

**OVERSEAS DIRECT INVESTMENTS**

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# About Us

Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.

Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields

Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.



## Overseas Direct Investments:

Things Indian Investors Should Be Aware Of

## ➤ **Meaning of ODI-**

Direct investment outside India means investments, either under the Automatic Route or the Approval Route, by way of contribution to the capital or subscription to the Memorandum of Association of a foreign entity, signifying a long-term interest in the overseas entity (setting up / acquiring a Joint Venture (JV) or a Wholly Owned Subsidiary (WOS)).

## ➤ **Points to be considered for ODI**

- Investments can be made in new or existing entity.
- Indian entity can invest in any bonafide activity (except real estate other than development of township, construction of residential/ commercial premises, road or bridges). Also in case of financial service sector, certain additional conditions to be fulfilled.

## ➤ Routes of Investment through ODI-

### Automatic Route

- An Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investments. The Indian Party should approach an Authorized Dealer Category – I bank with an application in Form ODI and the prescribed enclosures / documents for effecting the remittances

### Approval Route

- Proposals not covered by the conditions under the automatic route require the prior approval of the Reserve Bank for which a specific application in form ODI with the documents prescribed therein is required to be made through the Authorized Dealer Category – I banks.



## ➤ Indian Party-

A company incorporated in India or a body created under an act of Parliament.

A partnership firm registered under the Indian Partnership Act, 1932 or a Limited Liability Partnership (LLP) incorporated under the Limited Liability Partnership Act, 2008

Any other entity in India as may be notified by the Reserve Bank.

- **Joint Venture**

Joint Venture (JV)' means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian party makes a direct investment.

- **Wholly Owned Subsidiary**

'Wholly Owned Subsidiary (WOS)' means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian party.

- **Financial Commitment**

'Financial commitment' means the amount of direct investment by way of contribution to equity and loan and 100 per cent of the amount of guarantees issued by an Indian party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

- **Real Estate Business**

'Real estate business' means buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges;

## ➤ Sectors in which ODIs are allowed with prior RBI approval-

- Real Estate Business (Important to note the definition of Real Estate Business)
- Banking Business (However, Indian banks can set up JVs/WOSs abroad provided they obtain clearance under the Banking Regulation Act, 1949)

- **Clarification-**

An overseas entity, having direct or indirect equity participation by an Indian party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank. 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

## ➤ General Permission-

- In terms of Regulation 4 of the Notification, general permission has been granted to persons residents in India for purchase / acquisition of securities in the following manner:
- (a) out of the funds held in RFC account;
- (b) as bonus shares on existing holding of foreign currency shares; and
- (c) when not permanently resident in India, out of their foreign currency resources outside India.
- General permission is also available to sell the shares so purchased or acquired under clause (a), (b) and (c).



## ➤ Indian Party's Obligations-

### • EVIDENCE:

- Filling up of ODI Form to RBI, duly supported by certified board resolution, statutory auditors certificate and valuation report, through AD – I Bank
- Receive share Certificate
- Any other documents as an evidence of investment
- Within six months of investments

### • APR & FLA:

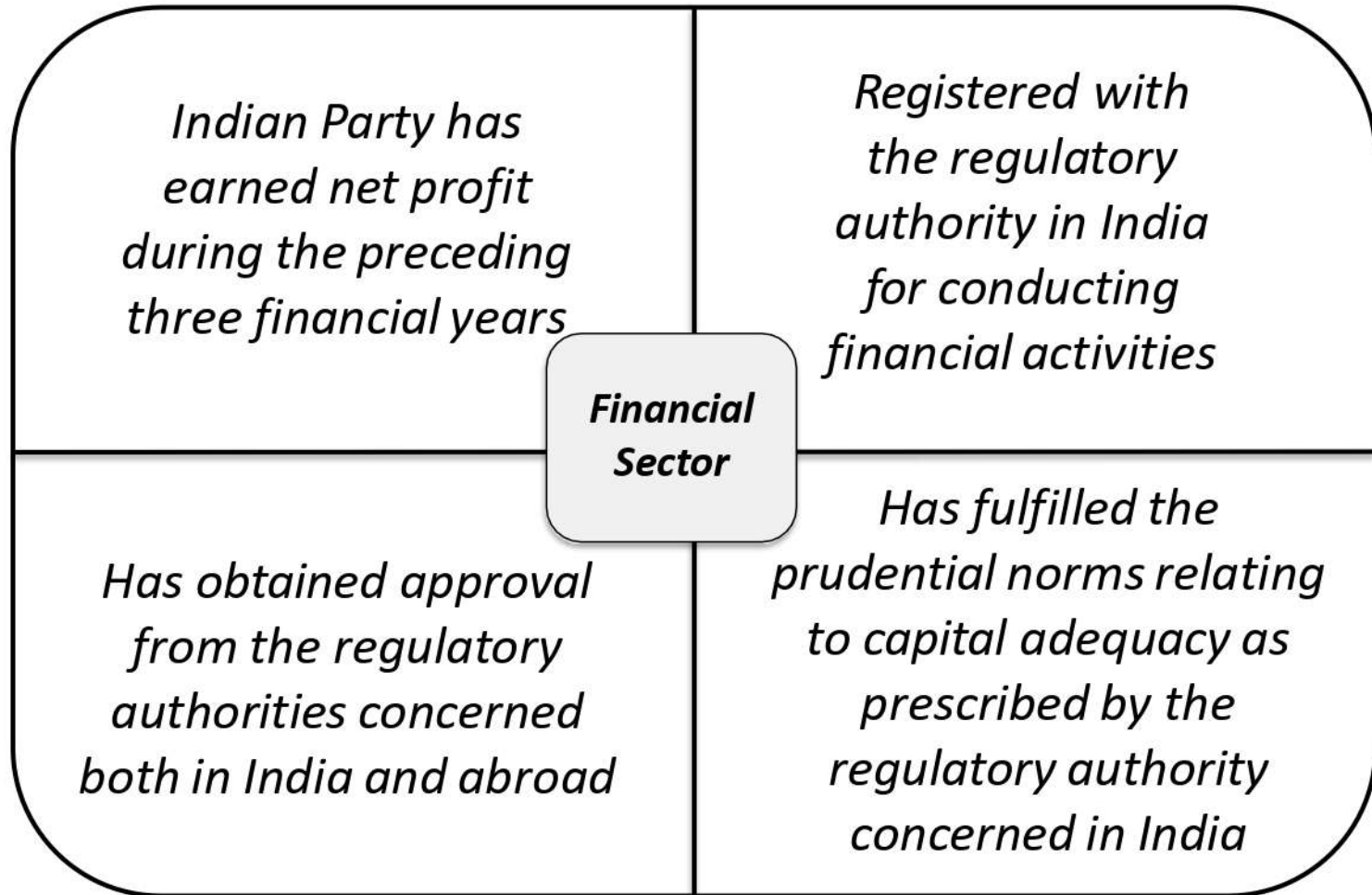
- Submit Annual Performance Report of overseas entity to the Reserve Bank of India through AD Bank
- Every year after annual accounts are prepared
- 31<sup>ST</sup> December every year (based on audited annual accounts)
- Submit annual return on Foreign Liabilities and foreign Assets
- 15<sup>th</sup> July every year (through mail)

### • DUES

- Repatriate to India all dues viz. dividends, royalty, technical fees, etc.
- Within 60 days of falling due.

## ➤ ODI by Financial Sectors-

### ➤ Requirements to be fulfilled by the Indian Party



## ➤ INVESTMENT THROUGH SPV -

- **INVESTMENT THROUGH SPECIAL PURPOSE VEHICLE (SPV) UNDER AUTOMATIC ROUTE**
  - (i) Investments in JV/WOS abroad by Indian party through the medium of a Special Purpose Vehicle (SPV) are also permitted under the Automatic Route in terms of Regulation 6 of the Notification.
  - (ii) Setting up of an SPV under the Automatic Route is permitted for the purpose of making a investment in JV/WOS overseas
  - (iii) Indian parties whose names appear in the Defaulters' list require prior approval of the Reserve Bank for the investment.

### Automatic Route



# ➤ OVERSEAS DIRECT INVESTMENT AS FINANCIAL TOOL:

(a) Indian Parties are permitted to issue corporate guarantees on behalf of their first level step down operating JV / WOS set up by their JV / WOS operating as a Special Purpose Vehicle (SPV) under the Automatic Route, subject to the condition that the financial commitment of the Indian Party is within the extant limit for overseas direct investment. It has been decided that irrespective of whether the direct subsidiary is an operating company or a SPV, the Indian promoter entity may extend corporate guarantee on behalf of the first generation step down operating company under the Automatic Route, within the prevailing limit for overseas direct investment. Such guarantees will have to be reported to the Reserve Bank in Form ODI, as hitherto, through the designated AD Category

– I bank concerned.

(b) Further, the issuance of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries will be considered under the Approval Route, provided the Indian Party directly or indirectly holds 51 per cent or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

- (Note :The Indian party / entity may extend loan / guarantee only to an overseas JV / WOS in which it has equity participation.)
- Proposals from the Indian party for undertaking financial commitment without equity contribution in JV / WOS may be considered by the Reserve Bank under the approval route.

As in the case of corporate guarantees, all guarantees (including performance Guarantees and Bank Guarantees / SBLC) are required to be reported to the Reserve Bank, in Form ODI-Part

II. Guarantees issued by banks in India in favour of WOSs / JVs outside India, and would be subject to prudential norms, issued by the Reserve Bank (DBOD) from time to time.

## ➤ **Capitalisation of exports and other dues-**

- (1) Indian party is permitted to capitalise the payments due from the foreign entity towards exports, fees, royalties or any other dues from the foreign entity for supply of technical know-how, consultancy, managerial and other services within the ceilings applicable. Capitalisation of export proceeds remaining unrealised beyond the prescribed period of realization will require prior approval of the Reserve Bank.
- (2) Indian software exporters are permitted to receive 25 per cent of the value of their exports to an overseas software start-up company in the form of shares without entering into Joint Venture Agreements, with prior approval of the Reserve Bank.

## ➤ **Creation of charge on shares of JV / WOS / step down subsidiary (SDS) in favour of domestic / overseas lender-**

- In terms of the extant FEMA provisions, creation of charge (pledge) on the shares of an JV / WOS of an Indian party in favour of domestic / overseas lender for the purpose of availing facilities (funded or non-funded) by the Indian party and / or the concerned JV / WOS is under the automatic route.
- It has been decided that the designated AD bank may permit creation of charge / pledge on the shares of the JV / WOS / SDS (irrespective of the level) of an Indian party in favour of a domestic or overseas lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its JV / WOS / SDS (irrespective of the level) under the automatic route subject to the following:

- The Indian party is complying with the provisions under Regulation 6 (and Regulation 7, if applicable) of the Notification *ibid* for undertaking financial commitment;
- Compliance to the provisions under Regulation 18 of the Notification *ibid*;
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created;
- The loan / facility availed by the JV / WOS / SDS from the domestic / overseas lender shall be utilized only for its core business activities overseas and not for investing back in India in any manner whatsoever;
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD;
  - The invocation of charge resulting into the domestic lender acquiring the shares of the overseas JV / WOS / step down subsidiary shall be governed by the extant FEMA provisions / regulations issued by the Reserve Bank from time to time;
- The facilities (funded or non-funded) extended by the domestic lender to the Indian party or to its group / sister / associate concern or to any of its overseas JV / WOS / SDS shall also be governed by the prudential norms and other guidelines issued by the Department of Banking Regulation (DBR, the erstwhile DBOD), Reserve Bank of India from time to time; and
- The matter relating to the setting up / acquiring the multi-layered structure of overseas entities by the Indian party, wherever applicable, is under the examination of the Reserve Bank and the decision taken in this regard shall be conveyed in due course for necessary compliance at AD / Indian party level.



## ➤ **Creation of charge on the domestic assets in favour of overseas lenders to the JV / WOS / step down subsidiary-**

The designated AD bank may permit creation of charge (by way of pledge, hypothecation, mortgage, or otherwise) on the domestic assets of an Indian party (or its group companies / sister concerns / associate concerns including the individual promoters / directors) in favour of an overseas lender for securing the funded and / or non-funded facility to be availed of by the JV / WOS / SDS (irrespective of the level) of the Indian party under the automatic route subject to the following:

- The Indian party is complying with the provisions under Regulation 6 (and Regulation 7, if applicable) of the Notification *ibid* for undertaking the financial commitment;
- Compliance to the provisions under Regulation 18A(1) of the Notification FEMA /120 – RB dated 07/07/2004;
- The domestic assets, on which charge is being created, are not securitized;
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created;
- The loan / funds raised overseas by the JV / WOS / SDS shall be utilized only for its core business activities overseas and not for investing back in India in any manner whatsoever;
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / funds raised overseas by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD;
- The overseas lender undertakes that, in the event of enforcement of charge, they shall transfer the domestic assets by way of sale to a resident only;
- In case of invocation of charge, the resultant remittance of the proceeds exceeding the prescribed limit of the financial commitment of the Indian party (prevailed at the time of creation of charge) shall require prior approval of the Reserve Bank;
- Wherever creation of charge involves pledge of shares of an Indian company, the pledge shall also be governed by the extant FEMA provisions / regulations issued by the Reserve Bank and the consolidated Foreign Direct Investment (FDI) policy issued by the Government of India from time to time; and
- The matter relating to the setting up / acquiring the multi-layered structure of overseas entities by the Indian party, wherever applicable, is under the examination of the Reserve Bank and the decision taken in this regard shall be conveyed in due course for necessary compliance at AD / Indian party level.

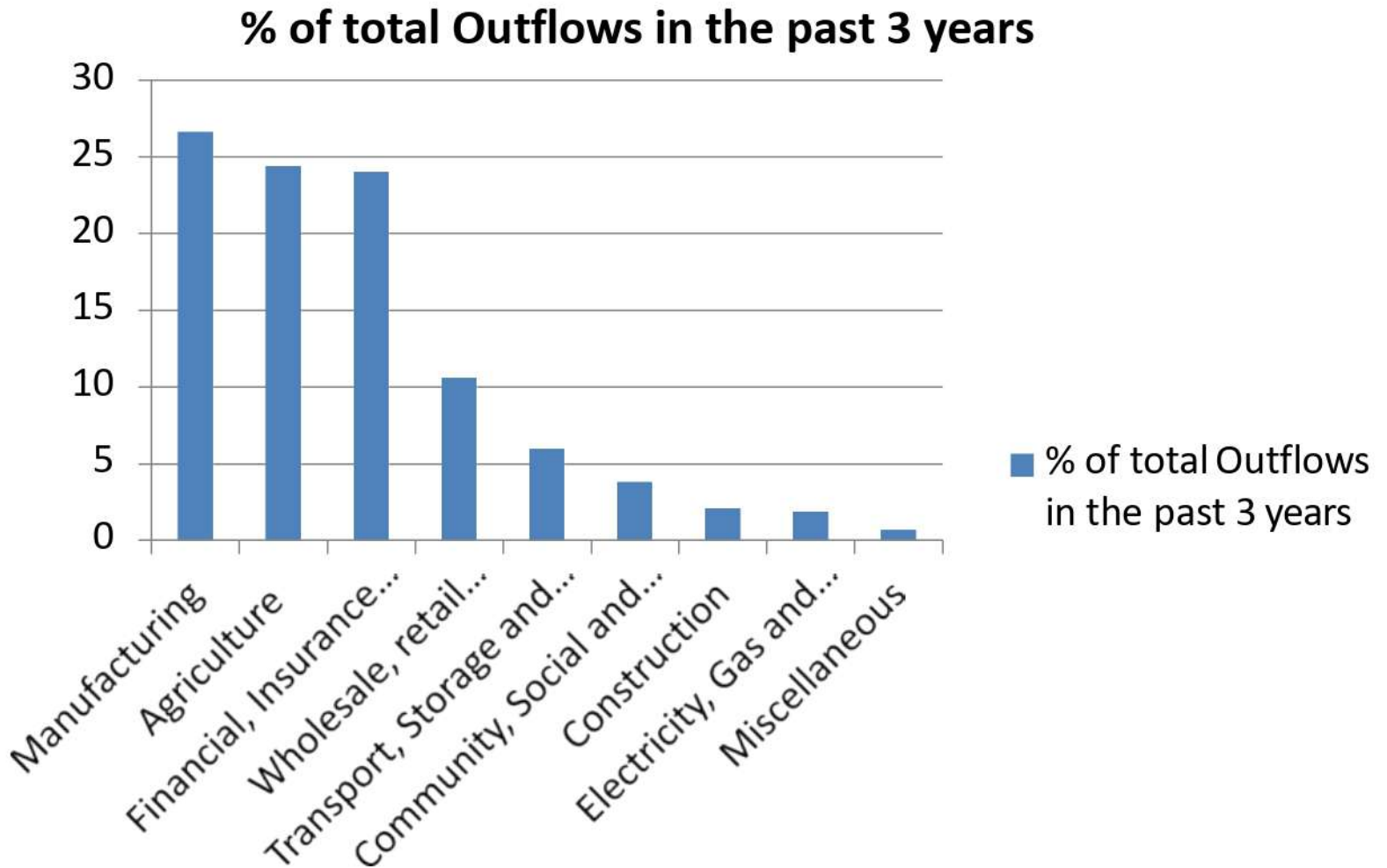
## ➤ Creation of charge on overseas assets in favour of domestic lender-

- The designated AD bank may permit creation of charge (by way of hypothecation, mortgage, or otherwise) on the overseas assets (excluding the shares) of the JV / WOS / SDS (irrespective of the level) of an Indian party in favour of a domestic lender for securing the funded and / or non-funded facility to be availed of by the Indian party or by its group companies / sister concerns / associate concerns or by any of its overseas JV / WOS / SDS (irrespective of the level) under the automatic route subject to the following:
- The Indian party is complying with the provisions under Regulation 6 (and Regulation 7, if applicable) of the Notification *ibid* for undertaking financial commitment;
- Compliance to the provisions under Regulation 18A(2) of the Notification *ibid*;
- The overseas assets, on which charge is being created, are not securitized;
- The period of charge, if not specified upfront, may be co-terminus with the period of end use (like loan or other facility) for which charge has been created;
- The loan / facility availed by the JV / WOS / SDS from the domestic lender shall be utilized only for its core business activities overseas and not for investing back in India in any manner whatsoever;
- A certificate from the Statutory Auditors' of the Indian party, to the effect that the loan / facility availed by the JV / WOS / SDS has not been utilized for direct or indirect investments in India, is to be obtained and kept by the designated AD;
- The invocation of charge resulting into the domestic lender acquiring the overseas assets shall require prior approval of the Reserve Bank; and
- The matter relating to the setting up / acquiring the multi-layered structure of overseas entities by the Indian party, wherever applicable, is under the examination of the Reserve Bank and the decision taken in this regard shall be conveyed in due course for necessary compliance at AD / Indian party level.

## ➤ **Setting up office/ branch outside India-**

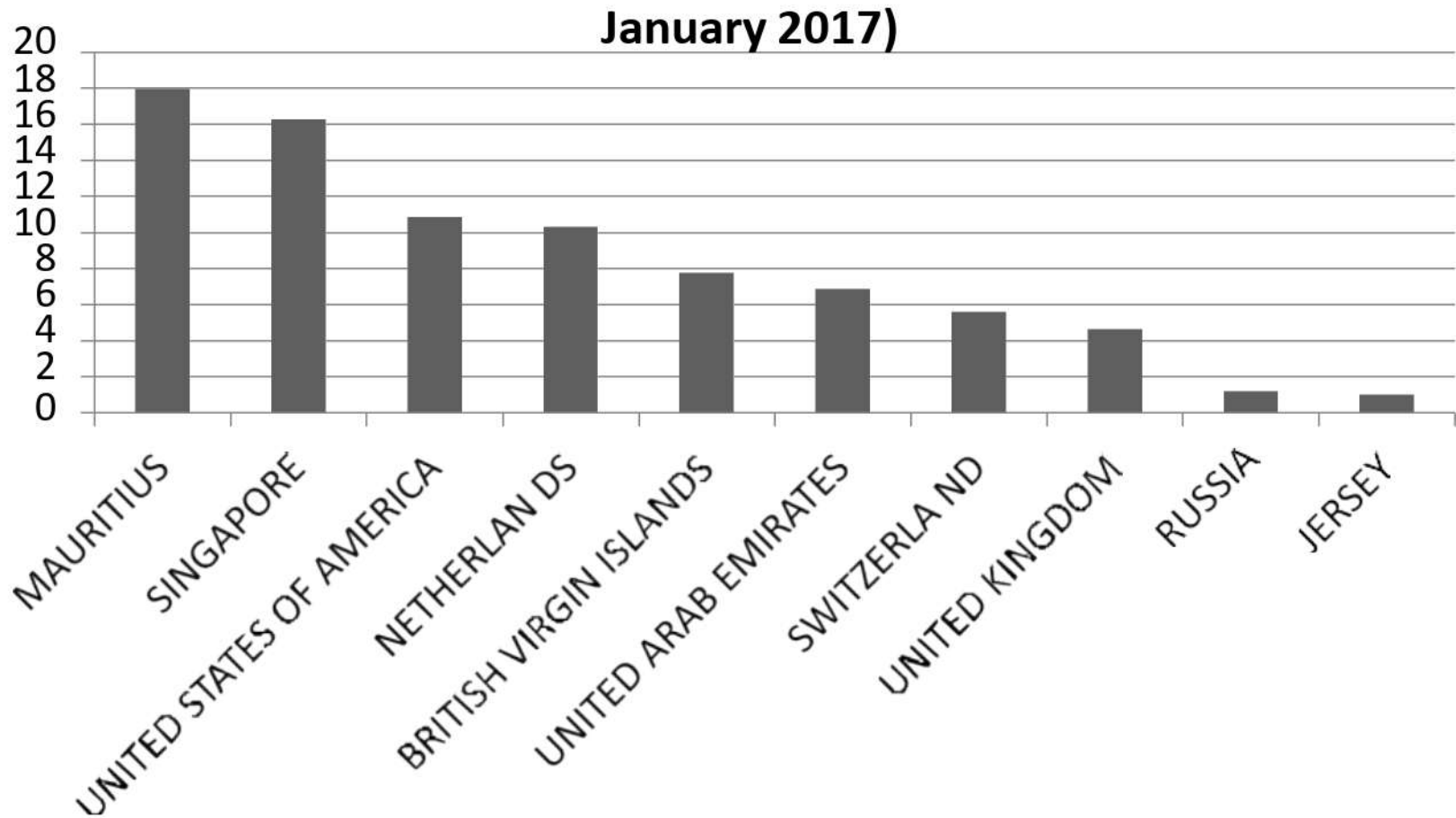
- (i) At the time of setting up of the office, AD Category – I banks may allow remittances towards initial expenses up to fifteen per cent of the average annual sales/income or turnover during the last two financial years or up to twenty-five per cent of the net worth, whichever is higher.
- (ii) For recurring expenses, remittances up to ten per cent of the average annual sales/income or turnover during the last two financial years may be sent for the purpose of normal business operations of the office (trading/non-trading)/branch or representative office outside India subject to the following terms and conditions:
  - a. The overseas branch/office has been set up or representative is posted overseas for conducting normal business activities of the Indian entity;
  - b. The overseas branch/office/representative shall not enter into any contract or agreement in contravention of the Act, Rules or Regulations made there under;
  - c. The overseas office (trading / non-trading) / branch / representative should not create any financial liabilities, contingent or otherwise, for the head office in India and also not invest surplus funds abroad without prior approval of the Reserve Bank. Any funds rendered surplus should be repatriated to India.
- (iii) The details of bank accounts opened in the overseas country should be promptly reported to the AD Bank.
- (iv) AD Category – I banks may also allow remittances by a company incorporated in India having overseas offices, within the above limits for initial and recurring expenses, to acquire immovable property outside India for its business and for residential purpose of its staff.
- (v) The overseas office / branch of software exporter company/firm may repatriate to India 100 per cent of the contract value of each 'off-site' contract.
- (vi) In case of companies taking up 'on site' contracts, they should repatriate the profits of such 'on site' contracts after the completion of the said contracts.
- (vii) An audited yearly statement showing receipts under 'off-site' and 'on-site' contracts undertaken by the overseas office, expenses and repatriation thereon may be sent to the AD Category – I banks.

# ➤ SECTORWISE ODI-



# ➤ TOP TEN ODI DESTINATION COUNTRIES -

% OF TOTAL OUTFLOW OF LAST 3 YEARS(April 2013 to



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## Branch Offices

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