



Regulations Governing Overseas Investments (As per FEMA & RBI Act).

BY SUMIT KURMI
CMA FINALIST

TOPICS TO BE DISCUSSED

1. Corporate law in Dubai (UAE)
 - Company Setup & Licensing
 - Tax & Financial Compliance
 - Economic Substance Regulations (ESR)
 - Anti-Money Laundering (AML) & UBO Reporting
2. Compliance in India (As per FEMA and RBI Act)
 - What is Overseas Direct Investment (ODI)
 - Section 6 of FEMA 1999
 - Role of RBI
 - Liberalised Remittance Scheme (LRS)





Corporate Law in Dubai

- As per Dubai corporate law what are the compliances need to be done if someone investing the money from India.

1. Company Setup & Licensing

- If you invest by forming a UAE company or acquiring shares in one, it must be properly incorporated and licensed with the relevant authority (e.g., Dubai Department of Economy and Tourism or the applicable Free Zone authority).
- The company must have Memorandum and Articles of Association outlining activities, share capital, governance, etc

2. Tax & Financial Compliance

- Introduced in June 2023, a federal corporate tax applies to businesses operating in the UAE. The standard rate is 9% of a company's net profits.
- Exemptions:
 - Companies with net annual profits below AED 375,000 (around USD 102,100) are exempt.
 - Free zone companies with specific restrictions on mainland business activities may qualify for a 0% tax rate.
 - Companies falling under the global minimum corporate tax rate agreement might be subject to a 15% rate.

3. Economic Substance Regulations (ESR)

- If the UAE entity engages in “relevant activities” (like distribution, IP holding, shipping, insurance, banking, etc.), it must demonstrate economic substance — a real presence (office, employees, local management) and file annual reports.
- Failure to comply may result in fines or license issues.

4. Anti-Money Laundering (AML) & UBO Reporting

- UAE law requires **Anti-money laundering** compliance
- Disclosure of the Ultimate Beneficial Owner (UBO) (person owning/controlling $\geq 25\%$ of the company).
- The company must register its UBO with UAE authorities and update it if ownership changes



Compliance in India (As per FEMA and RBI Act)

Under the Foreign Exchange Management Act (**FEMA**) and Reserve Bank of India (RBI) rules:

- Overseas Direct Investment (**ODI**) regulations apply if you are investing in a company outside India (including Dubai).
- You may need to use the Liberalized Remittance Scheme (**LRS**) (up to certain limits) or file an ODI application through your bank/Authorized Dealer.
- Investments over specified thresholds must be reported, and sometimes prior RBI approval is needed.

What is Overseas Direct Investment (ODI)

Overseas Direct Investment (ODI) is when a company or resident from one country (like India) invests in a foreign entity to gain ownership or control, typically by setting up subsidiaries, joint ventures (JVs), or acquiring significant equity (usually 10% or more) in a foreign company. It's a strategy for expanding business globally, accessing new markets, and transferring technology, unlike portfolio investment (buying small stakes).

Under FEMA, 1999, overseas investment in real estate by an Indian resident is mainly governed by Section 6

Section 6(4) – Foreign Assets Held Outside India

- This is the key section.
- It allows a resident individual to acquire, hold, own and transfer foreign assets, including immovable property outside India, in accordance with RBI regulations.
- The RBI operationalises this through the Liberalised Remittance Scheme (LRS).

Section 6(3)(j) – Capital Account Transactions

- This section empowers the RBI to regulate capital account transactions, including:
- Transfer of funds for overseas investments
- Acquisition of immovable property outside India
- RBI notifications under this section define limits, conditions, and procedures (like USD 250,000 limit under LRS).

Key Elements Explained as per section-06

- Who Is Covered?

- A person resident in India under FEMA.
- This includes Indian citizens who have become residents after living abroad, or residents inheriting foreign assets.

- What Assets Are Covered?

Section 6(4) covers:

- 🏠 Immovable property outside India (e.g., real estate in Dubai)
- 💰 Foreign currency
- 📈 Foreign securities

- When Is It Allowed?

he section primarily allows holding foreign assets if:

- The asset was acquired when the person was a non-resident, OR
- The asset was inherited from a non-resident.

⚠ Important Practical Interpretation:

- For new acquisitions while being a resident, RBI permission is required.
- RBI has given general permission through the Liberalised Remittance Scheme (LRS), which is why residents can now legally buy property abroad.

• Role of RBI

Liberalised Remittance Scheme (LRS)

- Section 6(4) works subject to RBI regulations.
- RBI decides:
 1. How much money can be invested
 2. Mode of payment
 3. Permissible purposes
- RBI exercises this power via:–
 - Liberalised Remittance Scheme (LRS)
 - FEMA Rules & Master Directions



Let us understand LRS

The Liberalised Remittance Scheme is an RBI scheme that allows Indian residents to remit up to USD 250,000 per year abroad for permitted purposes, including overseas real estate investment, without prior RBI approval.

Key Features of LRS

Who Can Use LRS?

- Only resident individuals under FEMA
- Not available to companies, firms, LLPs, or HUFs

Remittance Limit

- Maximum USD 250,000 per financial year (April–March) per individual
- The limit is cumulative for all purposes combined



Permitted Purposes

Under LRS, residents can remit money abroad for:

- Purchase of immovable property outside India (e.g., real estate in Dubai)
- Investment in foreign shares, securities, and bonds
- Setting up or investing in overseas businesses
- Education and medical treatment abroad
- Travel and maintenance of relatives abroad

Mode of Remittance

- Remittance must be done only through authorised dealer (AD) banks
- Source of funds must be legal and tax-paid
- Proper KYC and documentation are mandatory

What is Money invested above LRC ?

Legal Consequences of Investing Above LRS

FEMA Violation

- Excess amount is treated as a contravention under FEMA
- Penalty:
 - Up to 3 times the amount involved, or
 - ₹2 lakh (minimum), plus continuing penalties

Income Tax & Black Money Act Exposure

- Undisclosed foreign assets can trigger:
 - ₹10 lakh penalty per year for non-reporting
 - Tax, interest, and prosecution in serious cases



How Can Investment Above LRS Be Made Legally?

- Only with specific RBI approval
- Or by:
 - Spreading investment across multiple financial years
 - Using separate LRS limits of spouse/family members (each person separately)

Step 1: Approach an Authorised Dealer (AD) Bank

- RBI does not accept applications directly from individuals.
- The application must be routed through your AD Category-I bank (e.g., SBI, HDFC, ICICI).

Step 2: Submit a Formal Application

- You submit a written application to your bank explaining:
 - Why remittance exceeds LRS
 - Purpose of investment
 - Justification and background

The bank forwards it to RBI under Section 6(3) & 6(4) of FEMA.

Step 3: RBI Examination

RBI examines:

- Source of funds
- Nature of investment
- FEMA & policy compliance
- Whether the transaction creates systemic risk or misuse

Financial Documents

- ✓ Last 3 years Income Tax Returns
- ✓ Net worth statement (CA-certified)
- ✓ Source of funds declaration
- ✓ Bank statements

Investment-Specific Documents

- ✓ Sale & Purchase Agreement / Allotment Letter
- ✓ Project details of foreign real estate
- ✓ Developer profile (e.g., X Company situated outside India)
- ✓ Payment schedule
- ✓ Escrow account details (if off-plan)

“Investment above the LRS limit requires prior RBI approval, which is obtained by applying through an authorised dealer bank with full disclosure of source of funds, investment purpose, and FEMA compliance documents.”

THANK YOU
ALL TEAM MEMBERS

A. TEKRIWAL & CO.

PRESENTER - SUMIT KURMI
(CMA FINALIST)