OVERSEAS DIRECT INVESTMENT AND INDIAN ECONOMY

Detailed view on the impact of ODI on the growth of the Indian economy

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TABLE OF CONTENTS

INTRODUCTION

As per the Department of Economic Affairs, Overseas Direct Investment (ODI) in India was valued at US$ 17.53 billion in Financial Year 2021-22 compared to US$ 9,829 million Financial Year 2022-23 (April-September 2022). [1]

As per the High Commission of India, London, United Kingdom, India pertains to be recognized as the UK's second largest FDI and the Indian economy withholds 99 projects invested in the UK, which has successfully generated 4,830 new jobs in 2020. [2]

At the beginning of the half of the decade, the trends of direct investment were slow, since, ODIs were more emphasized in the rich/ developed nations such as Australia, UAE, and Sudan. However, in the latter half decade, ODIs began to emphasize on countries that provide high tax benefits such as Mauritius, Singapore, the British Virgin Islands, and the Netherlands. Over the past years, India has become a favorable Overseas Direct Destination.

The overseas investment by an Indian resident expands the scale and scope of business by providing an opportunity to explore the global market, which in return boosts the brand value of Indian entrepreneurs. Besides this, overseas investments are a significant source of foreign trade and technology, therefore, improving employment generation, investment and growth.

To keep the essence of liberalization and ease of doing business alive, the Central Government and the Reserve Bank of India (RBI) are working together to simplify the processes and rationalize the rules and regulations under the purview of the Foreign Exchange Management Act, 1999.

The new regime emphasizes on introducing a simplified framework for the overseas investment made by Indian residents covering broader economic activities and remarkably minimizing the requirements of seeking approvals. Consequently, it has minimized the compliance burden and costs.

Below mentioned are certain significant changes introduced in new rules and regulations are -

- Enhanced transparency concerning distinct definitions
- Introduction of "strategic sector"
- Eliminating the requirements of approvals for -

- Deferred payment of consideration
- Investment/disinvestment by an Indian resident under investigation by any investigative agency/regulatory body
- Issuance of corporate guarantees to/ on behalf of second/ subsequent level step-down subsidiary (SDS)
- Write-off on account of disinvestment

- Introduction of "Late Submission Fee (LSF)" for reporting delays

RULES, REGULATIONS AND DIRECTIONS FOR THE OVERSEAS INVESTMENT AND OVERSEAS DIRECT INVESTMENT (ODI) – (COLLECTIVELY WILL BE REFERRED TO AS "NEW REGIME")

Rules/Regulations/Directions	Purpose / Scope
Foreign Exchange Management (Overseas Investment) Rules, 2022	Provides Rules related to Non-Debt Instruments related transactions
Foreign Exchange Management (Overseas Investment) Regulations, 2022	Provides Regulations related to Debt Instruments related transactions
Foreign Exchange Management (Overseas Investment) Directions, 2022	Provides comprehensive directions regarding Rules and Regulations as stated to the above
Master Direction – Reporting under Foreign Exchange Management Act, 1999 (Updated as on August 22, 2022)	Provides directions with respect to reporting requirements of Overseas Investments
Master Direction - Liberalised Remittance Scheme (LRS) (Updated as on August 24, 2022)	Provides updated directions with respect to LRS by incorporating above Rules and Regulations

The outbound investments in India have evolved with time in terms of volume, geographic distribution and distinct sectors. Indian firms constantly look for an opportunity to invest in foreign since it helps in the economic development of a country as a whole besides improving the performance of the country's service and manufacturing sectors, restraints unemployment, and many more.

Moreover, the overseas investment made by Indian companies/ firms are constantly contributing to the improvement of the service and manufacturing sector of the country, including minimizing unemployment.

The increase in the activities associated with Mergers and acquisitions will allow India to receive new and more substantial markets and technologies, permitting them to maximize their customers and global reach.

Primarily, India is a demand-driven economy; consumption and investments contribute to 70% of the overall economic activities. With the Indian economy shedding the shocks of Covid-19 has emerged as the 5th largest economy in the world. Apart from significant interferences, the Indian economy persists to remain strong owing to the result-oriented policies and measures. Consequently, this has provided a benefit to Indian businesses to invest in foreign countries and broaden their scope of operations.

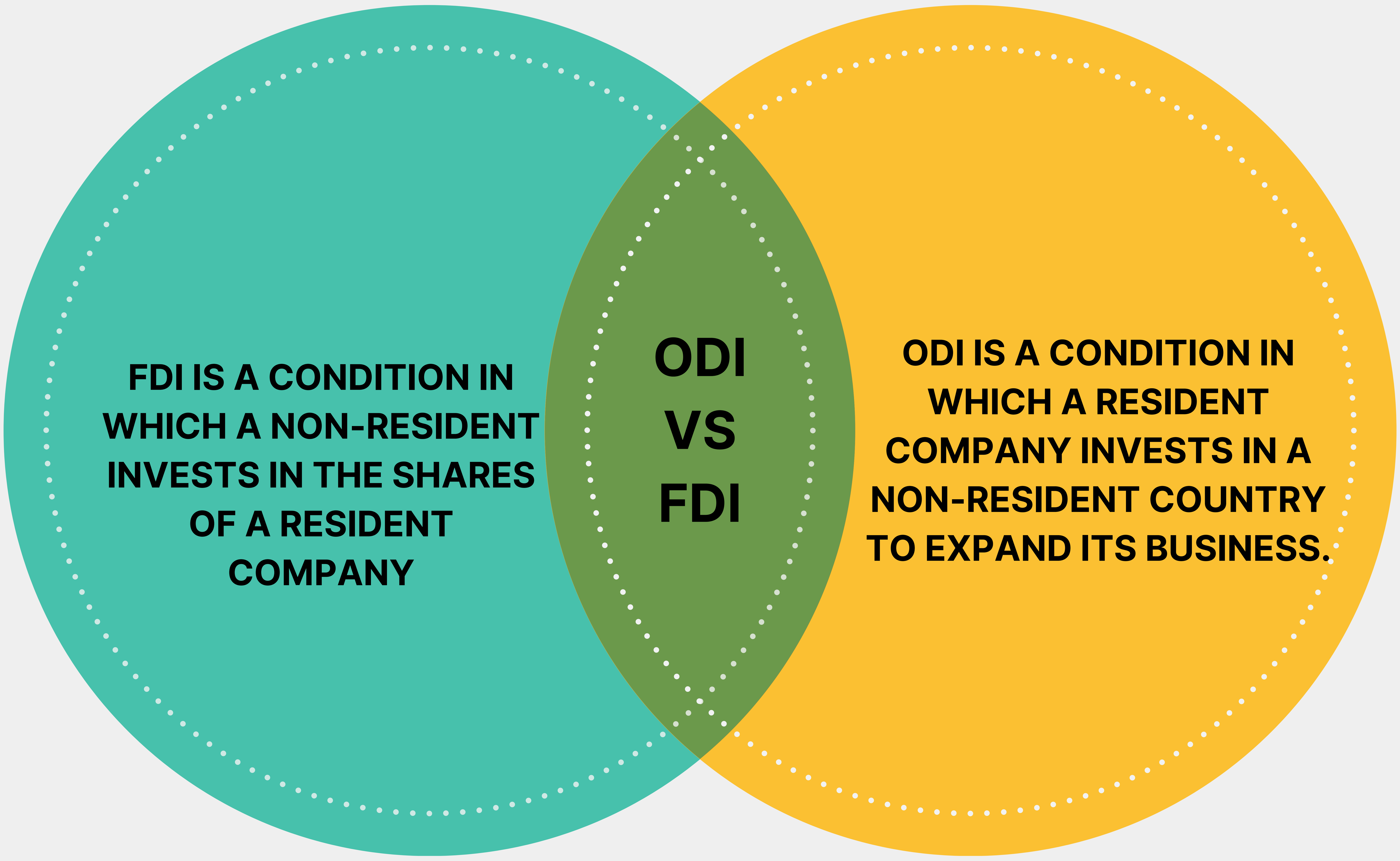
In this report, we will evaluate distinct aspects of Overseas Direct Investment and the Indian economy.

KEY HIGHLIGHTS OF THE ODI

- **Definition of Overseas Direct Investment & Overseas Direct Portfolio**, means (i) acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or (ii) investment in 10% or more of the paid-up equity capital of a listed foreign entity, or (iii) investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity. **Overseas Direct Portfolio** means investment, other than ODI, in foreign securities.
- **No Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency,**
    1. Any person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as a wilful defaulter or is under investigation by a financial sector regulator/ investigative agency shall obtain a NOC from the lender bank/regulatory body/investigative agency concerned in accordance with rule 10 of OI Rules, before making a financial commitment or undertaking disinvestment.
    2. Where an Indian entity has already issued a guarantee in accordance with the FEMA provisions before an investigation has begun or the account is classified as NPA/wilful defaulter and subsequently is required to honour such contractual obligation, such remittance due to the invocation will not constitute fresh financial commitment and hence NOC shall not be required.
- The **strategic sector** shall include energy and natural resources sectors such as Oil, Gas, Coal, Mineral Ores, submarine cable systems and start-ups and any other sector or sub-sector as deemed fit by the Central Government. The restriction of the limited liability structure of foreign entities shall not be mandatory for entities with core activity in any strategic sector. Accordingly, Overseas Direct Investment (ODI) can be made in such sectors in unincorporated entities as well. An Indian entity is also permitted to participate in a consortium with other international operators to construct and maintain submarine cable systems on a co-ownership basis. AD banks may allow remittances for ODI in the strategic sector after ensuring that the Indian entity has obtained the necessary permission from the competent authority, wherever applicable.
- **Indian entity** – The extant concept of the Indian party (IP) where all the investors from India in a foreign entity were together considered as IP, has been substituted under the new regime with the concept of an Indian entity where each investor entity shall be separately considered as an Indian entity. Indian entity shall mean a company defined under the Companies Act, 2013 or a body corporate incorporated by any law for the time being in force or a Limited Liability Partnership formed under the Limited Liability Partnership Act, 2008, or a partnership firm registered under the Indian Partnership Act, 1932.
- **Financial commitment** by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund based facility or facilities extended by it to all foreign entities. An Indian entity may lend or invest in any debt instruments issued by a foreign entity or extend the non-fund-based commitment to or on behalf of a foreign entity, including overseas SDSs of such Indian entity, subject to the following conditions: a) the Indian entity is eligible to make ODI; b) the Indian entity has made ODI in the foreign entity; c) the Indian entity has acquired control in the foreign entity on or before the date of making such financial commitment. [3]

OVERVIEW: FOREIGN EXCHANGE MANAGEMENT (OVERSEAS INVESTMENT) RULES, 2022

Overseas Direct Investment can be defined as a **"Direct investment made outside India by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity. However, ODI excludes portfolio investment."**[4].



For any country, it is significant to engage in overseas direct investment with the primary aim to diversify the business outside the country and to promote the global reach of the Indian entrepreneurs.

To keep the essence of liberalization and ease of doing business alive, the Central Government and Reserve Bank of India (RBI) are working together to simplify the processes and rationalize the rules and regulations under the purview of Foreign Exchange Management Act, 1999 as mentioned earlier.

The Central Government and RBI have notified Foreign Exchange Management (Overseas Investment) Rules, 2022 vide Notification No. G.S.R. 646 (E) dated August 22, 2022, which replaced the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 (dated July 7, 2004) and Foreign Exchange Management (Acquisition and Transfer of Immovable Property outside India) Regulations, 2015 (dated January 21, 2015).

An Indian resident may make or transfer investment or financial commitments in a foreign country either under general permission or automatic route are subjected to provisions included in Overseas Investment (OI), Overseas Investment (OI) Regulations and these directions.

Therefore, OI which may be done in a foreign entity dealing in bonafide business activities directly or indirectly (through SDS or Special Purpose Vehicle). In case of overseas investment made under approval route, the applicant is required to approach their designated AD bank with the objective to forward the proposal to RBI proceeding to scrutiny and its particular recommendations. Under the approval route, it would be persistent to submit the physical or electronic forms through email, in addition to online reporting.

Obligations of the Indian Resident

An Indian resident making ODI must comply with the obligations provided in regulation 9 of OI Regulations.

An Indian resident acquiring equity capital in a foreign entity, must submit the evidence of investment as per regulation 9(1) of OI Regulations to the AD bank within six months.

Form FC must be submitted along with relevant documents to AD bank for obtaining UIN on or before making initial ODI. The AD bank after due verification would report the information provided in the OID application for allotment of UIN.

The issuance of UIN will help in maintaining the investment database. With effect from June 01, 2012, an auto generated e-mail will be forwarded to the AD bank or Indian investor as a confirmation of allotment of UIN, without issuance of any separate letter by the Reserve Bank. [5]

Overseas Investments By Residents Individuals

With effect from August 05, 2013, resident individuals (single or in association with another resident individual or with an Indian entity) were permitted to make ODI. A resident individual may make overseas investments in accordance with Schedule III of OI Rules. The following is further provided:

- Where a resident individual has made ODI without control in a foreign entity that subsequently acquires or sets up a subsidiary/SDS, a such resident individual shall not acquire control in a such foreign entity.
- Overseas investment by way of capitalization, swap of securities, rights/bonus, gift, and the inheritance shall be categorized as ODI or OPI based on the nature of the investment. However, where the investment, whether listed or unlisted, by way of sweat equity shares, minimum qualification shares and shares/interest under Employee Stock Ownership Plan (ESOP)/Employee Benefits Scheme does not exceed 10 percent of the paid-up capital/stock of the foreign entity and does not lead to control, such Investment shall be categorized as OPI.
- In case of a swap of securities, both legs of the transaction shall comply with FEMA provisions, as applicable. However, where a swap of securities results in the acquisition of any equity capital which is not in conformity with the OI Rules/Regulations, e.g., ODI in a foreign entity engaged in financial services activity, foreign entity having a subsidiary/SDS, etc., such equity capital must be disinvested within a period of six months from the date of such acquisition.
- Resident individuals are not permitted to transfer any overseas investment by way of gift to a person resident outside India.
- Shares/interest under ESOP/Employee Benefits Scheme - AD banks may allow remittances, towards the acquisition of the shares/interest in an overseas entity under the scheme offered directly by the issuing entity or indirectly through a Special Purpose Vehicle (SPV) /SDS. Where the investment qualifies as OPI, the necessary reporting in Form OPI shall be done by the employer concerned in accordance with regulation 10(3) of OI Regulations. Where such investment qualifies as ODI, the resident individual concerned shall report the transaction in Form FC.
- Foreign entities are permitted to repurchase the shares issued to residents in India under any ESOP Scheme provided (i) the shares were issued in accordance with the rules/regulations framed under FEMA, 1999, (ii) the shares are being repurchased in terms of the initial offer document, and (iii) necessary reporting is done through the AD bank.
- Though there is no limit on the amount of remittance made towards the acquisition of shares/interest under ESOP/Employee Benefits Scheme or acquisition of sweat equity shares, such remittances shall be reckoned towards the LRS limit of the person concerned.

Overseas Investment By an Indian Resident, Other Than an Indian Entity or an Indian Resident

A person resident in India, other than an Indian entity, or a resident individual may make overseas investments in accordance with schedule IV of OI Rules. The following is further provided:

- Mutual Funds (MFs) and Venture Capital Funds (VCFs)/Alternative Investment Funds (AIFs) registered with SEBI may, in accordance with paragraph 2 of schedule IV of OI Rules, invest overseas in securities as stipulated by SEBI within an overall cap of USD 7 billion and USD 1.5 billion, respectively. Further, a limited number of qualified MFs are permitted to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI. Such investment shall be considered OPI irrespective of whether the securities are listed or not.
- MFs/VCFs/AIFs desirous of availing this facility may approach SEBI for the necessary permission. Operational modalities regarding eligibility criteria, individual limits, identification of recognized stock exchanges, the investible universe, monitoring of aggregate ceilings, etc., shall be as per the guidelines issued by SEBI. General permission is available to such investors for the sale of securities so acquired.
- An AD bank, including its overseas branch, may acquire or transfer foreign securities in terms of host country regulations/laws, as applicable, in the normal course of its banking business. The provisions contained in OI Rules/Regulations shall not apply to such acquisition or transfer of foreign securities by an AD bank.
- A bank in India, being licensed by the Reserve Bank under the provisions of the Banking Regulation Act, 1949, may acquire the shares of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) as per the by-laws of SWIFT, provided the bank has been permitted by the Reserve Bank for admission to the 'SWIFT User's Group in India' as a member.
- Any overseas investment by the sole proprietorship or unregistered partnership firms may be made by the proprietor concerned or the individual partners concerned within their limit available under the LRS in accordance with Schedule III of the OI Rules. If the proposed investment is in the strategic sector, any application for making overseas investments in excess of the LRS limit may be made under the government approval route.
- Overseas investment by registered trust/society may be made under the approval route in accordance with paragraph 1 of schedule IV of OI Rules.

Overseas Investment in an IFSC in India By an Indian Resident

A person resident in India may make an overseas investments in an IFSC in India in accordance with schedule V of OI Rules. The following is further provided:

- A person resident in India, being an Indian entity or a resident individual, may make an investment (including sponsor contribution) in the units of an investment fund or vehicle set up in an IFSC as OPI. Accordingly, in addition to listed Indian companies and resident individuals, unlisted Indian entities may also make such investment in IFSC.

- The restriction of making ODI only in an operating foreign entity or not making ODI in a foreign entity engaged in financial services activity by resident individuals, shall not apply to an investment made in IFSC. Such investment, however, shall not be made in any foreign entity engaged in banking or insurance. A foreign entity in IFSC may have subsidiaries/SDS in IFSC. It may also have a subsidiary/SDS outside IFSC where the resident individual does not have control of the foreign entity. A resident individual who has made ODI without control shall not acquire control in a foreign entity that subsequently acquires or sets up a subsidiary/SDS outside India.

Overseas Direct Investment is a form of business strategy which permits a domestic firm to bolster its scope of operations in foreign country. ODI is also termed as outward foreign direct investment or direct investment abroad and can take distinct forms. Often, ODI is an indication of a matured and experienced economy be it made by an Indian resident or entity because it enhances the investment competitiveness, thereby contributing in the long-term growth of a country. Considering the importance of ODI for economic growth, it is proven to introduce crucial and significant strategies to sustainable development. [6]

Permission for Making Overseas Investment

The Indian resident who desires to transfer or make any investment or financial commitment outside India is subjected to conform to the provisions mentioned in the OI Rules, OI Regulations, and other directions of the RBI under general permission/automatic route.

An individual desire to make any financial commitment is primarily subjected to fill FC Form along with duly supported documents. Then, the concerned individual is required to approach the designated AD bank to make the investment or remittance.

STEP 1

Fill up the Form FC as provided in the "Master Direction – Reporting under Foreign Exchange Management Act, 1999"

STEP 2

Provide by the duly supported documents as required

STEP 3

Approach the designated AD bank for making the investment/remittance

However, in case of making an investment under the approval route, an applicant is required to approach their designated AD bank, which is responsible for forwarding the proposal to the RBI ensuing to scrutiny and with its particular recommendations. Under the approval route, concerned individuals have to submit the application to RBI in physical or electronic form via email, along with online reporting.

Prior to forwarding the proposal to the RBI, the AD bank will submit the appropriate sections of the Form FC in the online OID application and the transaction number generated by the application would be provided for reference. Below mentioned are the documents which are required to be submitted –

- Transaction's brief details and background.
- Reasons to obtain approval, providing the extant FEMA provisions.
- Observations AD banks associated with Prima facie viability of the foreign entity, advantages which may accrue to India through such investment; financial position and track record of the business of the Indian entity and the foreign entity; and other material observations.
- AD banks recommendations with the confirmation to the applicant's board resolution or the resolution of the equivalent body, as applicable to the proposed transactions.
- A diagrammatical representation of the structure of the organization indicating the subsidiaries of Indian entities horizontally and vertically with the stake, be it direct or indirect and status whether it is an operating company or SPV.
- If applicable, a valuation certificate for a foreign entity.
- Other adequate documents are appropriately numbered, indexed and flagged.[7]

Restrictions and Prohibition

An AD bank is not permitted to make any transaction associated with a foreign entity engaged in Rule 19(1) of OI Rules or located in countries/ jurisdictions as advised by the Central Government under rule 9(2) of OI Rules.

It illuminates that financial products associated with the Indian rupee must include non-deliverable trades including foreign currency (INR exchange rates), and stock indices linked to the Indian market, among others. The financial commitment made by an Indian resident in a foreign entity invested in India during making such financial commitments or at any duration, after (directly or indirectly) leading to a structure with the above two layers of subsidiaries is not authorized as per Rule 19(3) of the OI Rules.

Moreover, no further subsidiary layer is to be added to any structure existing with 2 or more subsidiary layers following the notification of OI Rules/ Regulations.[8]

FORMS

Part 2 form to file Annual performance report

Part 1 form to make ODI

Part 3 form for disinvestment

PROCESS FOR AUTOMATIC ROUTE

- Fill ODI form part 1 and certify it with Statutory Auditor
- AD bank may require for Valuation Report of subsequent investment
- Submission of form A2 of respective AD bank with ODI part 1
- Part 1 includes info regarding JV/ WOS, Indian parties & remittance/ other financial commitment
- Form must be submitted during initial remittance
- Report the remittance for supplementary investment and other financial commitment

PROCESS FOR APPROVAL ROUTE

An application needs to be submitted to the Reserve Bank of India as per specifications of AD bank along with required documents.

FEMA AND ODI

The Direct investments made by residents in JV/ WOS abroad are permitted in terms of Clause (a) of sub-section (3) of Section (6) of the Foreign Exchange Management Act, 1999 (42 of 1999) via Notification FEMA 120/ RB - 2004 dated 7th July 2004 (GSR 757 (E) dated 14th November 2004) under Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004. Moreover, these regulations are amended with time with the purpose to incorporate the changes in the regulatory framework.

Under Section 11 of the Foreign Exchange Management Acct (FEMA), 1999, within these contours of Regulation, RBI also publishes/ issues directions to concerned individuals. The Foreign Exchange Management Act (FEMA) was introduced with the purpose to facilitate extrinsic trade and payments in India to ensure adequately organized development and maintenance of the foreign exchange market in India.

In order to do so, FEMA was enacted in 1999 (replacing the FERA 1973) to introduce and impose procedures, formalities and dealings of foreign exchange, including monitoring the foreign exchange transactions.

METHODS OF FUNDING

(I) Investment/ financial commitment in an overseas JV/ WOS may be funded through below mentioned sources -

1. Withdrawal of foreign exchange from AD bank established in India
2. Swap of shares
3. Capitalization of exports
4. Proceeds of External Commercial Borrowing (ECBs)/ Foreign Currency Convertible Bonds (FCCBs)
5. In exchange of issued ADRs/ GDRs
6. Proceeds of foreign currency funds raised through ADS. GDE issues
7. Balances held in EEFC account of the Indian party

(II) General permission has been provided to Indian residents for purchase/ acquisition of securities as provided -

1. Out of funds kept in RFC account
2. As bonus shares on existing holding of foreign currency shares
3. Out of their foreign currency resources outside India (when individual is not Indian resident)

This section attempts to cover the provisions under FEMA associated with Overseas Direct Investment (ODI).

The overseas direct investment (ODI) is done through an Authorized Dealer who is registered with Reserve Bank of India (RBI). The Indian party or Indian resident requires a route to complete such transactions only through one branch of an Authorized Dealer of a certain Joint Venture (JV) or Wholly Owned Subsidiary (WOS).

This branch would be referred to as the “designated Authorized Dealer” of a JV/ WOS, thereby, all transactions associated with certain JV/ WOS would be done through this designated branch only.

The FEMA ODI was introduced with the objective to liberalize and simplify the regulatory framework concerning overseas investments and to encourage ease of doing business. With the intention to encourage overseas investment, Foreign Exchange Management (Overseas Investment) Rules have been amended several times and ultimately, Foreign Exchange Management (Overseas Investment) Rules, 2022 was introduced on August 22, 2022. [9]

In accordance with Foreign Exchange Management (Overseas Investment) Rules, 2022, overseas investment through an Indian resident escalates the scale and scope of Indian entrepreneurs’ business operations by opening a passageway to global growth opportunities.

Major Issues in Overseas Direct Investment (ODI)

Issue no. 1 - Transfers money, employment, opportunities etc. abroad, at the expense of the home country

Overseas Direct Investment involves the outflow of money, employment, opportunities, skills, and talents, among others in a foreign country, thereby, the money is directly being invested in the foreign country rather than the home country. Due to this, the benefit the home country could actually receive from the direct investment is now diverted to the other country.

A country should emphasize on the measures to attract ODI in India, which will drive money, employment, opportunities, skills, talents, etc into the home country. Moreover, a company usually operates through investment in domestic and foreign countries simultaneously, where both investment potentially benefits each other parallelly, including enhancing the ODI. This will ensure optimal domestic and foreign investment and will generate the overall best results.

With time, ODI will generate financial returns, including the generation of non-financial benefits to the home country, such as greater flows of knowledge and resources from overseas to the home country and improvements in domestic innovation, productivity and standards, which is important for economic and sustainable development.

Issue no. 2 - Harmful effects to home country

Every overseas direct investment is an inward investment in the host country, which raises distinct concerns such as ODI could damage the host country in distinct ways, for instance, outcompeting domestic firms so they go out of business, exploiting workers, employing low environmental and labor standards, harming local communities, among others.

If we compare the benefit of inward and outward investment, these aspects outweigh its positive aspects because these are specifically associated with the policy and regulatory frameworks. Moreover, it is not only a matter of concern for the host country, but for the home country too, since the home country government also assumes responsibility to ensure that the home-country multinationals investing abroad engage in adequate corporate behavior (known as Responsible Business Conduct) when operating overseas.

Issue no. 3 - Transparent of multi-layered structure

A transparent policy framework associated with overseas direct investments with respect to multi-layered structure, which would range from business or commercial considerations to benefits of taxation available to global investors. Due to non-transparent policies or abuse of multi-layered structures which are unjustified on business grounds or not in the interests of the home country.

Therefore, there is a requirement to ensure greater clarity in the policy framework.

Issue no. 4 - Controlled Foreign Companies under Direct Tax Code

Since, India is a current account deficit (CAD) economy it is significant to closely monitor the capital outflow of the country. We require an excess capital account with the purpose to finance the growing current account deficit and also to maintain the level of foreign exchange reserves at an adequate level given several demands on the reserves. Thereby, the unrestrained capital outflows for ODI could have noteworthy implications for sustainability of India's CAD and extrinsic debt profile.

Issue no. 5 - Effect on domestic investments

Besides this, it is significant to ensure that ODI must not crowd out domestic investments. Although, ODI and domestic capital formation by Indian companies have enhanced over time, the need to examine the benefits that domestic companies derive concerning increased market base, backward and forward vertical integration and cheap skilled labor, which will potentially increase the ODI for domestic investment, growth and employment.

These are the major five issues associated with Overseas Direct Investment (ODI) in India, though, the Indian government has introduced drastic measures to eliminate the same, yet, it can not be ignored that for India there is a long way to go. Positively, from the latest data, we can conclude that a positive growth trajectory has been seen in ODI.

COMPONENT-WISE BREAK-UP OF ODI

(Figures in US$ Million)

Financial year	Overseas Direct Investment (ODI)				Financial Commitment (II+III+IV)	Actual ODI Outflow (II+III+V)
	Equity	Loans	Guarantee Issued	Guarantee Invoked		
I	II	III	IV	V	VI	VII
2020-21	8,577	7,028	34,984	64	50,589	15,669
2021-22	9,938	7,482	31,803	297	49,223	17,717
2022-23 (April – November 2022)	4,856	2,485	9,390	150	16,731	7,491
Total	**23,371**	**16,995**	**76,177**	**511**	**116,543**	**40,877**

Mitigation of Issues Associated With ODI

Contemporary, the Reserve Bank of India (RBI) is focusing on encouraging OI by Indian residents by enabling a regulatory environment, however, RBI requires analyzing the applicable existing caps and linking it the monetary ceilings existing caps and linking it to the monetary ceilings.

The particular ceilings may require rationalization, which includes ceiling to acquire qualification shares and shares of a foreign entity in part/full consideration of professional services rendered to the foreign company or in lieu of the Director's remuneration, to acquire shares offered through an ESOP scheme globally, on a uniform basis, in a foreign company which has an equity stake, directly or indirectly, in the Indian company.

Keeping this in view, RBI in consultation with the concerned Ministries has decided to -

- Removal of the existing cap of 1% on the ceiling for Indian residents with the objective to acquire qualification shares, including linking the same monetary ceiling under Liberalized Remittance Scheme (LRS).
- To permit the Indian residents to acquire shares of a foreign entity in parts or completely concerning the rendering of professional services to the foreign company or in lieu of the Director's remuneration with the monetary ceiling as per the limit prescribed under LRS.
- To authorize Indian employees or directors to possess the shares through the ESOP scheme globally based on a uniform basis in a foreign company acquiring equity stake, whether directly or indirectly in an Indian company.

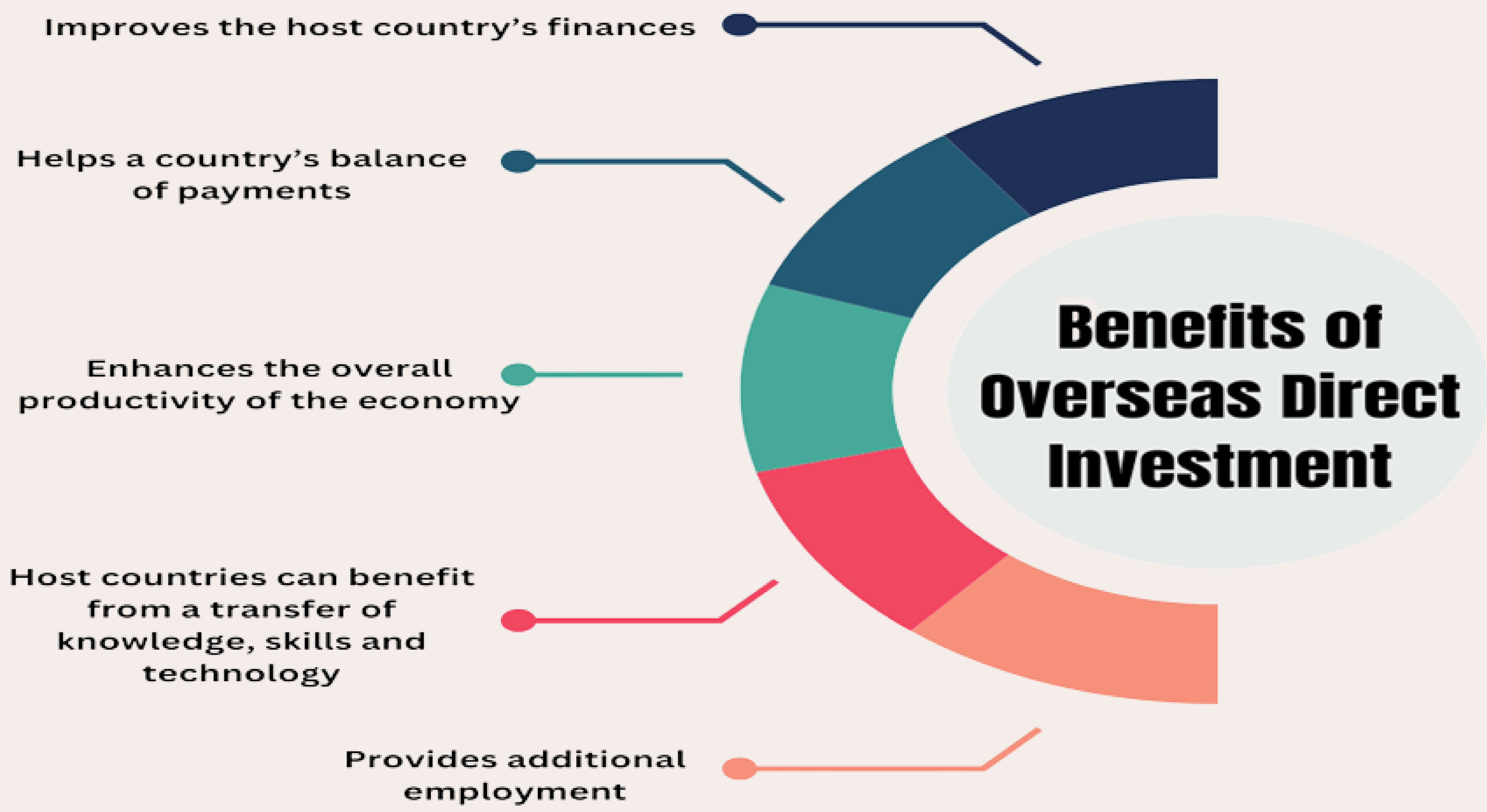
Besides emphasizing on the creation of an encouraging regulatory environment, the Reserve Bank of India (RBI) shall also resolve the issues associated with permitting individuals to establish JVs/WOS abroad by examining the transparent policy framework within the LRS ceiling. The extant regulations permit the registered partnership firms to invest abroad. I believe that with the passing of the Limited Liability Partnership (LLP) Act, the regulations must be reviewed and examined, in case LLPs are authorized to invest abroad.

With respect to multi-layered structures, taxation continues to be the subject of debate, which is often referred to as "Treaty Shopping" or "Tax planning" or "Tax Avoidance". I believe that a clearer prescription of policies on the subject matter proceeding to keep every legal or business requirement in view prior to introducing any policy with respect to facilitating or restricting the investment needs to be done. In addition to that, RBI in consultation with the government and stakeholders should examine the issues in a holistic manner.

Overseas Direct Investment and Indian Economy

"INDIAN GOVERNMENT IS ACTIVELY WORKING TO MAKE INDIA A HOT DESTINATION FOR OVERSEAS DIRECT INVESTMENT (ODI) THROUGH IMPROVISING AND ENCOURAGING THE CREATION OF CONDUCIVE ENVIRONMENT FOR EASE OF DOING BUSINESS (EODB), EASE OF LIVING, AND THROUGH DECRIMINALIZATION OF DECRIMINALIZATION OF COMPANIES ACT."

- MR. SUNIL KUMAR GUPTA, FCA, DISA, FICA, CPA-U, FAFD, AML SPECIALIST (ICAI), BUSINESS EXPERT, ECONOMIST, PHILANTHROPIST, & AUTHOR



Financial investment is a significant or key instrument to emphasize on result-oriented foreign policy, since it helps in preserving the long-lasting relationship with varied countries, including strengthening the relationship with different countries.

Conventionally, India has enhanced its financial investment in varied countries and within the previous few years, overseas direct investment has reflected positive growth. If we look at the trend from April 2000 to October 2022 the progressive growth in ODI was over US$ 6,25,490 billion in the form of equity, loans, and guarantees.

The precise reason behind this encouraging the ease of doing business (EoDB) by simplifying the business ecosystem in India by making the commencement of business easy, providing electricity, making taxation easy, introducing reforms such as GST, encouraging trading across borders, resolving insolvency, promoting seamless credit availability, among others.

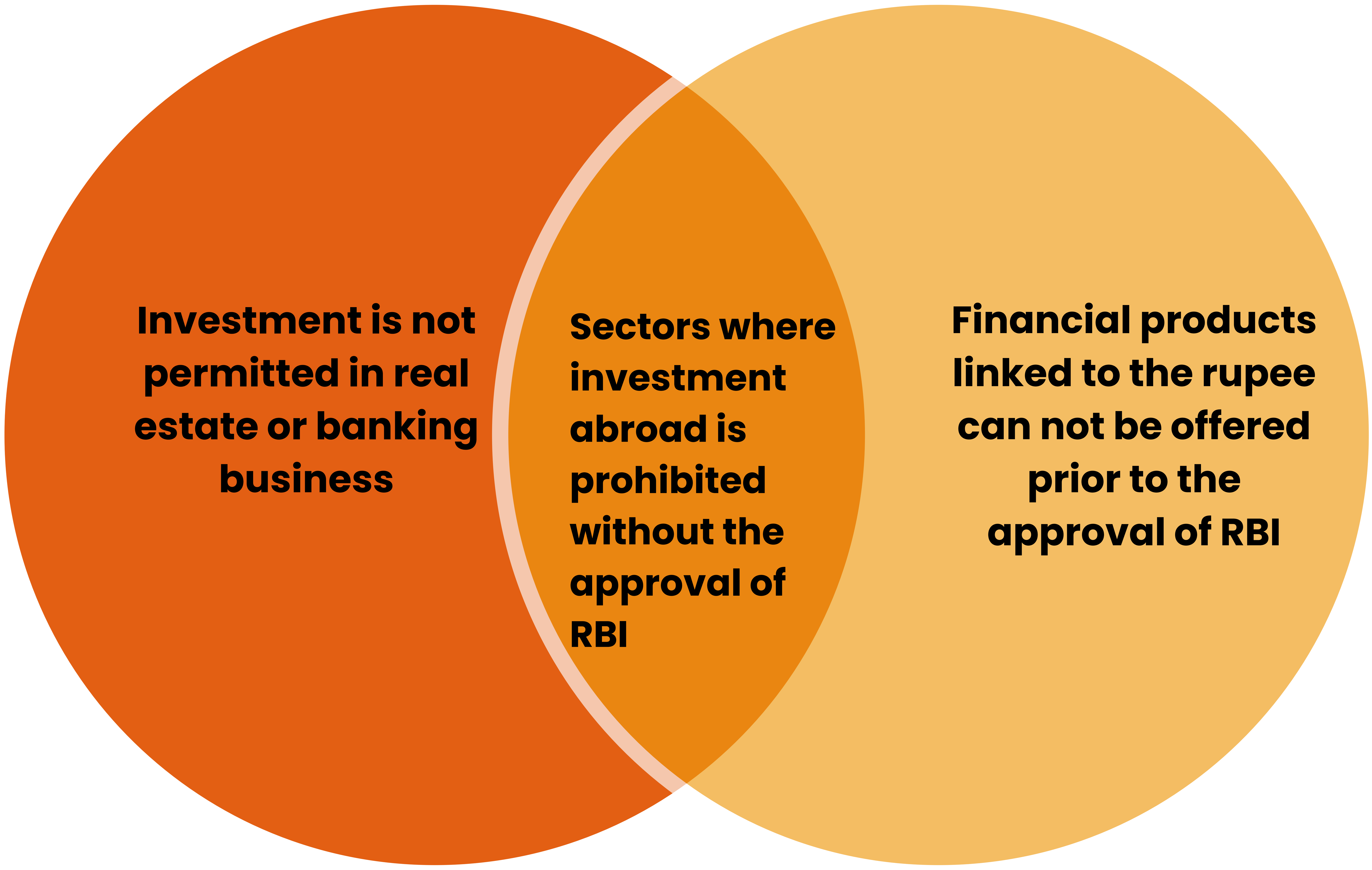
These initiatives and steps taken by the Indian government are promoting seamless commencement of businesses in India, which further promotes ODI in order to not only generate benefits for themselves, however, for the entire country. The ODI by Indian companies facilitates the improvement of the performance of the country's service and manufacturing sectors, including help in fighting against rising unemployment rates. [10]

India: Promoting Outward FDI or ODI Through Automatic Route

Under this section, I would like to emphasize whether India is promoting ODI through an automatic route. Before 2014, India was permitting ODI manually which included lengthy processes, documentation and other aspects associated with outward FDI. However, with time, India has been introducing an automatic route to authorize seamless ODI with the objective of boosting India's economic growth and development, including facilitating ease of international trade.

In order to boost ODI by the Indian residents or parties, an Indian party (a company established in India or a body formed under an Act of Parliament or Limited Liability Partnership registered under LLP Act, 2008 investing in JV/ WOS abroad, including any entity notified by the Reserve Bank of India) is authorized to invest/ undertake financial commitment in JV/ WOS overseas in accordance with ceiling prescribed by Reserve Bank of India (RBI) timely - RBI FDI Master Direction No. 15/ 2015-16 dated January 1st, 2016.

Despite the imposition of a ceiling with respect to overseas investment, Indian government has liberated the policies associated with ODI on a significant level.



Since 2016 India has taken varied measures such as issuance of RBI FDI Master Direction dated on January 1st, 2016 for Indian Party, Joint Venture and Wholly Owned Subsidiary. Considering that, Indian Party, JV and WOS are permitted to make total financial commitment under automatic route.

TOTAL FINANCIAL COMMITMENT UNDER AUTOMATIC ROUTE

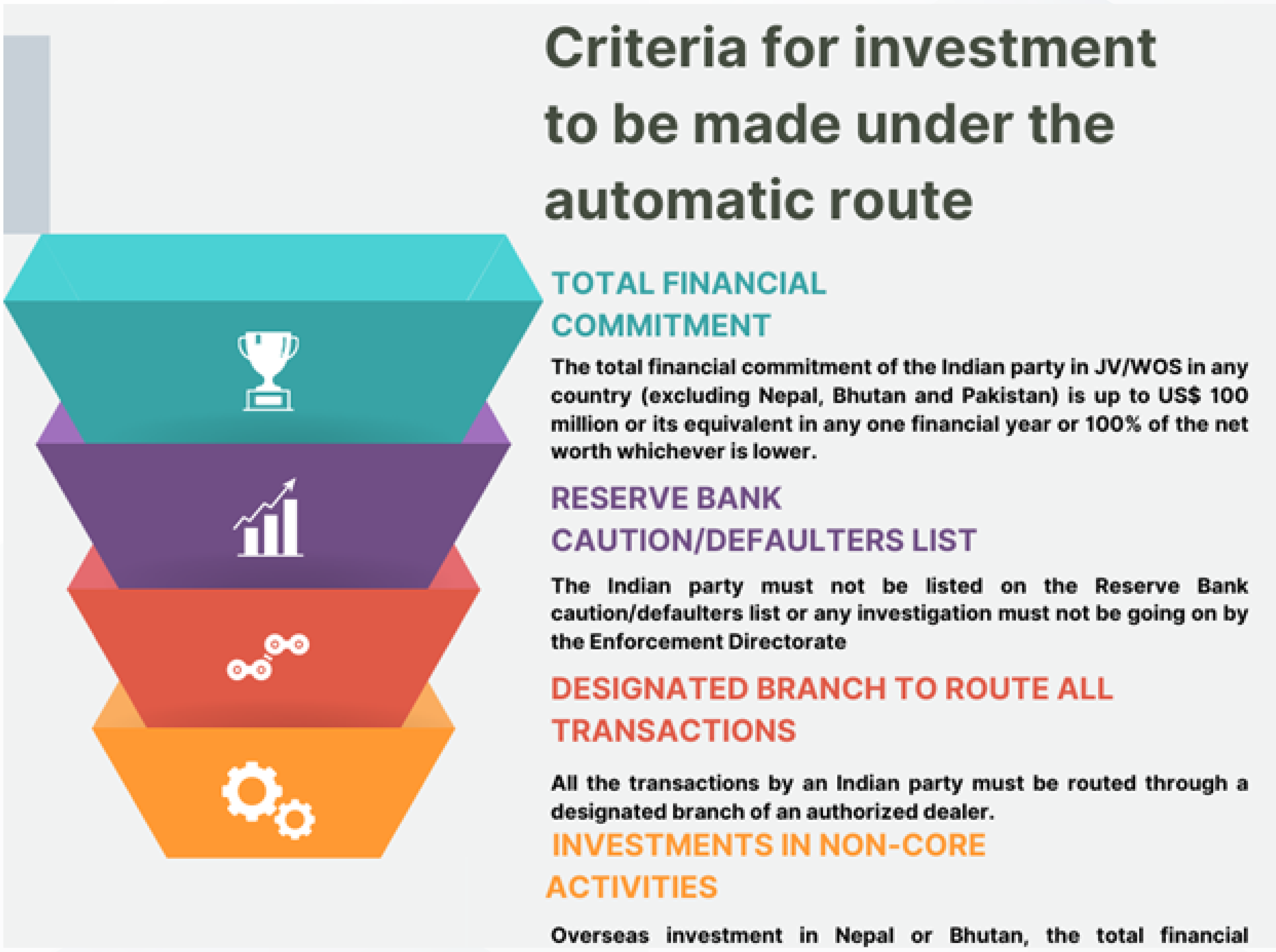
The total financial commitment under the automatic route of the Indian party with respect to all the JV/ WOS must comprise below mentioned, in accordance with Part I Part B.1 (4) of RBI FDI Master Direction No. 15/ 2015 - 16 dated January 1st, 2016 -

- 100% of equity shares and/ or Compulsorily Convertible Preference Shares (CCPS)
- 100% of the loan amount is permitted
- 100% of other preference shares permitted
- 100% of the guarantee issued by the Indian Party is authorized (other than the performance guarantee)
- 100% of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian party provided the bank guarantee supported by a counter guarantee/ collateral by Indian Party
- 50% of the performance guarantee issued by the Indian party in case the outflow with respect to the invocation of the performance guarantee results in a breach of restriction of financial commitment former permission of RBI to be obtained prior execution of remittance beyond the restriction prescribed for financial commitment

According to RBI FDI Master Direction No. 15/ 2015 - 16 dated January 1st, 2016 Indian government has introduced several measures/ policies, especially to promote ODI through automatic route.

Besides permitting financial commitment through the automatic route, the concerned Indian party, JV and WOS have issued particular conditions for making investments or financial commitments overseas under the automatic route.

CONDITIONS FOR MAKING INVESTMENT OR FINANCIAL COMMITMENT OVERSEAS UNDER THE AUTOMATIC ROUTE



As per Part I Part B.1 (4) of RBI FDI Master Direction No. 15/ 2015 - 16 dated January 1st, 2016, the investments or financial commitments under automatic route are authorized as follows -

Loan/ Guarantee Only Where Indian Party Has Equity Participation

The Indian party or entity may broaden the loan or guarantee to abroad JV or WOS in which it possesses equity participation. Under the Approval Route RBI may consider proposals from Indian parties with the purpose to undertake financial commitment without equity contribution in JV or WOS.

Guarantees By Indian Parties For Investment Overseas Under Automatic Route

The Indian entities may provide a form of guarantee - corporate or personal; primary or collateral/ guarantee by the company's promoter/ guarantee by the group company, sister concern, or associate company in India, including the personal guarantee by an indirect Indian resident promoter of the Indian party.

An Indian Party Must Not Be Listed As a Defaulters in Order to Make Investment through Automatic Route

The Indian party must not be listed on the Reserve Bank's Exporters' caution list or defaulters list to the banking system circulated by the Reserve Bank or Credit Information Bureau (India) Ltd (CIBIL) or any other credit information company as sanctioned by Reserve Bank or under investigation enforced by any regulatory body or investigation or enforcement agency.

All Transaction Must Be Done Through One Branch in India

All the transactions associated with JV or WOS must be initiated or done through one branch of an Authorized Dealer (AD) Bank to be designated by the concerned Indian Party.

Valuation of Shares When Investment Overseas under Automatic Route is More Than USD 5 Million

In case of partial or complete acquisition of an existing foreign company, where the investment is above USD 5 million, the shares' valuation of a company must be made by a Category I Merchant Banker registered with SEBI or Investment Banker or Merchant Banker registered overseas under adequate regulatory authority in the host country and in all other cases of Chartered Accountants or a Certified Public Accountant.

Investment/ Financial Commitment through Special Purpose Vehicle (SPV) Under Automatic Route

The investment/ financial commitment in JV or WOS overseas by Indian parties under the medium Special Purpose Vehicle (SPV) is authorized under automatic route with respect to Regulation 6 of the Notification ibid, including the circumstances that the Indian party is not authorized or appearing in the caution list of Reserve Bank or is under investigation by the Directorate of Enforcement or included in the defaulter list to the banking system circulated by Reserve Bank or any other Credit Information Company as permitted by Reserve Bank.

Issuance of Guarantee By an Indian Party to Step Down Subsidiary of JV or WOS

The Indian parties are authorized to issue corporate guarantees on behalf of the first-level step-down working JV or WOS established either as an operating unit or as an SPV under the automatic route, which is subjected to the circumstances that the financial commitment of the Indian party is within the abiding restriction.

Such kind of guarantees will need to be reported to the Reserve Bank in ODI Form. Moreover, the corporate guarantee to be issued on behalf of second-generation or subsequent level step-down established subsidiaries will fall under the purview of the approval route, considering that Indian Party indirectly contains 51% or more stake in the abroad subsidiary for which such guarantee is purposely to be issued in Part I Para b. 1.2 of RBI FDI Master Direction No. 15/ 2015-16 dated January 1st, 2016.

Investment/ Financial Commitment in Unincorporated/ Incorporated Entities Abroad in Oil Sector under Automatic Route

The investment/ financial investment in unincorporated or incorporated entities abroad in the oil sector, that is for exploration and drilling for oil and natural gas, among others by Navaratna PSUs, ONGC Videsh Ltd and Oil India Ltd (OIL) may be authorized by AD Category - I banks without any restriction provided such kind of investments permitted by the concerned authority.

Further, other Indian companies are also authorized to invest in unincorporated entities under automatic route in the oil sector up to the restricted limitation provided by the proposals concerned authorities and are supported by the certified copy of the Board resolution permitting such investments.

Automatic Route is permitted for Construction and Maintenance of Submarine Cable Systems

The Indian parties are authorized to participate in the consortium with the international operators to construct and maintain submarine cable systems based on the co-ownership under automatic route.

The Indian government has already permitted automatic routes in major sectors with the purpose to ensure growth and development in significant sectors, which proves that India is promoting ODI. This not only contributes to the growth and development of India as well as of other countries but also enhances employment opportunities, drives human capital opportunities, provides tax incentives, and transfers skills, and talents, among other benefits.

Contemporary, from April 2000 to October 2022 the progressive growth in actual ODI was over US$ 5,525 billion[11] in the form of equity, loans, and guarantees. Moreover, according to the Department of Economic Affairs (DEA) in the financial year 2021-22, the overseas direct investment of India was US$ 17911 million, if compared to ODI in the financial year 2020-21, which was US$ 15,065 million.[12]

COMPONENT-WISE BREAK-UP OF ODI

(OCTOBER 2022)

(Figures in US$ Million)

Financial year	Overseas Direct Investment (ODI)				Financial Commitment (II+III+IV)	Actual ODI Outflow (II+III+V)
	Equity	Loans	Guarantee Issued	Guarantee Invoked		
I	II	III	IV	V	VI	VII
2020-21	8,049	6,953	29,101	63	44103	**15065**
2021-22	9,954	7,659	29,021	298	46634	**17911**
2022-23 (April-October)	3,352	2,023	6,751	149	12,127	**5,525**
Total (April 2020-October 2022)	**21,355**	**16,635**	**64,873**	**510**	**1,02,864**	**38,501**

The statistical data provided by the Department of Economic Affairs indicates that India has been following a path of growth and development with respect to ODI, especially given that outward FDI in India is constantly increasing year on year basis. From the given data, we can conclude that the ODI outflow is enhancing constantly and would further increase as estimated by the Department of Economic Affairs. To further prove our point, we would like to highlight recent trends of overseas investment in India –

Recent Trend of ODI in India

India's ODI has magnificently increased in sectors such as investments, geographic distribution and volume. Moreover, India is continually scrutinizing the investment opportunities in foreign countries with the objective to strengthen the Indian economy because ODI by Indian companies contributes to the development of GDP, including the elimination of unemployment.

Also, a drastic increase in ODI will allow Indian companies to seamlessly access crucial technology and skills, including broadening the geographical reach and customer base.

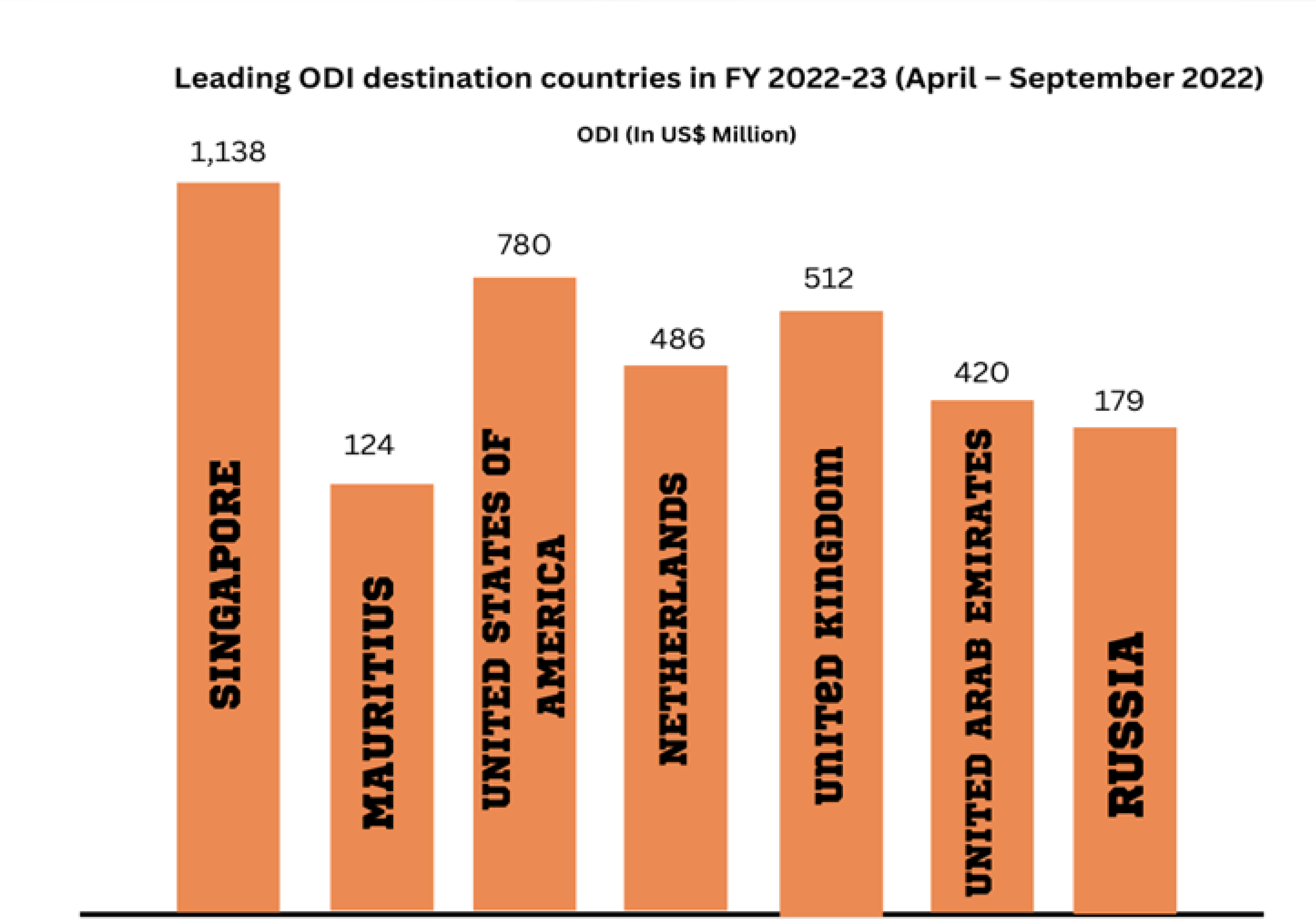
Now if we look at data for the financial year 2021-22, according to the Department of Economic Affairs (DEA) the overseas direct investment of India was US$ 17,685 million if compared to ODI in the financial year 2020-21, which was US$ 15,064 million.[13]

Moreover, as per the Department of Economic Affairs (DEA) the ODI for the financial year 2022-23 (April – September 2022) is USD 4,654 million.[14]

If we look at the ODI in the financial years 2021-22 and 2020-21, the financial year 2022-23 (April - September 2022) is significantly high, thereby reflecting that India is actively increasing its overseas direct investment. Therefore, not only enhances employment opportunities and GDP but also strengthens its relationship with varied countries.

Sectors Attracting Highest ODI FY 2022-23 (April – September 2022)

With the Financial Year 2022-23 (April – September 2022) the manufacturing sector has obtained the highest ODI followed by construction, agriculture and mining, among other sectors. Moreover, the sectors such as financial, insurance, and business services are ranked fourth in acquiring ODI followed by wholesale, retail trade, restaurants and hotels, transport, storage and communication services, among others. Below mentioned image gives a clear picture of month wise ODI outflow.



SECTORS ATTRACTING HIGHEST ODI OUTFLOWS (MONTH-WISE)
(In US$ Million)

Rank	Sector	April-22	May-22	June-22	July-22	Aug-22	Sept-22
1	MANUFACTURING	394	138	262	102	114	243
2	CONSTRUCTION	50	55	52	38	13	79
3	AGRICULTURE AND MINING	70	20	36	26	8	47
4	FINANCIAL, INSURANCE AND BUSINESS SERVICES	146	271	173	180	322	109
5	WHOLSALE, RETAIL TRADE, RESTAURANTS AND HOTELS	67	102	325	97	381	238
6	TRANSPORT, STORAGE AND COMMUNICATION SERVICES	28	28	38	197	16	5
7	COMMUNITY, SOCIAL AND PERSONAL SERVICES	15	32	17	11	33	5
8	ELECTRICITY, GAS AND WATER	22	3	1	5	1	5
9	MISCELLANEOUS	10	5	2	2	14	1
	TOTAL OUTFLOWS	802	654	906	658	902	732

Indian Firms/ Companies in Foreign Countries

As per the estimations of the International Monetary Funds, World Bank, and Asian Development Bank during 2021-24 India continues to be the fastest-growing economy in the world. The growth of the Indian economy is backed by the highest vaccine coverage, enhancement of exports, infrastructure development, and emphasis on fiscal and monetary measures to expand the capital expenditure of the country.

The growth of the Indian economy is contributing to its expansion and diversification of Indian businesses, which in return allows Indian businesses to explore overseas growth opportunities with the objective of expanding their geographic footprint. The Tata group is one of the biggest Indian companies investing in foreign countries. The Tata group has begun its overseas investment with Tata Tea's acquisition of Tetley in 2000, including the acquisition of Corus by Tata Steel, Jaguar and Land Rover by Tata Motors and Brunner Mond by Tata Chemicals in the United Kingdom, Daewoo Commercial Vehicles by Tata Motors in South Korea, NatSteel in Singapore and Millennium Steel in Thailand by Tata Steel, and General Chemical Industrial Products by Tata Chemicals, Eight O'Clock Coffee by Tata Tea and Tyco Global Network by Tata Communications in the US.[15]

Besides Tata group, Wipro Limited has announced that it will acquire International TechneGroup Incorporated (ITI)[16] - a global digital engineering and manufacturing solutions company.

As per the Press Information Bureau (PIB), the Cabinet Committee on Economic Affairs has approved the investment by ONGC Videsh Ltd. (OVL) of US$ 121.27 million (about Rs.909 crore) for the development of blocks A-1 and A-3 Blocks of Myanmar.[17]

One more example of the largest investments by Indian companies in foreign countries is Lanka IOC, which is making phased investments in Sri Lanka with the purpose to provide top-notch quality petroleum products and services. [18]

India's Investments and Development in ODI

India, despite being a developing country is constantly making efforts to enhance its overseas investment with the objective of becoming a sustainably developed country, below mentioned are some of the investments and developments done by the country -

- As per the Department of Economic Affairs (DEA) the ODI for the financial year, 2022-23 (April – September 2022) is USD 4,654 million.[19]
- On June 8, 2022, Tata Steel announced to invest of £7 million in a Hartlepool Tube Mill (North East mill) with the purpose to minimize carbon dioxide, enhance capacity and minimize costs.[20]

- On May 19, 2016, Tata Communications and ST Telemedia have entered into a partnership with the objective to expand data center business in Singapore as well as in India.[21]
- On June 5, 2019, Wipro Limited has announced that it will acquire International TechneGroup Incorporated (ITI)[22] - a global digital engineering and manufacturing solutions company.
- On 24 June 2020, as per the Press Information Bureau (PIB), the Cabinet Committee on Economic Affairs approved the investment by ONGC Videsh Ltd. (OVL) of US$ 121.27 million (about Rs.909 crore) for the development of blocks A-1 and A-3 Blocks of Myanmar.[23]
- One more example of the biggest investments by Indian companies in foreign countries is Lanka IOC, which is making phased investments in Sri Lanka with the purpose to provide top-notch quality petroleum products and services. [24]
- Essar joined forces with Progressive Energy to make the UK a low-carbon hydrogen production hub.[25]
- On January 12, 2022, Novelis invested UD$365 million to build a recycling center to support North American Automotive customers.[26]

The Indian government has minimized varied restrictions applicable to Indian companies investing in foreign countries (overseas) emphasizing on increasing funds by shares, local assets, and foreign assets.

The transfer of technology and skills, sharing the results of research and development, access to broader global markets, promotion of a brand, employment generation, and utilization of raw materials of India and the host country are some essential benefits arising from the ODI. These are also significant drivers for foreign trade through focusing on enhanced exports or plant and machinery, goods, and services from India and in return becoming the means of earning foreign exchange through dividend earnings, royalty, and other entitlements.

The Indian economy being a developing country is emphasizing on distinct elements to facilitate growth and development, out of which one of the key elements is foreign investment. Considering that, India has introduced more feasible policies and measures.

Case Study: Does ODI Generate Significant Economic Advantages or Disadvantages For Home or Host Country?

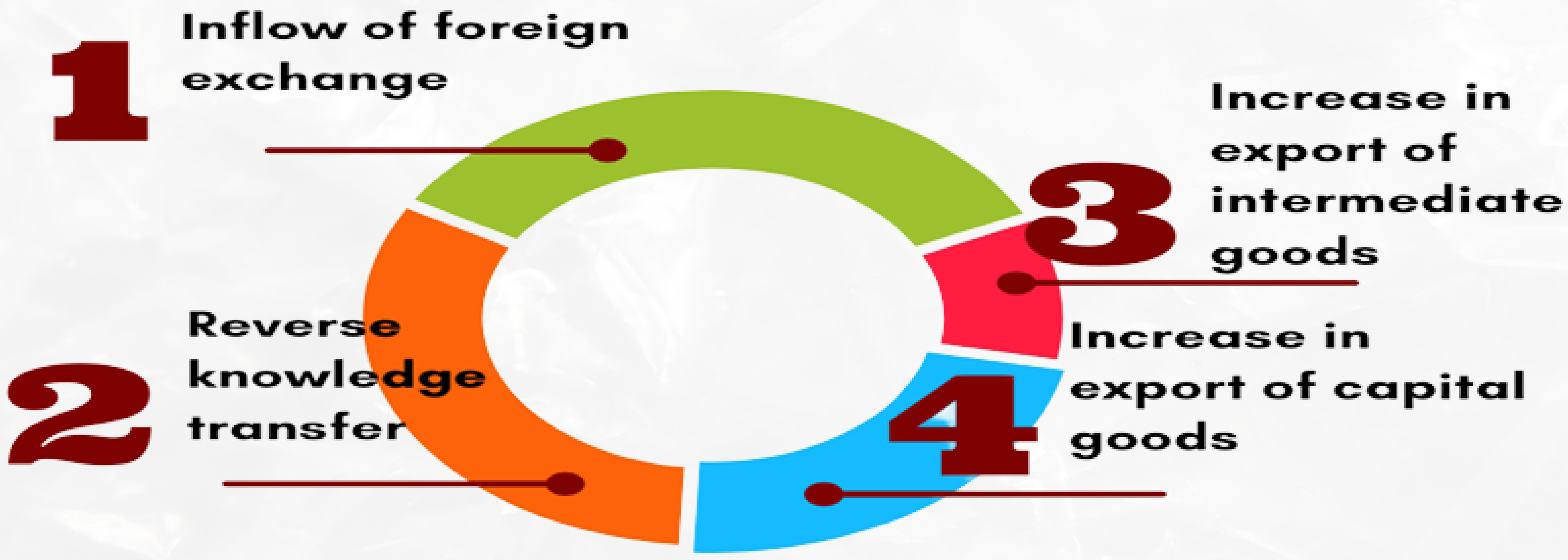
The home country is the one where the respective company is established, while the host country is one where investment is taking place for a specific purpose. Overseas Direct Investment (ODI) is expected to benefit both countries, in this case, study, we will evaluate the potential economic benefits of overseas direct investment.

In order to prove our point, we will analyze the overseas investment made by ONGC Videsh in Myanmar for the development of the Shwe oil & gas project. Since 2002, ONGC Videsh is constantly associated with the exploration and development of the Shwe project in Myanmar, which is part of consortiums from South Korea, India and Myanmar.

The first project of ONGC Videsh was Shwe Project was received in July 2013 and stabilized production attained in December 2014. Besides this, the Project commenced generating positive cash flows since the financial year 2014-15.

An act of an Indian company actively being a part of oil & gas exploration and development projects aligns with the goals of India's Act East Policy and India's efforts to develop Energy Bridges with its immediate neighbor countries.

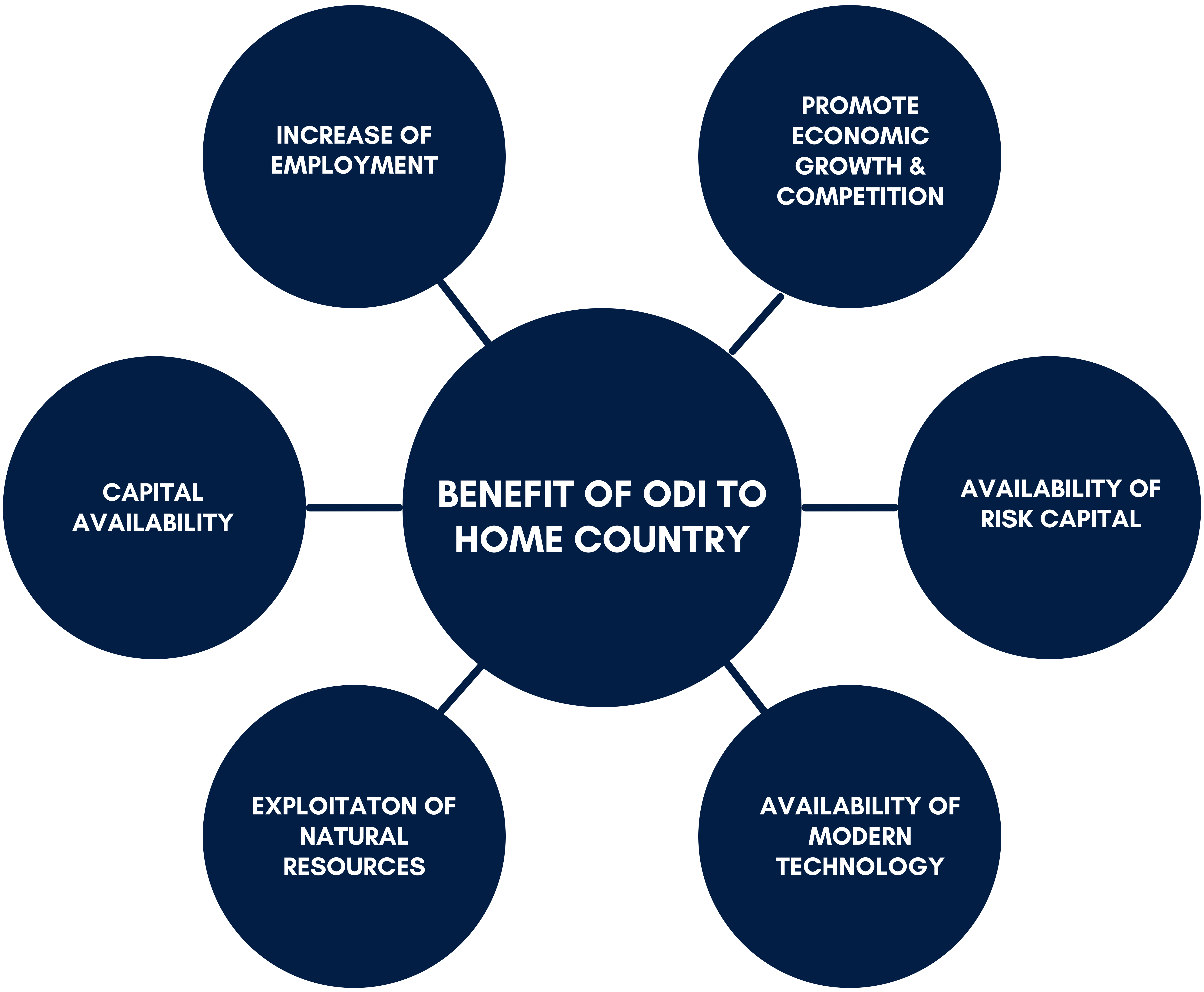
Benefits of ODI to Host Country



On June 24th, 2020, the Indian Cabinet Committee on Economic Affairs had approved the further investment of US$ 121.27 million by ONGC Videsh Ltd (OVL) towards supplementary development of blocks A-1 and A-3 Blocks of Shwe oil & gas project[27].

Currently, 6 projects has been going on in Myanmar[28], beside this, ONGC Videsh, GAIL India, and Essar Oil are some of the top Indian investors in Myanmar.

As of Jun 3, 2021, Myanmar obtain the significant proportion of industry revenue from 4 large offshore projects producing natural gas and ONGC Videsh is one of the largest contributor in the same[29] . This proves that, overseas investment by ONGC Videsh is significantly impacting the economy of the Myanmar since, it has increased its industrial revenue. Thereby, positively affecting the economy.



CONCLUSION

The Overseas Direct Investment and Indian economy shares a positive relationship with respect to growth and development, since higher ODI reflects the scope of economic development of a country as a whole. India was once a closed economy, restricting investment such as FDI and ODI in order to securely emphasize on the growth of the Indian economy.

However, with the understanding of globalization, especially its significance in the growth of a country, India falls among one of the countries with highest ODI in the developed countries such as Singapore, Mauritius, United States of America, United Kingdom, Netherlands, among others. This proves that “Overseas Direct Investment” plays a significant role in the growth trajectory of India.

Beside this, India has also permitted 100% ODI through automatic route in varied sectors such as Construction And Maintenance of Submarine Cable Systems, Special Purpose Vehicles (SPV), unincorporated/ incorporated oil entities, among others signifying that India is favoring overseas direct investment by Indian parties, JVs and WOS.