Changes in Overseas Investment Rules

Why in news?

The Finance Ministry has released the Foreign Exchange Management (Overseas Investment) Rules, 2022.

How is overseas investment governed in India?

- Currently, the overseas investment by a person resident in India is governed by
  - The Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004
  - The Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015

What is the need for revising the rules?

- In an increasingly integrated global market, there is a need of Indian corporates to be part of the global value chain.
- The revised regulatory framework for overseas investment provides for simplification of the existing framework for overseas investment.
- It has been aligned with the current business and economic dynamics.
- Clarity on overseas direct investment and overseas portfolio investment has been brought in.
- Various overseas investment-related transactions that were earlier under approval route are now under automatic route, significantly enhancing Ease of Doing Business.
- These rules make it difficult for wilful defaulters to send funds out of the country and make it easier for domestic corporates to invest abroad.

What are the amendments under the overseas investment rule?

- **ODI-** The investment by a person resident in India in the equity capital of a foreign entity is classified as ODI (Overseas Direct Investment).
- Such investment will continue to be treated as ODI even if the investment falls to a level below 10% of the paid-up equity capital or such person loses control in the foreign entity.
- **Ceiling for aggregate outflows**- RBI if necessary may in consultation with the central government, stipulate the ceiling for the aggregate outflows during a financial year on account of financial commitment or Overseas Portfolio Investment (OPI).
- RBI can stipulate the ceiling beyond which the amount of financial commitment by a person resident in India in a financial year shall require its prior approval.
- **Requirement of NOC**- Any Indian resident whose account is classified as non-performing assets or a wilful defaulter or is under investigation by a financial service regulator will have to obtain a 'No Objection Certificate' before making any financial

commitment or disinvestment.

- **Annual Performance Report**- Any resident in India acquiring equity capital in a foreign entity or ODI, will have to submit an Annual Performance Report (APR) for each foreign entity.
- **Liberalised Remittance Scheme**- Any resident individual can make ODI by way of investment in equity capital or OPI subject to overall ceiling under Liberalised Remittance Scheme.
- **Prohibitions**- The new rules prohibit Indian residents from making investments into foreign entities that are engaged in real estate, gambling, dealing with financial products linked to Indian rupee without specific approval of the RBI.
- **Arm's length pricing**- The amendment states that the pricing will be on an arm's length basis after taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.
- **Transferring equity capital**- Any Indian resident may transfer equity capital by way of sale to a person resident in India, who is eligible to make such investment or to a person resident outside India.
- **Acquiring immovable property**- An Indian entity having an overseas office may acquire immovable property outside India for the business and residential purposes of its staff.

Under the Liberalised Remittance Scheme, all resident individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year for any permissible current or capital account transaction or a combination of both.

References

1. https://indianexpress.com/article/explained/explained-economics/explained-defaulters-centre-tweaks-rules-overseas-investment-8107359/
2. https://www.livemint.com/news/india/finmin-in-consultation-with-rbi-amends-overseas-investment-rules-details-here-11661181242251.html
3. https://m.rbi.org.in/scripts/FAQView.aspx?Id=115#:~:text=Under%20the%20Liberalised%20Remittance%20Scheme,or%20a%20combination%20of%20both.

SHANKAR IAS PARLIAMENT
Information is Empowering