NEWS

HNIs face new dos & don'ts on foreign bets

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Synopsis

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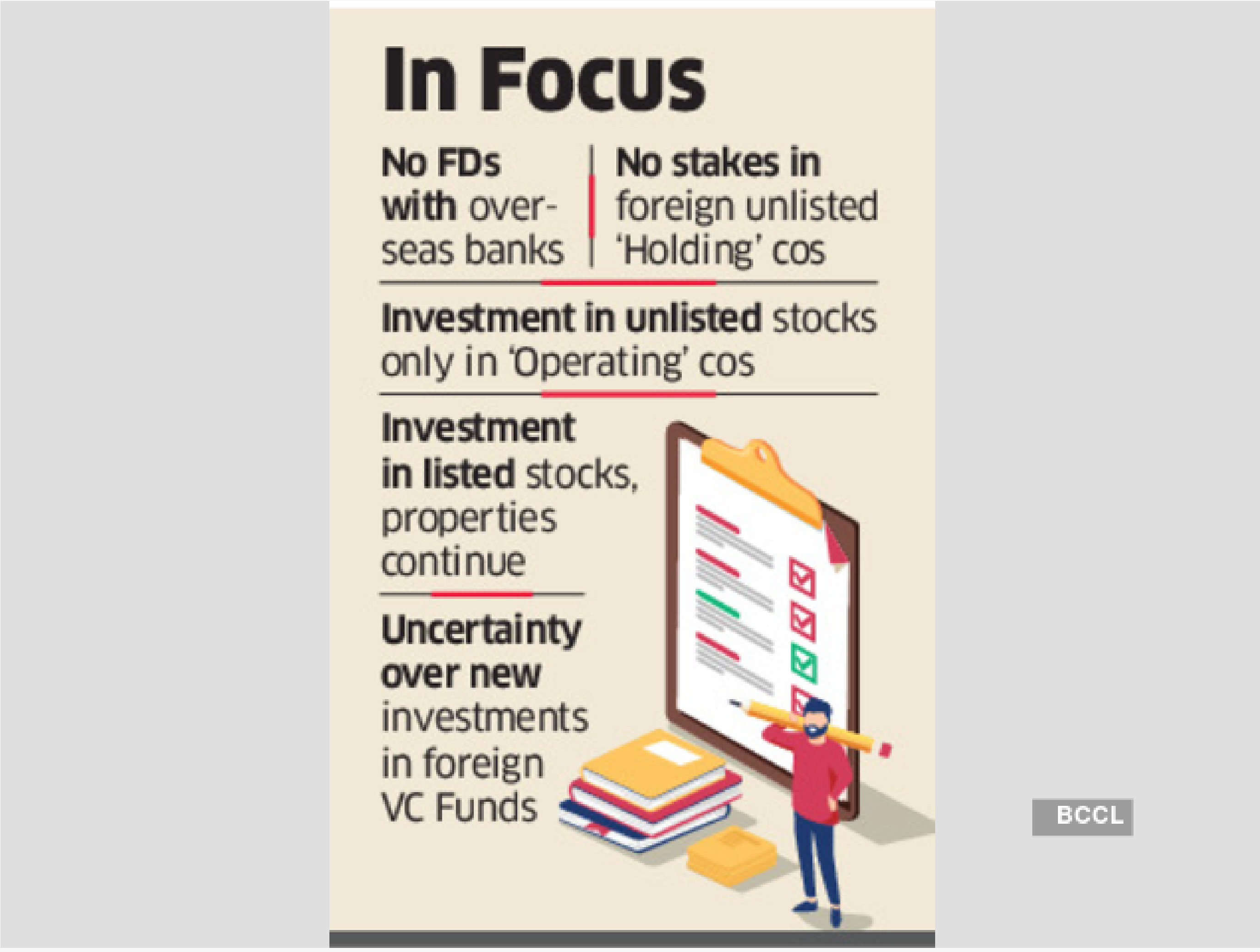
Mumbai: The rules of the game have changed for the Indian rich betting in the overseas **financial markets**. They can no longer sidestep regulations to **trade** in **derivatives**, **cryptocurrencies**, and other leveraged products abroad, or even park money in fixed deposits with offshore banks. There is also a question mark on whether they can invest in Silicon Valley venture capital funds. And more importantly, they have to be more careful now in how the corpus built over the years through overseas investments is reinvested.

A resident Indian can transfer overseas, using banking channels, up to $250,000 a year to invest in stocks, debt, and properties under the liberalised remittance scheme (LRS) regulated by Reserve Bank of India (RBI). While the maximum amount that can be remitted remains unchanged, the rules on where the money can be deployed have been tightened with the government altering the regulations on overseas direct investments (ODIs).

Till now, a person (besides investing in listed stocks) could invest up to 10% in a foreign 'holding' or an unlisted investment company - often created by a group of HNI investors coming together. This investment vehicle in turn traded in financial derivatives and cryptos which are disallowed under the LRS. That will stop now, with the new ODI rules stating that such an unlisted entity has to be an 'operating' company - which is carrying out certain business and is not in financial services.



"Also, under the old rules, resident Indians were allowed to retain LRS proceeds in an overseas bank account. But they are now required to repatriate realised foreign exchange within 180 days, unless reinvested in accordance with the new overseas investment rules. The reason for this change seems to be to discourage accumulation and flight of uninvested Indian capital outside the country, which could also then remain untracked, and be used for purposes not intended under the LRS," said Parul Jain, head of international tax and fund formation practices at Nishith Desai Associates.

With $250,000 remitted every year, a family of five could create a sizeable corpus over a period of time. Once the money was parked into FDs abroad, it was often difficult to trace fund movements after the deposits matured.

"It appears," said Moin Ladha, partner at Khaitan & Co, "that with a view to streamline and curb possible misuse of LRS for directly or indirectly undertaking capital account transactions not specifically permitted, the new rules have now limited investment to Overseas Portfolio Investment and Overseas Direct Indirect Investment. Also, while they have permitted reinvestment, they have clearly laid down the requirement of repatriating funds realised on eventual sale of investments back to India."

HNIs who have been diversifying their portfolio by subscribing to units of overseas VC funds are confused whether they can continue doing it. While RBI directions allow investment in units issued by VC funds, the rules of the government have no such provision. FDs are out of bounds as new rules prohibit investment in unlisted debts.

"However, in light of the new checks and balances, as long as the resident individual does not have control in the operating foreign entity, such a foreign entity is now permitted to expand by having a subsidiary as well as a step down subsidiary, which was earlier prohibited under LRS. This seems logical," said Tejesh Chitlangi, senior partner at IC Universal Legal.

The ODI rules were revisited at a time the currency and stock markets have been volatile amid a widely-shared belief that US interest rates could further rise. In the past, LRS limits were sometimes lowered when the local currency came under pressure. RBI had reduced the eligibility limit to $75,000 in 2013 as a macro-prudential measure. With stability in the foreign exchange market, the limit was raised to $125,000 in June 2014 without end-use restrictions, except for prohibited forex transactions such as margin trading, lotteries and the like. The limit which was originally set at $25,000 was increased to $200,000 between December 2006 and September 2007.

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