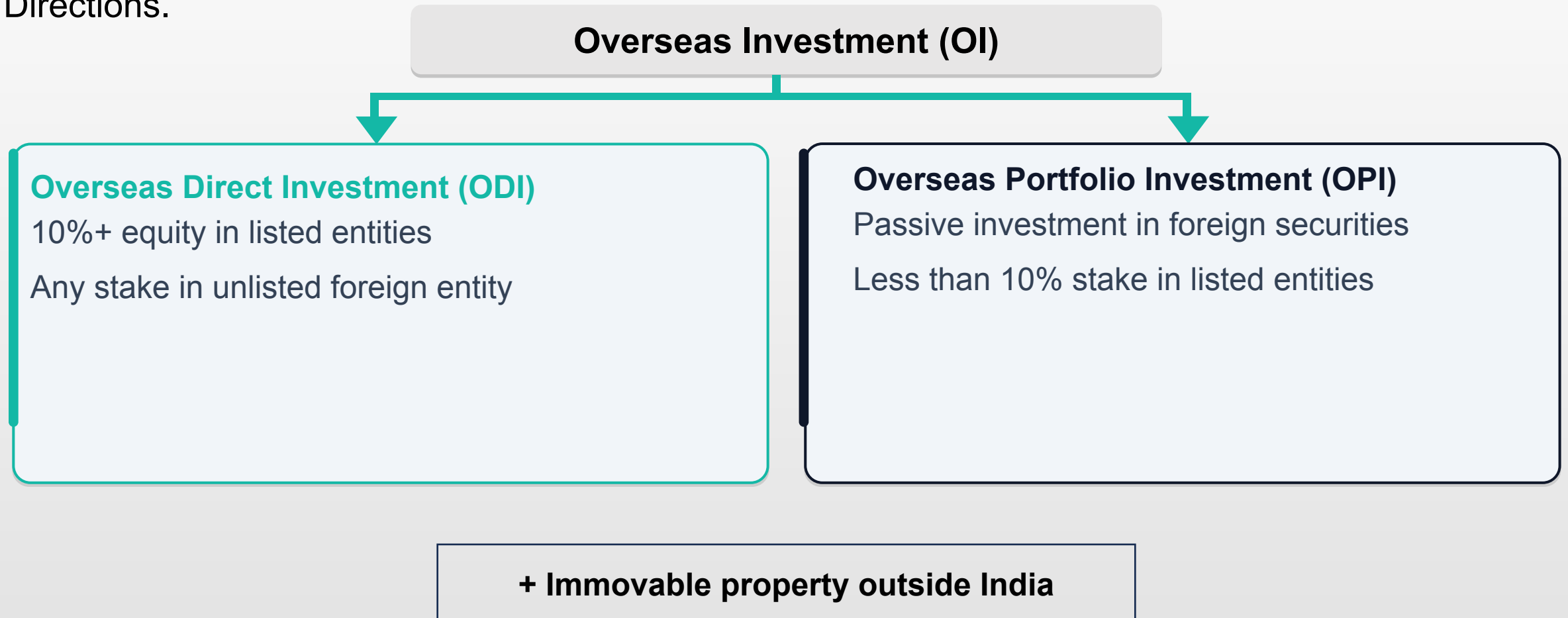
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# Key concepts



# Overseas Investment

From August 2022 - a single unified framework comprising OI Rules, OI Regulations, and OI Directions.



# Overseas Direct Investment (ODI)

Overseas Direct Investment or ODI means investment by way of acquisition of :

## 1 Unlisted Equity Capital

Even a single share (0.01% stake) in an unlisted foreign entity qualifies as ODI

2

## MoA Subscription

Founding investment at entity incorporation.

3

## Listed Entity ( $\geq 10\%$ )

10% or more of paid-up equity in a listed entity. **Once classified as ODI, remains ODI even if stake drops below 10%**

4

## Control

Investment with control where holding is  $< 10\%$



# Overseas Portfolio Investment (OPI)

Investment, other than ODI, in foreign securities

## Key Exclusions from OPI:

- **Unlisted debt instruments** issued by foreign entities
- Securities issued by a non IFSC PRI

**Delisting proviso:** OPI in a listed entity continues to be treated as OPI even after the entity delists, until any further investment is made in that entity.

**Non-debt instruments:** Includes investment in units of mutual funds and Exchange-Traded Fund which invest more than **50% in equity**

**What about debt mutual funds?**

# Other important definitions

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**"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

**"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**

**"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.

# Other important definitions

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**"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).

**"Subsidiary"** or **"step down subsidiary"** of a foreign entity means an entity in which the foreign entity has control.

**"Financial commitment"** means the aggregate amount of investment made by a person resident in India by way of ODI, debt other than OPI in a foreign entity or entities in which the ODI is made and shall include the non fund-based facilities extended by such person to or on behalf of such foreign entity or entities.

# Key conditions

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- **Rule 9:** Foreign entity must be engaged in a bona fide business activity, directly or through step down subsidiary or SPV. "bonafide business activity" shall mean any business activity permissible under any law in force in India and the host country or host jurisdiction.
  - **Real money gaming – Bonafide business activity?**
- **Rule 16:** Issue or transfer of equity capital of a foreign entity shall be on an arm's length basis.
- **Rule 17(4):** Disinvestment of ODI can be after at least 1 year of staying invested.
- **Rule 19(1):** ODI not allowed in foreign entity engaged in real estate activity, gambling, financial products linked to INR. "**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.
  - **Buying and leasing?**
  - **Serviced apartments and co working spaces?**
- **Rule 19(3):** Round tripping structures – not more than 2 layers of subsidiaries.

# Overseas Investment by Indian entity | Schedule I and II

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## ODI

- ODI can be made for undertaking bonafide business activity.
- **ODI can be made by way of:** Subscription of MoA, purchase, rights issue, bonus issue, capitalisation of any dues, **swap of securities**, merger / demerger / amalgamation of any other scheme of arrangement.
- Financial commitment – Maximum 400% of net-worth as per last audited balance sheet. >\$1bn – approval route mandatory.

## OPI

- Maximum 50% of net-worth as per last audited balance sheet
- Unlisted Indian entity can make OPI only by way of **rights, bonus, capitalization, swap, scheme.**
  - **Not by way of purchase – Indian LLP directly investing in US stocks?**

# Investment in Financial Service sector

A foreign entity is regarded as engaged in a Financial Services ("FS") activity if it undertakes an activity which, if carried on in India, would require registration with or regulation by a financial sector regulator in India.

## Indian Entity Engaged in Financial Services Activity

An Indian entity engaged in FS activities may make ODI in a foreign entity engaged in FS activities, subject to the following conditions:

- ✓ **Net profits during the preceding 3 financial years**
- ✓ Registered with or regulated by a financial sector regulator in India
- ✓ Regulatory approvals obtained from regulators in India and the host jurisdiction, wherever required.

## Indian Entity NOT Engaged in Financial Services Activity

An Indian entity not engaged in FS activities may make ODI in a foreign entity engaged in FS activities (except banking or insurance), **provided it has posted net profits during the preceding 3 financial years.**

### Insurance Exception:

IE not engaged in insurance may make ODI in a foreign entity engaged in general or health insurance where such insurance business supports the core overseas activity of the Indian entity.

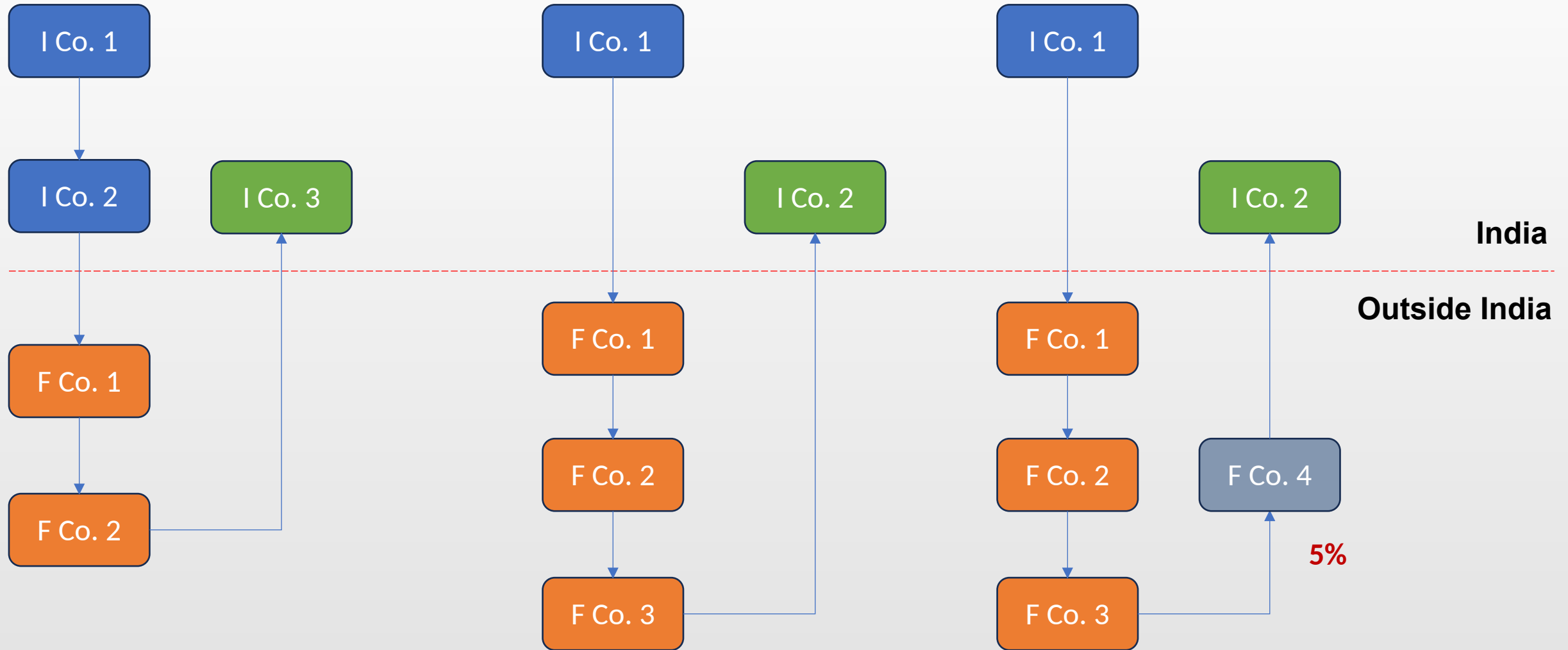
# Overseas Investment by Resident individuals | Schedule III

- ODI and OPI shall be subject to overall ceiling limit of USD 250,000.
- ODI can only be made in an **operating foreign entity** not engaged in FS activity and which does not have **subsidiary or SDS** where resident individual has control in foreign entity,
  - **Subsidiary / SDS – as per FEMA.**
  - **Allowed** if acquired through **inheritance, sweat equity, ESOP, qualification shares.**
- **Specific important scenarios**
  - Swap of securities allowed only in case of a merger, demerger, amalgamation or liquidation.
  - Inheritance from PRI or PROI allowed without limit.
  - Gift from relative PRI without limit.
  - Gift from PROI – in accordance with FCRA
  - <10% investment without control regarded as OPI - **sweat equity, ESOP, qualification shares.**
  - **ESOP investment allowed without limit – TCS applies.**

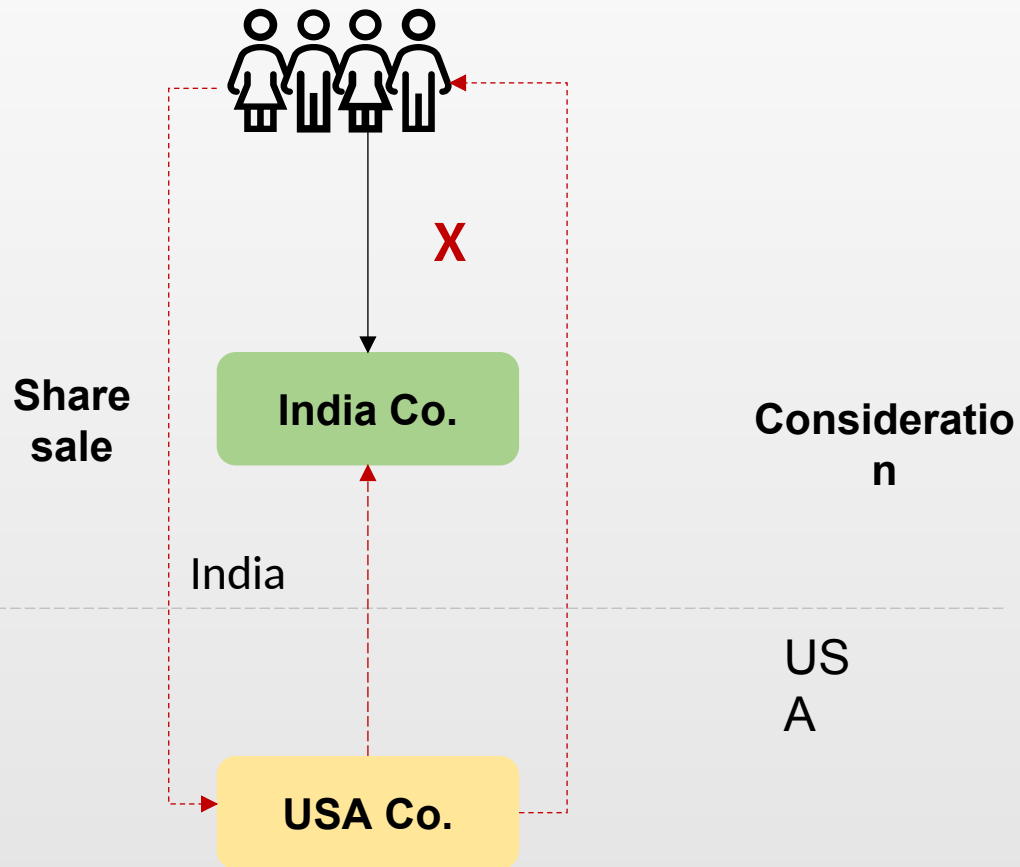
# Case studies



# Round trip structures



# Rollover structure



## Transaction:

Shareholders of India Co. to sell shares of India Co. to USA Co. for **USD 50 Million**

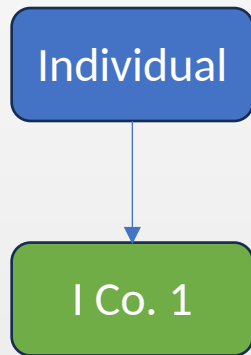
Buyer requires the founders to **reinvest USD 20 million** in USA Co.'s holding company. This would give ~2% stake to Indian shareholders in hold co.

## Challenges:

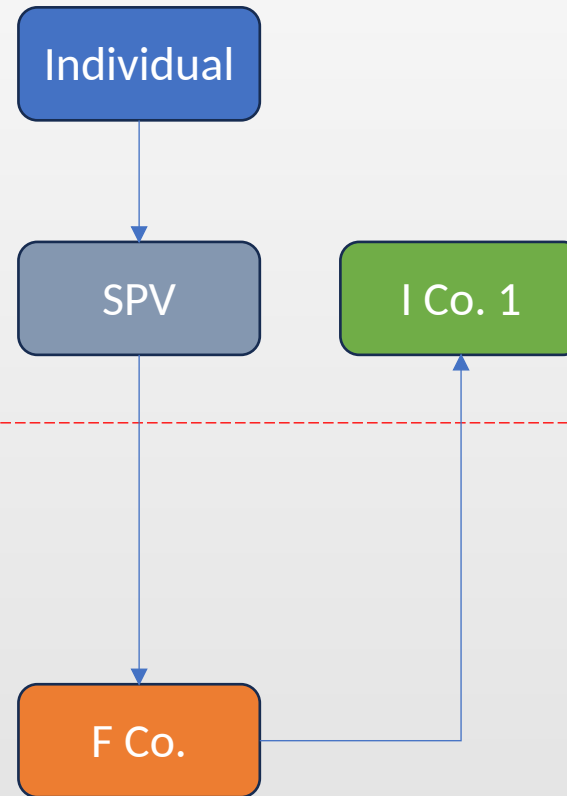
1. Swap by resident individuals not allowed.
2. Reinvestment exceeds LRS limits.

# Share swap

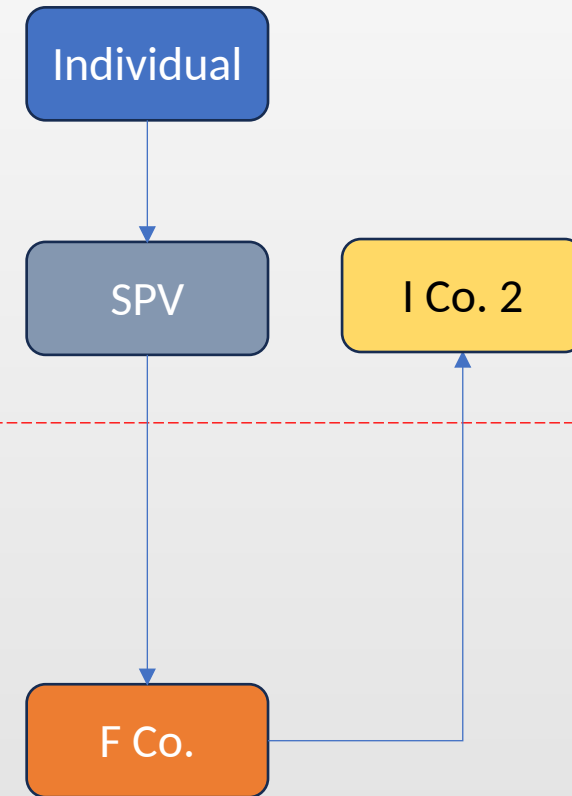
## #1. Current structure



## #2. Using SPV



## #3. Business transfer



India  
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Outside India

# Headlines

ED issues show cause notice of Rs 9,362 crore to Byju's for forex violation

## ED flags Indians buying Dubai properties using credit cards

Indian authorities are scrutinizing residents who bought Dubai properties using credit cards. This method may breach foreign exchange rules. Individuals are receiving notices from the Enforcement Directorate. They face penalties and the need to regularize transactions. Some may have to sell properties. This situation highlights the complexities of cross-border property investments.



[Sugata Ghosh](#) • ET Bureau

Published On Mar 23, 2026 at 07:07 AM IST • Read by 4234 Professionals



# Headlines

## ED seizes bank accounts, FDs, bonds worth Rs 590 crore under FEMA in crackdown against Winzo group

ANI | Updated: Feb 19, 2026 17:49 IST



New Delhi [India] February 19 (ANI): The Enforcement Directorate (ED) has seized bank accounts, fixed deposits, mutual funds and bonds of Winzo Pvt Ltd and its subsidiary Zo Pvt Ltd of Rs 590 crore under the Foreign Exchange Management Act (FEMA), 1999, the agency said on Thursday.

ED said Winzo was into the business of hosting Real Money Games (RMG) and gambling, offering more than 100 number games with a claimed user base of about 25 crore users.

## **ED detects ₹2,500-crore FEMA violations in Bengaluru cross-border crypto transfers probe**

Published - June 19, 2026 11:41 pm IST - Bengaluru

Other topics



# Investment in debt instruments

Indian entity may lend or invest in any debt instrument issued by a foreign entity or extend non-fund based commitment to or on behalf of a foreign entity including overseas step down subsidiaries of such Indian entity **subject to the following conditions** within the financial commitment limit:

The Indian entity is eligible to make Overseas Direct Investment (ODI)

The Indian entity has made ODI in the foreign entity

The Indian entity has acquired control in such foreign entity at the time of making such financial commitment

**01** An **Indian entity** may lend or invest in any **debt instruments** issued by a foreign entity

**02** Such loans must be duly backed by a **loan agreement**

**03** Rate of interest must be charged on an **arm's length basis**

# Immovable property investments

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- Lease not exceeding five years allowed.
- Can be acquired by **PRI from a PRI** by way of **inheritance, gift or purchase** from a PRI.
- Can be acquired by **PRI from a PRIO** by way of **inheritance, purchase out of RFC account, purchase out of LRS, jointly with a relative outside India, out of income or sale proceeds of assets other than ODI**
- **Indian entity** having overseas office may acquire for **business and staff's residential purposes**.

# Investments in IFSC by Indian residents | Schedule V

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## Relaxations available

- Time limit prescribed for regulatory approval (where required) for investment in FS sector – 45 days.
- ODI by Indian entity not engaged in FS activity in IFSC FS entity can be made without profitability track record.
- Contribution can be made to an investment fund or vehicle set up in IFSC as OPI.
- Resident individual may make ODI in FS sector entity in IFSC if such entity does not have a subsidiary or SDS outside IFSC where resident individual has a control.

# Deferred consideration

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**Consideration for acquisition of equity capital qualifying as ODI may be deferred for a specified period, subject to following conditions.**

- The entire equity capital/securities corresponding to the total consideration must be transferred or issued upfront.
- The final consideration paid must comply with applicable pricing guidelines.
- In case of acquisition of a foreign entity by a resident in India, the deferred portion of consideration shall be treated as a non-fund based financial commitment.
- The seller may provide indemnities to the buyer as mutually agreed, subject to FEMA compliance.

# Mode of Payment for Overseas Investment

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*A person resident in India making Overseas Investment may make payment through the following modes:*

- i Banking Channels**  
By remittance made through banking channels
- ii Other accounts**  
From funds held in an account maintained in accordance with the provisions of the Act
- iii Swap of Securities**  
By swap of securities between resident and non-resident parties
- iv ADR / GDR Proceeds & ECBs**  
By using proceeds of American Depository Receipts, Global Depository Receipts, stock-swap of such receipts, or external commercial borrowings raised under the Act for making ODI or financial commitment by way of debt by an Indian entity

# Obligations

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- Obtain UIN before sending remittance or acquisition of equity capital.
- All transactions related to one UIN should be routed through single AD Bank.
- Upon divestment – realise and repatriate funds within 90 days. **Relaxation of 180 days and reinvestment under LRS.**
- **Reporting requirements**
  - Financial commitment – at the time of making remittance or financial commitment, **whichever is earlier.** (Form FC)
  - Disinvestment / restructuring – within 30 days of receipt of disinvestment proceeds / restructuring.
  - OPI by PRI other than resident individuals – Investment / transfer within 60 days from end of half year (September / March).
  - ESOP OPI – Reporting by Indian entity, branch, office
  - For ODI - Annual Performance Report by 31<sup>st</sup> December – certain relaxations available.
  - Indian entity which has made ODI – Annual return on Foreign liabilities and assets

# Thank you

*chirag.chordia@globeviewadvisors.com*